

Appendix J

Tom Franklin, Barrett – Interview and Deposition Transcripts

Pipeline Rupture and Fire
Bellingham, Washington
June 10, 1999
DCA-99-MP-008

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD

IN RE: **OLYMPIC PIPELINE COMPANY**;
Pipeline Rupture and Fire, June
10, 1999, Bellingham, WA

DCA-99-WP-008

INTERVIEW UNDER OATH
OF
THOMAS FRANKLIN

July 14, 1999

A P P E A R A N C E S :

MR. ALLAN C. BESHORE, NTSB Pipeline Investigator, 490
L-Enfant Plaza East, SW, Washington, D.C. 20594-2000;

MR. JOE SUBSITS, Department of Ecology, Spills Program,
P. O. Box 47600, Olympia, WA 98504;

MR. DOUGLAS D. BEU, Operations Manager, Olympic Pipeline
Company, P. O. Box 1800, Renton, WA 98057;

MR. TERENCE J. SCANLAN, 1301 Fifth Avenue, Suite 3401,
Seattle, WA 98101-2605.

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ORIGINAL

1 Interview under oath of Mr. Thomas Franklin, a
2 witness in the above-entitled matter, taken at the instance
3 of the National Transportation and Safety Board, at the
4 Cascade Conference Room of the Best Western Lakeway Inn,
5 City of Bellingham, County of Whatcom, State of Washington,
6 before Allen R. Emerson & Associates, commencing at the hour
7 of 10:15 o'clock a.m. on Wednesday, July 14, 1999;

8 WHEREUPON, the following proceedings were had, to-
9 wit:

10 **THOMAS FRANKLIN**

11 Being duly sworn as a witness in this matter,
12 testified on his oath, as follows:

13 **DIRECT EXAMINATION**

14 MR. BESHORE:

15 Q My name is Allan Beshore and I am the investigator in
16 charge of the NTSB investigation and I want to thank
17 you for coming in and answering questions that we might
18 have for you, I appreciate your cooperation. To start
19 off, I want to ask you a few questions and when I
20 complete my questioning these other gentlemen may also
21 have some questions and I want you to know who they are
22 and who they work for.

23 MR. BEU: I am Doug Beu, Olympic Pipeline
24 operations manager.

25 MR. SUBSITS: I am Joe Subsits and I work with

1 the Department of Ecology.

2 MR. SCANLAN: I am Terence Scanlan and I am with
3 the law firm of Skellenger & Bender on behalf of Earth
4 Tech.

5 MR. BESHORE:

6 Q For the record would you state your full name?

7 A Thomas William Franklin.

8 Q And who are you employed by?

9 A Earth Tech.

10 Q How long have you been employed by Earth Tech?

11 A For the last two years.

12 Q Who were you employed by prior to Earth Tech?

13 A One of them was Barrett Construction previously to
14 Earth Tech.

15 Q What time frame were you employed with Barrett?

16 A I retired from the State DOT in August of '93 and from
17 that time I was with Barrett until March of '95.

18 Q And what was your role or title if you will at that
19 point in time?

20 A Construction representative.

21 Q Obviously you were interested in the water piping
22 project that was done at the city water treatment plant
23 and if we could just go back and you could start and
24 explain to us how you became involved in the project
25 and what your role was?

1 A Ultimately through third party people I found the job
2 available with Barrett and I retired from DOT in
3 August, made arrangements in July to give notice and
4 hired on with Barrett and spent a couple of months
5 learning the project plans and then went on and came up
6 here during the construction phase of the reservoir
7 itself. They did some leveling of the site prior to my
8 arriving and they proceeded during the construction to
9 the winter and by the time the EMCO project started the
10 reserve was I think eighty (80) percent complete. So I
11 just moved on through that phase of the whole project
12 essentially as this project evolved during the spring
13 of '94 and summer I was more immersed in that one as
14 time went on.

15 Q So what was your role during this process?

16 A To be involved during the construction phase and be the
17 owner's representative.

18 Q So you were there on the site?

19 A Ninety (90) percent of the time.

20 Q Okay when you were there what were your duties?

21 A Coordinate between the design in Bellevue, city people
22 as well as the contractor and make sure things were
23 going as planned and deal with the issues.

24 Q Okay throughout the course of the construction
25 activities did you have any interaction with anybody

1 from Olympic Pipeline?

2 A There were times when I would go up and say hi, we
3 would have a conversation. Other than that type of
4 thing there were interactions during the pipeline
5 construction itself, they were always around. I didn't
6 get that involved with them once I knew they were there
7 because I was doing a lot of other things as well.
8 Basically, I guess I am not sure, I don't want to
9 ramble here and say things off the top of my head.

10 Q I am just curious to know about any interactions you
11 had. Did they ever express any concerns about things
12 happening out there?

13 MR. SCANLAN: Are you talking about Olympic?

14 MR. BESHORE: Olympic.

15 A There were never any issues that came up between the
16 contractor and the gas pipeline that I know of and
17 being a second party to the issue, ultimately I would
18 have known if there was some major issue but I wasn't
19 aware of it.

20 Q Do you recall what the names were of the Olympic
21 people?

22 A No.

23 Q Were they there most of the time?

24 A Most of the time our trench line was open to my
25 knowledge. Any time we did any work in the vicinity

1 Greg was always making sure they were notified and
2 around to my knowledge.

3 MR. SCANLAN: Who is Greg?

4 THE WITNESS: Greg Berg (phonetic),
5 superintendent on site.

6 Q (By Mr. Beshore) So he was your point of contact with
7 EMCO then on site?

8 A Yes.

9 Q Foreman or whatever?

10 A The lead man and also a couple of other people and I
11 can't remember the names right now, Crackenberg
12 (phonetic) I believe was the last name. It was his
13 assistant, I didn't deal with him as much but there
14 were times when Greg wasn't around.

15 Q Crackenberg?

16 A Bob Crackenberg.

17 Q And he was out there on the site?

18 A About fifty (50) percent of the time. He wasn't there
19 right at the start. He came in as an office engineer
20 organizing, communicating with different subs that were
21 on site.

22 Q Now do you recall whether Olympic Pipeline was ever
23 exposed?

24 A Oh sure, several times it was exposed. We took pictures
25 and there were a couple of times where he had to make

1 some modifications to our pipes where I would have to
2 be aware.

3 Q Okay where you modified your piping and you said you
4 made Olympic aware of that?

5 A Yes.

6 Q And they never expressed any concerns?

7 A No, didn't affect the concept of what was going on,
8 connect here and here or one time they went and cut to
9 a valve connection so they had to realign the ditch.

10 Q That's where the twenty-four (24) inch tied into the
11 sixteen (16) inch?

12 A That's one of them, end of the pump station. We went
13 straight to the connection point and couldn't make it,
14 instead of having maybe a three or four foot opening
15 where the pipe is exposed it became five foot to widen
16 the trench.

17 Q And that was the section line?

18 A Yes.

19 Q Northern side?

20 A Yes.

21 Q And then on the twenty-four (24) inch discharge line
22 that was also modified is that right?

23 A I believe so, yes.

24 Q But that wasn't an error, that was a design change?

25 A Correct, to install it the way the design was

1 originally made they had to go over the large diameter
2 pipe, just go right straight down, just east of the
3 construction.

4 Q All right when the line was exposed, the Olympic
5 Pipeline was exposed, did you look at it closely?

6 A Just from about two or three feet away. I didn't get up
7 close, I didn't see any obvious damage. I wasn't aware
8 of it.

9 Q Did the Olympic people get up and brush it off and look
10 at it?

11 A I believe they did. They were around it.

12 Q They either examined it or at least had an opportunity?

13 A Sure, certainly.

14 Q Okay now do you remember what kind of clearance we're
15 talking about?

16 A A picture speaks a thousand words.

17 Q Well we have been provided three pictures by the city,
18 are these the pictures you are talking about, Tom?

19 A Yes.

20 Q I am not sure how best to do this for the record here
21 but I guess I could label my page at the bottom and we
22 could just say page one or whatever. I want to see if
23 you can help me understand where the gas line pipe was
24 in relationship to the first three or four pages. Two
25 or three pages are the large diameter water line

1 construction. Now on the third page of the photograph
2 there is a pipeline shown underneath it, is that a gas
3 pipeline?

4 A I believe actually that is a sixteen (16) inch water
5 line that we put in, the gas line is below.

6 Q The gas line is not that exposed line?

7 A Right, should be two lines visible right here.

8 Q Okay on the following page which would be page four of
9 the fourth paragraph on the left-hand side of the
10 photograph -

11 MR. SCANLAN: How about if we identify this
12 particular view and label it?

13 Q Mark this a, vacant new dated May '94 and we have got a
14 xeroxed reproduction of photographs, my understanding
15 is that these were photographs taken entirely by you?

16 A Correct.

17 Q And we will mark this as Exhibit A. So on the fourth
18 page on the left-hand photograph there is a number,
19 lower pipeline and gas pipeline?

20 A I believe so.

21 Q And can we see the pipeline in any of the photographs?

22 A Yes, the next page, closer up.

23 Q Is that a seventy-two (72) inch?

24 A That is correct. Actually it is smaller at that point
25 but it becomes a seventy-two (72) inch.

1 Q So it comes out towards you taking the picture?

2 A Yes.

3 Q On the left-hand photo on that same page is that gas
4 line pipe exposed and the ditch below?

5 A I believe it is.

6 Q I am going to label these pages. So we are on page four
7 again on the left-hand photograph and that gasoline
8 line - page five I am sorry.

9 A Eighty (80) feet, this is pipe coming out of the clear
10 well of the reservoir itself and this is further to the
11 north towards Whatcom Creek than the other site. These
12 two are about eighty (80) to one hundred (100) feet
13 apart, same line, just different direction actually,
14 one coming from the southwest and the other one looking
15 due east. It could be off by forty (40) degrees. There
16 is no north and south, east or west there.

17 Q Okay on page six is any of the gas line pipe shown in
18 any of these photos?

19 A I believe that is the gas line again, same excavation
20 right next to the pipe, right here. Just to the right
21 of the twenty-four (24) inch pipeline, that is what I
22 am looking at.

23 Q So this is the left-hand photo, twenty-four (24) inch T
24 down at the bottom of the photograph? So you are
25 looking -

1 A Well, I need to re-evaluate that. Looking back on this,
2 it looks like it comes out the north end of the pump
3 station. This is the original excavation for this
4 construction, pipe coming out of the pump going into
5 the system itself. This is the same one as this, same
6 location. In other words this is the pump station or
7 reservoir, the north side of the pump station is right
8 there and that is pipe coming out and it is making a
9 connection to discharge.

10 Q So the water line down below is the discharge line?

11 A This is the discharge line, right. This is I believe
12 the water line that the city had, that we had to
13 reinstall during the process and this is the widened
14 excavation. Originally we had to widen a couple of feet
15 to the north.

16 Q To install this line?

17 A Yes, couldn't get to that elbow. This is where the pipe
18 was, had to move it three feet to get it right.

19 Q And the gas line was exposed too?

20 A Yes. That water line is actually underneath the
21 gasoline line. They do a lot of changes and profile
22 elevations there. They went within two or three feet of
23 each other.

24 Q In the photograph the water line is down underneath?

25 A The water line is over here.

1 Q I thought it was running along?

2 A The new line yes but the new system is over here that
3 this connects to.

4 Q Okay down at the bottom of the page?

5 A Right.

6 Q I think I follow hopefully.

7 A Well it is misleading because you don't see much more
8 than the whole so you have to look at that.

9 Q What about some of these others if you want to look
10 through the pictures?

11 A That is in the same site, same area, north of the pump
12 station. I believe all of these are at the pump site
13 area. That, I don't know what it is, can't see much
14 more than just the pipe.

15 Q Now is the gas line shown?

16 A Same picture basically same site location as the other
17 pictures, new pipe.

18 Q That is the new pipe that came out of the north end of
19 the pump station?

20 A That is correct.

21 Q And that is page nine and let me hand you the
22 photograph, it shows the new water line up and down
23 through the picture and the gas line crossing the upper
24 pipe of the two shown in that left-hand photograph is
25 that correct?

1 A That is correct, the right photograph.

2 Q Photo ten (10) is similar, same type area?

3 A There are dates on these, some don't show up as well as
4 others.

5 Q On page eleven (11) now these photographs look like
6 there is - is that the new seventy-two (72) inch?

7 A Well, the elbow there, I would have to study it a
8 little bit and look at the plans now. There has been so
9 much time since I have been involved. There are
10 different situations where it could be in different
11 sites.

12 Q Now page twelve (12) can you explain what that is?

13 A The new line that was established into the Bellingham
14 system, into the pump station, pressurized system.

15 Q So on page twelve (12) the upper photograph shows the
16 new twenty-four (24) inch line?

17 A Yes.

18 Q That comes out to the sixteen (16) inch?

19 A Right.

20 Q And that was installed as part of this project?

21 A Yes.

22 Q And tied in with the sixteen (16) inch?

23 A That was the one area where there was a change in the
24 plan where this pipe was supposed to go over the
25 seventy-two (72) inch, just to the right of it and make

1 a connection on that side. That was in between the
2 large diameter and the pipe station itself.

3 Q Now where would the gas line, pipeline be in
4 relationship to this picture do you know?

5 A To my recollection it would be ten feet towards the
6 pump station and down three or four feet. You are
7 asking me to speculate on that. From the other pictures
8 that would be what I would use to recall. Do you see
9 how the two of them are at a different angle, ten feet
10 over? You are probably going to have to have ten feet
11 of difference between them horizontally. They were not
12 right on top of each other, actually twisted. My guess
13 is twenty (20) or thirty (30) degree angle between
14 them.

15 Q So parallel?

16 A Yes.

17 Q Now on page thirteen (13) that is wrapped pipe and the
18 installation of it itself, they aren't right next to
19 each other sequence wise. Is that wrapping standard? Is
20 that pretty common?

21 A Actually for the wrap, once they want a double wrap.

22 Q Taped on there?

23 A Well, the second one has to be taped on. The first one
24 they put on together but couldn't put both of them on,
25 each piece. In time what they need to do is put the

1 wrap on before hand because of the protection system.
2 So they were allowed to put one on the first part and
3 after they got the thing together they cut the sleeve
4 and wrapped it around and tucked the tape in and that
5 is probably shown there, duct tape.

6 Q Is that the reason why the duct tape is on the top, on
7 page fourteen (14) of the photograph here?

8 A Same thing, the entire system, bottom picture here.

9 Q It shows that entire new piece of pipe out to the -

10 A Right, back filled on top, starting to back fill in.

11 Q So the front of the pump station is shown there?

12 A Right.

13 Q And looking at the last page, a couple more
14 photographs, that is page fifteen (15) of the
15 installation?

16 A Correct.

17 Q All right, thank you for going through those. Okay I
18 just want to be clear. If Olympic had any concerns or
19 any kind of a conflict between Olympic and EMCO during
20 this process do you feel like you would have been aware
21 of that?

22 A Yes.

23 Q And you weren't aware of any problems or concerns?

24 A Nothing of any nature that would have come to my
25 attention. For people who knew I was there, we had been

1 in contact with each other during the process.

2 Whenever Greg was sure he wasn't going to be
3 doing any work in the area he would tell the guys
4 and most of the time they would leave the site if
5 there wasn't going to be anything done in the area.
6 That didn't happen very often but there were times
7 when we jumped from one activity to the other, maybe
8 three hundred feet away from the gas line or there
9 wouldn't be anything going on at all for a couple of
10 days because they were short different pipes and
11 didn't get a shipment from Portland.

12 Q Looking at this photograph, the gasoline pipe was
13 exposed directly underneath that seventy-two inch?

14 A Yes.

15 Q What kind of fill did you put in down around the gas
16 line?

17 A The whole area was made clear and clean and then we
18 used a concrete--a CD of backfill, controlled density
19 fill. We don't have to compact it, it is an ideal
20 material for that type of source because it is almost
21 like cement and it holds its own shape and yet you
22 can peel it with a shovel. No real strength to it
23 but it will support everything around it.

24 Q That was self-compacting material?

25 A Yes. That is what the utilities are being backfilled

1 with whenever there is a sensitive area.

2 Q There was a thrust block on that one twenty-four (24)
3 inch line where it tied into it, do you recall that?

4 A Yes sir.

5 Q Do you recall when that was put in, how that was dug
6 in?

7 A Well there are pictures I believe showing the
8 excavation itself where other people stand way down
9 below the pipe and they excavate down below the pipe
10 and then they fill the whole vicinity with concrete and
11 then they put a rebar in the concrete.

12 Q Was that filled back in, compacted and dug back out for
13 the thrust block?

14 A No just dug a hole large enough for the concrete to
15 take up the space, came all the way up to support
16 itself. I don't see those pictures in here. Here is
17 thirteen (13), bottom picture, actually picture twelve
18 (12), about two feet of excavation underneath that,
19 sixteen (16) inch with water down there. That whole
20 area was filled up with concrete.

21 Q Okay, so they did this, formed that up?

22 A No just poured it, mud pour, a fill pour. It is called
23 something else right now. No forming. Concrete should
24 be visible in the other pictures in the vicinity.

25 Q I can't see it in the upper picture. Okay, your picture

1 on page twelve (12)?

2 A Yes.

3 Q Concrete down at the bottom portion?

4 A This area around it, just filled it all up, all you see
5 is the surface of the concrete.

6 MR. BESHORE: Doug, do you have any questions?

7 MR. BEU: I don't have any questions.

8 MR. BESHORE: Joe?

9 MR. SUBSITS:

10 Q Do you recall how many different locations on the
11 Olympic Pipeline was exposed during the process of the
12 trench?

13 A I think three, three different lines, two or three
14 locations. It was exposed coming out of the clear well.
15 It was exposed for the north connection into the elbow
16 where we had to wade in deeper, widen it more to make
17 the connection and then the clear well opening where we
18 went above and below the gas line, an air gap, man hole
19 that comes out and we saw some of the concrete but a
20 picture is worth a thousand words. One of the things
21 they did they have an emergency system to drain the
22 clear well and I don't know if the earlier people
23 explained that to you or not but this comes out of the
24 pump station and if there was something that happened
25 and the water got plugged up it comes out of the plant

1 into an air gap man hole and the pipe is running from
2 the lower structure out to the out-washed piping they
3 already have in the system. They have a way to control
4 the water rather than have to go in the creek, they
5 have a series of piping out aways from the creek and
6 they use that whenever they have flushing going on for
7 the filters and this goes into that as well.

8 MR. BESHORE: That is that photo on page five,
9 left-hand photo.

10 MR. SUBSITS:

11 Q So this structure with the black plastic around the
12 concrete block, are you looking out from the pump
13 station down the hill?

14 A Down the hill and it is north of the pump station
15 probably sixty (60) feet.

16 Q I think that structure is visible on the surface.

17 A Right.

18 Q Okay that helps me out there quite a bit on what is
19 exposed. So those were the three locations, was it
20 exposed where it was installed?

21 A No we never went - from the other pictures there was
22 probably a two months' time frame between this
23 installation and when we brought that pipe out first of
24 all. We put a large diameter pipe, see the water line
25 and gas below it? So we knew the water line was further

1 away from the gas line and it was higher as well and we
2 had located that earlier in fact March and April they
3 went through and identified where the water line was
4 and the gas line from the ground marks on the top to
5 start with. I don't believe it was ever exposed.

6 Q During that installation?

7 A No.

8 Q And did they just dump their concrete down?

9 A It was done with a bucket of material and at that point
10 they couldn't drive vehicles into the area.

11 Q So they couldn't get a truck in there?

12 A No.

13 Q So they would use a crane?

14 A Right.

15 Q What type of heavy equipment was used in that area?

16 A You mean during the excavation itself?

17 Q Including the excavation, just anything that could have
18 been used in that area?

19 A Well normally there wouldn't have been anything out
20 there at all until the asphalt trucks would have been
21 placing the surfacing material and asphalt on top, the
22 road itself, because it was too hard to drive on. You
23 could drive a backhoe but that would be about it.

24 Q What about other types of equipment?

25 A Typically nothing.

1 Q No compactors?

2 A Well sure you would have rollers but normally you
3 didn't have any heavy equipment out there until we
4 could protect the surface on the road because that is
5 all relatively soft compacted material. The coating of
6 the pipe is sensitive, fine graded, well graded
7 material that would not hold water at all and as a
8 result they were keeping the densities right close to
9 the pipe because they have a plastic coating on that
10 pipe itself and I was concerned about that. Normally
11 you only have light equipment, nothing of any weight
12 because it gets stuck. So typically you wouldn't have
13 heavy equipment.

14 Q How was the trench dug?

15 A With a backhoe, a small backhoe, a Case 580, a fifteen
16 hundred (1500) pound backhoe.

17 Q Now in terms of the depth of the Olympic line or where
18 the Olympic line was at, what kind of information
19 sources? How are you able to determine where the
20 Olympic line was in terms of depth?

21 A It would show on the plans, they had it marked on the
22 plans, identified what the elevations were. They are
23 city plans, developed by Barrett.

24 Q And then once your line was constructed you surveyed
25 that line?

1 A When it was done yes, located at our crossing so we
2 could be sure we could put our pipe where they could
3 fit it and that was done sometime before I was around.
4 I wasn't with them at that time. I hired on in August
5 of '93 so my scope in the early part of the project is
6 very limited, second-hand information.

7 Q These photos supplied by the city, do you have any
8 other photos of the project that aren't included?

9 A Oh yeah sure I probably have five rolls, half on this
10 project.

11 Q Do you have other photos of the Olympic line being
12 exposed?

13 A Well when the accident occurred soon afterwards I was
14 asked to come into the office and look at the
15 photographs and try to identify ones that showed the
16 pipeline and I did that. There were something like
17 thirty (30) pictures all total that may have shown the
18 pipeline. Other people sorted them. I was the one asked
19 because I had done it and I found about thirty (30)
20 pictures that originally were copies and brought up to
21 the city, but there are four or five different folders
22 of four by six pictures, about eighty (80) pictures in
23 each of the different activities going on during the
24 year and a half, but these are probably the central
25 pictures.

1 Q In terms of your work hours there, do you recall any
2 extended work hours there in terms of job activity?

3 A Normally no, there may have been some miscellaneous
4 type of things going on when I wasn't around. There
5 were times when this contract wasn't going on and the
6 other contract was on four tens but normally they
7 wouldn't work at night. There was maybe some
8 backfilling of the large diameter pipe next to the
9 reservoir that they may have chosen to do.

10 Q This photo on page six where you have the water line
11 going underneath, do you recall what type of clearance
12 it was?

13 A Not off the top of my head I don't. It seems like it
14 was probably a foot, probably two to three feet of
15 clearance in between that would be my guess,
16 speculation.

17 MR. SUBSITS: That's all I have.

18 MR. BESHORE:

19 Q Did EMCO do all the excavation work themselves?

20 A Yes, there was some minor drilling done that they had a
21 drilling contractor come in and do but all of the earth
22 work was done by EMCO.

23 Q Okay how did they expose the gas line?

24 A Well it was done with care, went down within a couple
25 feet of the known elevation and used, as I recall to

1 finish the gas line, used a bucket and it was pretty
2 evident as I remember when they got down into the rock
3 area, you could see some of the material where the
4 pipeline was and the material wasn't hard, it had
5 obviously been excavated before and it was broken up,
6 wasn't solid like most of the excavation at that site,
7 so they could tell. It was evident from several feet
8 above it that we were in the right track.

9 Q Would you consider EMCO to be a good contractor?

10 A I had no problem with them at all. I felt they were a
11 competent firm, civil engineering type of work, very
12 competent in doing that work.

13 Q You were comfortable with their operator and equipment?

14 A Yes.

15 Q Good operators?

16 A They had brought in an operator especially for the
17 large diameter pipe work and he was around during that
18 interim time. I don't remember his name but he is
19 fifty-five (55) maybe but he was brought in because he
20 was respected by his own company for doing the work,
21 brought in specifically for this work.

22 Q Is there anything else you can think of that might help
23 us during our investigation to find out what might have
24 happened that comes to mind?

25 A No, it is a really regrettable situation. It puts a bad

1 taste in my mouth. The project was a fascinating
2 project and this kind of ruins it.

3 MR. BESHORE: I don't have any further
4 questions.

5 MR. SUBSITS:

6 Q One last question, where was the CDF? Where was that
7 applied? Was it on the seventy-two (72) inch?

8 A Right, supported the seventy-two (72) inch pipe the
9 full length out of the reservoir all the way down and I
10 believe it is shown in the plans actually, goes down to
11 the angle pipe where it goes into the angle right
12 straight to the reservoir and it is supported to that
13 area and it is passed all the piping, waterlines, gas
14 lines and everything else out towards Hannah Creek.

15 Q Any other places that you know?

16 A I believe there was some CDF placed in the loop system
17 that we have of valves. We backfill that I believe.
18 Those were smaller, I think thirty-six (36) and it was
19 poured from a foot below and up to.

20 Q There is a reference to Cascade Pipeline. Is that
21 intended to mean Olympic?

22 A It is meant for Olympic. I worked on a project in the
23 early seventies down in the Sea-Tac area and Cascade
24 was there so I knew it was there, just one of those
25 things. Obviously I meant to write Olympic Pipeline.

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25

MR. SUBSITS: Okay thank you.

MR. BESHORE: Thank you.

(WITNESS EXCUSED at 11:15 o'clock a.m. on 7-14-99)

STATE OF WASHINGTON)
)
COUNTY OF SKAGIT)

D E C L A R A T I O N

Pursuant to the laws of the State of Washington,
I declare under penalty of perjury that the following to be
true:

I have read my interview under oath and the same
is true and accurate save and except for any corrections as
made by me on the correction page, herein.

Signed at _____, Washington
on the _____ day of _____, 2000.

MR. THOMAS FRANKLIN

1 STATE OF WASHINGTON)
2 COUNTY OF SKAGIT)


C-E-R-T-I-F-I-C-A-T-E

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I, **ALLEN R. EMERSON**, a Notary Public in and for the **State of Washington**, do hereby certify that the interviews under oath before the National Transportation & Safety Board were reported in a verbatim manner stenographically before me and reduced typewritten form under my direction;

I further certify that the interviews under oath before the National Transportation and Safety Board are full true and correct transcript of the proceedings reported by me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 22 day of Jan, 2000.


NOTARY PUBLIC in and for the **State of Washington**, residing at Sedro Woolley. My Commission expires 6/27/2000.

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON 1
 2 IN AND FOR THE COUNTY OF WHATCOM
 3 KATHERINE DALEN, Individually
 4 and as the Personal Represent-
 5 ative of the Estate of STEPHEN
 6 M. TSIORVAS, and as Guardian
 7 ad Litem for ANDREW R. TSIORVAS
 8 and GEORGE K. TSIORVAS,
 9 Plaintiffs,
 10 -vs- No. 99-2-01468-1
 11 OLYMPIC PIPE LINE COMPANY, a
 12 foreign corporation, EQUILON
 13 PIPELINE COMPANY LLC, a foreign
 14 corporation, and EQUILON
 15 ENTERPRISES, LLC, a foreign
 16 corporation, and FRED CROGNALE,
 17 FRED HOPF, RON BRENTSON and
 18 JOHN DOES,
 19 Defendants.
 20 OLYMPIC PIPE LINE COMPANY, a
 21 foreign corporation,
 22 Third-Party Plaintiff,
 23 -vs-
 24 IMCO GENERAL CONSTRUCTION, a
 25 domestic corporation,
 Third-Party Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
 THOMAS W. FRANKLIN

June 19, 2000

Susan Cannon, CCR
 Court Reporter
 CANNOS507P9

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1 FRANK S. KING, as the Personal
 2 Representative of the Estate
 3 of WADE B. KING, and FRANK S.
 4 KING and MARY L. KING, Individ-
 5 ually, and TRACY K. BELL,
 6 individually, and JASON KING,
 7 individually,
 8 Plaintiffs,
 9 -vs- No. 99-2-01467-3
 10 OLYMPIC PIPE LINE COMPANY, a
 11 foreign corporation, EQUILON
 12 PIPELINE COMPANY LLC, a foreign
 13 corporation, and EQUILON
 14 ENTERPRISES, LLC, a foreign
 15 corporation, and FRED CROGNALE,
 16 FRANK HOPF, RON BRENTSON and
 17 JOHN DOES,
 18 Defendants.
 19 OLYMPIC PIPE LINE COMPANY, a
 20 foreign corporation,
 21 Third-Party Plaintiff,
 22 -vs-
 23 IMCO GENERAL CONSTRUCTION CO., a
 24 domestic corporation, and JOHN
 25 DOE DEFENDANTS ONE THROUGH FOUR,
 Third-Party Defendants.

DEPOSITION OF THOMAS W. FRANKLIN

9:40 a.m.
 June 19, 2000
 1201 Third Avenue
 Suite 5200
 Seattle, Washington

Susan Cannon, Court Reporter

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35

1 MR. BENINGER: This is the deposition of Tom
2 Franklin pursuant to notice in the case of the Kings and
3 Dalens versus Olympic Pipe Line, et al. Today's date is
4 June 19, 2000. The location is the Cozen and O'Connor
5 law offices in Seattle, Washington.
6 The videographer, if you call me that, is
7 David Beninger. I'm going to be turning the camera on
8 and letting it run. I represent the plaintiffs and my
9 law firm is in the Columbia Center downtown Seattle now
10 called the Bank of America. I guess that's it. We will
11 swear Mr. Franklin and continue on.
12
13 THOMAS W. FRANKLIN, having been first duly sworn
14 upon oath by the Notary,
15 testified as follows:
16
17 EXAMINATION
18 BY MR. NICOLL:
19 Q. Would you state your full name, please?
20 A. Thomas William Franklin.
21 Q. Mr. Franklin, my name is Chris Nicoll and I'm
22 one of the attorneys representing Olympic Pipe Line
23 Company in the litigation arising out of the June 10,
24 1999 rupture and fire. You have been asked to come here
25 today pursuant to a subpoena and we are grateful that

9

1 you found the time to do it.
 2 Have you ever had your deposition taken
 3 before?
 4 A. Yes. One more, one other time.
 5 Q. What kind of matter was that?
 6 A. That was a construction injury while I was
 7 working for the State Department of Transportation.
 8 Q. Mr. Franklin, a deposition as you know from
 9 that experience is the same as testimony in court. In
 10 fact under certain circumstances the deposition
 11 transcript or in this case the videotape and the
 12 transcript could be used in place of your actual live
 13 testimony at trial should you later become unavailable.
 14 It's not only for that reason but for a host
 15 of other reasons very important that you testify
 16 truthfully and completely to the best of your ability.
 17 Okay? Do you understand that?
 18 A. Yes.
 19 Q. Due to the transcription difficulties that
 20 arise, it's important that you let me finish my question
 21 before you begin your answer. Okay?
 22 A. Yes.
 23 Q. And it's also important that you answer
 24 questions verbally, because otherwise ambiguity creeps
 25 into what you intended by a grunt or a moan or a shake

10

1 of the head. Okay?
 2 A. Yes.
 3 Q. Now, this deposition is likely to take some
 4 time. We've scheduled you for two days, today and
 5 Thursday. Consequently your body could get stiff, you
 6 might get thirsty, need to take a break, for whatever
 7 reason you need to take a break, just tell us and we'll
 8 be more than happy to break. Okay?
 9 A. Okay.
 10 Q. Do we have any particular limitations on how
 11 long we can go today? Terry?
 12 MR. SCANLAN: No.
 13 Q. Tom?
 14 A. No.
 15 Q. What would your preference be?
 16 A. 4 to 4:30-ish.
 17 Q. Any problem, anybody else?
 18 MR. FLOYD: No.
 19 MR. BENINGER: No.
 20 MR. NICOLL: With that understood, let's get
 21 started.
 22 Q. First could you tell us what your present
 23 address is?
 24 A. [REDACTED]
 25 Q. How long have you lived at that address?

11

1 A. Seven years.
 2 Q. Do you anticipate remaining at that address
 3 for the next five years say?
 4 A. We have talked about moving, but it takes
 5 time. Probably I expect to be there another three to
 6 five years, yeah.
 7 Q. Where did you live before you lived at that
 8 address in [REDACTED]
 9 A. In Federal Way.
 10 Q. How long did you live in Federal Way?
 11 A. Twenty years.
 12 Q. What's your date of birth?
 13 A. [REDACTED]
 14 Q. Who are you employed by today?
 15 A. Earth Teck.
 16 Q. Could you spell Earth Teck for us, please?
 17 A. E-a-r-t-h T-e-c-k.
 18 Q. Where is Earth Tech located?
 19 A. In Bellevue.
 20 Q. How long have you been employed by Earth
 21 Tech?
 22 A. On and off. I was employed twice, once for a
 23 year and a half and this time I have been there for two
 24 years.
 25 Q. When did this time begin?

12

1 A. This time started in June of '98.
 2 Q. And the prior time you were employed from
 3 when to when?
 4 A. I believe it was August of '93 until March of
 5 '95.
 6 Q. In between your employments at Earth Tech,
 7 the one that ended in '95 and the one that began in '98,
 8 were you employed by anybody else?
 9 A. Yes.
 10 Q. Who were you employed by in between?
 11 A. Different consulting firms. The first one
 12 was JKM Consulting, the second one was Betty &
 13 Associates.
 14 Q. Like the name Betty?
 15 A. Right.
 16 Q. What did you do for these consulting firms?
 17 A. I was employed as a construction
 18 representative or inspector under different contracts
 19 for different agencies, twice for the Port of Seattle,
 20 the State Department of Transportation for nine months.
 21 Basically those are the three.
 22 Q. And when you say on site inspector or
 23 representative, do you mean in the nature of an owner's
 24 representative?
 25 A. Yes.

13

1 Q. So you would be representing the owner of the
 2 facility that was say under construction or redesign?
 3 A. That's correct.
 4 Q. Is that what you do for Earth Tech as well,
 5 the same sort of thing?
 6 A. Yes.
 7 Q. That's what you are doing for Earth Tech
 8 currently?
 9 A. Presently I'm doing design work, but most of
 10 the time I'm in the field doing construction
 11 representative work.
 12 Q. Why did your employment with Earth Tech end
 13 in March of '95 the first time?
 14 A. The project in Bellingham was over and they
 15 didn't have any more work at the time.
 16 Q. So it was a layoff?
 17 A. Yes.
 18 Q. A reduction in force?
 19 A. Yes.
 20 Q. When you were hired again in June of '98 was
 21 that for a specific project?
 22 A. Yes.
 23 Q. Is that project over now?
 24 A. Yes, it is.
 25 Q. Do you know why you haven't been laid off

14

1 following that project?
 2 A. There has been plenty of work.
 3 Q. Plenty of work to do?
 4 A. Yes.
 5 Q. No need to reduce the force?
 6 A. Right.
 7 Q. Prior to working for Earth Tech by whom were
 8 you employed?
 9 A. The first time?
 10 Q. Right. Prior to working for Earth Tech the
 11 first time.
 12 A. I was with the State Department of
 13 Transportation.
 14 Q. What was your job for the State Department of
 15 Transportation?
 16 A. I entered entry level in 1968 and I
 17 progressed to the chief inspector position when I
 18 retired in '93.
 19 Q. What was your entry level position for the
 20 Department of Transportation?
 21 A. It was a Tech I, just an entry level position
 22 learning how to take tickets, read plans, just an entry
 23 level out of high school with no training.
 24 Q. So you have a State retirement then?
 25 A. Yes.

15

1 Q. What kind of projects did you work on for the
 2 Department of Transportation?
 3 A. Primarily road projects, the Valley freeway,
 4 I-90, several different projects along I-5, SeaTac rest
 5 area, Hood Canal floating bridge drawspan. The benefits
 6 with DOT is you get a little variety of the work.
 7 Q. Especially around here there are so many
 8 different types of transportation that they are involved
 9 in. Right?
 10 A. Yes.
 11 Q. So in your capacity as an employee for the
 12 State Department of Transportation, were you always an
 13 inspector of one sort or another?
 14 A. No. I also did design work when I was going
 15 to school at the University of Washington.
 16 Q. That brings me to my next question which was
 17 education. You mentioned earlier that you graduated
 18 from high school. Where did you go to high school?
 19 A. Cascade High School in Everett.
 20 Q. What year was it that you graduated?
 21 A. 1968.
 22 Q. Do you have any degrees beyond a high school
 23 diploma?
 24 A. Yes. I have a civil engineering degree. I
 25 got that in 1982 from the U of W. I also have a

16

1 professional engineer's license.
 2 Q. When did you take your professional
 3 engineering exam?
 4 A. 1982.
 5 Q. And your license I assume is current?
 6 A. Yes.
 7 Q. Any other education beyond a bachelor's
 8 degree in civil engineering?
 9 A. No.
 10 Q. Have you spent any time in the military?
 11 A. I was in the reserves for a year in 1968. I
 12 was discharged because I had an ulcer in 1969.
 13 Q. Which branch?
 14 A. Navy Seabees.
 15 Q. Did you get any training while you were in
 16 the Navy?
 17 A. I had six weeks of training during that time.
 18 Q. Basic?
 19 A. Basic, and four weeks at Sandpoint as well as
 20 Biloxi, Mississippi.
 21 Q. Biloxi which is the school that you go to for
 22 basic Seabee training; is that right?
 23 A. Yes.
 24 Q. I can divine the answer to this question
 25 without even asking it but I have to ask it anyway.

17

1 And that's have you ever been arrested for a criminal
 2 offense?
 3 A. No.
 4 Q. Other than the two consulting firms and Earth
 5 Tech, have you been employed outside of working for the
 6 State in the construction and design field?
 7 A. No.
 8 MR. SCANLAN: Can I interject? I don't know
 9 how important it is to you guys, but we should be clear
 10 that it was not Earth Tech back in '95. It was Barrett.
 11 MR. NICOLL: Right. I'm going to get to that
 12 thing and see what he knows about that in a few moments.
 13 Q. I'm going to talk to you a little bit about
 14 what you have done to prepare yourself for the
 15 deposition today. Okay?
 16 First of all, have you discussed with anyone
 17 including Mr. Scanlan here the testimony that you will
 18 be giving today?
 19 A. No.
 20 Q. Have you discussed with anyone the fact that
 21 you will be giving a deposition in this case?
 22 A. Yes.
 23 Q. That probably would be your family?
 24 A. Yes.
 25 Q. Outside of your family I'm going to guess

18

1 people at Earth Tech as well?
 2 A. Yes.
 3 Q. Who have you spoken with at Earth Tech about
 4 that?
 5 A. Just in passing George Nordby, the person
 6 that will be testifying after me, just the fact that we
 7 have gotten depositions. And that was primarily what
 8 that was, and we got notice of deposition late last
 9 week.
 10 Q. Have you done anything to prepare yourself to
 11 testify today?
 12 A. No.
 13 Q. So you haven't reviewed any documents, looked
 14 at any photographs?
 15 A. No.
 16 Q. You haven't reviewed any earlier statements
 17 that you might have written?
 18 A. Not in several months.
 19 Q. Not in several months?
 20 A. Yes.
 21 Q. Have you written statements about this
 22 matter?
 23 A. No.
 24 Q. But others have prepared statements for you;
 25 is that right?

19

1 A. No. Maybe I misunderstood your question.
 2 Q. I asked have you reviewed any statements in
 3 preparation and you said not in several months.
 4 A. Right.
 5 Q. So I'm wondering whether it was several
 6 months ago that you reviewed it?
 7 A. I believe during a discussion I had with
 8 people, with the EPA and the Attorney General's office,
 9 I reviewed different notes that I had made at that time
 10 or daily reports that I had written.
 11 Q. Did you make notes during the interview?
 12 A. No. I had strictly discussion.
 13 Q. Have you reviewed any videotape or
 14 photographs?
 15 A. At the same time we looked at photographs.
 16 Q. This would be your interview with the NTSB
 17 and the Department of Ecology; is that correct?
 18 A. That's correct.
 19 Q. Have you traveled anywhere to look at
 20 anything to assist you in your recollection of the
 21 events?
 22 A. No.
 23 Q. Have you been -- I know you were interviewed
 24 in July of 1999 by the Department of Transportation and
 25 some others after the incident in this case. Other than

20

1 that interview have you been interviewed by
 2 investigators of the federal, state, local governments?
 3 A. No. I was interviewed by the U.S. attorney
 4 several months ago when I referred to looking at the
 5 document and pictures.
 6 Q. Who interviewed you? Do you remember by
 7 name?
 8 A. I have cards.
 9 Q. With you?
 10 A. Yes. Somewhere.
 11 Q. I'm going to read these into the record
 12 unless somebody wants them as exhibits for some reason.
 13 For the U.S. Environmental Protection Agency, James D.
 14 Oesterle, assistant regional counsel, with offices at
 15 1200 Sixth Avenue, Seattle. I'm going to crucify his
 16 name, but Bob Wojnicz, special agent, U.S. Environmental
 17 Agency, criminal investigation division with offices at
 18 1200 Sixth Avenue, Seattle, Washington.
 19 Joseph P. Hillborfer, Environmental
 20 Protection Agency, criminal investigation division,
 21 same address in Seattle. Daniel P. O'Malley, U.S.
 22 Department of Transportation in the Office of Inspector
 23 General. He is a special agent and his address is
 24 Federal Building, Suite 644, 915 Second Avenue. And of
 25 course Terry was there.

21

1 A. There were others as well I didn't get their
2 cards.

3 MR. SCANLAN: I can assist you with that. It
4 was Lawrence Lincoln.

5 MR. SCANLAN: Lawrence Lincoln was present as
6 well?

7 MR. SCANLAN: Yes. And as well as another
8 U.S. attorney and I'm drawing a blank on her name right
9 now.

10 MR. FINEGOLD: Nicki.

11 MR. SCANLAN: Nicki.

12 Q. How long did the interview last?

13 A. I believe it was two day's time about four
14 hours each time.

15 Q. Was anything prepared for you to sign in
16 writing at that interview?

17 A. No.

18 Q. Were any promises made to you prior to the
19 interview being taken?

20 A. I believe there was.

21 Q. What promises?

22 A. I believe I was told there was some type of
23 limited immunity?

24 MR. SCANLAN: No.

25 A. No? I don't really know just what the

22

1 promises were.

2 MR. SCANLAN: I can fill in the blanks.

3 MR. NICOLL: Why don't you do that for us.

4 MR. SCANLAN: We were given a letter and for
5 all of these folks interviewed, George, Tom and John
6 Hatch, we were given a letter that just said that Earth
7 Tech -- neither Earth Tech nor any of its employees are
8 targets or subjects. There was no other promises or
9 representations made.

10 And I should also note the individuals you've
11 got there on those cards, they were not all present for
12 all the interviews and not all of them participated in
13 all of the interviews.

14 MR. NICOLL: Thank you.

15 Q. Okay. What your attorney just said, is that
16 your understanding?

17 A. Yes, that is correct.

18 Q. Really no promises but a representation was
19 made that you and Earth Tech are not targets or
20 subjects?

21 A. That was what was mentioned, yes.

22 Q. In general I know that's a long period of
23 time to cover, eight hours worth of conversation, but if
24 you could summarize what it was that you covered in that
25 discussion for us I would be grateful.

23

1 A. We looked at pictures probably 90 percent of
2 the time and I was explaining what I saw and the reasons
3 I took certain pictures.

4 Q. These are the photographs you took during the
5 Dakin-Yew construction project?

6 A. Yes.

7 Q. About 1200 or so of them?

8 A. I was thinking in the range of three to four
9 hundred, but yeah.

10 Q. So most of the time was spent looking through
11 photographs. What else?

12 A. We discussed the activities that transpired
13 in Bellingham during --

14 Q. Was there a section -- I'm sorry. I violated
15 my own rule.

16 A. -- during the time that I was up there.

17 Q. Was there a section of the project that your
18 comments particularly focused on?

19 A. There was a time frame that the pictures that
20 I had taken were primarily from, and would have been
21 from April to July.

22 Q. And that's in the 1994 year; correct?

23 A. Yes, that's correct.

24 Q. Was there an aspect of the job where the
25 conversation was particularly focused?

24

1 A. Probably the excavation time frame,
2 installing pipes.

3 Q. And was there an aspect of the excavation on
4 which they were particularly focused in your
5 conversation with government representatives?

6 A. Yes. The area in the vicinity of the gas
7 pipeline, whenever that was exposed, that drew major
8 attention.

9 Q. Was there an area, a geographical area of the
10 project itself on which the discussion with the
11 government focused?

12 A. Once again the area in the vicinity of the
13 gas pipeline.

14 Q. The gas pipeline kind of ran through various
15 parts of the construction area; is that right?

16 A. Yes.

17 Q. Was there any part of your discussion with
18 the government in which the attention was focused where
19 there was not a particular record that the pipeline had
20 been exposed?

21 A. Not to my knowledge.

22 Q. We'll get into all of that later. Okay.
23 Did you bring anything with you in response
24 to the subpoena that was served on your attorney? We
25 issued a subpoena asking for any personal notes or

25

1 diaries, anything like that from that time frame, the
 2 '93 through '95 time frame.
 3 A. No, I didn't.
 4 Q. Do you have any personal notes or diaries?
 5 A. No.
 6 Q. Would it be fair to say that everything that
 7 you wrote down as a daily log of your activities on that
 8 job would be contained in what we have come to know as
 9 the inspection reports?
 10 A. I would expect that to be the case, yes.
 11 Q. Just for identification, why don't we mark
 12 this as Exhibit 64, the stack. Exhibit 64.
 13 MR. FLOYD: Why do we have two Bates stamps
 14 on those, do you know?
 15 MR. NICOLL: I think the reason is, and this
 16 is just a theory. I think the reason is that Earth Tech
 17 assigned its own number to the documents prior to the
 18 production that they made to the city. Do you know?
 19 MR. SCANLAN: I don't know. Because giving
 20 things to the city was before we were involved. I don't
 21 know that they numbered them or not.
 22 MR. NICOLL: This isn't a Skellenger Bender,
 23 ET04359?
 24 MR. SCANLAN: I'm embarrassed to say I don't
 25 know if it is or not.

26

1 MR. NICOLL: The bottom number ET0006564 is
 2 our number.
 3 MR. SCANLAN: If that's the case, then what I
 4 would expect is probably the top number is our number
 5 and it was probably when we produced these documents to
 6 you folks. We are going off the bottom number.
 7 MR. NICOLL: Right. Just for consistency
 8 sake, we are going to go off the bottom number, the
 9 number that has seven available digits.
 10 (Exhibit No. 64 is marked
 11 for identification)
 12 Q. Take a look at Exhibit 64 and take a moment
 13 to peruse it. I don't need you to testify in any detail
 14 about this right now. I just want you to confirm if you
 15 would that those are copies of the inspection reports
 16 that you made out --
 17 A. Yes.
 18 Q. -- during the Dakin-Yew Pump Station job.
 19 A. That's correct. The majority of them are.
 20 Some are maybe other people.
 21 Q. I'm going to make an assumption that from
 22 time to time you might need to refer to Exhibit 64 to
 23 refresh your recollection about the events in a
 24 particular day, and if you need to you might make a note
 25 that it's Exhibit 64 and you can come back to it. Okay?

27

1 A. Thank you.
 2 Q. Other than working on the Dakin-Yew project,
 3 have you worked with IMCO General Construction Company
 4 A. No.
 5 Q. So that's the only time you have ever worked
 6 with that firm?
 7 A. Yes.
 8 MR. FLOYD: Chris, would you mind clarifying
 9 what you mean working with, if he is employed by the
 10 city.
 11 Q. I don't understand you to ever have been
 12 employed by IMCO General Construction Company based on
 13 your earlier answers to questions; is that right?
 14 A. That's correct.
 15 Q. Have you ever worked at a job where IMCO is
 16 also on the job in some capacity other than the
 17 Dakin-Yew job?
 18 A. No.
 19 Q. Have you worked on a job other than the
 20 Dakin-Yew job where the City of Bellingham was either
 21 the owner or some involved party?
 22 A. No.
 23 Q. Do you have any family, relatives or friends
 24 who work at IMCO General Construction Company or the
 25 City of Bellingham?

28

1 A. No.
 2 Q. Do you have any familial or friendship type
 3 relationship with the King family or the Tsiorvas family
 4 or the family of Liam Woods?
 5 A. No.
 6 Q. I'm going to turn now to the project that
 7 brings you into this deposition here, and that's the
 8 Dakin-Yew pump station project. When was it that you
 9 first became involved in that project as best you can
 10 recall?
 11 A. August of 1993.
 12 Q. So that would be right after you started
 13 employment with Earth Tech's predecessor Barrett?
 14 A. Yes.
 15 Q. Let's talk a little bit about Barrett
 16 Consulting Group. What is Barrett Consulting Group?
 17 A. It is a firm that was bought by Earth Tech
 18 in -- I don't know just when that was.
 19 Q. Was it --
 20 A. After '95.
 21 Q. It was after you left?
 22 A. Yes.
 23 Q. So in 1993 your employer was Barrett
 24 Consulting Group?
 25 A. Yes.

29	<p>1 Q. Subsequently purchased by Earth Tech?</p> <p>2 A. Yes.</p> <p>3 Q. Are the main people with whom you worked in</p> <p>4 1993 on the Dakin-Yew job still working for Earth Tech?</p> <p>5 A. Yes.</p> <p>6 Q. And are they located in the same building?</p> <p>7 A. Yes.</p> <p>8 Q. So Barrett is in the same building as Earth</p> <p>9 Tech, same people who were employed by Barrett are at</p> <p>10 Earth Tech?</p> <p>11 A. That were involved with me, yes.</p> <p>12 Q. Do you know anything about the nature of the</p> <p>13 acquisition of Barrett by Earth Tech?</p> <p>14 A. No.</p> <p>15 Q. So you don't know if it was a merger or an</p> <p>16 asset purchase or anything like that?</p> <p>17 A. No, I don't.</p> <p>18 Q. Do you hold any particular position or title</p> <p>19 within Earth Tech?</p> <p>20 A. Construction representative is my title.</p> <p>21 Q. Do you have authority to hire, fire</p> <p>22 employees?</p> <p>23 A. No.</p> <p>24 Q. And you are not an officer of the company?</p> <p>25 A. No.</p>	31	<p>1 no reason to feel like they were an incompetent company.</p> <p>2 Q. Do you recall which conduit it was that Mr.</p> <p>3 Dudley was interested in?</p> <p>4 A. Yes. It was a sampling system conduit that</p> <p>5 ran from the pump station out to the reservoir. He</p> <p>6 didn't know what it was for and I just explained to him</p> <p>7 what it was.</p> <p>8 Q. He saw a drawing and just wanted an</p> <p>9 explanation for that?</p> <p>10 A. Yes.</p> <p>11 Q. Anything else that you can think of?</p> <p>12 A. That was it.</p> <p>13 Q. Any other interviews?</p> <p>14 A. No. After that one I talked to certain</p> <p>15 people and they said to not say anything to anybody</p> <p>16 anymore.</p> <p>17 Q. Who told you not to say anything?</p> <p>18 A. My boss.</p> <p>19 Q. Your boss is?</p> <p>20 A. I can't remember exactly which one I talked</p> <p>21 to. I believe it was Dirk Van Woerden.</p> <p>22 Q. Did Mr. Van Woerden say why you shouldn't</p> <p>23 talk to anybody anymore?</p> <p>24 A. No, he didn't.</p> <p>25 Q. So you first became involved in the Dakin-Yew</p>
30	<p>1 Q. Where is Earth Tech's headquarters if you</p> <p>2 know?</p> <p>3 A. Long Beach, California.</p> <p>4 Q. Have you provided verbal or written</p> <p>5 statements to any other parties other than governmental</p> <p>6 agencies related to the 1999 rupture and your job, your</p> <p>7 work during the 1993 to 1995 excavation project at</p> <p>8 Dakin-Yew?</p> <p>9 A. I was contacted once probably three weeks</p> <p>10 after the accident by a news reporter.</p> <p>11 Q. Do you recall who that was?</p> <p>12 A. Yes. I believe his name is Brian Dudley.</p> <p>13 This was before the NTSB had been in touch with me.</p> <p>14 Q. Did you give Mr. Dudley an interview?</p> <p>15 A. I talked to him over the phone for about two</p> <p>16 minutes I believe, yes.</p> <p>17 Q. Do you recall what you told him?</p> <p>18 A. He asked about what I might know about a</p> <p>19 certain conduit that was running from the pump station</p> <p>20 out to the reservoir, and I told him what I knew of</p> <p>21 that. He also asked about IMCO, the contractor.</p> <p>22 Q. Do you recall what he asked?</p> <p>23 A. He asked about their competency.</p> <p>24 Q. Do you recall what you said?</p> <p>25 A. I believe I told them at the time that I had</p>	32	<p>1 project in August of 1993. And refresh my recollection,</p> <p>2 when was it that you started work for Barrett?</p> <p>3 A. August of '93 as well.</p> <p>4 Q. What was it that you were asked to do at that</p> <p>5 time?</p> <p>6 A. Just refresh myself or read the plans and</p> <p>7 digest what the project was about.</p> <p>8 Q. How long did that take you?</p> <p>9 A. Three weeks.</p> <p>10 Q. Would it be fair to characterize the project</p> <p>11 as having really two components, one would be the</p> <p>12 reservoir part of the project and then the other would</p> <p>13 be the Dakin-Yew pump station part of the project?</p> <p>14 A. Yes.</p> <p>15 Q. And there were actually two contractors</p> <p>16 involved as well; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. On the reservoir side there was Baugh,</p> <p>19 B-a-u-g-h?</p> <p>20 A. Yes.</p> <p>21 Q. And on the Dakin-Yew side there was IMCO</p> <p>22 General Construction Company?</p> <p>23 A. Yes.</p> <p>24 Q. By the time you got involved in August 1993</p> <p>25 the construction work on the Dakin-Yew project had not</p>

33

1 commenced? .

2 A. On which one?

3 Q. The Dakin-Yew pump station?

4 A. No, it had not.

5 Q. In fact, the bid hadn't even been awarded

6 yet?

7 A. That's correct.

8 Q. But the reservoir project was under way; is

9 that right?

10 A. Yes.

11 Q. Did you participate in putting together the

12 bid package?

13 A. For which time?

14 Q. For the Dakin-Yew pump station project.

15 A. No.

16 Q. Who at Barrett/Earth Tech put together the

17 bid package, if you know?

18 A. George Nordby was the principal engineer

19 involved with that.

20 Q. I know you were new to the company at the

21 time so I understand if you wouldn't know the answer to

22 this question. But in the bid documents there is a set

23 of general terms and conditions. Do you know if those

24 were City generated general terms and conditions or were

25 those terms and conditions generated by Barrett/Earth

34

1 Tech for the City to use?

2 A. I don't know.

3 Q. In general, what was the Dakin-Yew pump

4 station supposed to do, what was its purpose?

5 A. It was supposed to provide a power source for

6 water flow from the reservoir out into the different

7 sites that have smaller reservoirs in them, to provide

8 the piping, to accomplish that and tie in from the new

9 reservoir to the existing system.

10 Q. Is there one part of the project, the overall

11 project, reservoir and pump station, that you were more

12 involved in than another?

13 A. No.

14 Q. So you kind of divided your time pretty

15 equally between the two?

16 A. Depending on what was going on at the time,

17 yes.

18 Q. On any given day would you inspect equally

19 between the reservoir and the pump station?

20 A. It really varied quite a bit.

21 Q. It depended on what's going on?

22 A. Right.

23 Q. After you finished reviewing the plans, what

24 was the next function that you filled in the pump

25 station project?

35

1 A. In the pump station project?

2 Q. Yes.

3 A. Well, the pump station project really didn't

4 get started until early spring of '94. And I was out --

5 I was in Bellingham from the end of September all the

6 way through through September of the next year I

7 believe.

8 Q. Did you live up in Bellingham during the

9 project?

10 A. I had an apartment up there. I commuted back

11 and forth on the weekends as well as maybe one or two

12 nights a week I went home.

13 Q. And are you married?

14 A. I am married.

15 Q. Do you have children?

16 A. Yes.

17 Q. How many kids?

18 A. I have two. My wife has two.

19 Q. What are their ages?

20 A. They are all over 24 years old. They range

21 from 30 to 24.

22 Q. And in '93, '94 the youngest would have been

23 17, 18?

24 A. 16-ish.

25 Q. 16-ish. All right. So in September of 1994

36

1 you relocated or at least during the week up into

2 Bellingham, and that's so you could commence acting as

3 owner's rep on site during the reservoir project; is

4 that right?

5 A. Yes.

6 Q. What involvement did you have, if any, in the

7 planning for the pump station project?

8 A. None.

9 Q. Who was responsible for planning the pump

10 station project?

11 A. George Nordby. John Hatch also had input

12 then.

13 Q. Did -- is it Dirk Van Woerden?

14 A. Yes.

15 Q. Did he have any role to play to your

16 knowledge?

17 A. I'm sure he was directing them.

18 Q. That would be his usual role?

19 A. That's correct.

20 Q. Did you have draftspeople working on drawings

21 and things like that?

22 A. There were people working on CAD drawings,

23 yes.

24 Q. So the preparation of design drawings was

25 done with the assistance of a computer?

<p>37</p> <p>1 A. Yes.</p> <p>2 Q. CAD means computer assisted design?</p> <p>3 A. Yes. Drafting.</p> <p>4 Q. Drafting?</p> <p>5 A. Yes.</p> <p>6 Q. Who were the people if you can recall who</p> <p>7 were assisting in the preparation of drawings using the</p> <p>8 computers?</p> <p>9 A. I don't know. I wasn't involved or around at</p> <p>10 that time.</p> <p>11 Q. Do you know if the design drawings and drafts</p> <p>12 of those drawings are available in electronic form as</p> <p>13 opposed to paper form at Barrett/Earth Tech?</p> <p>14 A. I believe they are available in both forms.</p> <p>15 Q. When was the last time at Earth Tech that you</p> <p>16 looked at drawings of the Dakin-Yew pump station site</p> <p>17 using the computer?</p> <p>18 A. I never did.</p> <p>19 Q. You never did?</p> <p>20 A. Never.</p> <p>21 Q. You always looked at hard copy drawings?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. Now after you got up to Bellingham in</p> <p>24 September 1994, could you describe what your duties</p> <p>25 became?</p>	<p>39</p> <p>1 reservoir.</p> <p>2 Q. So for the reservoir construction you would</p> <p>3 be interacting with Baugh Construction; right?</p> <p>4 A. Yes.</p> <p>5 Q. And you would be interacting with City of</p> <p>6 Bellingham representatives?</p> <p>7 A. Yes.</p> <p>8 Q. And you would be interacting with the design</p> <p>9 people back in Bellevue at Earth Tech?</p> <p>10 A. Yes.</p> <p>11 Q. Barrett at the time; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. Did the design people from time to time come</p> <p>14 up and examine the site or did they pretty much rely on</p> <p>15 you to tell them?</p> <p>16 A. No. They came up once every week or so</p> <p>17 depending on the time, one to every two weeks.</p> <p>18 Q. Now were you involved in any way in preparing</p> <p>19 the site for the Dakin-Yew pump station project?</p> <p>20 A. No.</p> <p>21 Q. So you didn't participate in having utilities</p> <p>22 come out and stake the location of their underground</p> <p>23 lines for example?</p> <p>24 A. No. That was already done.</p> <p>25 Q. That was already done?</p>
<p>38</p> <p>1 A. Well, for a while --</p> <p>2 MR. FLOYD: Did you say September of 1994?</p> <p>3 MR. NICOLL: I'm sorry, September '93. You</p> <p>4 are right.</p> <p>5 A. The first three or four weeks actually the</p> <p>6 work that I would be involved with wasn't being done at</p> <p>7 the time and there was another project that I actually</p> <p>8 went up and worked on up in Lynden, Washington. And</p> <p>9 that took two, maybe three weeks during that time frame</p> <p>10 too. And by the time that was over, the actual</p> <p>11 construction of the reservoir was under way. Previous</p> <p>12 to that time they were working on the foundation of the</p> <p>13 reservoir itself, removing rock and getting the proper</p> <p>14 stability for the ground at that time.</p> <p>15 Q. So you worked at this Lynden job and then the</p> <p>16 reservoir project gets under way. You finish with the</p> <p>17 Lynden job some three weeks later. And is that when you</p> <p>18 actually --</p> <p>19 A. I spent all my time from then on at Dakin-Yew</p> <p>20 in the reservoir.</p> <p>21 Q. How would you describe your duties from that</p> <p>22 point on?</p> <p>23 A. Well, from that point on basically I</p> <p>24 interacted with the contractor as well as my own people</p> <p>25 with Barrett and progressed in the construction of the</p>	<p>40</p> <p>1 A. Yes.</p> <p>2 Q. What was the first time you went out to the</p> <p>3 Dakin-Yew site and examined the area?</p> <p>4 A. I don't remember.</p> <p>5 Q. Just in a rough approximation would it have</p> <p>6 been in the fall of '93 after the Lynden job was over?</p> <p>7 Approximation?</p> <p>8 A. Probably not the fall. It would have been</p> <p>9 the middle, wintertime, January, February time frame is</p> <p>10 when I was told about the pump station and given the</p> <p>11 preliminary set of the plans where I would try and</p> <p>12 generate some knowledge about the project.</p> <p>13 Q. So we know from records which we'll talk</p> <p>14 about in a moment that there was a pre-construction</p> <p>15 conference in late January 1994. Would you have been</p> <p>16 out to the job site before that pre-construction</p> <p>17 conference?</p> <p>18 A. Yes.</p> <p>19 Q. So more likely than not sometime in early to</p> <p>20 mid January 1994 was the first time you went out to the</p> <p>21 pump station site?</p> <p>22 A. Actually the pump station site was in</p> <p>23 between the reservoir, and so I'm walking all the time</p> <p>24 right through where the reservoir will be. But other</p> <p>25 than walking through there I didn't really generate any</p>

41

1 information on it.
 2 Q. When was the first time that you walked
 3 through there and were consciously aware of the fact
 4 that utilities had been there and staked the location of
 5 their lines?
 6 A. I had seen them in the fall of '93. I had
 7 seen stakes and the signs that say Olympic Pipe Line on
 8 them.
 9 Q. And you specifically recall the Olympic Pipe
 10 Line stakes and signs?
 11 A. Yes.
 12 Q. And are they coated or colored in a specific
 13 way that identifies them as hydrocarbon or petroleum
 14 pipeline utilities?
 15 A. Yes, I believe they are.
 16 Q. They were?
 17 A. They were.
 18 Q. Do you recall roughly the area of the
 19 construction site where the stakes were positioned?
 20 A. Pretty much so, yes.
 21 Q. You do pretty much so?
 22 A. I remember roughly where they were.
 23 Q. It you were to look at a drawing would you be
 24 able to indicate on the site drawing where?
 25 A. Yes.

42

1 MR. NICOLL: Why don't you mark this as 65.
 2 Guys, this is -- we can be off record for this.
 3 MR. FLOYD: I would like it on the record so
 4 we know what it is.
 5 MR. NICOLL: This in your box. It will be
 6 document ET0007770 and it's attached with one of these
 7 alligator clips to a July 30, 1993 letter from Tom
 8 Collins to R.G. Burnett.
 9 MR. FLOYD: July 30 what?
 10 MR. NICOLL: '93.
 11 (Exhibit No. 65 is marked
 12 for identification)
 13 Q. I'm going to ask you to take a look at
 14 Exhibit 65, ET0007770. See in the lower right hand
 15 corner drawing number C-1?
 16 A. Yes.
 17 Q. It's called site plan, Barrett Consulting
 18 Group dated September 1993. Do you see that?
 19 A. Yes.
 20 Q. You recognize this drawing?
 21 A. I have seen it before, yes.
 22 Q. It's also entitled City of Bellingham
 23 Dakin-Yew Pump Station Whatcom Falls Reservoir No. 2
 24 Pipelines.
 25 Can you identify this as a true and correct

43

1 copy of the drawings that you reviewed back in 1993 in
 2 connection with the Dakin-Yew pump station job?
 3 A. As to the time I reviewed them, I'm not sure
 4 of that. I did review the plans. I do recognize them.
 5 Q. Is this too small a scale to assist us in
 6 having you locate or show us where the approximate
 7 locations of the pipeline markings were? Would that be
 8 to difficult to do that?
 9 A. No. I believe they are available here. I
 10 see the pipeline itself, but it's not very well marked.
 11 Q. I have some better scaled drawings actually.
 12 MR. NICOLL: Let's look at 7771 and mark it
 13 Exhibit 66.
 14 (Exhibit No. 66 is marked
 15 for identification)
 16 Q. Take a look at Exhibit 66. It's drawing
 17 ET0007771. Can you tell us what drawing number that is?
 18 A. It's drawing No. C-5.
 19 Q. And it's entitled?
 20 A. 72-inch and 8-inch utility duct plan and
 21 profile.
 22 Q. City of Bellingham, Dakin-Yew Pump Station,
 23 Whatcom Falls Reservoir No. 2 Pipelines?
 24 A. Yes.
 25 Q. Prepared by Barrett Consulting Group?

44

1 A. Yes.
 2 Q. Is that right?
 3 A. Yes.
 4 Q. You see the date is September '93?
 5 A. Yes.
 6 Q. Does this make it any easier for you to
 7 indicate where the markings were -- excuse me, the
 8 stakes indicating at the site where the pipeline was
 9 located?
 10 A. Yes. It shows the dash line where Olympic
 11 Pipe Line is right at the bottom of the slope that runs
 12 along the hillside there.
 13 Q. Do you recall -- I know that the drawing
 14 shows that, but do you recall where the stakes were that
 15 had been in position when you walked through that area
 16 in the fall of 1993?
 17 A. I believe they were at the angle point. I
 18 remember one being at the angle point as well as maybe
 19 along the tangents on either side of it. I think three,
 20 maybe four signs.
 21 MR. NICOLL: Before everything got torn apart
 22 I had some markers. Can we go off record for a moment.
 23 (Off the record)
 24 MR. NICOLL: We are back on record. It is
 25 10:35.

45

1 Q. We found pens. Using the red pen on Exhibit
 2 66, would you mind just placing an X in the various
 3 locations along the pipeline where you recall seeing
 4 stakes or markers showing the location of the pipeline
 5 in the fall of '93?
 6 MR. FLOYD: Counsel, I think he said signs
 7 too.
 8 MR. NICOLL: And signs.
 9 A. Yes. I remember seeing three or four of them
 10 in the three or four hundred foot stretch of the
 11 pipeline that we would have been involved with. That's
 12 all I remember as far as actual locations. I know there
 13 was one probably here and then on either side of that
 14 identifying the basic outline of where the pipe was.
 15 MR. BENINGER: Would those be signs or
 16 stakes?
 17 A. Signs.
 18 MR. BENINGER: The X's that you put on there
 19 in red designate signs; is that correct.
 20 A. Yes.
 21 Q. Were there stakes as well in addition to the
 22 signs?
 23 A. Yes.
 24 MR. FLOYD: At what time?
 25 Q. In the fall of '93.

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1 A. I believe there were stakes where they
 2 actually did expose the pipeline maybe a year ahead of
 3 this time, but that's all. They dug I believe two
 4 different locations and had a stake by where they
 5 actually had dug them.
 6 Q. And by the digging you mean, is that a term
 7 called potholing?
 8 A. Yes.
 9 Q. So there had been some potholing about a year
 10 earlier to your knowledge?
 11 A. Right.
 12 Q. Do you recall approximately where the stakes
 13 related to the earlier potholing were located?
 14 A. No. It is shown in the profile where the
 15 potholes were done though.
 16 Q. Would you use this pink marker and just trace
 17 the outline of the pipeline on Exhibit 66?
 18 A. (Witness complies.)
 19 Q. Now at that time, at the time of this
 20 drawing, Exhibit 66, the plan was to run a 24-inch
 21 discharge line from the Dakin-Yew pump station to
 22 connect up with the 16-inch waterline at a tee joint; is
 23 that correct?
 24 A. Yes.
 25 Q. Could you use the blue marker to trace on

47

1 Exhibit 66 where the discharge -- first of all color in
 2 the pump station and then second of all trace the
 3 discharge to the point of the tee intersection?
 4 A. Actually what you said isn't correct. The
 5 discharge isn't on here. This is the suction line.
 6 This draws water out of the system and sends it through
 7 the pumps and then discharges out to the north.
 8 Q. So your recollection is that the suction line
 9 is the one to the south and the discharge line is to the
 10 north?
 11 A. Yes.
 12 Q. So now you are going to trace in what you are
 13 calling the suction line?
 14 A. (Witness complies.)
 15 Q. Given the scale of this drawing, Exhibit 66,
 16 what's the distance between the tee intersection that
 17 you just highlighted in blue and the pipeline that you
 18 highlighted in pink approximately?
 19 A. Twenty feet. Actually I just see on the plan
 20 one inch equals twenty, so it was probably fifteen feet.
 21 Q. Now, during the fall and winter of '93 and
 22 the early part of '94 do you have a recollection of
 23 meeting people from Olympic Pipe Line with respect
 24 specifically to the Dakin-Yew job?
 25 A. No.

48

1 Q. Were you involved in any of the contracting,
 2 drafting of contracts, executing of contracts between
 3 the City and Barrett/Earth Tech?
 4 A. No.
 5 Q. Were you involved in the drafting of
 6 contracts or the executing of contracts between the City
 7 or Barrett and IMCO?
 8 A. No.
 9 Q. Were you involved directly in dealing with
 10 change orders, requests for modification, adjudication
 11 of change orders and things of the sort submitted by
 12 IMCO?
 13 A. No.
 14 Q. The next exhibit --
 15 MR. SCANLAN: Can we put this away?
 16 MR. NICOLL: Yes, you can put that away now.
 17 Thanks.
 18 MR. FLOYD: Were we supposed to bring a box?
 19 MR. NICOLL: There is a box over there.
 20 MR. NICOLL: ET0005005, it's a letter to
 21 Chris Hart.
 22 MR. SCANLAN: So you are not in the
 23 inspection reports?
 24 MR. NICOLL: Not yet, no. ET0005005 through
 25 6. It's a letter from John Hatch to Chris Hart dated

49

1 January 14, 1994.
 2 (Exhibit No. 67 is marked
 3 for identification)
 4 Q. Would you take a look at that exhibit,
 5 please, Exhibit 67? Do you see where you are copied on
 6 that letter?
 7 A. Yes.
 8 Q. Do you have any recollection of receiving
 9 this letter?
 10 A. Not that letter, but I remember attending the
 11 meeting.
 12 Q. Do you see on the second page of Exhibit 67
 13 where it says attendees will include representatives
 14 from the City, Olympic Pipe Line Company, U.S. West,
 15 BCG -- which I assume means Barrett Consulting Group; is
 16 that correct?
 17 A. Yes.
 18 Q. And IMCO?
 19 A. Yes.
 20 Q. Do you have a recollection of the meeting
 21 that was held subsequent to receipt of Exhibit 67?
 22 A. I remember the meeting being held.
 23 Q. Do you recall whether IMCO people -- I'm
 24 sorry, Olympic people were present?
 25 A. I don't recall that specifically. But, no, I

50

1 don't recall.
 2 (Exhibit No. 68 is marked
 3 for identification)
 4 Q. Exhibit 68 is a document ET0005003 and 004.
 5 Would you take a look at that letter?
 6 A. Yes.
 7 Q. Do you recall receiving a copy of the letter?
 8 A. Yes.
 9 Q. And do you recall attending the partnering
 10 workshop which is referenced in the letter?
 11 A. Yes.
 12 Q. Notice that time and date of the letter
 13 appears to be in conflict with the time and date of the
 14 scheduled pre-construction conference referred to in
 15 Exhibit 67. Do you see that?
 16 A. Yes.
 17 Q. Were both the pre-construction conference and
 18 the partnering workshop held on the same day to your
 19 recollection?
 20 A. No, they weren't.
 21 Q. So one was rescheduled?
 22 A. Yes.
 23 Q. And Olympic Pipe Line representatives would
 24 not have attended -- did not attend the partnering
 25 workshop; is that right?

51

1 A. No, they did not.
 2 (Exhibit No. 69 is marked
 3 for identification)
 4 Q. I'm going to mark as Exhibit 69 a stack of
 5 documents that are clipped together. These are numbers
 6 ET0006723, 24, 25, 26 and 27.
 7 Now you will understand I hope that in a case
 8 like this we get a whole bunch of documents and
 9 sometimes they come to us organized in ways that may not
 10 have been the way they were organized in the files from
 11 which they originally came. I mean after a while things
 12 change. But these might be shuffled, that's right.
 13 But these were clipped together, and so I
 14 just ask if you will take a look at Exhibit 67 for a
 15 moment and familiarize yourself with it.
 16 MR. VERWOLF: 69.
 17 MR. NICOLL: I'm sorry. 69.
 18 MR. VERWOLF: Were the numbers 723 to 727?
 19 MR. NICOLL: Yes.
 20 Q. Have you had a chance to review the packet?
 21 A. Yes.
 22 Q. Do you recognize those documents in that
 23 organization, and in other words clipped in that way?
 24 A. Yes.
 25 Q. What are they? Can you tell us generally

52

1 what they are?
 2 A. It's the agenda for the pre-construction
 3 meeting.
 4 Q. That agenda is two pages long. I am sorry,
 5 three pages long and it's followed by some handwritten
 6 notes. Do you see that?
 7 A. Yes.
 8 Q. Page 6726?
 9 A. Yes.
 10 Q. Whose notes are those?
 11 A. John Hatch's.
 12 Q. Do you recognize his handwriting?
 13 A. Yes.
 14 Q. And then 6727 which appears to be a sign-in
 15 sheet; right?
 16 A. That's right, for the pre-construction
 17 meeting itself.
 18 Q. And you recall John Hatch being present at
 19 the meeting, at the pre-construction meeting?
 20 A. I don't really know for sure that he was. I
 21 don't see his name on the list, so he probably wasn't.
 22 I would expect his name to be here but it wasn't.
 23 Q. Is it possible that he could have attended
 24 the meeting but not signed in?
 25 A. That's possible.

53

1 Q. Because you notice these notes, do these
 2 notes cover items that were covered in the
 3 pre-construction meeting?
 4 A. They were issues that were relevant at that
 5 time. Whether they were covered in the meeting or not,
 6 I couldn't say.
 7 Q. The City were issued 23 gate door keys. Do
 8 you notice that in the second to the last line?
 9 A. Right.
 10 Q. Parks want about fifteen thousand cubic yards
 11 of waste?
 12 A. There were different issues that were evident
 13 at the time. Whether we talked about them in the
 14 meeting or not, I don't know for sure.
 15 Q. The references to U.S. West at the top, do
 16 you see that?
 17 A. Yes.
 18 Q. And references to Olympic has delivered
 19 package to IMCO?
 20 A. Yes.
 21 Q. You can't tell me as you sit here I guess
 22 whether or not these notes were made by Mr. Hatch during
 23 the pre-construction meeting?
 24 A. That's correct.
 25 Q. And they are not your notes?

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1 A. No.
 2 Q. One of the -- well, one of the points to be
 3 covered in the pre-construction meeting was coordination
 4 with other utilities and then it says next to that on
 5 6723 PR 14. Do you see that?
 6 A. Yes.
 7 Q. What does PR 14 stand for?
 8 A. I don't know.
 9 Q. Could it stand for project requirement?
 10 A. It could. I'm not familiar with the code.
 11 (Exhibit No. 70 is marked
 12 for identification)
 13 Q. Exhibit 70 is ET0009859 and ET0009985. I
 14 will represent that this is the cover page of the
 15 project manual for project number 454-B and one of the
 16 interior pages from that project manual. Okay?
 17 A. Okay.
 18 Q. We have the whole thing if you want to look
 19 at the whole thing.
 20 MR. FLOYD: Is that in the box that we have?
 21 MR. NICOLL: It is.
 22 Q. Project number 454-B, that's the Dakin-Yew
 23 pump station project; right?
 24 A. I believe so.
 25 Q. And it of course says Dakin-Yew pump station,

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1 reservoir pipelines, and chemical feed?
 2 A. Yes.
 3 Q. 14, we've copied a page, project page 20,
 4 which has the number 14 on the top of it. And it deals
 5 with utility coordination and relocation. Would you
 6 take a look at that?
 7 A. Okay.
 8 Q. So the second page of Exhibit 70 deals with
 9 the requirement to coordinate with owners of underground
 10 utilities in the project area?
 11 A. Yes.
 12 Q. So looking back now to Exhibit 69, the first
 13 page of that exhibit, this reference to coordination
 14 with other utilities (Pr 14) would appear to be a
 15 reference to the second page of Exhibit 70; is that
 16 right?
 17 A. Yes.
 18 Q. Now, to your recollection having attended the
 19 meeting, were the requirements discussed on the second
 20 page of Exhibit 70 addressed at the pre-construction
 21 meeting in accordance with the pre-construction meeting
 22 agenda and the requirements of the contract?
 23 A. Yes.
 24 Q. Were there representatives of U.S. West and
 25 Olympic Pipe Line present when those requirements were

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1 discussed?
 2 A. I remember the U.S. West person being at the
 3 meeting. I don't remember the Olympic Pipe Line people
 4 being there.
 5 Q. Now, could they have been there and you just
 6 can't recall it?
 7 A. Well once again, John Hatch's name isn't on
 8 the list and I'm not sure why, but I would expect the
 9 name to be on the list if they were there.
 10 Q. The fact that the name is not on the list in
 11 your mind doesn't mean that they necessarily weren't
 12 there?
 13 A. That's correct. I have no explanation why
 14 their name isn't on the list. I can't say. I don't
 15 know why. I remember John being there. I don't
 16 remember the Olympic Pipe Line person being there.
 17 Q. Do you know Kevin Wittmer?
 18 A. No.
 19 Q. Do you know Ken Roberts?
 20 A. Not to my knowledge.
 21 Q. But you do recall a discussion of
 22 coordinating with Olympic Pipe Line when working in the
 23 pipeline right-of-way?
 24 A. I remember talking to people from Olympic
 25 Pipe Line during the excavation work. I don't have

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1 names. I remember they were around several times and
 2 made comments about talking to them.

3 Q. I mean at this pre-construction meeting. I
 4 recognize that you don't recall if Olympic people were
 5 there at the pre-construction meeting, but you do recall
 6 that there was a discussion at the pre-construction
 7 meeting about the need to coordinate with Olympic Pipe
 8 Line when working in the pipeline right-of-way?

9 A. Yes.

10 (Exhibit No. 71 is marked
 11 for identification)

12 Q. Exhibit 71 is a document which is numbered
 13 IMC0001179. This is a document that we would have
 14 received from IMCO. It's dated January 28, 1994. It's
 15 on Resolutions International letterhead and you will see
 16 that in the first line it refers to the partnering
 17 workshop that occurred on January 27, 1994.

18 A. Okay.

19 Q. So that resolves the --

20 MR. FLOYD: Could you read back that
 21 question, please?

22 (The requested question
 23 was read by the reporter)

24 A. Yes.

25 Q. Do you have a recollection as to whether or

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1 not that workshop then in fact did occur on January 27,
 2 1994?

3 A. I believe it did.

4 Q. And there was the development of a
 5 communication matrix at the workshop; is that right?

6 A. I believe so.

7 (Exhibit No. 72 is marked
 8 for identification)

9 Q. Exhibit 72 is a document numbered
 10 OPL50022330. Take a look at that document. Do you
 11 recognize it?

12 A. Yes.

13 Q. Is that the communication matrix?

14 A. Yes.

15 Q. And Exhibit 72 basically sets forth perhaps
 16 in a more formal way than was actually conducted on site
 17 how people are to communicate in connection with the
 18 Dakin-Yew project; is that right?

19 A. Yes. It identifies the City, Barrett as well
 20 as IMCO people.

21 (Exhibit No. 73 is marked
 22 for identification)

23 Q. Take a look at Exhibit 73. It's a document
 24 numbered ET0004965 dated January 28, 1994.

25 A. Yes.

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1 Q. And it's a letter from John Hatch to Chris
 2 Hart of IMCO; right?

3 A. Yes.

4 Q. And you are copied on it; is that right?

5 A. That's correct.

6 Q. The letter refers to the meeting of January
 7 25th which I'm going to ask you, was that the
 8 pre-construction meeting?

9 A. Well, yes. It --

10 Q. It was?

11 A. -- occurred the 27th.

12 Q. No. Well, the partnering meeting occurred on
 13 the 27th; right?

14 A. Yes.

15 Q. But the pre-construction meeting occurred on
 16 the 25th?

17 A. That's correct.

18 Q. And then it references this meeting. It says
 19 there was some confusion during our meeting on January
 20 25 regarding trench excavation for the telephone
 21 conduit. Please note that Project Requirements Section
 22 14 requires the contractor to provide all coordination
 23 with U.S. West Communications for the relocation work.
 24 You are also required to perform all work required by
 25 U.S. West for relocation, including trench and

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1 connection pit excavation.

2 Do you know what confusion Mr. Hatch was
 3 referring to?

4 A. No, I don't.

5 Q. Were you personally involved in any
 6 discussions with the contractor IMCO or its
 7 representatives concerning the scope of the work that
 8 Project Requirements 14 had obligated them to perform
 9 within the confines and limits of the bid?

10 A. Yes.

11 Q. And what were those discussions?

12 A. I believe one was a trunk line for U.S. West
 13 that ran through the site and the other one was a hand
 14 laid single telephone line. And I believe that was what
 15 the issue was, the fact that we had a telephone line
 16 that wasn't really marked very well. But that's what my
 17 recollection is.

18 Q. Do you know whether the confusion being
 19 referred to here was a confusion about whether IMCO
 20 General Construction Company was going to have to pay
 21 for the relocation of utilities out of the amount of
 22 money that it got for the contract?

23 A. I don't know for sure, no.

24 Q. To the best of your recollection on what --
 25 forget recollection. Let's take a look at Exhibit 64

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1 and let's stick that right in front of you.
 2 On what date did the work on the Dakin-Yew
 3 pump station get under way, the work at the site?
 4 A. From what I'm seeing here, the 24th of
 5 February.
 6 Q. Why don't you show us and reference the page
 7 number that led you to that answer.
 8 A. Actually the page number was ET0006566. And
 9 I say that because that was the earliest day where I see
 10 some work being done. I'm seeing something happen
 11 earlier than that too, but I would have to spend some
 12 time looking to see what the actual first day was.
 13 Q. I don't know why these are out of order, but
 14 they do appear to be.
 15 A. Actually I guess the 22nd would have been the
 16 first day.
 17 Q. The 22nd?
 18 A. Yes.
 19 Q. Of February. So it would be ET0006569?
 20 A. Yes.
 21 Q. Here's a document that's all serial letter
 22 number 8 ET0004880 through 882. And I'll have it
 23 marked.
 24 (Exhibit No. 74 is marked
 25 for identification)

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1 There is reference in here to CDF, controlled
 2 density fill. Could you tell us what that is?
 3 A. Yes. It's a mixture of sand and cement
 4 concrete and water so that when the material is
 5 deposited and settles it's a soft digable material but
 6 will stand up and not settle.
 7 Q. So it can provide some support for whatever
 8 it is that's above it?
 9 A. Yes. As well as not settling, which means
 10 you don't have to compact it after you put it in place
 11 and that's the benefit of it.
 12 Q. But you can dig through it?
 13 A. Yes, with a shovel.
 14 Q. However the ease of digging through it is
 15 going to be affected by the density to which you mix the
 16 fill; is that right?
 17 A. That's correct.
 18 Q. So there were some questions early on about
 19 the strength of the CDF that would be utilized in
 20 different applications on the job site?
 21 A. Yes.
 22 Q. And that would be the bullet point here, the
 23 use of a controlled density fill whose strength exceeds
 24 that in one of the sections of the project manual was
 25 acceptable only under structures. Controlled density

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1 Q. Dated 2/23/94. Just to help you guys, the
 2 inspection reports are a big stack of documents.
 3 MR. FLOYD: Right here?
 4 MR. NICOLL: Right. Before that there are
 5 some loose correspondence arranged chronologically.
 6 MR. FLOYD: It's in here?
 7 MR. NICOLL: Yes. Serial No. 8.
 8 Q. Exhibit 74, could you take a look at that and
 9 identify it for us? Basically tell us what it is.
 10 A. It appears to be questions being answered
 11 that had come up between the pre-construction conference
 12 and February 23rd when this letter was written.
 13 MR. SCANLAN: Can I interject? This exhibit
 14 appears to be an incomplete letter. There is no
 15 signature page attached to what I've got.
 16 MR. FLOYD: I have one.
 17 MR. SCANLAN: You have it on the exhibit. My
 18 apologies.
 19 MR. NICOLL: No problem.
 20 Q. You were copied on the letter?
 21 A. I'm sure I was. Yes.
 22 Q. The part that I was -- there are several
 23 things in here that I would like to talk about. They
 24 raise some terms that I think are going to be important
 25 to us.

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1 fill within pipeline trenches shall meet the
 2 requirements of the other section. No additional
 3 payment will be made for higher strength material.
 4 Do you recall what it was that prompted -- I
 5 realize there was a question that was asked, but what
 6 was it that occurred that prompted that question?
 7 A. I couldn't say.
 8 Q. Above that --
 9 MR. FLOYD: Chris, you said a different
 10 section, because they look like they are exactly the
 11 same.
 12 MR. NICOLL: I didn't say they were different
 13 sections. I'm sorry. If I did I apologize. But I know
 14 they are referred to as the same section.
 15 Q. I take it that section would be the section
 16 that deals with the issue of controlled density fill?
 17 A. I would assume so.
 18 Q. So above that there is a paragraph bullet
 19 point that says we have reviewed your proposed alternate
 20 route for the 60-inch waterline. This route is not
 21 acceptable because the area south of the 60-inch
 22 backwash line is reserved for future parallel 60-inch
 23 backwash line. Based on a review of the design criteria
 24 for the 60-inch waterline we see no alternate route to
 25 that indicated on the plans.

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1 Do you recall what the issue was there beyond
 2 what's written on the exhibit?
 3 A. No, I don't.
 4 Q. Did this issue later have an impact on a need
 5 to relocate the 24-inch line that ran from the south of
 6 the pump station?
 7 A. I don't know.
 8 Q. Who is Tom Collins?
 9 A. He was an engineer in our office.
 10 Q. Does he still work for you?
 11 A. No.
 12 Q. Where is he now, do you know?
 13 A. No, I don't.
 14 Q. When did he leave?
 15 A. During the time I was gone between '95 and
 16 '98.
 17 Q. Do you recall an eventual realignment of the
 18 72-inch pipe at the pump station?
 19 A. No.
 20 Q. You worked on site under some safety rules;
 21 is that right?
 22 A. Basic safety rules, yes.
 23 (Exhibit No. 75 is marked
 24 for identification)
 25 Q. Exhibit 75 is a handwritten memo written by

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1 somebody named Bob Morley, ET0009012, and attaching a
 2 document entitled Barrett general safety rules, office
 3 operations field operations ET0009013 through 9016.
 4 First why don't you take a look at the safety
 5 rules attached to the handwritten memo. Do you
 6 recognize those rules?
 7 A. No, I don't.
 8 Q. Take a look at the memo. This is a memo from
 9 a guy named Bob Morley. Who is Bob Morley, do you know?
 10 A. He was a construction representative in our
 11 office.
 12 Q. And there is a question about how Barrett
 13 Consulting Group inspectors should protect themselves
 14 when entering into confined spaces and whether or not
 15 the clearwell was considered a confined space?
 16 A. Yes.
 17 Q. And he referenced the Barrett Consulting
 18 Group safety requirements and concluded I guess that the
 19 clearwell wasn't a confined space?
 20 A. That's correct.
 21 Q. In view of that, do you now recall having
 22 reviewed those safety regulations before, safety rules?
 23 A. I recall seeing them and reviewing them, yes.
 24 Q. I just want to make a simple record of that
 25 fact that there were safety rules that you were

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1 following on site in connection with your job. Okay?
 2 A. Yes.
 3 Q. So you can lay that aside.
 4 (Exhibit No. 76 is marked
 5 for identification)
 6 Q. Exhibit 76 is a document called a project
 7 data transmittal from IMCO to Barrett Consulting Group.
 8 It's dated April 18, 1994. It is ET0002400 through
 9 2405. Could you take a look at that? Okay?
 10 A. Okay.
 11 Q. First of all, were there a lot of project
 12 data transmittals that you recall?
 13 A. Yes.
 14 Q. What was the purpose of that?
 15 A. This transmittal?
 16 Q. Yes.
 17 A. To identify the different as an example
 18 formula for different concrete mixes. And to either
 19 require them to change it or to accept it as is would be
 20 the normal interaction that this would lead to.
 21 Q. Now this particular one, refresh my
 22 recollection, Exhibit No. 76, that had to do with the
 23 issue of the controlled density fill?
 24 A. Yes.
 25 Q. Right?

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1 A. Yes.
 2 Q. And that raises again the question of the
 3 strength of the controlled density fill being used?
 4 A. Yes.
 5 Q. Around the pipelines that were being
 6 installed; isn't that right?
 7 A. That's correct.
 8 Q. The density for the density that was being
 9 put to use by IMCO at that time was too strong?
 10 A. It's too strong a mix design, yes.
 11 Q. The issue that if it's too strong you can't
 12 dig through it to get --
 13 A. Yes.
 14 Q. -- to the pipeline to repair the pipeline or
 15 change it if you need to at some point in the future; is
 16 that right?
 17 A. That's right.
 18 Q. As a result of this interaction did the CDF
 19 have to be cut out or dug out and replaced?
 20 A. No, they submitted a different mix design.
 21 Q. This was all at the design phase?
 22 A. Yes.
 23 Q. Before CDF was actually laid?
 24 A. Yes.
 25 (Exhibit No. 77 is marked

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1 for identification)

2 Q. Exhibit 77 is ET0006189 and it's a memo to

3 Chris Hart from John Hatch. Chris Hart was an IMCO

4 representative; right?

5 A. Yes.

6 Q. And this had to do with some changes that

7 were under design. Do you see that?

8 A. Yes.

9 Q. You are copied on this document; correct?

10 A. Yes.

11 Q. Now, the first two bullet points, one is

12 revise vertical alignment of 72-inch pipeline to clear

13 existing 16-inch waterline. And the other is revise

14 alignment of 24-inch Dakin-Yew pump station discharge so

15 it does not cross the 72-inch pipeline.

16 I would like to look back at Exhibit 66 so

17 that we can have an understanding, if you are able to

18 provide it for us, what these changes concern.

19 A. I don't really recall the 72-inch being

20 changed. But if it was, I do remember something having

21 been done to raise it up higher, but I don't recall

22 directly what it was.

23 Q. Where does the 72-inch waterline cross the

24 16-inch waterline?

25 A. Down here.

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1 MR. NICOLL: Do you want me to have him hold

2 this up?

3 MR. BENINGER: You can do what you did before

4 and point where it was.

5 A. Right in this area here.

6 Q. So the depth of the 72-inch waterline was

7 going to be revised in some way. That was under

8 consideration.

9 A. It appears, yes.

10 Q. Do you know if it was going to be made deeper

11 or shallower?

12 A. It would have been shallower.

13 Q. As a result of making the 72-inch waterline

14 shallower where it crosses the 16-inch waterline, would

15 it then have been necessary to revise the crossing point

16 for the 24-inch discharge line and the 72-inch line

17 where I'm pointing on Exhibit 66?

18 A. Perhaps.

19 Q. So just to clarify your earlier testimony.

20 You said --

21 MR. FLOYD: Did you say discharge or suction?

22 MR. NICOLL: I said discharge on purpose.

23 I'm getting to that right now.

24 MR. FLOYD: All right.

25 Q. To clarify your earlier testimony, you

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1 testified earlier with respect to Exhibit 66 that the

2 blue outlined line running from the square, the pump

3 station, was a suction line and not a discharge line.

4 You testified that it drew water off the 16-inch line

5 into the pump station rather than the reverse,

6 discharged it out of the pump station and into the

7 waterline.

8 In view of Exhibit 77, would you like to

9 reconsider your testimony about whether the line leaving

10 from the south of the pump station is the discharge or

11 suction line?

12 A. No. This is a suction line.

13 Q. It is a suction line?

14 A. It is a suction line.

15 Q. Do you have any idea what -- is Exhibit 77

16 referring to a different line?

17 A. It is a mistake. From what I'm seeing and

18 what I remember and know about it it wasn't a discharge.

19 It was a suction line that they were referring to.

20 Q. Whether it's a suction line or a discharge

21 line, Exhibit 77 is referring, is it not, to the line

22 that is depicted on Exhibit 66 as running in a southerly

23 direction from the pump station to a point south of the

24 reducer between the 60-inch and the I guess it's a

25 48-inch line and then to the west to where it connects

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1 with a 16-inch waterline at the tee joint?

2 A. That's what it is referring to at the south

3 side of the piping, the piping on the south side of the

4 pump station.

5 Q. The piping on the south side of the pump

6 station was later revised?

7 A. Yes.

8 Q. Now I will tell you that in all the

9 documentation I've read it's always referred to as a

10 discharge line. And I can't help calling it that. I

11 don't mean to qualify what it actually does, but that's

12 what they refer to it as always.

13 Was it actually a suction line?

14 A. It is a suction line.

15 Q. It is a suction line.

16 A. It draws water off and is pumped through the

17 system and then out through the other way.

18 Q. And then there is another line that runs from

19 the north of the pump station?

20 A. Into the large new piping.

21 Q. Into the large new piping, right, and that's

22 the discharge line?

23 A. That's correct.

24 MR. FLOYD: Would this be a good time to take

25 a break?

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1 MR. NICOLL: It would be a great time to take
 2 a break.
 3 (Off the record)
 4 MR. BENINGER: Back on the record. Tape
 5 number two of Mr. Franklin in the Olympic case. Go
 6 ahead.
 7 MR. NICOLL: The time is 11:38 or so. All
 8 right. While we were on the break I dug out some
 9 drawings that I hope will get us squared away. Let's
 10 mark these in order.
 11 (Exhibit Nos. 78, 79, 80
 12 and 81 are marked for
 13 identification)
 14 MR. NICOLL: Exhibit 78 is a document
 15 entitled the 60-inch outlet pipeline plan and profile,
 16 Barrett Consulting Group drawing C-4. We have a Bates
 17 number for it of OPL1033478.
 18 Exhibit 79 is drawing P-1. It's Bates number
 19 OPL1033477. It's entitled pump station site plan,
 20 Barrett Consulting Group.
 21 Exhibit 80 is drawing number E-3 entitled
 22 pump station site plan. It seems to be done by Barrett
 23 Consulting Group and is it Casne?
 24 A. Yes.
 25 Q. Engineering, Inc. City engineering 000002.

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1 MR. FLOYD: What is 80?
 2 Q. 80 is city engineering 000002. And it's
 3 entitled pump station site plan. And finally 81 is
 4 IMC0001431 drawing number E-4 by Barrett Consulting
 5 Group and Casne Engineering, Inc. entitled pump station
 6 power and control plans.
 7 You have those in front of you; right?
 8 A. Yes.
 9 Q. Would you get the first one out? There you
 10 go. Exhibit 78 is drawing number C-3; is that right?
 11 A. Yes. C-4.
 12 Q. C-4? Is it C-4?
 13 MR. FLOYD: Should it be C-3?
 14 MR. NICOLL: Either one works.
 15 MR. VERWOLF: C-3 is the 72-inch.
 16 MR. NICOLL: I didn't mark C-3. I'm going to
 17 mark it 82.
 18 (Exhibit No. 82 is marked
 19 for identification)
 20 Q. Exhibit 82 is drawing C-3. It's OPL1033480,
 21 72-inch inlet pipeline plan and profile. Do you see
 22 Exhibit 82? The main thing I want to point out on 82
 23 and ask you to confirm is that next to the Dakin-Yew
 24 pump station that is a reference that says see drawing
 25 P-1. Do you see that?

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1 A. Yes.
 2 MR. FLOYD: Where are you looking at?
 3 MR. NICOLL: Upper right hand corner.
 4 There's an arrow pointing to the little square pump
 5 station.
 6 MR. FLOYD: I got you.
 7 Q. See drawing P-1. Let's go through those
 8 documents and find drawing P-1. Do you have that?
 9 A. Yes.
 10 Q. What exhibit is P-1?
 11 A. It says pump station site plan.
 12 Q. Exhibit 79?
 13 A. Right.
 14 Q. So you see the pump station site plan. Now
 15 find that 24-inch line that runs off the south side of
 16 the pump station?
 17 A. Yes.
 18 Q. Do you see that? Do you see the arrow
 19 pointing to it? It says pump station discharge.
 20 A. Yes, it does.
 21 MR. FLOYD: See drawing P-11, is that what
 22 you are reading?
 23 MR. NICOLL: Yes.
 24 Q. It says pump station discharge see drawing
 25 P-11. Why don't you highlight that in blue so that we

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1 have that.
 2 A. Okay.
 3 Q. And also would you just highlight in blue
 4 that line that runs all the way over to the tee joint
 5 joining with the 16-inch waterline.
 6 Now so we are clear, on Exhibit 79 the line
 7 that you just highlighted is the one line that was later
 8 revised to intersect with the 16-inch line at a
 9 different location. Isn't that right?
 10 A. Yes.
 11 Q. Which is wrong? I mean I hate to put you on
 12 the spot, but I guess --
 13 A. The drawing is wrong.
 14 Q. The drawing is wrong?
 15 A. Yes.
 16 Q. It was a suction line?
 17 A. Yes.
 18 Q. So find on Exhibit 79 the discharge line
 19 then.
 20 A. It's on the opposite side going out to the
 21 large diameter pipe.
 22 Q. I hate to mix our colors, but for sake of
 23 this let's draw the discharge line in red. There you
 24 go.
 25 MR. FLOYD: Where did he put that under?

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1 Q. The discharge line in red runs from the north
 2 side of the pump station --
 3 MR. BENINGER: Mr. Franklin, would you mind
 4 holding it up?
 5 A. Sure.
 6 Q. -- and connects with the 60-inch line to the
 7 northwest -- northeast sorry -- northwest.
 8 MR. FLOYD: Is that a 60 or 48? There's a
 9 reducer on it.
 10 MR. NICOLL: That's 48. That's a 60.
 11 MR. FLOYD: Okay.
 12 Q. Using the pink marker would you please also
 13 locate the Olympic pipeline on the drawing, Exhibit 79?
 14 A. (Witness complies.)
 15 Q. So where initially conceived, the 24-inch
 16 line running to the south from the pump station was not
 17 going to intersect or even come any closer than about
 18 fifteen feet from the pipeline; right?
 19 A. Yes.
 20 MR. BENINGER: Mr. Franklin, would you mind
 21 holding it up again and show us where you were just
 22 talking about where the discharge line was going to end
 23 before the pipeline?
 24 A. The discharge line is here. It's called
 25 discharge but it's actually suction line and the Olympic

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1 pipeline is this along in here.
 2 MR. BENINGER: And is that the discharge,
 3 what really was a suction, and that running into the
 4 16-inch line?
 5 A. Yes.
 6 Q. Would you also draw in blue the 16-inch
 7 waterline that it tied into?
 8 A. (Witness complies.)
 9 Q. And would you circle in red the place where
 10 the 16-inch waterline intersects on the drawing the
 11 Olympic's pipeline?
 12 A. (Witness complies.)
 13 Q. And hold it up so that the camera can see
 14 what you have done.
 15 I'm pointing to where the pipeline and the
 16 16-inch waterline intersect; is that right?
 17 A. Yes.
 18 Q. Now let's take a look at another one of those
 19 drawings. Exhibit 81, can you tell us what Exhibit 81
 20 is, please?
 21 A. It talks about the pump station power and
 22 control plans.
 23 Q. Now, should you be able to in looking at
 24 Exhibit 81 determine whether or not the lines that we
 25 are talking about, the discharge and suction lines, are

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1 actually configured for discharge or for suction?
 2 A. Not from looking at these two plans
 3 necessarily, no.
 4 Q. Can I have that exhibit back? On Exhibit 81
 5 on the portion labeled upper level plan, in the upper
 6 right hand corner of that portion there is a pipeline or
 7 some piping indicated in the drawing; is that right?
 8 A. Yes.
 9 Q. And that's 24-inch piping?
 10 A. Yes.
 11 Q. Now, at the point near the I guess you would
 12 call it a bubble or a cloud, there is a notation that
 13 says future pump number five and it says discharge
 14 pressure transmitter something or other.
 15 Is the position and location of those pumps
 16 consistent with a discharge as opposed to suction?
 17 A. You are looking at the upper level and
 18 typically you pump water from higher to lower.
 19 Typically it would be a suction side of the pipe, pipe
 20 system.
 21 Q. On the upper side?
 22 A. Yes. Bringing water down.
 23 Q. I am sorry. I thought you just said that
 24 typically you would --
 25 A. You suck it from the higher elevation down to

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1 the pumps and out.
 2 Q. So what you're saying is the location of the
 3 discharge on the --
 4 A. On the upper level plan like showing here
 5 indicates that it would be a discharge where it's lower
 6 access. It's not showing it.
 7 Q. Notice the location of the north marker.
 8 Maybe this is more detailed than we really need, but I
 9 want to make sure we have this correct.
 10 The 24-inch line exiting the building on the
 11 south side is on the upper level plan rendition?
 12 A. Yes.
 13 Q. Right? And you are saying that that's
 14 consistent with it being a suction line?
 15 A. Yes.
 16 Q. And the 24-inch line that exits the pump
 17 station on the lower level, you are saying that's
 18 consistent with its being discharged?
 19 A. Yes. It's already gone through the pump.
 20 Q. Even though it says suction pressured
 21 transmitter?
 22 A. Yeah.
 23 Q. On the drawing?
 24 A. Even though.
 25 Q. So these drawings are wrong, just wrong?

81

1 A. Yes.

2 Q. Exhibit 82, we talked about this earlier.

3 It's drawing number --

4 MR. FLOYD: 82?

5 Q. 82, it's drawing number C-3. Since we've

6 been using pink to indicate it, do you see this notation

7 on Exhibit 82, it says existing 16-inch petroleum

8 pipeline and then there is a line going down to a zero?

9 A. Yes.

10 Q. I'm going to highlight that in pink and hand

11 you the document. Okay? What does that portion of

12 Exhibit 82 depict? What is it trying to depict?

13 A. It's identifying the elevation of the Olympic

14 pipeline in relationship to the pipes that we were going

15 to install.

16 Q. All pipes or just the 60-inch pipes?

17 MR. FLOYD: All pipes where; on the diagram

18 or anywhere on the site?

19 Q. Throughout the site.

20 A. It shows specifically the 72-inch discharging

21 out of the water treatment plant. A profile for that

22 line is what it's showing.

23 Q. One drawing a design layout cross referencing

24 the Olympic pipeline with the other lines would not

25 necessarily have cross referenced the Olympic line with

82

1 a line if that line wasn't going to actually come close

2 to or intersect the Olympic pipeline. Is that correct,

3 or is that too difficult and convoluted a question to

4 possibly answer?

5 MR. SCANLAN: I'm going to object that it

6 calls for speculation and it's vague as to form.

7 MR. FLOYD: I will object to form. It's

8 compound also. Go ahead. You can answer it if you can.

9 A. Usually if a pipe is known within the profile

10 of a pipe that we are installing we show the elevation

11 and the approximate dimension of the pipe.

12 Q. That 24-inch what is referred to on the

13 drawings as a discharge line and I'm going to refer to

14 it as that, but that 24-inch discharge line is depicted

15 on the initial plans as not intersecting with the

16 pipeline and coming no closer really than fifteen feet

17 where it's going to tie into the 16-inch waterline;

18 right?

19 A. That's correct.

20 Q. Do you know whether or not that is an

21 explanation for why the 24-inch discharge line is not

22 depicted on Exhibit 92 in profile?

23 MR. SCANLAN: I have the same objection that

24 it calls for speculation.

25 MR. NICOLL: I'm asking if he knows.

83

1 Q. I don't want you to speculate. I want to

2 know if you know.

3 A. I don't know.

4 Q. Can you find that 24-inch line in profile on

5 that drawing exhibit C-3?

6 A. No, I can't.

7 Q. If the 24-inch line was going to cross the

8 24-inch, I'm sorry, the pipeline where it would be

9 located close to the pipeline, would you have preferred

10 to have a profile that depicted?

11 A. Actually I was wrong. There is an 18-inch

12 waterline shown in here in the profile. Right next to

13 the 16-inch petroleum.

14 Q. Is that 18 or 16?

15 A. It says 18. Right?

16 MR. FLOYD: You better get your glasses on

17 and check that and make sure.

18 A. It says it's an existing 18-inch water

19 relocated as required.

20 Q. But the line it was tying into was a 16-inch

21 waterline. I'm not aware of any 18-inch line.

22 A. It could be 16-inch. I can't tell whether

23 it's 16 or 18. But my recollection was that is the

24 reason that the 72-inch had to be moved, to miss that

25 waterline. I think they came through earlier and

84

1 relocated it further out and then made the angles

2 different.

3 Q. Why don't you highlight in blue that existing

4 18 or 16?

5 A. (Witness complies.)

6 Q. Okay. Now, do you know whether or not

7 Exhibit 82 was an accurate rendition of the precise

8 locations below ground level of all the lines that ran

9 through the area?

10 A. I don't know.

11 Q. If it was, you wouldn't need to have people

12 come out and pothole to locate precisely where their

13 underground lines were, would you?

14 MR. FLOYD: Excuse me. Could you read that

15 back again?

16 Q. If it was a precise rendition of the location

17 of the lines under the ground you wouldn't need to have

18 people come out and pothole their lines to locate

19 precisely where they were?

20 MR. FLOYD: You are talking about 82?

21 MR. NICOLL: On Exhibit 82.

22 MR. FLOYD: I'll object, lack of foundation.

23 Because that assumes the potholing was not done before

24 this Exhibit 82 was prepared. Go ahead and answer

25 though.

85

1 A. That's correct. It was potholed before the
 2 plans were constructed.
 3 Q. And I think you testified earlier that it was
 4 about a year before you came out?
 5 A. Yes, give or take.
 6 Q. And then Exhibit 80, would you take a look at
 7 that? And this will be the last thing we talk about
 8 before we break for noon.
 9 Can you tell me what that is?
 10 A. It's says pump station site plan. I believe
 11 it has to do with identifying the areas where power is
 12 going to be run from the pump station or from the water
 13 treatment plan out to the pump station.
 14 Q. You notice in the upper left hand corner of
 15 the document there is a date?
 16 A. Yes. 6/14/99.
 17 Q. And you will also notice in the lower right
 18 hand corner there is a reference to City ENG 000002?
 19 A. Yes. Correct.
 20 Q. Do you see that?
 21 A. Correct.
 22 Q. Do you in light of those marks know or have
 23 any idea where the document came from?
 24 A. No.
 25 Q. What I'm going to do is represent to you that

86

1 this appears to have been printed out off of the City
 2 engineering computerized drawings. Okay. And it
 3 appears to show the location of that 24-inch discharge
 4 line prior -- as originally conceived and not as later
 5 constructed?
 6 A. Yes.
 7 Q. Is that right?
 8 A. That's correct.
 9 Q. Is there anything on this drawing, Exhibit
 10 80, that would assist in determining a resolution, a
 11 further resolution of the question of whether or not the
 12 south exiting pipe is discharge or suction?
 13 A. No. There are no labels on it one way or the
 14 other.
 15 MR. NICOLL: All right. Let's break there.
 16 (Off the record at 12:05 p.m.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

87

1 AFTERNOON SESSION
 2 June 19, 2000
 3 1:25 p.m.
 4
 5 MR. BENINGER: Back on the record. It's
 6 afternoon approximately 1:25 or so on June 19.
 7 MR. NICOLL: I've got a couple more drawings
 8 that I want to mark.
 9 (Exhibit Nos. 83, 84, 85
 10 are marked for identification)
 11 MR. NICOLL: For the record and for everybody
 12 searching for their copy, Exhibit 83 is drawing number
 13 P-2, ET0007904. 84 is another version of drawing number
 14 C-3, ET08114. And 85 is another P-1 pump station site
 15 plan. It's ET0010329.
 16 I'm putting in the other copies just because
 17 the earlier ones had some handwriting on them. I want
 18 to distinguish the ones that have handwriting from those
 19 that don't.
 20 Q. Take a look at Exhibit 83. Do you recognize
 21 that drawing as one of the many drawings that were
 22 related to the project at Dakin-Yew?
 23 A. Yes.
 24 Q. You see in the left hand, your left hand
 25 corner, there is a depiction of a tee intersection?

88

1 A. Yes.
 2 Q. Would you mind highlighting that in blue?
 3 A. (Witness complies.)
 4 Q. Is that meant to be the tie-in between the
 5 16-inch waterline and the 24-inch line that exits the
 6 southern side of the pump station?
 7 A. Yes.
 8 Q. You notice that even on that drawing it
 9 refers to it as discharge. Do you see the arrow?
 10 A. It says pump station discharge, yeah.
 11 Q. And that's erroneous?
 12 A. Yes.
 13 Q. Exhibit 84 is another copy of an exhibit that
 14 we have already looked at. It's drawing C-3. It's just
 15 that this one is a cleaner copy in that it doesn't have
 16 handwriting on it?
 17 A. Yes.
 18 Q. This copy also comes from the Earth Tech
 19 files as opposed to the Olympic Pipe Line files?
 20 A. Yes.
 21 Q. And Exhibit 85, the same thing, it's another
 22 copy of I think it's a drawing C?
 23 A. P-1.
 24 Q. Sorry, P-1. It's another document that's
 25 already in the record, 79. It's a version that doesn't

89

1 have the handwriting that's on the Olympic Pipe Line
 2 version of that document. Okay?
 3 A. Yes.
 4 Q. And let's put these over here where they will
 5 be relatively safe. All right.
 6 You weren't personally involved in the early
 7 efforts of Barrett/Earth Tech to get the pipeline and
 8 other utilities located on the job site?
 9 A. No.
 10 Q. Have you reviewed the correspondence of Earth
 11 Tech related to location of underground utilities?
 12 A. No.
 13 Q. Did you have any discussions with your
 14 colleagues at Barrett/Earth Tech prior to commencement
 15 of the Dakin-Yew pump station job concerning what had
 16 been done to that point to locate underground utilities?
 17 A. I had been told, yes.
 18 Q. Who told you and what did they tell you?
 19 A. I believe John Hatch made the comment they
 20 had already come out and potholed the Olympic Pipe Line
 21 pipe as well -- I'm not sure about the telephone lines.
 22 I don't recall them, but I believe that was the only
 23 issue was the pipeline location.
 24 Q. Of course you yourself saw some of the stakes
 25 out there; right?

90

1 A. Yes.
 2 Q. You saw indications that potholing had been
 3 done?
 4 A. Yes.
 5 Q. Can you describe just for those of us who
 6 maybe need a verbal picture of what actually it looked
 7 like that let you know that the location had been
 8 potholed?
 9 A. There was an indication that the earth had
 10 been disturbed in the two locations. Grass had grown
 11 but it wasn't normal grass that was in the surrounding
 12 area.
 13 Q. And there was a stake at that location as
 14 well or some kind of --
 15 A. I don't know if there was a stake. There was
 16 just a hole itself. The stake had probably be discarded
 17 while the digging process was underway.
 18 Q. And that was in the fall you said of '93?
 19 A. Late fall, early winter.
 20 (Exhibit No. 86 is marked
 21 for identification)
 22 Q. Exhibit 86, back to the correspondence pile,
 23 document ET0004659, memo to Chris Hart from John Hatch
 24 and you are copied on it. Do you see that?
 25 A. Yes.

91

1 Q. This memo concerns problems encountered in
 2 installing large diameter pipes. And it says if there
 3 is a high groundwater condition, and the backfill over
 4 the pipes has not been completed, there is a possibility
 5 that the pipes will float.
 6 Could you explain that? Do you know what he
 7 is talking about there?
 8 A. Yes. On the reservoir we were installing
 9 these same 72-inch diameter pipes. And the one section
 10 that comes out of the reservoir and is exposed that this
 11 pipeline would connect to, it was installed and during
 12 wintertime water was allowed to accumulate and it did
 13 float. And so it is just preparing Olympic's people to
 14 remove the possibility of that happening in their line.
 15 Q. You mean IMCO's people; right?
 16 A. Right.
 17 Q. So --
 18 A. It wasn't the same situation. The previous
 19 pipe that did float had a flange on it that completely
 20 made it airtight. And as a result of that, that's why
 21 it floated. None of their pipe was that way. They
 22 didn't have any flanges. It was all open pipe and water
 23 could go in.
 24 Q. What knowledge do you have of the rupture
 25 location on the Olympic pipeline?

92

1 A. The knowledge I have was a drawing that I had
 2 seen maybe four months ago with a pipeline hole location
 3 identified. That was all.
 4 Q. That pipeline hole location was not really
 5 very close to any of the larger diameter pipes, water
 6 pipes. It wasn't close to the 72-inch or the 60-inch
 7 lines?
 8 A. No.
 9 Q. It was close to the 16-inch line; right?
 10 A. Yes.
 11 Q. And close to the 24-inch line that came out
 12 and joined in a tee section, tee intersection with the
 13 16-inch?
 14 A. Yes.
 15 Q. So can I take it then that the issues raised
 16 in Exhibit 86 at least in your mind don't have any
 17 bearing?
 18 A. That's correct. Yes.
 19 (Exhibit No. 87 is marked
 20 for identification)
 21 Q. Exhibit 87 is a letter from Christenson
 22 Engineering Corporation dated May 18, 1994, and it
 23 attaches some pages. The Bates numbers are ET0004634,
 24 35, 36, 37 and 38, the last one being a fold-out
 25 drawing.

97	<p>1 sent by John Hatch who I guess, would John be your boss?</p> <p>2 A. Yes.</p> <p>3 Q. What does this refer to, this</p> <p>4 over-excavation?</p> <p>5 A. The over-excavation deals with Hannah Creek.</p> <p>6 The contract plans indicated originally that they were</p> <p>7 going to only dig the pipe a certain distance and if</p> <p>8 they didn't encounter rock then they would have to go</p> <p>9 down as far as the plans showed to support the pipes</p> <p>10 across Hannah Creek.</p> <p>11 They misunderstood the plans and assumed that</p> <p>12 they had to dig the full depth of the hole. And I</p> <p>13 wasn't there at the time they started doing this and I</p> <p>14 couldn't ascertain just how deep they were digging until</p> <p>15 after they had done their work.</p> <p>16 Q. So they thought, they being IMCO, thought</p> <p>17 apparently that they had to dig down as deep as the</p> <p>18 plans provided whereas --</p> <p>19 A. Whereas the plans actually had a line showing</p> <p>20 where they had to dig to to make a decision whether they</p> <p>21 had to go further or not. They went the full depth</p> <p>22 instead of stopping and talking to me about it and</p> <p>23 getting confirmation that they are as deep.</p> <p>24 Q. And that led to what?</p> <p>25 A. A claim for extra costs by them because they</p>	99	<p>1 typical. Whenever you are around rock in a structure</p> <p>2 you always want a cover, a separation between them.</p> <p>3 Whereas the pipe itself, they showed it differently than</p> <p>4 that, they actually showed the depth. Where this wasn't</p> <p>5 available, then you had to go deeper with the pipe.</p> <p>6 Q. Would you just hold up for the camera what it</p> <p>7 is that you are -- just point to the area where the</p> <p>8 excavation is indicated.</p> <p>9 A. In there.</p> <p>10 Q. And those are the elevation values on the</p> <p>11 side; is that right?</p> <p>12 A. Right.</p> <p>13 Q. And what do those numbers refer to if you</p> <p>14 know, the 285?</p> <p>15 A. That's the actual elevation from mean sea</p> <p>16 level typically.</p> <p>17 Q. So sea level being zero, some elevations</p> <p>18 above sea level are still underground?</p> <p>19 A. Yes.</p> <p>20 Q. So that here, 250 feet above sea level and</p> <p>21 the location of that pump station is underground?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell based on that drawing how far</p> <p>24 underground it would be?</p> <p>25 A. From this drawing?</p>
98	<p>1 did the work.</p> <p>2 Q. So that's what this means then. It's stated</p> <p>3 on the plans the depth of all over-excavation is to be</p> <p>4 determined by the engineer. The only exception to this</p> <p>5 is over-excavation for the pump station as shown on</p> <p>6 drawing P-2 where the actual depth is indicated.</p> <p>7 Let's take a look at drawing P-2. Could you</p> <p>8 indicate on drawing P-2 to Exhibit 83 where the actual</p> <p>9 depth of excavation is indicated?</p> <p>10 A. It would be in the elevation view section A.</p> <p>11 Q. So that's the upper left hand corner?</p> <p>12 A. Yes.</p> <p>13 Q. Is that what these numbers and lines,</p> <p>14 horizontal lines mean running down the page?</p> <p>15 A. Yes. The dimension here of fifteen feet from</p> <p>16 that ground level indicated rock excavation. They</p> <p>17 wanted to have a foot of cover below the bottom of the</p> <p>18 pump station, a foot of separation between whatever rock</p> <p>19 there is and the bottom of the pump station. So that's</p> <p>20 what he was referring to.</p> <p>21 Q. Does this basically get to the point that</p> <p>22 there was a lot of rock in the area where the pump</p> <p>23 station was going to be? Is that why the precise amount</p> <p>24 of excavation was indicated?</p> <p>25 A. Not necessarily. The one foot is pretty</p>	100	<p>1 Q. Yes.</p> <p>2 A. From the original ground if it's shown, this</p> <p>3 would have been the original ground, the dashed lines</p> <p>4 there, and they are between 260 and 275. So 15, 20 feet</p> <p>5 deep.</p> <p>6 (Exhibit No. 89 is marked</p> <p>7 for identification)</p> <p>8 Q. Going back to Exhibit 88, the</p> <p>9 over-excavation that's mentioned in Exhibit 88 was away</p> <p>10 from the location of the rupture; is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. Exhibit 89, Bates ET0004569 dated June 16,</p> <p>13 '94. I hope you appreciate what I'm doing here is</p> <p>14 using -- is that right? Did I give you the right one?</p> <p>15 Okay. These are items of correspondence that you have</p> <p>16 been copied on. Right?</p> <p>17 A. Yes, right.</p> <p>18 Q. That's what we are going through right now.</p> <p>19 This is a memo from John Hatch, your boss, to Wan Huang</p> <p>20 at the City of Bellingham concerning Dakin-Yew pump</p> <p>21 station, pump station discharge connection. Do you see</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. This has to do with the relocation of the</p> <p>25 pipe that exits the south side of the pump station so</p>

<p>101</p> <p>1 that it connects up with the 16-inch waterline at a 2 point further to the north along the 16-inch waterline; 3 is that correct? 4 A. Yes. 5 Q. Now, were you present during the discussions 6 that John Hatch refers to with Paul Krakenberg and Bill 7 Evans? 8 A. I don't believe I was. 9 Q. Were you involved in any of the planning 10 design or otherwise in connection with relocating the 11 24-inch, the southern 24-inch line and its connection 12 with the 16-inch waterline? 13 A. Only in regards I know that they were talking 14 about it. I wasn't involved directly. 15 Q. Again, this memo refers to that connection as 16 the discharge connection and it says IMCO is planning to 17 install a new pump station discharge connection to the 18 existing 16-inch waterline on July 7, 1994. Please note 19 that this is a different date than discussed at our June 20 14 meeting, and while IMCO has materials on hand they 21 are concerned about having sufficient labor available to 22 complete the work in a timely manner. 23 It's still your position that that line is 24 not a discharge line? 25 A. Well, I've been trying to think about why</p>	<p>103</p> <p>1 in the morning. 2 Q. And you had to get the City people there to 3 shut down the 16-inch line so that you could cut into it 4 or IMCO could cut into it and drain it and do everything 5 they needed to do? 6 A. Right. 7 Q. In order to get to the point of being ready 8 for that there was a fair amount of work that had to 9 occur beforehand? 10 A. Yes. 11 Q. And as a result of that, IMCO went for some 12 period of time into working night shifts on the job; is 13 that right? 14 A. Yes. May I take a break now? 15 Q. Sure. 16 MR. BENINGER: We'll go off the record now. 17 (Off the record) 18 MR. BENINGER: We are back on record now. 19 (Exhibit No. 90 is marked 20 for identification) 21 Q. Exhibit 90 is Bates numbered ET0004570. 22 It's dated June 16, 1994. It's another memo from John 23 Hatch, your boss, to Paul Krakenberg; correct? 24 A. Yes. 25 Q. And this deals with the issue of the night</p>
<p>102</p> <p>1 perhaps they are doing it this way and why it's labeled 2 that way and all I can do is speculate. I'm speculating 3 that they called it discharge because it's actually 4 discharging out of their own system and into the new 5 pump station. Whether that's the reason or not, I can't 6 say. That's the way it's labeled. 7 Q. So maybe I'm looking at it the wrong way. 8 A. Me too. 9 Q. I understand. But at any rate, there is no 10 confusion in your mind, we're talking about -- 11 A. The 16-inch connection to the 24-inch. 12 Q. And that's the only 16-inch connection? 13 A. That's the only place where you have the 14 situation. 15 Q. So the upshot of that memo, it appears that 16 the purpose of this memo is to get, is it correct, 17 approval to work more than one shift per day? 18 A. Yes. The City -- to be able to do this work 19 the City had to take the 16-inch line off service, and 20 so they had to arrange their own people at the right 21 time to be able to do that. Thus that's the reason the 22 City was so involved with this project, this section of 23 the work. 24 Q. So there was a scheduling issue? 25 A. For personnel, yes. They had to start early</p>	<p>104</p> <p>1 shift. 2 MR. FLOYD: What was the number? 3 MR. NICOLL: 4570. 4 MR. FLOYD: Thank you. 5 Q. This provides approval for working a night 6 shift through the end of June 30, 1994. Right? 7 A. Yes. 8 Q. Subject to certain restrictions that are 9 itemized there as bullet points. Correct? 10 A. Yes. That's correct. 11 Q. What does that last point mean, because the 12 second shift has been added to accelerate your contract 13 completion the charge for overtime inspection as allowed 14 in GR Section 1-08.1(3) will be waived? Is that 15 overtime for your services, do you know? 16 A. I don't know. 17 Q. Did you inspect the work that was done during 18 late shifts or second shifts? 19 A. I did. The next day, yes. 20 Q. The following day, but you didn't stay there 21 on site while they worked? 22 A. No, I didn't. 23 Q. Did anybody from Earth Tech, then Barrett, 24 stay on site while IMCO worked the second shift? 25 A. Not to my knowledge, no.</p>

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1 Q. Who was the last to leave the work site on
 2 any typical day?
 3 A. The contractor would be the last to leave.
 4 Q. So you would normally knock off before the
 5 contractor would?
 6 A. There were times I did leave before the
 7 contractor did, yes.
 8 Q. Did you ever leave when there was still
 9 mechanized excavation going on, people working with
 10 backhoes, things like that?
 11 A. Not as a general rule, no.
 12 Q. Did you ever leave when there was mechanized
 13 excavation going on?
 14 A. Yes.
 15 Q. Do you recall when that was?
 16 A. Primarily just during this time frame when
 17 they were working at night.
 18 Q. So during -- up until June 30?
 19 A. Yes. I would usually be there on site
 20 somewhere.
 21 Q. But when they were working at night, if they
 22 were doing excavation at night you wouldn't be there?
 23 A. No.
 24 Q. It's correct you wouldn't be there; right?
 25 A. That's correct.

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1 Q. And you would know that they had done
 2 excavation at night because the following day you would
 3 see the evidence of it?
 4 A. That's correct.
 5 Q. It's very tempting to go off into these
 6 things, but I think it's important to get through these
 7 items and we are going to come back and try to pull
 8 everything together and talk about everything in that
 9 kind of context. Okay?
 10 A. Okay.
 11 (Exhibit No. 91 is marked
 12 for identification)
 13 Q. Mr. Franklin, Exhibit 91 is Bates ET0004564
 14 dated June 22, 1994. It is a Barrett Consulting Group
 15 letter to Paul Krakenberg of IMCO General Construction
 16 Company from John Hatch, your superior; right?
 17 A. Yes.
 18 Q. You're copied as you can see on page two.
 19 This has to do with an issue that apparently arose
 20 concerning demolition?
 21 A. Yes.
 22 Q. And this has to do with the pump station
 23 itself; is that correct?
 24 A. This has to do with the water treatment, the
 25 structure itself inside the big building.

107

1 Q. That would be further to the east?
 2 A. Yes.
 3 Q. Away from the rupture location?
 4 A. Far away. Two hundred feet maybe. Yes, a
 5 hundred fifty.
 6 Q. This just has to do with what?
 7 A. A shitty job.
 8 Q. Over-exuberance?
 9 A. Yes. A poor job.
 10 Q. A poor job, okay. Do you recollect how this
 11 was worked out ultimately, this question about
 12 structural damage?
 13 A. I remember things being done, yes, repairs.
 14 Q. But at any rate, it didn't happen over by
 15 the --
 16 A. Right.
 17 Q. -- rupture?
 18 A. It had nothing to do with the rupture at all.
 19 (Exhibit No. 92 is marked
 20 for identification)
 21 Q. Exhibit 92 is Bates ET0006140 dated June 27,
 22 1994 to Paul Krakenberg from John Hatch, a copy to you.
 23 And it has to do with the contract change order markup.
 24 Take a minute and look at that.
 25 A. Okay.

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1 Q. Do you know what this markup request was in
 2 connection with, what it had to do with?
 3 A. It had to do with the change order charges
 4 and how much the contractor is allowed in addition to
 5 the work they actually did.
 6 Q. Would the relocation of that 24-inch
 7 discharge line be a change order item; do you know?
 8 A. Not necessarily.
 9 Q. You would have to look back and see at the
 10 records?
 11 A. Right. Or how the people that were in charge
 12 of the contract decided to do the documentation for it.
 13 Q. Were you involved in, for lack of a better
 14 word, adjudicating change order submissions from IMCO?
 15 A. I was the first line of defense, yes. But
 16 oftentimes it went above me quickly.
 17 Q. Did you have authority to approve change
 18 orders on site?
 19 A. No.
 20 Q. What was the limit of your authority on site
 21 if there is any easy way to express it?
 22 A. There really isn't an easy way. I could
 23 agree to how much time contracted work on certain items
 24 of work, but that was typically the only thing that I
 25 would have authority for is to acknowledge that they had

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1 so many hours of labor work on the site that might be
 2 chargeable.
 3 Q. Out of curiosity, why was Barrett/Earth Tech
 4 even on the job site? What was your purpose of being
 5 there?
 6 A. There was a variety of different design
 7 criterias that had to be followed.
 8 Q. But the City has a City engineering
 9 department. Why weren't --
 10 A. This is a very unique project. Most cities
 11 don't deal with the type of water resource installations
 12 that these were including. And so they -- I don't know
 13 for a fact that this is the reason, but ultimately it
 14 was specialized work.
 15 Q. Did you have a sense when you were there that
 16 the City relied upon you in any sort of way to be its
 17 eyes and ears on the job site?
 18 A. No. I got no sense from the City on that.
 19 Q. What was your own understanding?
 20 A. The City --
 21 MR. SCANLAN: I'm going to object to the
 22 question, the form, and it calls for speculation.
 23 Q. Your understanding of what your role was for
 24 the City.
 25 A. For the City was making sure that the

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1 contractor understood and followed the rules that were
 2 set down in the contract by Earth Tech, by Barrett.
 3 Q. Were you ever told by your superiors that
 4 Barrett or Earth Tech, that you were an agent for the
 5 City on the job site?
 6 A. No.
 7 Q. But you were that every day; right?
 8 A. Not every day, no. There were days I had
 9 vacation. I had sick leave during that time.
 10 Q. If you weren't there on a vacation day or on
 11 a sick day, did somebody else from Earth Tech do your
 12 job for you?
 13 A. Sometimes. I believe John Hatch would have
 14 been involved whenever I wasn't around. He would have
 15 been the next contact they would have gone to, they
 16 being IMCO.
 17 (Exhibit No. 93 is marked
 18 for identification)
 19 Q. Exhibit 93 is another memo to Paul Krakenberg
 20 from John Hatch dated June 27, 1994. It's ET0004201.
 21 This is another one of those documents we are not sure
 22 what it has to do with anything but we want to ask you
 23 quickly, this has to do with something about cracks
 24 observed in installation of large diameter pipe due to
 25 inadequate bracing or apparently inadequate bracing?

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1 A. Yes.
 2 Q. Why was that addressed to Paul Krakenberg, if
 3 you know?
 4 A. It was addressed to Paul because he was the
 5 one responsible for obtaining the different materials on
 6 project site and communicating with the suppliers. I
 7 had -- during the delivery of the pipes I would make
 8 measurements on a daily basis to determine what the
 9 roundness of the pipes were from the inside.
 10 And I was finding cracks and I was finding
 11 that the braces weren't properly installed to keep
 12 deflection at a minimum. Because you have a steel lined
 13 pipe and you have lining inside of the concrete. And so
 14 you have got a lot of adhesion requirements there. And
 15 the braces, the wood braces that were installed weren't
 16 tight so the lining was allowed to rattle so-to-speak
 17 within the pipe and was causing cracks to occur during
 18 the transportation of the pipe.
 19 Q. Would this be a manufacturing problem? A
 20 problem with the manufacture of the pipe itself?
 21 A. No, not the manufacture, the transportation
 22 of the pipe.
 23 Q. The transportation of the pipe. Okay.
 24 A. It came from the middle of California, I
 25 think the Sacramento area, so it was quite a long drive.

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1 Q. It would arrive on the flatbed and it would
 2 be out of round?
 3 A. Exactly.
 4 (Exhibit No. 94 is marked
 5 for identification)
 6 MR. NICOLL: Before we go on to Exhibit 94, I
 7 apologize to everybody. I should have taken my break
 8 when everybody else took theirs, but I have to take a
 9 short break.
 10 (Off the record)
 11 MR. NICOLL: Back on the record.
 12 Q. Exhibit 94 is a document dated -- well, it's
 13 got different dates on it. One is July 7, 1994 and the
 14 other is at the bottom. Well, July 7 I guess 1994
 15 although ten is crossed out. It's entitled contract
 16 clarification/interpretation request and it's in
 17 handwriting. It's ET0005183 and 5184. Do you see that?
 18 A. Yes.
 19 Q. Have you seen this document before?
 20 A. I don't remember seeing it before, no.
 21 Q. Do you recognize the handwriting on the lower
 22 portion of the document?
 23 A. I don't recognize it, but it looks like it's
 24 George Nordby's writing and he signed it.
 25 Q. This has to do with that intersection between

<p>113</p> <p>1 the 24-inch and 16-inch waterlines; right?</p> <p>2 A. Yes.</p> <p>3 Q. Do you remember -- have you had a chance to</p> <p>4 review that document?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember the events that that document</p> <p>7 is referring to, Exhibit 94?</p> <p>8 A. As you said, the connection between the</p> <p>9 16-inch and the 24-inch.</p> <p>10 Q. Right. In general it deals with the</p> <p>11 connection between the 16-inch and the 24-inch line, but</p> <p>12 it also speaks about having to move the pipes two feet</p> <p>13 closer to the end of the retaining walls. Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you remember that?</p> <p>17 A. Well, I remember the situation. The two feet</p> <p>18 closer didn't make any difference as far as placement of</p> <p>19 the pipe goes. The issue was getting it underneath the</p> <p>20 retaining wall that's shown in the next sheet.</p> <p>21 Q. The next sheet ET0005184 of Exhibit 94 shows</p> <p>22 the approximate location of the retaining wall, and</p> <p>23 that's the retaining wall on the pump station; right?</p> <p>24 A. Yes. The south side of the pump station.</p> <p>25 Q. What that basically meant was you had to move</p>	<p>115</p> <p>1 number. The number is ET-PH0000913.</p> <p>2 MR. FLOYD: That's Exhibit 95?</p> <p>3 MR. NICOLL: That's Exhibit 95.</p> <p>4 MR. FLOYD: Could we find that first?</p> <p>5 MR. NICOLL: It would be at the end of your</p> <p>6 package.</p> <p>7 MR. SCANLAN: Run that number by me one more</p> <p>8 time, please.</p> <p>9 MR. NICOLL: 913.</p> <p>10 (Exhibit No. 96 is marked</p> <p>11 for identification)</p> <p>12 Q. And Exhibit 96 is also a photograph and it is</p> <p>13 ET-PH0000919.</p> <p>14 First of all, let's take a look at these two</p> <p>15 pictures. Do you recognize those?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Those are photographs that you took; right?</p> <p>18 A. Yes.</p> <p>19 Q. Can you see on the photograph on Exhibit 95 a</p> <p>20 date?</p> <p>21 A. Yes. It looks like it's 7/18/94.</p> <p>22 Q. So the camera that you use or that you used</p> <p>23 at this time was what kind of camera?</p> <p>24 A. It was an instamatic, or actually it was a 35</p> <p>25 millimeter camera.</p>
<p>114</p> <p>1 two feet further to the north? I'm sorry. Is that</p> <p>2 right?</p> <p>3 A. Two feet south. Two feet away from the pipe</p> <p>4 closer to the end of the retaining wall, which would</p> <p>5 have been north, yes. You are right.</p> <p>6 Q. Basically closer to the side of the pump</p> <p>7 station?</p> <p>8 A. Yes. But that didn't change the geometrics</p> <p>9 of the situation. Moving it closer wouldn't have</p> <p>10 changed where the retaining wall was because we were</p> <p>11 moving it laterally.</p> <p>12 Q. Right. It basically meant that you had to</p> <p>13 use a little bit less pipe to connect it, the discharge</p> <p>14 side on the south side of the station to the 90 degree</p> <p>15 elbow?</p> <p>16 A. Basically all it did was make it more of a</p> <p>17 right angle, closer to a right angle, the tee itself.</p> <p>18 If it was further away from the pump station, then it</p> <p>19 would have been a smaller angle than 90 degrees or</p> <p>20 closer to 90 degrees. I can show you on the plan.</p> <p>21 (Exhibit No. 95 is marked</p> <p>22 for identification)</p> <p>23 Q. Exhibit 95 is a photograph. Your copy of it</p> <p>24 has a second page. The second page is actually a copy</p> <p>25 of the reverse of the photograph which has a Bates</p>	<p>116</p> <p>1 MR. FLOYD: Where is the date?</p> <p>2 A. It's hard to read. It's at the bottom there.</p> <p>3 Q. And it had an automatic date stamp feature?</p> <p>4 A. Yes.</p> <p>5 Q. And you had that --</p> <p>6 A. Turned on.</p> <p>7 Q. -- turned on and calibrated to the right</p> <p>8 date?</p> <p>9 A. Yes.</p> <p>10 Q. So this photograph is a photograph that shows</p> <p>11 the condition of the 24-inch pipe leaving the pump</p> <p>12 station on the south side and connecting up with the</p> <p>13 16-inch waterline as it was on July 18, 1994?</p> <p>14 A. That's correct.</p> <p>15 Q. So why don't you use my pen and just on</p> <p>16 Exhibit 95 draw a line or an arrow, if you will, to the</p> <p>17 point where the pipe exits the pump station and label</p> <p>18 that A and hold it up.</p> <p>19 So A is where the 24-inch line exits the</p> <p>20 south side of the pump station --</p> <p>21 A. Yes.</p> <p>22 Q. -- on Exhibit 95. And then there is a point</p> <p>23 where there is some bends in this pipe before it</p> <p>24 proceeds I guess in a westerly direction to the</p> <p>25 junction?</p>

<p>117</p> <p>1 A. Yes.</p> <p>2 Q. Could you just circle --</p> <p>3 MR. BENINGER: Bend or bends?</p> <p>4 Q. I'm going to guess there's more than one.</p> <p>5 A. Just one.</p> <p>6 Q. Just one bend?</p> <p>7 A. Yes.</p> <p>8 Q. It's a 90 degree bend?</p> <p>9 A. Yes, sir.</p> <p>10 Q. So there's one bend in the pipe. Circle the</p> <p>11 bend and put a line out to the margin and call that B on</p> <p>12 Exhibit 95. 90 degree bend. Okay.</p> <p>13 Then circle the junction between the 24-inch</p> <p>14 line and the 16-inch line, the line out to the margin</p> <p>15 and call that C.</p> <p>16 A. (Witness complies.)</p> <p>17 Q. All right. Now you are holding up an Exhibit</p> <p>18 95 that has the three points; A, where the 24-inch line</p> <p>19 leaves the pump station on the south side, B where it</p> <p>20 takes a 90 degree turn and proceeds in a westerly</p> <p>21 direction to point C, where it connects at a tee</p> <p>22 intersection with the 16-inch waterline; is that right?</p> <p>23 A. Yes.</p> <p>24 MR. BENINGER: Would you mind writing that,</p> <p>25 just label what the different points are so we have</p>	<p>119</p> <p>1 A. You've got the wrapping on it up there but</p> <p>2 you don't have it down here, so it was before this one.</p> <p>3 Q. Exhibit 96 was taken before Exhibit 95?</p> <p>4 A. That's correct.</p> <p>5 Q. By the way, what's the purpose of the</p> <p>6 wrapping?</p> <p>7 A. It's a corrosion protection system.</p> <p>8 Q. But it also had an electric corrosion</p> <p>9 protection system; right?</p> <p>10 A. Yes. Just double protection basically to</p> <p>11 keep the water out. You can't have rust.</p> <p>12 Q. Now to be clear, this pipe shown in Exhibit</p> <p>13 95 was installed after the decision was made to locate</p> <p>14 it two feet closer to the pump station; right?</p> <p>15 A. Not necessarily. They could have made the</p> <p>16 measurement there and started putting the pipe in. I</p> <p>17 don't recall just the exact different schedule it took.</p> <p>18 I don't remember just which was done first and at what</p> <p>19 time.</p> <p>20 Q. The decision to make sure that the pipe was</p> <p>21 moved two feet closer to the end of the retaining wall</p> <p>22 was made on July 7, 1994?</p> <p>23 A. Right.</p> <p>24 Q. And --</p> <p>25 A. Or at least they give them criteria to be</p>
<p>118</p> <p>1 something documented rather than having to turn to the</p> <p>2 transcript.</p> <p>3 MR. NICOLL: Go ahead.</p> <p>4 MR. BENINGER: Thank you.</p> <p>5 Q. You've written next to A you have written</p> <p>6 exit, next to B you have written 90 degree bend and next</p> <p>7 to C you have written tee, t-e-e.</p> <p>8 MR. BENINGER: Maybe you can put tee with</p> <p>9 16-inch waterline, if that's what it is.</p> <p>10 MR. NICOLL: Done.</p> <p>11 MR. BENINGER: Thank you.</p> <p>12 Q. Now turn back to Exhibit 94. Which direction</p> <p>13 was it? Was the length of pipe that runs in a westerly</p> <p>14 direction moved two feet closer to the pump station?</p> <p>15 A. Yes.</p> <p>16 Q. So --</p> <p>17 A. And that was done to get away from the CDF</p> <p>18 fill. The CDF fill is right here. To be able to put</p> <p>19 that tee in and be able to get this, all these fixtures</p> <p>20 in, it had to be moved closer to the pump station.</p> <p>21 Q. These photographs were taken by you on July</p> <p>22 18, 1994; right?</p> <p>23 A. Yes.</p> <p>24 Q. The same for 95 as well as for -- actually 96</p> <p>25 might be an earlier photograph?</p>	<p>120</p> <p>1 able to move things on that date.</p> <p>2 Q. Do you have any recollection of this 24-inch</p> <p>3 line being installed other than according to the</p> <p>4 instructions given in Exhibit 94?</p> <p>5 A. No. It was done as given in 94, in that</p> <p>6 exhibit.</p> <p>7 Q. Was it installed according to George Nordby's</p> <p>8 instructions?</p> <p>9 A. Yes.</p> <p>10 Q. Now, the problem or limitation that required</p> <p>11 you to move two feet closer to the pump station was the</p> <p>12 existence of CDF that had been poured for the 60-inch</p> <p>13 lines?</p> <p>14 A. 72-inch line, yes.</p> <p>15 Q. 72-inch line?</p> <p>16 A. Larger diameter, yes.</p> <p>17 Q. Why couldn't you dig through that?</p> <p>18 A. You could. It's just a matter of being able</p> <p>19 to get to all the fittings so that the ductile iron pipe</p> <p>20 connects themselves as well as getting wrapping around</p> <p>21 it properly. It was still a job, you still had to dig.</p> <p>22 It would have taken some time, but it was easier to do</p> <p>23 it this way.</p> <p>24 Q. Was the CDF on the 72-inch line near the area</p> <p>25 photographed on Exhibit 95, was that some of the higher</p>

<p>1 density CDF that had been -- 2 A. It was under the structure. Yes, it would 3 have been a stronger strength. 4 Q. Was it the strength that was supposed to be 5 or was it stronger than it was supposed to be? 6 A. We never really tested it. That would have 7 required someone to come out and sample it properly. It 8 wasn't really a critical item to determine what the 9 actual strength was. 10 Q. It was just as easy to move it two feet to 11 the north? 12 A. Yes. As you see, the 16-inch pipe is coming 13 on an angle and that required even more space to be able 14 to get it installed properly. 15 Q. Did the tee joint itself have to get 16 relocated as a result of this decision to move the line 17 over two feet? 18 A. The two aren't corrected, the tee itself. 19 Q. Wasn't the tee put in the hole before the 20 long line connecting the 90 degree elbow down to the tee 21 was put in the hole? 22 A. Yes. That was installed first, the tee was. 23 Q. So this change really required having to 24 relocate the tee as well, didn't it? 25 A. Yes.</p>	121	<p>1 assembly of ductile pipe tee for Thursday's 20-inch pump 2 station tie-in for 16-inch existing line? 3 A. Yes. 4 Q. Testing will be performed prior to insertion. 5 Is that referring to the tee joint connection between 6 the 24 and the 16? 7 A. Yes. 8 Q. There is no tee joint between any 20-inch 9 line and 16-inch line? 10 A. No. It's incorrectly labeled. 11 Q. So on the next day, July 6 report number 96, 12 ET0006444, again these are all your notes; right? 13 A. That's correct. 14 Q. And you signed it here Tom Franklin; right? 15 A. Yes. 16 Q. The same with the prior page 6445? 17 A. Yes. 18 Q. This report provides that there was 19 excavation of 24 inches between pump station and large 20 diameter pipe? 21 A. Yes. That's the other side of the pump 22 station. 23 Q. That's for that 24-inch line that runs out to 24 the 72 inch. It goes to the northwest? 25 A. Yes.</p>	123
<p>1 Q. In order to do that you had to do some 2 additional excavating to move the tee over the two feet 3 or so to make the connection? 4 A. They had already made some measurements. 5 They had exposed the pipe previous to this point in 6 time, and that was what was augmenting this Exhibit 94 7 to be sent was because they needed a little more room. 8 Q. Let's move back to Exhibit 64 and take a look 9 at ET0006445. I better find it for you. Report number 10 95. It's going to be in the bunch I've pulled out 11 there. 12 MR. FLOYD: This is in his notes? 13 MR. NICOLL: This is in the inspection 14 reports. 15 MR. FLOYD: This is exhibit what? 16 MR. NICOLL: Exhibit 64. 17 MR. FLOYD: This is all part of Exhibit 64. 18 MR. NICOLL: Right. 19 Q. Have you had a chance to review report 95? 20 A. Yes, I have. 21 Q. Is there anything in report 95 that deals 22 with the -- 23 MR. FLOYD: Are you saying report 95 or 89? 24 Q. Report number 95 dated July 5, 1994, 25 ET0006445, you see in the fifth line down it says</p>	122	<p>1 Q. Right? 2 A. That's correct. 3 Q. And that's the area where the Olympic Pipe 4 Line representative was on site for the excavation? 5 A. That's correct. He was there for that one. 6 MR. BENINGER: Are we talking this is on the 7 north side or the south side? 8 MR. NICOLL: This is on the north side of the 9 pump station to the west. In fact, let's go ahead and 10 get C-5. Give me one of these drawings. 11 Q. Why don't we use Exhibit 85. And if you 12 would in blue show us, just highlight in blue the 13 24-inch line that's referred to on the Exhibit 64, 14 report number 96, page ET0006444. 15 A. Okay. 16 Q. Hold that up for the camera to see. So that 17 actually what we should do is also highlight the pump 18 station in blue. 19 A. Okay. 20 Q. Again for our point of reference, north being 21 at the top of the page. The work that was being done on 22 the 24-inch line that exited the south side of the pump 23 station and then joined up at the tee intersection was 24 down where my yellow magic marker is pointing? 25 A. That's correct.</p>	124

<p style="text-align: right;">125</p> <p>1 Q. The work that the Olympic inspectors were 2 observing, the excavation that the Olympic inspectors 3 were observing according to report 96 as part of Exhibit 4 64 was along this blue line at the top of Exhibit 85; is 5 that right? 6 MR. FLOYD: I object to the form of the 7 question. What they are observing calls for 8 speculation. The note says work that they were on site. 9 Go ahead. I'm sorry. 10 A. I believe they were -- both of these pipes 11 were exposed at the same time and ultimately that was 12 what he was observing as well was both tee down here and 13 the tee over here. 14 Q. Now I'm afraid that I have to object because 15 the answer is not responsive to the question. 16 Were you with the Olympic inspectors while 17 they were -- 18 A. At times I was. 19 Q. -- on site? 20 A. At times. 21 Q. And when you were with them where were you? 22 A. I was around the pump station. 23 Q. Around the pump station? How many people 24 from Olympic were there, do you know? 25 A. I only remember one.</p>	<p style="text-align: right;">127</p> <p>1 A. That's correct. They hadn't exposed the 2 16-inch line at that time. They knew where it was, but 3 they hadn't dug down yet because they needed to get all 4 the logistics of just exactly where it was going to be 5 before they dug it out. 6 Q. They being IMCO? 7 A. That's correct. 8 Q. Now, this sentence efforts this evening on 9 exposing 16-inch waterline for tomorrow's waterline 10 tie-in, did you ask Olympic's representative to come 11 back that evening? 12 A. No. No, it wasn't -- what I was referring to 13 as this PM being during the afternoon. And what I was 14 referring to there is a picture of the thrust block void 15 having been dug beneath the waterline. And that was 16 what this was for. They were actually digging by hand 17 underneath the waterline and exposing a void for the 18 concrete to be poured into and a tee to be installed on 19 top of that. 20 Q. So the thrust block was installed at the same 21 time the tee was installed? 22 A. It was, yes. It was after the tee was put 23 there that we had new blocks, wood blocks, and then the 24 concrete was poured in through the wood and then we 25 filled up the hole.</p>
<p style="text-align: right;">126</p> <p>1 Q. Do you know who it was? 2 A. No. 3 Q. By name? 4 A. No. 5 Q. Could you describe the individual? 6 A. No, I can't. 7 Q. Had you seen that person before? 8 A. Not to my knowledge, no. 9 Q. Have you seen this person since? 10 A. No. 11 Q. Now, reading that whole section of report 96 12 it reads excavation of 24 inches between pump station 13 and large diameter pipe began. Now, am I reading this 14 right that by that you meant excavation of 24-inch line 15 between pump station and large diameter pipe began? 16 A. That's correct. 17 Q. With Olympic Pipe Line representative on site 18 during excavation near line. The next sentence is more 19 work tomorrow. And the next sentence is efforts this 20 evening on exposing 16-inch waterline for tomorrow's 21 waterline tie-in and four inch tap to drain to storage 22 pipe system. 23 So as I read this report, the excavation to 24 expose the 16-inch waterline hadn't even occurred yet; 25 isn't that right?</p>	<p style="text-align: right;">128</p> <p>1 Q. Was that done before you tied the tee joint 2 into the 24-inch line or after? 3 A. The hole was dug while the pipe was still in 4 place, the existing waterline was in place. The next 5 day they went and cut the waterline and installed the 6 tee. 7 Q. By the time they went to cut the waterline 8 was the thrust block in place? 9 A. No. 10 Q. So they didn't cut -- they didn't put the 11 thrust block in place until after the tee was -- 12 A. Right. It supported the tee. The thrust 13 block was the intended support for the tee. The wood 14 was left there but that was just left in place and then 15 the concrete was poured around it and the concrete 16 supported the pipe. 17 Q. So all the pipe, the 24-inch line, the 18 16-inch line and the tee, they were all connected 19 together by the time the thrust block was poured? 20 A. Yes. 21 Q. So I guess I'm just misunderstanding what you 22 said then. It says efforts this evening -- I'm sorry, 23 this PM on exposing 16-inch waterline for tomorrow's 24 waterline tie-in and four inch tap to drain to storage 25 pipe system.</p>

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1 The four inch tap was off of the 16-inch
 2 line; right?
 3 A. I don't really recall just --
 4 Q. Well, that's the only thing you would be
 5 draining; right?
 6 A. Yes.
 7 Q. I guess I'm not -- could you --
 8 A. What I'm saying they exposed waterline, the
 9 16-inch waterline, and then dug down around it by hand
 10 because they had to create a void for the tee to go into
 11 as well as a void for the thrust block concrete to be
 12 poured in to support the whole system. So they dug the
 13 hole that afternoon. The next day they came in and
 14 drained the system as much as they could. They cut the
 15 pipe and installed the tee. And after that was
 16 installed and after all the pipe was connected, then
 17 they came back and poured the concrete up to this point
 18 here.
 19 Q. Actually something else happened though;
 20 right?
 21 A. I don't know. What are you referring to?
 22 Q. They had relocated the tee. We have just
 23 covered that.
 24 A. That was done prior to them digging the hole.
 25 Once we found out what we could do and what we couldn't

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1 do as far as the logistics of the placement of the pipe,
 2 then they can go ahead and do whatever they were going
 3 to do.
 4 Q. Look at the next report, report 97, dated the
 5 July 7, 1994. It says --
 6 MR. FLOYD: What page?
 7 MR. NICOLL: It's ET0006442.
 8 MR. FLOYD: Thank you.
 9 Q. It says problems arose when hole for tee was
 10 not positioned properly. And the plan to tap into
 11 16-inch, 16-inch line I guess, was abandoned today with
 12 reschedule tomorrow. Revisions to the distance of 90
 13 degree elbow from 12 feet to 9 feet so edge of reducers
 14 are not in CDF when tee is inserted.
 15 A. Right.
 16 Q. The pipe still needs to pass beneath the
 17 second wall footing. Water pressure was restored
 18 approximately 8:30 by City personnel. Some of the hole
 19 dug for today's work was backfilled and an area
 20 excavated to fit tee in near the CDF placement. Work
 21 begins at valve shut off approximately four a.m.
 22 And then the excavation continued on the
 23 other 24-inch line.
 24 A. Yes.
 25 Q. This is the excavation on the other 24-inch

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1 line that actually had to expose the Olympic pipeline
 2 because the 24-inch line was going to run under it;
 3 right?
 4 A. Yes.
 5 MR. BENINGER: You mean the south side.
 6 MR. NICOLL: No, on the north side.
 7 MR. BENINGER: The next paragraph you are
 8 talking about?
 9 MR. NICOLL: Yes.
 10 Q. So --
 11 MR. SCANLAN: Before you -- just your
 12 comments there, I'm not sure his answer is reflecting
 13 what you guys were alluding to, so I would just like the
 14 record to be clear what you are asking him.
 15 Q. The 24-inch line that is referred to on page
 16 ET0006442 where it says excavation continued and was
 17 complete for 24-inch pipe to be placed beneath Olympic
 18 line to connect pump station to loop system installed
 19 previously, that is a reference to the same 24-inch line
 20 that you highlighted on Exhibit 85 in blue?
 21 A. Yes.
 22 Q. The one that's to the north and slightly west
 23 of the Dakin-Yew pump station?
 24 A. Correct.
 25 MR. SCANLAN: Thank you.

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1 Q. So what time of day do you typically write
 2 your inspection reports?
 3 A. It would really vary. Most of the time I do
 4 something at noontime and then try again mid-afternoon
 5 and then at the end of the day.
 6 Q. Do you have any record anywhere that would
 7 let you know or give you any basis for saying whether
 8 the report that you wrote here on July 6, 1994,
 9 ET0006444, was written at noon or 2 or 5 or 5:30?
 10 A. No.
 11 Q. No?
 12 A. No.
 13 Q. Notice it says that time stop 5:30 at the
 14 top? Five lines down about.
 15 A. What number is that? 96?
 16 Q. Yes.
 17 A. I see something referring to 11:30.
 18 Q. I'm sorry. Up at the top, towards the top of
 19 the --
 20 A. I see.
 21 Q. Inspection report, time start 7 o'clock, time
 22 stop 5:30?
 23 A. Right.
 24 Q. Those are your times; right?
 25 A. Yes.

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1 Q. Time start is when you are on the job?
 2 A. Actually I think that they are the
 3 contractor's start and stop times.
 4 Q. Are you sure?
 5 A. That's normally what I write would be his
 6 times, not mine.
 7 Q. Do you recall being on site when the City
 8 personnel closed the valves on the 16-inch line on July
 9 7th? Look at report 97, the first page.
 10 A. Yes, I was there.
 11 Q. Do you recall seeing the excavation work that
 12 was done to expose the 16-inch waterline for the
 13 waterline tie-in? Were you there to observe that
 14 excavation on July 6th as reported in report number 96?
 15 In report 96, it says efforts this PM on exposing
 16 16-inch waterline for tomorrow's waterline tie-in?
 17 A. Yes.
 18 Q. Now as I read this, it looks like you are
 19 saying that this is what is going to happen rather than
 20 this is what did happen. But I don't want to --
 21 A. As I recall, it was what happened. And then
 22 the next day once we had to move the system further away
 23 from the pump station or closer to the pump station,
 24 then we had to move more dirt and fill in the hole where
 25 we didn't need it anymore.

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1 Q. Was it also necessary to pick up the tee and
 2 move it?
 3 A. No, it wasn't.
 4 Q. It wasn't in the hole yet?
 5 A. Right.
 6 Q. So how was the hole for the tee joint
 7 excavated?
 8 A. With shovels, hand shovels. We went down a
 9 foot below the pipe and roughly three and a half foot on
 10 either side of the center of the tee.
 11 Q. In order to get down to that 16-inch
 12 waterline, how was that digging done?
 13 A. I'm trying to remember. I can't really
 14 recall for sure, but as they had exposed the large
 15 diameter pipe trench and installed the large diameter
 16 pipe the waterlines were also exposed at that time. I
 17 think you will find some pictures here both of the
 18 waterline and the gasline. And that was just an
 19 extension of it and all they had to do was mark where
 20 the waterline was and then dig out. It was already
 21 exposed basically. They had dug a trench five foot wide
 22 and the waterline was at the bottom of the trench and
 23 they put the CDF in, they removed the top couple of feet
 24 down to where the pipe was and the rest of it was done
 25 by hand.

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1 Q. So I guess I must be missing something here.
 2 The hole that had to be refilled was a hole that had
 3 already been dug?
 4 A. Yes.
 5 Q. Sometime earlier?
 6 A. They had dug it during the afternoon of the
 7 day before they were actually going to install the tee.
 8 And --
 9 Q. And that hole was dug with hand shovels?
 10 A. Yes. And then they moved it two feet closer
 11 to the pump station and they had to move a couple feet
 12 of dirt to accomplish that.
 13 Q. And your testimony is that you observed --
 14 you were there and observed the IMCO workers digging the
 15 new hole, the new hole that had to be moved two feet
 16 over to the north?
 17 A. Right. Yes. And I do have a picture of it
 18 as well. I remember seeing a picture of the hole dug
 19 and the pipe in place.
 20 Q. Of the hole dug?
 21 A. And the pipe still being there, the
 22 waterline.
 23 MR. FLOYD: Would this be a good time for a
 24 break?
 25 MR. NICOLL: Yes.

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1 MR. BENINGER: We are going off the record.
 2 End of tape two.
 3 (Off the record)
 4 MR. BENINGER: We are back on record. It's
 5 3:15 and we are still deposing Mr. Franklin.
 6 Q. We spent a little bit of time trying to
 7 locate a photograph that you recalled of the 16-inch
 8 line, I think the term would be, hanging --
 9 A. Yes.
 10 Q. -- in a trench that had been excavated you
 11 said I think at an earlier point in the project?
 12 A. Yes. Well, around the 6th or 7th of July.
 13 It was a time frame that was labeled in the diary to
 14 have done that.
 15 Q. So the excavation, I just want to be really
 16 clear about it. The digging from the ground surface
 17 down to the point of at least let's say the top of the
 18 16-inch line was done on somewhere around July 6th, 7th?
 19 A. Yes.
 20 Q. And part of that digging was done with a
 21 backhoe or some kind mechanical digger?
 22 A. The smaller backhoe that was a 580.
 23 Q. A Case 580?
 24 A. Yes.
 25 Q. Is that the yellow one?

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1 A. No. That's a Cat.
 2 Q. That's a Cat. I have a photograph of it.
 3 A. No. That's the Cat too.
 4 Q. It is. It wasn't the Hyundai or Hitachi
 5 rather and it wasn't the Cat. Describe the shovel, if
 6 you will?
 7 A. It was a Case 580. The shovel I remembered
 8 was truck driven. I mean it was something you could
 9 mount on the back of a flatbed. And, you know, small,
 10 it was a smaller piece of equipment. It wouldn't weigh
 11 more than maybe three ton.
 12 Q. And would you lower it into the hole?
 13 A. No. You excavate from outside the hole. And
 14 it also has a bucket that you can scoop material out of.
 15 Q. What does the bucket look like?
 16 A. The front bucket was about five foot wide and
 17 two foot deep. The back excavating mechanism had a
 18 reach of about 12 foot from two sections and it had an
 19 articulating bucket.
 20 Q. So that basically the arm could reach out and
 21 then when you say it had an articulating bucket, what do
 22 you mean by that?
 23 A. Just that it could rotate probably about 150
 24 degrees from one end, one extreme to the other. It had
 25 no life arm on it so it was just a backhoe bucket.

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1 Q. Was the excavating tool flat edged or did it
 2 have teeth?
 3 A. I believe it had teeth.
 4 Q. I will find a photograph of it later. I
 5 tried to pull out pictures of all the different things
 6 that were being used.
 7 (Exhibit No. 97 is marked
 8 for identification)
 9 Q. This is Exhibit 97. This is Bates numbered
 10 City-ENG000001. There is handwriting at the top that
 11 says October, Oct. 1993, but in the upper left hand
 12 corner there is a date of 6/11/99 which I assume is the
 13 day on which it was printed.
 14 But for our purposes I would like to take a
 15 look at the Dakin-Yew pump station. This is drawing
 16 number P-1 pump station site plan. See the Dakin-Yew
 17 pump station in the middle?
 18 A. Yes.
 19 Q. Over in the lower left hand corner above the
 20 computer stamp there is a revised pump station discharge
 21 pipe and it seems to be revision number three. And
 22 although it's hard to read, I believe the date is
 23 5/13/94. Do you see that?
 24 A. Yes, I do.
 25 Q. Let's go back to the Dakin-Yew pump station.

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1 And if you would with your blue marker just fill in in
 2 blue the Dakin-Yew pump station.
 3 A. (Witness complies.)
 4 Q. And then again in blue will you please
 5 highlight the 24-inch line that runs out of the pump
 6 station to the south and then to the west to the point
 7 that it connects in a tee intersection with the 16-inch
 8 line?
 9 A. Okay.
 10 Q. Would you hold that up? Now is that the way
 11 in which the plan to tie-in to the 16-inch line had been
 12 revised?
 13 A. Yes.
 14 Q. Do you know, and I fully understand that you
 15 might not, but do you know if Exhibit 97 is an as-built
 16 drawing that takes into account the two foot or so move
 17 of the line to the north to get closer up to the station
 18 itself?
 19 A. It wouldn't be an as-built. It would be
 20 something other than as-built because as-built would
 21 have the actual dimensions of the pipe that were
 22 measured and it would also have normally an elevation.
 23 Q. So to your understanding Exhibit 97 is not an
 24 as-built drawing?
 25 A. Right.

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1 Q. Now, would you take the pink marker that we
 2 have been using for this purpose and highlight please
 3 the Olympic pipeline if you can find it displayed on
 4 Exhibit 97, drawing P-1?
 5 A. (Witness complies.)
 6 Q. Hold that up for the camera, please.
 7 A. (Witness complies.)
 8 Q. That's actually even written on the drawing
 9 as well, isn't it, it says Olympic pipeline?
 10 A. Yes, it is.
 11 Q. Now, you testified to this earlier, but you
 12 have an understanding of the approximate location of the
 13 rupture point?
 14 A. Yes.
 15 Q. Would you take that red marker that you have
 16 there and circle in red the approximate location of the
 17 rupture point as you understand it?
 18 A. (Witness complies.)
 19 Q. And hold that up. Why don't you show it to
 20 the guys at the table.
 21 MR. FLOYD: Thank you.
 22 Q. So that would be a point slightly to the
 23 north of the, somewhat to the north of the intersection,
 24 the new intersection tee joint, the 16-inch line and the
 25 24-inch line?

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1 A. Yes.
 2 Q. I would like you to hand me back that
 3 handwritten document. I am going to refer you back to
 4 Exhibit 94 and specifically to the second page of
 5 Exhibit 94 which is ET0005184. Now you did not do that
 6 drawing yourself; right?
 7 A. That's correct.
 8 Q. Can you tell who did?
 9 A. No.
 10 Q. Do you know who did the drawing?
 11 A. No, I don't.
 12 Q. That's an elevation, a profile elevation of
 13 the depth of the 24-inch line and the point at which
 14 it's going to connect to the 16-inch waterline; right?
 15 A. Yes.
 16 Q. Now, is there anywhere shown on that drawing
 17 the location in profile of the pipeline, of the Olympic
 18 pipeline?
 19 A. No.
 20 Q. And yet you know, do you not, that the
 21 pipeline was approximately three feet more or less below
 22 that 16-inch waterline?
 23 A. Yes.
 24 Q. Would you normally expect to see the pipeline
 25 depicted in elevation?

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1 MR. FLOYD: Counsel, where does it say three
 2 feet? If you look at Exhibit 84 it's over five feet.
 3 MR. VERWOLF: Counsel, I'm going to object to
 4 on the record to your testifying. Why don't you just
 5 ask the witness questions.
 6 MR. FLOYD: I'm going to object to the three
 7 feet. It's not in Exhibit 94.
 8 MR. VERWOLF: I join in that objection too.
 9 Q. The evidence will show whatever it shows
 10 about exactly where the line was.
 11 But whether it's five feet or three feet or
 12 two feet or six inches, whatever, when doing an
 13 elevation in an area where the drawings show an
 14 underground utility and pipeline would be or is located,
 15 would you normally expect to see that underground
 16 utility identified in the profile drawing?
 17 A. Sometimes.
 18 Q. Sometimes?
 19 A. Sometimes.
 20 Q. Do you have any record that Olympic Pipe Line
 21 was provided with a copy of Exhibit 97 showing the
 22 relocation of the tie-in of the 24-inch line to the
 23 16-inch waterline?
 24 MR. SCANLAN: I'll object to the form of the
 25 question.

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1 Q. By you I mean first you personally.
 2 A. I thought I had made a comment in my daily
 3 report that I did give them a copy of the revised plan.
 4 Q. Okay. You have got the daily report there.
 5 Which one? One of the ones you were just reading?
 6 A. Yes.
 7 Q. Why don't you take a look at that again and
 8 point me to it.
 9 MR. FLOYD: Are we on Exhibit 64?
 10 MR. NICOLL: Exhibit 64. And I assume we are
 11 looking at the entries.
 12 A. Around the 7th of July.
 13 Q. It would be the 7th of July?
 14 A. Right.
 15 Q. So that would be ET0006442 and 443.
 16 A. Apparently I didn't write it that way. On
 17 the 6th I made the comment he was there and I believe
 18 that's when I gave it to him.
 19 Q. Let's back up on these inspection reports for
 20 a minute. What's the purpose of these inspection
 21 reports as you understand it?
 22 A. To give the people in my office an idea of
 23 what's going on in the field and to deal with issues
 24 that come up.
 25 Q. Isn't one of the purposes to make a record, a

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1 written record of significant or important events?
 2 A. Sure. Yes.
 3 Q. And in view of what the Olympic pipeline is,
 4 isn't a crossing of the Olympic pipeline in your mind a
 5 significant event?
 6 A. Yes, sir.
 7 Q. And isn't in fact Exhibit 97, this drawing,
 8 if you would please hold that up, doesn't Exhibit 97 in
 9 fact show that because of this decision to relocate the
 10 joinder of the 16 and 24-inch lines that there was now
 11 going to be a crossing of Olympic pipeline where before
 12 one had not been planned?
 13 A. What was the question?
 14 Q. Doesn't Exhibit 97 show the crossing of the
 15 Olympic pipeline by the tee intersection of the 24 and
 16 16-inch.
 17 A. It's on top of it, yes.
 18 Q. And previous to Exhibit 97 all other prior
 19 drawings of that vicinity for this project did not
 20 depict a crossing by the tee joint?
 21 A. That's correct.
 22 Q. So you also know, don't you, that Olympic was
 23 pretty insistent, in fact the rules themselves for this
 24 particular project were pretty insistent that Olympic be
 25 notified whenever there is to be a crossing or digging

<p>145</p> <p>1 or excavation near the Olympic pipeline? 2 A. Yes, sir. 3 Q. You made those inspection reports at or about 4 the time of the events that are written in each report; 5 right? 6 A. Yes, sir. 7 Q. Would you carry a clipboard around that had a 8 form with an inspection report on it and make notes as 9 you went? 10 A. No. 11 Q. Where would you go when you made your notes? 12 A. I would try to go either into the filtration 13 plant or to my own vehicle. 14 Q. Where was your vehicle located? 15 A. Fifty, a hundred feet away. 16 Q. From the filtration plant? 17 A. Yes. 18 Q. And how far a distance is the filtration 19 plant from the pump station? 20 A. A hundred feet. 21 Q. And it's to the east; right? 22 A. Yes. 23 Q. Would you normally go to your car and write 24 up your report at the end of the day or periodically 25 through the day?</p>	<p>147</p> <p>1 very cautious reporter on these reports, on these 2 inspection reports? 3 A. No. I wasn't real cautious. 4 Q. So there were some things that might have 5 happened that were important but you didn't put them in 6 the inspection reports? 7 A. It's kind of hard -- 8 MR. SCANLAN: Object to the form of the 9 question, argumentative. 10 Q. I don't mean to be argumentative. I just 11 want to get a sense of the outside parameters of how far 12 might it go before you would say no, if something like 13 that happened I would put it in the report but there 14 might be this gray area of things that might not 15 necessarily get into the report. 16 A. They are very likely little things that 17 didn't get in the report. Things like when you break a 18 waterline, that clearly made it and entered in the 19 report. And anything of any damage or anything of 20 significance I would try to put it in the report. 21 Q. Now, you noted when the Olympic Pipe Line 22 people were present during excavation on the 24-inch 23 line, the northwest line; right? 24 A. Yes. 25 Q. The following day -- that was on July 6th;</p>
<p>146</p> <p>1 A. Periodically through the day. 2 Q. What was your customary practice for filling 3 in these reports? 4 A. I would at least get it started at noontime, 5 if not before then, and then I would go back on a two 6 hourly basis or sometimes not until the end of the day 7 to finish it. It kind of depended on what was going on. 8 Q. Were there ever occasions when you went back 9 and filled it in the following day? 10 A. No. 11 Q. You always did it the same day? 12 A. Yes, sir. 13 Q. Did you have to turn these in at the end of 14 each day? 15 A. Once a week. 16 Q. Once a week. In fact we'll see with each one 17 of these groups of reports there is a transmittal 18 notice. Do you see that? 19 A. Yes. 20 Q. I think you are looking at one right there, a 21 letter of transmittal? 22 A. Yes. 23 Q. That's page ET -- why don't you read the -- 24 A. ET0006439. 25 Q. Right. Would you consider yourself to be a</p>	<p>148</p> <p>1 right? 2 A. Yes. 3 Q. The following day, July 7th, we know that 4 there was digging in connection with relocating the 5 position of that tee joint? 6 A. Yes. 7 Q. And yet you don't know on that date the 8 presence of Olympic inspectors; is that right? 9 A. That's correct. 10 Q. Based on your own reporting standards and 11 criteria, can we take it from that, that that lack of an 12 entry in your inspection report, report numbered 97, 13 reflected that an Olympic inspector was present that an 14 Olympic inspector probably wasn't present? 15 A. No. Just because I didn't put it in the 16 entry doesn't mean he wasn't there. 17 Q. That's the kind of information, although in 18 your own view important but still might not have made it 19 into these inspection reports? 20 A. Yes, that's correct. 21 Q. You said earlier, and I left it behind 22 because I wanted to get a better understanding of what 23 kind of information might go into these reports and what 24 might not, but you said that you thought that you had 25 made a reference in one of these inspection reports to</p>

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1 giving Exhibit 97 or a copy of Exhibit 97 showing the
 2 relocated tie-in between the 24-inch and the 16-inch
 3 line to one of the Olympic inspectors?
 4 A. Yes.
 5 Q. But when you reviewed the inspection reports
 6 you found that there wasn't a reference in the reports
 7 to having done so; isn't that right?
 8 A. That's correct.
 9 Q. Now, the fact that there is no reference in
 10 the inspection reports to your having provided such a
 11 revised drawing to the Olympic inspectors, doesn't that
 12 mean that you didn't give them one of those?
 13 A. No, it doesn't.
 14 Q. Do you have a specific recollection of doing
 15 so?
 16 A. I don't have the recollection of doing so,
 17 but I believe I did.
 18 Q. Why do you believe you did?
 19 A. Because I can't prove that I didn't. I don't
 20 have anything saying that I did but I remember doing it.
 21 I remember.
 22 Q. You remember doing it?
 23 A. I remember talking to him and giving him a
 24 copy the plan sheet. But I don't have any way of
 25 proving that since I didn't write it down. That's why I

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1 had thought I had written it down too.
 2 Q. Did you keep contemporaneous notes or note
 3 pads, things like that?
 4 A. No.
 5 Q. Did you have any specific kind of procedure
 6 besides noting when they were there for reporting
 7 internally at Barrett/Earth Tech about the presence of
 8 representatives of underground utilities on site?
 9 A. No.
 10 Q. So for example you wouldn't call in and say
 11 well, we have got Olympic people on site or anything
 12 like that?
 13 A. That might have happened, but I didn't --
 14 what was the question again?
 15 Q. I was wondering sometimes certain events will
 16 prompt people to take certain actions. So if somebody
 17 important comes on site, like if the governor showed up
 18 I'm sure you would call your boss and say I don't know
 19 why but the governor is here on the work site. Maybe
 20 Olympic is not that important, but I just don't know.
 21 I'm asking you.
 22 A. The reason I thought I remembered writing it
 23 down was because I remembered also talking to John Hatch
 24 about the fact that I was going to give him a copy of
 25 it. I thought he actually suggested that I give him a

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1 copy of the plan sheet.
 2 Q. So at the time of these events, around the
 3 late May, June, July time frame, John Hatch, your
 4 superior, suggested to you that you provide the Olympic
 5 representative with a copy of Exhibit 97, the drawing
 6 showing the relocated tie-in?
 7 A. That's correct.
 8 Q. And because of that conversation you have a
 9 recollection of having complied with his request?
 10 A. That's correct.
 11 Q. But you have no written record of it?
 12 A. No.
 13 Q. You didn't note it in your inspection report?
 14 A. No. Apparently not. I didn't find it.
 15 Q. Is this the first time you have looked at
 16 those inspection reports since the project?
 17 A. Yes, sir.
 18 Q. We are going to get together again on
 19 Thursday. I want you to have every opportunity to read
 20 those reports and confirm for yourself what is or isn't
 21 in them. So if you don't have a copy of your own I
 22 think we have got a spare box. You are welcome to take
 23 a copy and read it if you like. I will leave it to
 24 Terry to tell you what you should or shouldn't do, but I
 25 would personally prefer that you had the chance to

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1 really scour those things if you want. Okay?
 2 A. Sure.
 3 Q. Can you describe the person from Olympic to
 4 whom you have a recollection of providing the revised
 5 drawing?
 6 A. No, I don't have any recollection of his
 7 description.
 8 Q. Was he tall?
 9 A. Average. There was nothing specific that I
 10 recall about him.
 11 Q. Dark hair, light hair. Don't recall?
 12 A. No, I don't recall.
 13 Q. Do you recall where you were when you gave it
 14 to him?
 15 A. On the site.
 16 Q. Well --
 17 A. At the pump station basically, you know.
 18 That time it's -- I don't recall the specific minute
 19 where I was, no.
 20 Q. Do you recall the general time of day?
 21 A. When I first saw him. I would have done it
 22 when I first had an opportunity to communicate with him.
 23 Q. That would have been on July 6th?
 24 A. Right in that frame, yes, 6th, 7th.
 25 Q. And you think it has to do--

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1 A. See, he had come out and said we were going
 2 to do both of the small pipe, the 24-inch on either side
 3 of the pump station at the same time.
 4 Q. I guess I have to object to that on the
 5 grounds of speculation and non-responsive.
 6 But did he tell you why he came out?
 7 A. Because he was told -- asked to come out
 8 by --
 9 Q. By IMCO?
 10 A. Right.
 11 Q. Did you see where -- I think we covered this
 12 before, but did you see where he stood during the time
 13 that he was there?
 14 A. Not specifically. I don't recall locations.
 15 Q. Do you know whether you made a note each time
 16 somebody from Olympic came out?
 17 A. I'm sure I didn't. I wouldn't have, that
 18 wasn't my goal.
 19 Q. Exhibit 79, could you just take a look at
 20 Exhibit 79 again and compare that with Exhibit 97?
 21 A. Okay.
 22 Q. Exhibit 79 is the version of drawing P-1
 23 before the change; is that right?
 24 A. Yes, sir.
 25 Q. And Exhibit 97 is the version after the

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1 change?
 2 A. Yes.
 3 Q. So I'm clear in my mind about this, is the
 4 location of the length of pipe exiting the south end of
 5 the pump station on Exhibit 97 and the length of pipe
 6 joining the 90 degree bend with the tee joint, is that
 7 in actuality two feet to the north where it was
 8 installed?
 9 A. I don't know.
 10 Q. It could have been?
 11 A. I would think it would be, yes.
 12 Q. You think it would be. Since the date of
 13 this revision predates the field change that was made on
 14 July 7th, more likely than not the location of the pipe,
 15 the 24-inch line is actually two feet or so to the
 16 north?
 17 A. That's correct. This was drawn 6/13 or
 18 something like that so odds are it's probably two feet
 19 further north.
 20 Q. What's the scale on that drawing? That's
 21 half size by the way.
 22 A. It should be one to fifty, the small piece of
 23 paper.
 24 MR. BENINGER: It's one to ten it says down
 25 below.

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1 A. It says one to ten.
 2 Q. Horizontal -- that's the profile.
 3 MR. FLOYD: See where down by approved?
 4 Q. May I see that? Yes. One inch equals ten
 5 feet. So two feet would be a fifth of an inch?
 6 A. Yes.
 7 MR. FLOYD: I don't think the 97 either is
 8 half size, is it? Do you see that anywhere on there? I
 9 think it's only half size just so the record is clear.
 10 MR. NICOLL: Okay. Yes. I think you are
 11 right.
 12 MR. FLOYD: If you take them and superimpose
 13 them you can see.
 14 MR. NICOLL: And do a transparency or
 15 something.
 16 Q. Okay. I would like to turn away just for a
 17 little while -- we're going to come back to these
 18 inspection reports -- and go back to the correspondence.
 19 (Exhibit No. 98 is marked
 20 for identification)
 21 Q. Exhibit 98 is a letter dated July 25, 1994.
 22 It's ET0004212. And it consists of one -- it seems to
 23 consist of five pages ending at 4216. And it has to do
 24 with some damage out of round of the larger pipes. Do
 25 you see that?

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1 A. Yes, sir.
 2 Q. Is this the same problem that was referenced
 3 earlier or is this a different --
 4 A. It's a congruence of everything, yes. It was
 5 what we talked about earlier.
 6 Q. Again the large diameter pipes are in a
 7 different location; right?
 8 A. Yes.
 9 Q. Does that also address the pipe deflection
 10 problems that had or is that the pipe deflection
 11 problem?
 12 A. That is what they refer to as a deflection,
 13 yeah.
 14 (Exhibit No. 99 is marked
 15 for identification)
 16 Q. 99 is a fax from IMCO dated July 28, 1994 to
 17 John Hatch, serial number 14, dealing with pipe
 18 deflection issues. And it runs from ET0008793 through
 19 8796. Do you see that?
 20 A. Yes.
 21 Q. Again raising questions about the deflection
 22 and the questions concerning really whose fault it is
 23 and who is required to go forward with the project; is
 24 that right?
 25 A. Yes.

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1 Q. Are these problems -- I don't know if it's
 2 fair to call them problems. I'm just searching for a
 3 word that won't sound argumentative. But these issues,
 4 are these cost issues for both parties? Do they become
 5 questions of who is going to end up bearing the cost of
 6 doing the follow-up work, the inspection work, the
 7 replacement work and that kind of thing?
 8 A. Yes, that's always an issue in a situation
 9 like this.
 10 Q. I'm just eliminating a couple of documents as
 11 I go here.
 12 (Exhibit No. 100 is marked
 13 for identification)
 14 Q. Exhibit 100 has something to do with
 15 installation of angles attaching the vault to the
 16 ballast slab in the wrong location and directing some
 17 remedial work.
 18 MR. BENINGER: September 15th, a one page
 19 memo?
 20 Q. Right. September 15, 1994 ET0004098.
 21 A. Yes.
 22 Q. And you were copied on it?
 23 A. Yes.
 24 Q. Are you familiar with the issue that was
 25 raised here?

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1 A. I would have to read it a little bit. But
 2 ballast, I don't remember that.
 3 Q. This deals with something that wouldn't
 4 actually be related to anything physical that happened
 5 at or about the location of the rupture?
 6 A. Right.
 7 Q. It may be a cost issue, but it's not a
 8 direct physical rupture thing; right?
 9 A. Right.
 10 (Exhibit No. 101 is marked
 11 for identification)
 12 Q. Exhibit 101 is an another memo that you were
 13 copied on to Paul Krakenberg from John Hatch. It has to
 14 do with repairing of the 60-inch line that was damaged
 15 because it was up against a rock or something like that?
 16 A. Yes.
 17 Q. Again the 60-inch line really doesn't have
 18 anything to do directly with the rupture; right?
 19 A. That's correct.
 20 Q. But this again is a cost question, a cost
 21 issue. Somebody is going to bear the cost for having to
 22 repair that work?
 23 A. This really isn't even a cost issue because
 24 it was something they accept responsibility.
 25 Q. They accept responsibility for it?

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1 A. Right.
 2 Q. It doesn't cost the City anything?
 3 A. Right.
 4 Q. But it costs IMCO something?
 5 A. It took labor and materials for them to fix.
 6 MR. FINEGOLD: What's the number on that?
 7 MR. NICOLL: 101.
 8 MR. BENINGER: 0560 IMCO.
 9 MR. NICOLL: Yes.
 10 Q. Here's a big stack of something. Let's mark
 11 it
 12 (Exhibit No. 102 is marked
 13 for identification)
 14 Q. Exhibit 102, why don't you flip through that
 15 real quickly and tell us what it is.
 16 A. It appears to be the envelope that I had
 17 pictures printed from, the pictures that we were looking
 18 at.
 19 Q. Okay.
 20 A. Enclosed. It was 12/93 to 1/95.
 21 Q. For the record we have received from Earth
 22 Tech, the parties have received from Earth Tech
 23 approximately 1200 photographs? Would that be right?
 24 MR. BENINGER: It sounds right.
 25 Q. Each of these documents are xerox copies of

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1 the development envelope for each of those sets of
 2 photographs?
 3 A. That's correct.
 4 MR. FLOYD: There is also a picture.
 5 MR. NICOLL: There is? Which page is it?
 6 MR. BENINGER: 428.
 7 A. Which page?
 8 Q. 428.
 9 A. I'm totally ignorant of it. It looks like a
 10 pile of dirt though.
 11 Q. Well, these photographs that we have, some of
 12 which we have marked as exhibits and many more of which
 13 we will be marking as exhibits, have, as we discussed
 14 earlier, some dates stamped in the lower right hand
 15 corner depending on the view, one's take of it?
 16 A. Yes.
 17 Q. But not all of those dates are easily visible
 18 just because of the way the film is exposed or where the
 19 light happens to be or the background?
 20 A. Yes.
 21 Q. You mentioned earlier when we were off record
 22 that some of the -- that the negatives themselves carry
 23 the date that the photograph was taken; is that right?
 24 A. I believe they do.
 25 Q. And that would be on the reverse side of the

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1 negative?
 2 A. I don't know.
 3 Q. Who has the negatives now?
 4 A. I believe they are all turned in. I don't
 5 know who has them.
 6 MR. SCANLAN: I can answer that. He wouldn't
 7 know. United States Attorney's office.
 8 Q. United States Attorney office has them.
 9 Okay. I wonder if they have like a chart that aids in
 10 the determination of the date of these photographs.
 11 MR. FLOYD: They have contact negatives I
 12 think. They have taken the negatives and made a contact
 13 sheet and you can read the date off of that if it was on
 14 the negative. I have requested a set of contact sheets
 15 from them. So if you want to get a set too.
 16 MR. NICOLL: Sure. That would be great.
 17 Q. And when the U.S. Attorney's office asked you
 18 for that it was -- never mind. I won't ask that
 19 question. I will leave that for Mr. Finegold.
 20 (Exhibit No. 103 is marked
 21 for identification)
 22 Q. During the project, the Dakin-Yew project,
 23 there were weekly meetings; is that right?
 24 A. Yes.
 25 Q. And did you attend those meetings?

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1 A. Yes.
 2 Q. All of them or most of them?
 3 A. Most of them.
 4 Q. And minutes were prepared from those
 5 meetings; is that right?
 6 A. Yes.
 7 Q. Did you receive copies of the weekly meeting
 8 minutes?
 9 A. I did not, no.
 10 Q. Have you ever seen them?
 11 A. I may have seen some, but it wasn't a regular
 12 basis.
 13 Q. I'm going to show you Exhibit 103 which
 14 contains documents Bates numbered ET0004852?
 15 MR. SCANLAN: They are not in sequential
 16 order.
 17 MR. NICOLL: They are out of order but I
 18 think they go from reverse to forward.
 19 MR. SCANLAN: You also have some other OPL
 20 numbers in there.
 21 MR. NICOLL: They sure do.
 22 Q. It looks like about 29 packages of minutes
 23 here although the last one that we have in this stack is
 24 October 25, 1994 and it's listed as Dakin-Yew weekly
 25 project meeting number 33.

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1 MR. SCANLAN: You're missing --
 2 MR. NICOLL: We're missing 32.
 3 MR. SCANLAN: And some others.
 4 MR. NICOLL: And some others.
 5 MR. SCANLAN: You are missing like three in
 6 March.
 7 MR. NICOLL: Let me see if I can augment
 8 that. This might be the most complete set that we have.
 9 Q. But anyway, take a look at it. Do those
 10 minutes look familiar?
 11 A. Yes.
 12 Q. You have seen them?
 13 A. I've seen some of them.
 14 Q. Similar ones or at least some of those in the
 15 past; right?
 16 A. That's correct.
 17 Q. I would like you to take a look at the
 18 meeting minutes from June 7, 1994. It's ET0004585.
 19 A. Okay.
 20 Q. By June 7, 1994 the decision had already been
 21 made, had it not, to change the location of the tie-in
 22 between the 16-inch and the 24-inch?
 23 A. I believe that's true.
 24 Q. It was changed to the location as shown on
 25 Exhibit 97, the revised drawing P-1?

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1 A. Yes.
 2 Q. Now, this also talks about under item 15.3
 3 the tie-in of the 24-inch tee into the 16th line will be
 4 tentatively the 22nd of this month at night. Do you see
 5 that?
 6 A. Yes.
 7 Q. And this is at about the time that IMCO was
 8 receiving authority to run two shifts?
 9 A. Within a month of that time, yes.
 10 Q. Is there any significance to the number
 11 sequence here, the way this paragraph on status of
 12 clarification is numbered? Is it just the third item
 13 from the fifteenth weekly project meeting?
 14 A. That's what it was.
 15 Q. That's all it is?
 16 A. Yes.
 17 Q. What kinds of things would normally be
 18 addressed in these weekly meetings?
 19 A. Basically they would start out with issues,
 20 whatever was coming up, had come up during that week or
 21 will come up. And we talked about some submittals after
 22 that, whatever is needing to be provided before they do
 23 the work. Things like that, like they have on the
 24 minutes here, the safety issue and schedule. Just
 25 different things. That like this meeting they talked

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1 about impacts on plan operation, pay estimates is a
 2 pretty good example of the different types of things
 3 that would come up.
 4 Q. How long would the meetings usually last, or
 5 would it vary widely?
 6 A. Half hour to an hour typically.
 7 Q. Where were they usually held?
 8 A. Inside the filtration plant. They had a
 9 table set up where it was quiet and was not accessible
 10 to outside traffic.
 11 Q. Who was assigned, if assigned is the right
 12 word, the task of preparing the minutes?
 13 A. I believe John was.
 14 Q. John Hatch?
 15 A. Yes.
 16 Q. He would keep notes during --
 17 A. Yes.
 18 Q. -- the meetings? Yes?
 19 A. Yes.
 20 Q. Did anybody else keep notes during these
 21 weekly meetings that you know of?
 22 A. Not to my recollection, no.
 23 Q. You didn't notice anybody sitting there
 24 jotting things down?
 25 A. Not regularly, no.

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1 Q. Normally in attendance would be yourself and
 2 John Hatch, Greg Burress from IMCO?
 3 A. Yes.
 4 Q. Yes. What, Paul Krakenberg maybe?
 5 A. Most times.
 6 Q. Who else?
 7 A. The City people, Wan Huang.
 8 Q. Bill Evans?
 9 A. And Bill Evans would be the primary ones.
 10 Q. Is this circulation of minutes like this, is
 11 this s pretty standard project like the Dakin-Yew
 12 treatment plan?
 13 A. For big projects like this, yes.
 14 Q. Something that you were accustomed to on
 15 larger projects when you worked for the State?
 16 A. That's right.
 17 Q. On the June 7 minutes, in my review of them
 18 anyway, I didn't see any reference to the need to notify
 19 Olympic Pipe Line of the relocation of the 24-inch,
 20 16-inch tie-in. And I'm wondering if your own review of
 21 the minutes confirm?
 22 A. For this meeting that's true. I didn't see
 23 anything either. I think that maybe there would have
 24 been something in the earlier meetings.
 25 Q. Pardon me?

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1 A. I would think there would have been something
 2 in earlier meetings talking about that since this is
 3 during the time they were actually doing the work.
 4 Q. Would that kind of thing normally be raised
 5 at a meeting?
 6 A. I would think they would make comments about
 7 the fact they were going to be contacting them or
 8 something in that regard, yes.
 9 Q. Is that the kind of mention follow-up item
 10 that you would expect normally to be reflected in the
 11 minutes of these meetings?
 12 A. Some comment on them, yes.
 13 Q. Were there other report forms or not forms,
 14 just reports of any type or description that you were
 15 responsible for maintaining, preparing at the Dakin-Yew
 16 job?
 17 A. No.
 18 Q. You just did your inspection report?
 19 A. My inspection report and the estimate. I
 20 should have clarified that a little bit. I was
 21 responsible for communicating and negotiating with the
 22 contractor what his estimate values were for each month.
 23 Q. So you would get weekly pay, not weekly,
 24 monthly pay estimates. You would get an estimate. The
 25 first estimate would come in in advance of the month or

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1 following?
 2 A. Usually it was the 25th of the month we would
 3 come up with something and by the end of the month it
 4 would be all agreed upon and given to John for
 5 documentation.
 6 Q. So for Thursday I would have to have the pay
 7 estimates here. Okay. Those are kind voluminous
 8 documents. Right?
 9 A. Yes, sir.
 10 Q. And the pay estimate, this revised work on
 11 the 16-inch, 24-inch tie-in would have been reflected on
 12 the pay estimates for the month of -- on June 25th
 13 probably; right?
 14 A. Yes.
 15 Q. Possibly even on May 25th?
 16 A. If there was anything it would be paid for at
 17 that time. Normally you don't pay for it until after
 18 it's installed and you have some way of measuring
 19 something if it's a measuring item.
 20 Q. Okay. All right. I'm about to kind of
 21 launch into a more detailed examination of the
 22 photographs that I have had copied. And I am wondering
 23 if it might be better to break now rather than to get
 24 into that because we'll just end up stopping in fifteen
 25 minutes anyway.

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1 MR. SCANLAN: We'll have to revisit.
 2 MR. NICOLL: Yes.
 3 MR. SCANLAN: Let's do it.
 4 MR. NICOLL: Unless anybody objects.
 5 MR. BENINGER: No objection from me. I'm
 6 going to turn the tape off for today.
 7 MR. NICOLL: Yes.
 8 (Recessed at 4:15 p.m.)
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1 CERTIFICATE

2 STATE OF WASHINGTON)
 3 COUNTY OF KING)

4 I do hereby certify:

5 1. That I am a Notary Public in and for the
 6 State of Washington;

7 2. That each witness before examination was by
 8 me duly sworn to testify to the truth, the whole truth
 9 and nothing but the truth;

10 3. That the foregoing deposition was taken
 11 stenographically by me and reduced to transcript form
 12 under my direction;

13 4. That I am not a relative or employee or
 14 attorney or counsel of any of the parties to said
 15 action, or a relative or employee of any such attorney
 16 or counsel, and that I am not financially interested in
 17 the said action or the outcome thereof;

18 5. That each witness was given the opportunity
 19 to read and sign the deposition after the same was
 20 transcribed, unless indicated in the record that the
 21 parties and each witness waived the signing;

22 6. That all objections made at the time of said
 23 examination to my qualifications or the manner of taking
 24 the deposition, or to the conduct of any party, have
 25 been noted by me upon said deposition;

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1 AFFIDAVIT

2 STATE OF WASHINGTON)
) ss.
 3 COUNTY OF KING)

4

5 I have read my within deposition, and
 6 the same is true and accurate, save and except for
 7 changes and/or corrections, if any, as indicated by me
 8 on the correction sheet hereof.
 9
 10
 11
 12 _____
 13 THOMAS W. FRANKLIN
 14
 15
 16 Subscribed and sworn to before me this
 17 _____ day of _____, 2000.
 18
 19
 20
 21 _____
 22 Notary Public in and for the
 23 State of Washington,
 24 residing in _____
 25 Commission expires _____

24 Susan Cannon, Court Reporter
 25 Deposition taken on: 6-19-00

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1 7. That the deposition as transcribed is a full,
 2 true and correct transcript of the testimony, including
 3 questions and answers, and all objections, motions, and
 4 exceptions of counsel made and taken at the time of the
 5 foregoing examination;

6 8. That I have made arrangements for delivery of
 7 the deposition to the appropriate place of filing.
 8
 9
 10 IN WITNESS WHEREOF, I have hereunto set my hand
 11 and affixed my official seal this _____ day of
 12 _____, 2000.
 13
 14
 15
 16
 17 _____
 18 Notary Public in and for
 19 the State of Washington,
 20 residing at Kirkland,
 21 Commission expires 5-13-02
 22 CA-NN-OS-#507P9
 23
 24
 25

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF WHATCOM

3 KATHERINE DALEN, Individually
 4 and as the Personal Represent-
 5 ative of the Estate of STEPHEN
 6 M. TSIORVAS, and as Guardian
 7 ad Litem for ANDREW R. TSIORVAS
 8 and GEORGE K. TSIORVAS,

9 Plaintiffs,

10 -vs- No. 99-2-01468-1

11 OLYMPIC PIPE LINE COMPANY, a
 12 foreign corporation, EQUILON
 13 PIPELINE COMPANY LLC, a foreign
 14 corporation, and EQUILON
 15 ENTERPRISES, LLC, a foreign
 16 corporation, and FRED CROGNALE,
 17 FRED HOFF, RON BRENTSON and
 18 JOHN DOES,

19 Defendants.

20 OLYMPIC PIPE LINE COMPANY, a
 21 foreign corporation,

22 Third-Party Plaintiff,

23 -vs-

24 IMCO GENERAL CONSTRUCTION, a
 25 domestic corporation,
 Third-Party Defendant.

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF

THOMAS W. FRANKLIN - VOLUME II

June 22, 2000

Susan Cannon, CCR
 Court Reporter
 CANNOS507P9

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1 FRANK S. KING, as the Personal
 2 Representative of the Estate
 3 of WADE B. KING, and FRANK S.
 4 KING and MARY L. KING, individ-
 5 ually, and TRACY K. BELL,
 6 individually, and JASON KING,
 7 individually,

8 Plaintiffs,

9 -vs- No. 99-2-01467-3

10 OLYMPIC PIPE LINE COMPANY, a
 11 foreign corporation, EQUILON
 12 PIPELINE COMPANY LLC, a foreign
 13 corporation, and EQUILON
 14 ENTERPRISES, LLC, a foreign
 15 corporation, and FRED CROGNALE,
 16 FRANK HOFF, RON BRENTSON and
 17 JOHN DOES,

18 Defendants.

19 OLYMPIC PIPE LINE COMPANY, a
 20 foreign corporation,

21 Third-Party Plaintiff,

22 -vs-

23 IMCO GENERAL CONSTRUCTION CO., a
 24 domestic corporation, and JOHN
 25 DOE DEFENDANTS ONE THROUGH FOUR,

Third-Party Defendants.

VIDEOTAPED DEPOSITION OF THOMAS W. FRANKLIN - VOL. II

9:15 a.m.
 June 22, 2000
 1201 Third Avenue
 Suite 5200
 Seattle, Washington

Susan Cannon, Court Reporter

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1 MR. BENINGER: We are on number three. We are

2 about halfway through this particular tape and we'll

3 continue on until it finishes off. This is Mr. Franklin's

4 continuation deposition.

5 You are still under oath. So let's proceed.

6

7 THOMAS W. FRANKLIN, having been previously sworn

8 upon oath, testified as

9 follows:

10

11 EXAMINATION

12 BY MR. NICOLL:

13 Q. Thanks. Mr. Franklin, the same rules as Monday.

14 We are taking your deposition. As David just said you are

15 still under oath. And as before, if you have trouble with a

16 question that I'm asking, if you don't understand it, just

17 tell me and I will try and rephrase it. And also if you

18 need to take a break, just tell us and we can do that.

19 Okay?

20 A. Okay.

21 Q. I was about to get into the photographs when we

22 broke on Monday. And I'm going to get to that very shortly,

23 but when I was going back through the materials I realized

24 there was a letter with some drawings that I didn't get into

25 the record. So I'm going to go a little bit out of my

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1 planned order and have you examine and then identify Exhibit
 2 116.
 3 (Exhibit No. 116 is marked
 4 for identification)
 5 MR. NICOLL: And while he is doing that I will
 6 tell the rest of you that our copy service made a mistake
 7 and unintentionally failed to copy drawings, an extra set of
 8 the large drawings of P-1, P-10 and P-11.
 9 MR. BENINGER: Did not get P-10 and P-11?
 10 MR. NICOLL: P-1, P-10 and P-11 did not get
 11 copied.
 12 MR. SCANLAN: Into this set?
 13 MR. NICOLL: To the set that's attached to that
 14 letter.
 15 MR. SCANLAN: Okay.
 16 MR. BENINGER: Okay. You have marked the whole
 17 thing. We have some letters and we've got some drawings,
 18 all 116.
 19 MR. VERWOLF: Chris, you've got several letters
 20 here and you've got a whole bunch of photographs.
 21 MR. NICOLL: No.
 22 MR. VERWOLF: It's not everything in the clip?
 23 MR. NICOLL: No, it's not everything in the
 24 clip.
 25 MR. SCANLAN: What is 116 then?

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1 MR. NICOLL: 116 is supposed to be the May 16,
 2 1994 letter.
 3 MR. SCANLAN: Not the June 15?
 4 MR. NICOLL: No. It's the May 16 letter.
 5 MR. SCANLAN: Okay. All right.
 6 MR. NICOLL: May 16 letter and the drawings that
 7 follow it.
 8 MR. SCANLAN: Okay.
 9 MR. NICOLL: What's missing from the package but
 10 you will get shortly are the three or four drawings that Tom
 11 has in his hand.
 12 MR. FLOYD: What exhibit is this?
 13 MR. NICOLL: 116.
 14 MR. FLOYD: Thank you. Are those drawings
 15 significant at all, Chris?
 16 MR. NICOLL: No. P-1, it's all the same thing
 17 basically. Different views of the same thing.
 18 MR. FLOYD: All right.
 19 MR. BENINGER: May 16, several drawings are all
 20 part of 116?
 21 MR. NICOLL: Yes.
 22 Q. Do you see that?
 23 A. Yes.
 24 Q. Do you recognize the letter and the drawings
 25 attached to it?

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1 A. Yes, I do.
 2 Q. Now, is Exhibit 116 a letter that communicates
 3 to IMCO, Mr. Chris Hart, the changes with respect to the
 4 tie-in location between the 24-inch line and the 16-inch
 5 line on the south side of the pump station?
 6 A. Yes.
 7 Q. And then the drawings that are attached to it
 8 are drawings that incorporate that revision as a specific
 9 change on each of those drawing sets; is that correct?
 10 A. As well as other things.
 11 Q. As well as other things, okay. While we are at
 12 it, let's go back to this whole question of discharge and
 13 suction.
 14 Since you testified on Monday, you recall on
 15 Monday you were telling us that the 24-inch line that exited
 16 the south side of the pump station was a suction line?
 17 A. Yes.
 18 Q. Since you've testified on Monday have you spoken
 19 with anybody about that issue?
 20 A. I did.
 21 Q. Who did you speak with?
 22 A. Dirk Van Woerden and George Nordby.
 23 Q. Dirk Van Woerden is the president of Barrett --
 24 who is Dirk Van Woerden?
 25 A. He is the supervisor of the water division of

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1 Earth Tech.
 2 Q. So he is one of your bosses?
 3 A. Yes.
 4 Q. And George Nordby is your other boss?
 5 A. That's correct.
 6 Q. Did you discuss the issue of whether that
 7 24-inch line coming out of the south side of the station was
 8 a discharge or suction?
 9 A. Yes.
 10 Q. What did they say to you?
 11 A. That I was incorrect.
 12 Q. That it was a discharge line?
 13 A. That's correct.
 14 Q. And not a suction line?
 15 A. Yes.
 16 Q. Do you accept that?
 17 A. Yes.
 18 Q. So we can go back to calling it the 24-inch
 19 discharge line.
 20 A. Yes, sir.
 21 Q. Thanks. So Exhibit 116 concerns the relocation
 22 of the tie-in between the 24-inch discharge line and the
 23 16-inch waterline?
 24 A. Yes.
 25 Q. What I would like to do is ask you to open up

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1 Exhibit 97 which I have, and if you would just read off the
 2 lower right hand corner. That's drawing P-1; right?
 3 A. That's correct.
 4 Q. Now, in the stack of folded up sheets you should
 5 have a larger version of Exhibit P-1?
 6 A. Yes.
 7 Q. Could you open that up, please? Now, could you
 8 take a look in the lower left hand corner of drawing P-1
 9 attached to Exhibit 116 and tell us what the date is of the
 10 revision concerning the location of the 24-inch discharge
 11 line?
 12 A. 5/13/94.
 13 Q. 5/13/94. Okay. Because the reason I wanted to
 14 get to that is on our copy here on Exhibit 97 it was a
 15 little blurry.
 16 A. Yes.
 17 Q. There are some aspects of P-1 -- I would like
 18 you to have the larger version of P-1 out to assist in doing
 19 this, but we'll do the drawing actually I think on Exhibit
 20 97. So here's Exhibit 97.
 21 On Exhibit 97, if you would find the dashed
 22 Olympic pipeline that's represented on there, the dashed
 23 line that's the Olympic pipeline. And you can look at the
 24 large P-1 as well.
 25 A. Okay.

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1 Q. Do you see that on both drawings?
 2 A. Yes.
 3 Q. Down in the lower left bottom of the page, close
 4 to the bottom, of the Olympic pipeline on the south end of
 5 the pump station you see a notation with an arrow pointing
 6 towards the direction of the pipeline and it reads daylight
 7 at elev. 260.0. Install two inch beehive strainer on pipe
 8 end. Do you see that?
 9 A. Yes.
 10 Q. And for sake of reference, on Exhibit 97 would
 11 you highlight that in yellow, please?
 12 A. (Witness complies).
 13 Q. If you wouldn't mind, just show that to the
 14 camera. So that's the section that you just highlighted in
 15 yellow.
 16 What does, if you know, daylight at elev. 260
 17 mean?
 18 A. What they are talking about is a drain for the
 19 manhole that is on top of the waterline, to have it drain
 20 for the manhole and to keep it dry in case water was to
 21 infiltrate at one place or another into it.
 22 Q. E-l-e-v means elevation; right?
 23 A. Right.
 24 Q. 260 is a reference to 260 feet above sea level?
 25 A. Yes.

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1 Q. And daylight means that at that elevation 260
 2 feet above sea level you are above ground?
 3 A. It means it's at the ground level.
 4 Q. At ground level?
 5 A. So anything that comes out of it would flow out.
 6 Q. And of course all along this drawing, Exhibit
 7 97, drawing P-1 attached to Exhibit 116, are contour lines
 8 indicating changes in elevation?
 9 A. Yes.
 10 Q. Now, as you go north on the pipeline on that
 11 dashed pipeline towards the pump station you reach right on
 12 the pipeline a circle with an X through it and next to that
 13 circle are the letters el 253.0. Do you see that?
 14 A. Yes.
 15 MR. SCANLAN: I don't think that's a point zero.
 16 MR. NICOLL: It's point something else.
 17 Q. On Exhibit 116 drawing P-1 it's clearer to read,
 18 so why don't you read it off of that.
 19 A. It says elevation 253.6.
 20 Q. On Exhibit 97 using this green highlighter would
 21 you please highlight the circle with the X in it and the
 22 elevation symbol?
 23 A. (Witness complies).
 24 Q. Now, what do you understand that to mean?
 25 A. As I understand it, that was the location that

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1 they potholed the existing Olympic pipeline at and
 2 identified it.
 3 Q. And "they" were do you know who?
 4 A. I believe it was Christenson Brothers Surveying.
 5 Q. Do you know if that elevation was taken off the
 6 top of the pipeline or the bottom of the pipeline or the
 7 middle of the pipeline?
 8 A. I don't know.
 9 Q. You don't know. Because you weren't there?
 10 A. Right.
 11 Q. Do you know who entered the elevation figure on
 12 Exhibit 97 and drawing P-1 that was the same thing?
 13 A. No.
 14 Q. Do you know, Mr. Franklin, how an elevation off
 15 of an underground pipe is ordinarily measured and indicated?
 16 Is it ordinarily measured from the top of the pipe or from
 17 the bottom or from the middle?
 18 A. Typically from the top.
 19 Q. And the reason for that would be that it doesn't
 20 do you much good to know what the elevation is at the middle
 21 one. The whole purpose is to know where it is below the
 22 ground where it begins?
 23 A. That's correct.
 24 Q. And your understanding of this is that it's
 25 based on an actual occurrence at some point where

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1 Christenson Brothers and others went out and dug down to the
 2 pipeline, identified where it was and then calculated that
 3 above sea level?
 4 A. Yes.
 5 MR. FLOYD: Object to the form of the question.
 6 Lack of foundation when you say "and others".
 7 Q. Your understanding you expressed to us before
 8 was that Christenson Brothers did the potholing?
 9 A. That's what I was told, yes.
 10 Q. Who told you that?
 11 A. I believe George and John.
 12 Q. George Nordby and John Hatch?
 13 A. Right.
 14 Q. Did they tell you anything else about the
 15 potholing?
 16 A. No.
 17 Q. Did they tell you this because they just
 18 generally wanted you to know or did you have questions about
 19 it?
 20 A. I had asked where we got the information from
 21 and they had told me.
 22 Q. When did you ask that question?
 23 A. During the first part of my introduction to the
 24 project.
 25 Q. And why did you ask the question?

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1 A. Just to know.
 2 Q. Did you know anything at all about Christenson
 3 Brothers at the time, the surveying firm?
 4 A. No.
 5 MR. SCANLAN: I don't think it's actually
 6 Christenson Brothers.
 7 Q. Christenson Engineering I think is the name of
 8 the company.
 9 A. No, I didn't.
 10 Q. All right. As we move north then along the
 11 Olympic pipeline on Exhibit 97 the drawing P-1 we come to a
 12 number 3 with what looks like a comet tail running off of it
 13 pointing towards an area of piping that is encircled in a
 14 cloud-like drawing. Do you see that?
 15 A. Yes.
 16 Q. And you see that also on P-3?
 17 A. Yes, I do.
 18 Q. What does that number 3 refer to?
 19 A. It's referring to the changes that they
 20 identified on the bottom left corner revision to pump
 21 station discharge pipe.
 22 Q. That number 3 refers to revision 3?
 23 A. That's correct.
 24 Q. The May 13, 1994 revision of the discharge line
 25 to the 16-inch tie-in?

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1 A. Yes.
 2 Q. Now, there are a number of other things as you
 3 run along the pipeline here, some of which we have
 4 identified the other day.
 5 But off slightly to the left which would be to
 6 the east -- I'm sorry -- west of that number 3 is an entry
 7 on this drawing that says see detail, and then a circled two
 8 over P-2 with an arrow pointing towards what appears to be
 9 the tee joint?
 10 A. Yes.
 11 Q. Is that a reference to another drawing that will
 12 give you further information about how the tee joint is to
 13 be assembled?
 14 A. Yes, P-2.
 15 Q. Now, as you testified the other day, this tee
 16 joint appears to be situated above both the 16-inch
 17 waterline and the 16-inch Olympic pipeline; right?
 18 MR. FLOYD: I'm sorry. The tee joint above the
 19 water?
 20 Q. This tee joint appears to join the 16-inch
 21 waterline at a point above the 16-inch Olympic pipeline;
 22 right?
 23 A. Yes.
 24 Q. Then as you continue to move north along the
 25 Olympic pipeline we come to the words Olympic pipeline and

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1 then come to another circle above the words PVC utility
 2 duct?
 3 A. Yes.
 4 Q. And the letters next to the circle with the X
 5 through it, el 256.0. Do you see that?
 6 A. Yes.
 7 Q. As we did with the other elevations, would you
 8 highlight on Exhibit 97.
 9 A. (Witness complies).
 10 Q. Again would you hold it up and I will point to
 11 it as you do. You highlighted up on Exhibit 97 the area
 12 that I'm pointing to now that's in yellow. Right?
 13 A. Right.
 14 Q. What's your understanding of what that circle
 15 with an X in it on the dashed Olympic pipeline is?
 16 A. That again is another pothole location.
 17 Q. And as with the one to the south, the elevation
 18 on that would be 256 feet above sea level?
 19 A. Yes.
 20 Q. Comparing the two elevations, the one to the
 21 south and the one that we just looked at, is the Olympic
 22 pipeline gaining elevation, in other words getting closer to
 23 the surface, as it moves through that area?
 24 MR. SCANLAN: Object to the form of the
 25 question, vague.

<p>193</p> <p>1 A. It is raising in elevation.</p> <p>2 MR. BENINGER: As you go north.</p> <p>3 A. As you go north, right.</p> <p>4 Q. In fact, if you wanted, you could probably</p> <p>5 compare those two numbers and perhaps the third elevation</p> <p>6 and actually calculate how much elevation it gains per foot</p> <p>7 or per yard?</p> <p>8 A. Yes, you could.</p> <p>9 Q. I'm looking along the 16-inch waterline which is</p> <p>10 represented by the sort of two parallel dashed lines running</p> <p>11 through that area. Do you see it?</p> <p>12 A. Yes.</p> <p>13 Q. Just for sake of completeness, why don't you</p> <p>14 highlight the entire 16-inch waterline on Exhibit 97 in</p> <p>15 blue?</p> <p>16 A. (Witness complies).</p> <p>17 Q. Thanks. Now if you would hold that up just</p> <p>18 briefly, remember to put it over to your right a little bit</p> <p>19 so in theory the camera picks it up. You have highlighted</p> <p>20 in blue the entire length of the 16-inch line on Exhibit 97?</p> <p>21 A. Yes.</p> <p>22 Q. That corresponds to the same 16-inch line on</p> <p>23 drawing P-1?</p> <p>24 A. That's correct.</p> <p>25 Q. Looking at the two of them, do you see any</p>	<p>195</p> <p>1 Q. What do you recall about whether the 16-inch</p> <p>2 waterline as it traversed the area shown on Exhibit 97 as to</p> <p>3 whether it was gaining elevation or losing elevation through</p> <p>4 that area? Was it going up towards the surface or down</p> <p>5 deeper?</p> <p>6 MR. SCANLAN: I'm going to object. It's one</p> <p>7 thing to say the pipeline may be going up or down relative</p> <p>8 in elevation but you are not correlating it to the</p> <p>9 topography of the surface. So that you characterizing it as</p> <p>10 being something that's closer to the surface or not is not</p> <p>11 necessarily there.</p> <p>12 MR. NICOLL: I appreciate that. Why don't we</p> <p>13 just do the elevation then.</p> <p>14 Q. Was it going up in elevation or down in</p> <p>15 elevation?</p> <p>16 A. It wasn't clear whether it was going up or down.</p> <p>17 Q. From south to north was it going up or down in</p> <p>18 elevation?</p> <p>19 A. It wasn't clear.</p> <p>20 Q. It wasn't clear to you?</p> <p>21 A. It wasn't clear. The ground slopes were a</p> <p>22 variety of different slopes and the grade to the west of the</p> <p>23 pump station itself was relatively flat.</p> <p>24 Q. The grade to the west was flat but the grade to</p> <p>25 the east of the 16-inch waterline in the vicinity of the</p>
<p>194</p> <p>1 indications along that drawing of potholing of that 16-inch</p> <p>2 line?</p> <p>3 A. No.</p> <p>4 Q. Do you know if any elevations were taken off of</p> <p>5 the 16-inch line that aren't shown on this drawing?</p> <p>6 A. No, I don't.</p> <p>7 MR. BENINGER: Which drawing?</p> <p>8 Q. The 16-inch waterline.</p> <p>9 A. No, I don't.</p> <p>10 Q. Would it be customary when working around</p> <p>11 pipelines, waterlines, to pothole and show an elevation on a</p> <p>12 drawing?</p> <p>13 MR. SCANLAN: Objection. It calls for</p> <p>14 speculation.</p> <p>15 A. It would depend on the situation.</p> <p>16 Q. In your experience prior to this and subsequent</p> <p>17 I guess to this project, is it a customary practice to show</p> <p>18 actual elevations of underground waterlines that are part of</p> <p>19 a project on the drawings for the project?</p> <p>20 MR. SCANLAN: Same objection. It calls for</p> <p>21 speculation.</p> <p>22 Q. I don't want you to speculate. If you know, in</p> <p>23 your experience is it customary?</p> <p>24 A. It's normal to show what you know of a situation</p> <p>25 beforehand, yes.</p>	<p>196</p> <p>1 pipeline was sloped; right?</p> <p>2 A. Yes. The grade was but the pipe wasn't</p> <p>3 necessarily. That fill was built during the construction of</p> <p>4 the pump station. And the ground, I don't know what the</p> <p>5 ground topography was like beforehand.</p> <p>6 Q. Do you recall whether the 16-inch waterline was</p> <p>7 gaining elevation relative to sea level between the</p> <p>8 approximate location of the Olympic pothole mark, the 253.6</p> <p>9 elevation, and a point let's say north of the Dakin-Yew pump</p> <p>10 station? Do you know if was gaining elevation to that area?</p> <p>11 A. I don't know. I don't know anything about the</p> <p>12 profile of the waterline. We did expose it when the 16 and</p> <p>13 72-inch lines or the 72-inch line was dug. And that's what</p> <p>14 we knew beforehand when we went to find the waterline was</p> <p>15 the 20 foot width or the 15 foot width of the actual trench</p> <p>16 was and the actual pipe was exposed was what the contractor</p> <p>17 used to know something about the system.</p> <p>18 Q. There was a time during the project in May,</p> <p>19 wasn't there, when the contractor IMCO damaged the 16-inch</p> <p>20 waterline with its backhoe?</p> <p>21 A. Yes.</p> <p>22 Q. While digging?</p> <p>23 A. Yes.</p> <p>24 Q. And we are going to get to that because I think</p> <p>25 there are some events that occur on July 8th with respect to</p>

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1 that line, but we'll talk about that later when we get into
 2 the inspection reports again.
 3 As you move north along the Olympic pipeline on
 4 Exhibit 97, and you can again refer to drawing P-1, do you
 5 see any other potholes noted?
 6 A. I don't believe so, no. I only saw the two.
 7 MR. FLOYD: I'm going to object to the use of
 8 the word potholes. There is nothing on the exhibit shows
 9 the pothole elevation.
 10 MR. NICOLL: You're right.
 11 Q. Do you see any other elevations of the Olympic
 12 pipeline noted?
 13 A. Not on P-1, no.
 14 Q. Are you able to tell by looking at drawing P-1,
 15 Exhibit 97, at what elevation ground level was?
 16 A. There are contour drawings, contour lines
 17 identifying the elevations.
 18 Q. I know, but which of those elevations would be
 19 ground level. Well, I suppose that answers my question,
 20 doesn't it.
 21 At about the southern elevation on the Olympic
 22 pipeline, the 253.6 elevation, by looking at the drawing P-1
 23 are you able to tell what elevation was ground level?
 24 A. Yes.
 25 Q. What elevation was ground level based on this

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1 drawing?
 2 A. Elevation 260 contour line runs right through
 3 it.
 4 Q. So that would put the Olympic pipeline at that
 5 location approximately, what, six point --
 6 A. Five and a half, six and a half feet.
 7 Q. Six and a half feet, six feet four inches or so?
 8 MR. SCANLAN: 6.4.
 9 Q. 6.4 inches below ground level? 6.4 feet below
 10 ground level; right?
 11 A. Yes.
 12 Q. And then if you go up to the elevation to the
 13 north, the 256.0, can you tell what the approximate ground
 14 level was there as shown on the map?
 15 A. It's just under elevation 262.
 16 Q. And that would make that depth for the pipeline
 17 in that location approximately, what, six feet?
 18 A. Yes.
 19 Q. Six feet below ground level.
 20 It's the understanding of some of us at least
 21 here in this room that there was a third pothole location.
 22 Do you recall where that was?
 23 A. No, I don't.
 24 Q. I think there might be some drawings that show
 25 it. We can cover that later.

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1 Now, the letter which we have marked as Exhibit
 2 116 -- if you want to close 97, that's fine. You can close
 3 drawing P-1 as well if you want.
 4 The letter we marked as Exhibit 116 says in the
 5 first paragraph that the revision of the 24-inch discharge
 6 line from the Dakin-Yew pump station was made at the request
 7 of IMCO to avoid crossing under the 72-inch line. Do you
 8 see that?
 9 A. Yes.
 10 Q. Do you recall the events surrounding why the
 11 revision was made?
 12 A. Yes.
 13 Q. We have looked at a lot of letters and things
 14 like that, but could you tell us what you recall about when
 15 these discussions concerning revision of the 24-inch line
 16 occurred?
 17 A. I remember in the early spring them starting to
 18 talk about it because the waterline was in the vicinity of
 19 where the 72-inch piping was going to go.
 20 So they had to do something one way or other to
 21 install the 72-inch pipe system.
 22 Q. They being IMCO?
 23 A. The contractor, yes. And as a result they
 24 explored different options that they had and decided this
 25 was the most appropriate choice.

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1 Q. The next sentence says it also allows more
 2 flexibility when the connection to the existing 16-inch pipe
 3 is made. That was a scheduling issue I guess. Do you know?
 4 A. It had to do with when they can install the tee
 5 and if the piping system itself was designed to be able to
 6 accept the tee and be able to be closed so that the
 7 remaining of the piping can be installed.
 8 Because the system was on line and so they
 9 needed to put the tee in and get the waterflow back as soon
 10 as possible.
 11 Q. I see. So at the time they installed the tee
 12 they needed to also hook up the remainder of the piping to
 13 it?
 14 A. No, not at that time. They just needed to be
 15 able to put the tee in --
 16 Q. Close the valves?
 17 A. Use the valves to keep it functional.
 18 Q. Look at the second page of Exhibit 116. And you
 19 will see that they attach a copy of a sketch entitled
 20 partial profile pump station discharge. This is in the
 21 record as Exhibit 94 page two.
 22 Would you take a look at Exhibit 94 page two?
 23 A. Yes.
 24 Q. And I will tell you that in our copy of Exhibit
 25 116, when we searched through the City's and the Earth

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1 Tech's and IMCO's files we found only the letter. We didn't
 2 find the drawings or this drawing attached to it, but we
 3 were able to by searching through all the records pull
 4 together all the drawings showing this specific revision and
 5 found it in another location, Exhibit 94, which is why this
 6 exhibit isn't attached to that letter.
 7 Looking at that exhibit, we talked about this
 8 the other day, but on Exhibit 94 there is no reference to
 9 the Olympic pipeline; right?
 10 A. No, there isn't.
 11 Q. But there are elevations indicated in the grid?
 12 A. Yes.
 13 Q. And if you can let me take a look at that
 14 quickly. This concept is drawn out, as that elevation is
 15 drawn out here on Exhibit 94, it appears that the bottom of
 16 the tee intersection where it connects with the 16-inch and
 17 the 24-inch line is between elevations 255 and 260; is that
 18 right?
 19 A. Yes.
 20 Q. But when this was installed it had to be
 21 installed in a different location as I recall?
 22 A. Yes.
 23 Q. So it was actually installed in the location
 24 different than was planned?
 25 A. Yes.

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1 Q. It was installed in a location that was
 2 different than as shown on the elevation as well on this
 3 partial plan profile, Exhibit 94?
 4 A. I don't know that. I don't know what the tee
 5 elevation is or the waterline elevation is.
 6 Q. Did anybody determine the elevation during the
 7 dig?
 8 A. Yes.
 9 Q. How was that done?
 10 A. With a rod and a level.
 11 Q. A rod, explain that?
 12 A. We have a measuring device and an instrument
 13 that sees on a level plane and you view the rod and
 14 determine what the elevation is from the plane at the
 15 instrument height.
 16 Q. Somebody holds the rod down at the bottom of the
 17 hole?
 18 A. Or on top of the pipe and they get an elevation.
 19 Q. Now, going down the second page of Exhibit 116
 20 you see that there are some CC recipients of the letter?
 21 A. Yes.
 22 Q. One of those of course is you and the other is
 23 Wan Huang from the City of Bellingham?
 24 A. Yes.
 25 Q. And there is no copy provided of this change and

203

1 those drawings at least as reflected on this letter to
 2 Olympic Pipe Line?
 3 A. That's correct.
 4 Q. Do you know if a copy of the letter was given to
 5 Olympic Pipe Line even though not reflected there?
 6 A. No, I don't.
 7 MR. NICOLL: Let's take a short break.
 8 (Off the record).
 9 Q. Why don't you flip through the drawings there
 10 and look for C-1.
 11 MR. FLOYD: Is that on 116?
 12 MR. NICOLL: Yes, Exhibit 116 drawing C-1.
 13 Q. And I know it's kind of a dark copy because
 14 there are a lot of contour lines that run through there.
 15 Would you find the Olympic pipeline and
 16 highlight that in pink?
 17 A. (Witness complies).
 18 Q. Okay. If you would please also find the revised
 19 discharge line and the pump station which is indicated I
 20 think with the two and the arrow pointing to that location.
 21 A. (Witness complies).
 22 Q. And you highlighted it in blue; right?
 23 A. Yes.
 24 Q. Now, that number two refers to the revision in
 25 the lower left hand corner of drawing C-1. And that's dated

204

1 5/13/94 revised pump station discharge pipe; is that right?
 2 A. Yes.
 3 Q. Why don't you turn to Exhibit 116 drawing C-2,
 4 the next drawing. This is essentially the same thing, just
 5 kind of a focused view; is that right?
 6 A. Yes. It's a very focused view of the same.
 7 Q. Again, as you could with the drawing before, you
 8 are able to see the pipeline; right?
 9 A. I'm able to see the dashed lines for it, yes.
 10 Q. And you can actually see the words Olympic
 11 pipeline there?
 12 A. You can make them out, yes.
 13 Q. And then the pump station in blue -- not in
 14 blue, but the pump station and then the revised discharge
 15 line?
 16 A. Yes.
 17 Q. Drawing revision number 3.
 18 MR. FLOYD: Are you talking about C-3?
 19 MR. NICOLL: It's C-3, revision 3 attached to
 20 Exhibit 116. It has both a profile and kind of a close-up
 21 view of that area. Do you see that?
 22 A. Yes.
 23 Q. Do you see any of the elevation markings that we
 24 saw on Exhibit 97 on this particular drawing?
 25 A. You mean contour lines?

<p>205</p> <p>1 Q. Remember the elevation that was drawn in on the 2 pipeline itself?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Just a little bit south of the 72-inch line?</p> <p>5 A. Right.</p> <p>6 Q. Do you see that here?</p> <p>7 A. No.</p> <p>8 Q. Would you take that pink marker and just mark 9 the Olympic pipeline as it goes through the planned view on 10 the top?</p> <p>11 A. (Witness complies).</p> <p>12 Q. And in blue just mark that dashed 16-inch 13 waterline and the discharge line and the pump station.</p> <p>14 A. (Witness complies).</p> <p>15 Q. Now let's look down at what's called the profile 16 view which is just below it. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. This also shows elevations, does it not?</p> <p>19 A. There are elevations indicated by the lines and 20 some of the drawings have elevations on them, yes.</p> <p>21 Q. There is a grid behind these drawn in things. 22 And this grid, at least the horizontal lines along the grid, 23 are intended to be elevations above sea level; is that 24 right?</p> <p>25 A. That's correct.</p>	<p>207</p> <p>1 A. It's to be able to get the profile on the same 2 piece of paper.</p> <p>3 Q. There's not much happening between those two 4 points, so you just changed the elevation between those two 5 points so you could fit the whole thing on that piece of 6 paper?</p> <p>7 A. Yes. It looks like there was a ten foot 8 difference in elevation, one side versus the other.</p> <p>9 Q. Would you in pink please mark the Olympic 10 pipeline, existing 16-inch Olympic pipeline, that little "o" 11 and then a line going down to it?</p> <p>12 A. (Witness complies).</p> <p>13 Q. And that shows the existing line as being 14 between 250 and 255 feet above sea level; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. And that would seem, would it not, to correspond 17 with the elevation that was shown on drawing P-1 in Exhibit 18 97 as being, if I recall, 253.67?</p> <p>19 A. Yes.</p> <p>20 Q. Now, looking immediately to the right of that 21 which you just highlighted in pink is a representation of 22 existing 16-inch W. I assume that's 16-inch waterline?</p> <p>23 A. Yes.</p> <p>24 Q. And if you would highlight that in blue going 25 down to the circle.</p>
<p>206</p> <p>1 Q. Now if you go over to the right side as you look 2 at that drawing you will see a little circle in elevation 3 between 240 and 245? I'm sorry. I see the elevation 4 changes when you get down there.</p> <p>5 You see this dark line about two-thirds of the 6 way across the page to the right?</p> <p>7 MR. SCANLAN: Which dark line?</p> <p>8 MR. NICOLL: If you hand it to me I will 9 highlight it in green.</p> <p>10 MR. FLOYD: There are two different profiles, 11 counsel.</p> <p>12 MR. NICOLL: Yes, I see that.</p> <p>13 Q. If you would hold it up for the camera, I have 14 highlighted in green a dark line that runs vertically down 15 through that grid and then highlighted two numbers, one of 16 them is 250 and other 255?</p> <p>17 A. Yes.</p> <p>18 Q. Am I correct in assuming that the elevation, the 19 representation of elevation changes from the point of the 20 line that I highlighted in green and on to the right?</p> <p>21 A. Yes.</p> <p>22 Q. But the elevation representation at any rate is 23 different in the grid that's to the left?</p> <p>24 A. That's correct.</p> <p>25 Q. Why is that; do you know?</p>	<p>208</p> <p>1 A. (Witness complies).</p> <p>2 Q. This whole thing is in a cloud or a bubble?</p> <p>3 A. The waterline is, yes.</p> <p>4 Q. And maybe all those words ought to be 5 highlighted in blue, but what does crown elevation 258.48 6 station four plus 64.60 i.e 262 mean? What does this mean?</p> <p>7 A. The station that you see off to the right is the 8 angle point of the 72-inch line. That doesn't have anything 9 to do with the waterline. But it does have to do with the 10 change order because they changed the profile of the 72-inch 11 line.</p> <p>12 Q. And because the profile of the 72-inch line was 13 changed, that meant you weren't going to go under the line. 14 You were going to take the discharge line and connect to the 15 16-inch line at a point to the north of the 72-inch line?</p> <p>16 A. That's correct.</p> <p>17 Q. What does crown elevation 258.48 mean?</p> <p>18 A. That's the top of the waterline. Crown is the 19 top.</p> <p>20 Q. So there is an elevation representation of the 21 top of the 16-inch line of 258.48 feet above sea level; is 22 that right?</p> <p>23 A. Yes.</p> <p>24 Q. At least at that station point?</p> <p>25 A. Right.</p>

<p>209</p> <p>1 Q. Which is between station point four plus zero 2 and five plus zero?</p> <p>3 A. Yes.</p> <p>4 Q. Explain what station points are, would you, 5 please?</p> <p>6 A. Stationing is just a way of measuring distance 7 along a given item. Station is just a term that has been 8 accepted as an identifying point and it's identified by 9 feet.</p> <p>10 Q. It's sort of a latitudinal representation. 11 You've got elevation on one side of the grid and then along 12 the bottom of the grid you are going out from zero?</p> <p>13 A. Horizontal dimension, right.</p> <p>14 Q. Now on this representation of the pipeline the 15 actual elevation isn't inserted, but it's representationally 16 noted by where it's placed on that grid; right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know how this detailed elevation of the 19 top of the 16-inch waterline at that station was obtained?</p> <p>20 A. I believe that it was obtained by measuring it 21 while it was exposed during excavation of the 72-inch line.</p> <p>22 Q. So there was a time for several days when that 23 16-inch line was exposed as was the Olympic pipeline below 24 it?</p> <p>25 A. That's correct.</p>	<p>211</p> <p>1 A. As I understand it, yes.</p> <p>2 Q. Attached to that Exhibit 87 is a drawing. It's 3 a pull-out drawing, an exhibit from Barrett Consulting 4 Group.</p> <p>5 A. Okay.</p> <p>6 Q. You notice the 60-inch and 72-inch pipeline are 7 represented to the left of that drawing?</p> <p>8 A. Yes.</p> <p>9 Q. And then there are elevation marks it appears 10 anyway in here. Can you explain what these triangles with 11 points and X's in them, what these mean?</p> <p>12 A. They are identified as grade breaks with a north 13 and an east coordinate and an elevation on it.</p> <p>14 Q. For those of us who don't understand these 15 things, what is a grade break?</p> <p>16 A. It just identifies the angles within the land, 17 the way the land lays, and it identifies the primary profile 18 points.</p> <p>19 Q. Do you know why this kind of survey and report 20 would be done?</p> <p>21 A. This one was done because the contract didn't 22 deal with clearing and grubbing requirements out to Hannah 23 Creek and to the next project.</p> <p>24 MR. BENINGER: Clearing and?</p> <p>25 A. Clearing of the land where the pipes were going</p>
<p>210</p> <p>1 Q. We have some photographs and we'll talk about 2 that.</p> <p>3 A. Yes.</p> <p>4 Q. Why don't you hold up for the camera as well 5 what all this drawing we have just been doing. And we are 6 looking at drawing C-3 attached to Exhibit 116. I'm 7 pointing to the elevations which are relevant to the changed 8 area, change 3, which you highlighted in green; right?</p> <p>9 A. Yes.</p> <p>10 Q. And then the pink which is relevant to the 11 16-inch waterline and its location -- the double zero -- its 12 location between the two elevation points; right? You 13 highlighted that in pink?</p> <p>14 A. I highlighted that. Actually you highlighted 15 the green earlier.</p> <p>16 Q. I highlighted the green. And then the blue that 17 you highlighted down to the zero or 0 or circle that 18 represents the 16-inch waterline?</p> <p>19 A. Yes.</p> <p>20 Q. Take a look at Exhibit 87, would you? Exhibit 21 87 is a letter to John Hatch from Christenson Engineering 22 Corporation. That's the group that you understand did the 23 potholing with respect to the location of the pipeline and 24 perhaps even other locations, they did the surveying; is 25 that right?</p>	<p>212</p> <p>1 to go, the contract didn't appropriately deal with the 2 clearing and grubbing item. The previous contract paid for 3 clearing and grubbing up to Hannah Creek.</p> <p>4 This contract had to pay IMCO to do the work and 5 they hadn't. So we had to do some surveying to accomplish 6 that.</p> <p>7 Q. And the tie-in between the 16-inch waterline and 8 the 24-inch discharge line occurred at some point to the 9 south of these noted grade breaks; is that right? Or do you 10 know?</p> <p>11 A. What was the question again?</p> <p>12 Q. The tie-in between the 16-inch and the 24-inch 13 line occurred at some point to the south of these noted 14 grade breaks on the drawing to Exhibit 87?</p> <p>15 A. The tie-in from the pump station?</p> <p>16 Q. Right.</p> <p>17 A. Actually it occurred to the north. These are -- 18 well, actually this is a real hard drawing to get a sense of 19 what I'm looking at here. I think actually you are correct. 20 With the north arrow, Hannah Creek -- I'm not really able 21 to --</p> <p>22 Q. It would actually be to the east, wouldn't it?</p> <p>23 A. Well, if these are the pipes coming from the 24 filtration plant and this is Hannah Creek, north would be 25 the other direction. And that's what's confusing me. It's</p>

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1 a difficult drawing.
 2 But if you just orient Hannah Creek and where
 3 the two pipes are, the place where the -- see, this is
 4 totally wrong. It's a bad drawing.
 5 Q. It's hard to locate anything on there. Okay.
 6 Let's bypass it then. You can close it up.
 7 I would like to turn now to consideration of
 8 these photographs and so I've got a stack of photographs
 9 that somebody has pulled together for me.
 10 MR. NICOLL: I'm going to try to go through
 11 these in the order you guys have them. Okay?
 12 (Exhibit No. 117 is marked
 13 for identification)
 14 Q. I'm going to show you Exhibit 117. And I will
 15 represent to you as you can see from the Bates number in the
 16 lower right hand corner that this is an IMCO photograph or
 17 one that we got out of IMCO's records. It appears to be a
 18 composite.
 19 Take a look at the scene and tell me first of
 20 all have you seen the photograph before?
 21 A. No, I haven't.
 22 Q. Does the scene look familiar to you?
 23 A. Yes.
 24 Q. Can you tell us what the photograph depicts?
 25 A. It shows the 72-inch waterline having been

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1 placed at least out to where Hannah Creek is. It shows the
 2 pipe anchors at Hannah Creek, or at least one of them. And
 3 it also shows it appears to be a 60-inch pipe being stored
 4 over on the ground to the right side. And they have
 5 installed it up to a point where perhaps the angle of the
 6 60-inch is.
 7 Q. Is this a photograph of the area of the pump
 8 station before or after installation and backfilling of the
 9 24-inch discharge from the south of the pump station?
 10 A. It would be before.
 11 Q. It would be before, okay. And could you point,
 12 for my purposes and then we'll do a drawing on the
 13 photograph, to on the photograph approximately where the
 14 16-inch, the excavating for the 16-inch tie-in with the
 15 24-inch line would have been or was to be?
 16 A. It appears as if it's where I see two people or
 17 two heads at least, maybe fifteen feet to the right of the
 18 pipe.
 19 MR. BENINGER: Mr. Franklin, if you hold that up
 20 I will zero in for you.
 21 Q. Point to those two heads for us. I will do it.
 22 MR. BENINGER: Thank you.
 23 A. Maybe it's safety helmets is what I see
 24 actually, not heads.
 25 Q. Now, I'm going to do a couple things here.

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1 First I'm going to circle in red some objects to the left of
 2 the 60 or 72-inch waterline and ask you to identify those if
 3 you can.
 4 A. I see what appears to be some stakes in the
 5 ground.
 6 Q. Do you have any recollection of what those
 7 stakes were?
 8 A. I believe they are Olympic Pipe Line stakes
 9 marking their pipeline location.
 10 Q. I'm going to circle those hard hats or heads or
 11 whatever they were in red.
 12 A. Yes.
 13 Q. That's the location that you are talking about?
 14 A. That's correct.
 15 MR. NICOLL: A will be the stakes, B will be the
 16 location that he indicated as the approximate location of
 17 the excavation for the tie-in between the 16-inch and
 18 24-inch discharge line.
 19 MR. BENINGER: Thank you. I will change the
 20 tape. This is the end of the third tape.
 21 A. Can we take a break now?
 22 Q. Sure.
 23 (Off the record)
 24 MR. BENINGER: We are back on the record. This
 25 will be tape number four of the deposition of Tom Franklin.

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1 Q. Mr. Franklin, we were talking about Exhibit 117,
 2 the compilation photograph from the records of IMCO.
 3 I have circled an item on the photograph that's
 4 on the bottom of the page. Do you see that?
 5 A. Yes.
 6 Q. Can you identify that for us?
 7 A. It appears to be an Olympic Pipe Line flexible
 8 guide post. That's what they were using to mark their
 9 pipeline location.
 10 Q. Would you draw a line into that circle and write
 11 C next to the line? C is the flexible guide post for
 12 Olympic that you indicated.
 13 MR. BENINGER: Would you mind putting next to
 14 those letters, actually spell out the different things? One
 15 was the stake and one was the guide post and something else?
 16 Q. A is the Olympic stake that you mentioned before
 17 next to the -- on the south side of the 72-inch line; is
 18 that right?
 19 A. Yes.
 20 Q. B is the two hard hatted heads that is the
 21 approximate location of the excavation that was done to do
 22 the tee joint for the 16 and 24-inch line; right?
 23 A. Yes.
 24 Q. And then C, the photograph on the bottom, is
 25 what you said was an Olympic flexible guide post?

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1 A. Yes.

2 Q. Marking the approximate location of their line?

3 A. Yes.

4 MR. FLOYD: Is there a difference between a

5 flexible guide post or a stake or is it one in the same?

6 A. You can't see. It could be the same type.

7 Q. Looking at the two photographs that are a part

8 of Exhibit 117, would you say that the one on the bottom is

9 taken at an earlier point in time than the photographs

10 making up the composite on the top?

11 A. It appears to be, yes.

12 Q. What is it that enables you to say that?

13 A. You can see the two ends or the end of the

14 72-inch pipe and it doesn't progress past the hole that's

15 already dug there.

16 Q. And that's on the bottom photograph; correct?

17 A. That's correct.

18 Q. Could you draw a line to the end of the 72-inch

19 pipe and circle it there? Draw it out, write the letter D.

20 Thanks.

21 A. (Witness complies).

22 Q. So what I'm pointing to then is the point where

23 the 72-inch line has reached at the point of the photograph

24 on the bottom part of Exhibit 117; right?

25 A. Yes.

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1 Q. The point in time that that photograph was

2 taken?

3 A. Yes.

4 Q. There are some other reference points I think

5 that are useful to have from this composite. One would be

6 the pump station itself or what one can see of the pump

7 station in the composite photograph. Could you circle that

8 with that red pen and label it E?

9 A. (Witness complies).

10 Q. And hold it up and show it. So E you've circled

11 is the pump station, at least the pump station at that point

12 in the construction process?

13 A. Yes.

14 Q. As we go through the documents you may be better

15 able to tell us later the approximate date based on stage of

16 completion that the composite photograph was taken. But as

17 you look at it now, do you have a sense based on your

18 recollection of when it would have been?

19 A. No.

20 Q. In the photograph, Exhibit 117, do you see any

21 of the excavation equipment that you referred to on Monday

22 that was used to excavate the area around the 16-inch line?

23 A. No. I only see the large backhoe.

24 Q. You only see the large backhoe?

25 A. That's right.

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1 Q. Which is in the upper right hand corner; is that

2 right?

3 A. Yes.

4 Q. What's this piece of equipment to the left of

5 the photograph above the 72-inch line?

6 A. That's a rubber tire loader.

7 Q. So it has nothing to do with digging holes?

8 A. No.

9 (Exhibit No. 118 is marked

10 for identification)

11 Q. Please take a look at Exhibit 118 and tell us if

12 you recognize it.

13 A. I recognize the location, yes.

14 Q. I'm going to represent to you that this is one

15 of the photographs that was produced by Earth Tech. It's

16 photograph ET-PH0000520. Do you see that on the back?

17 A. Yes.

18 Q. Do you see a date stamp in the lower right hand

19 corner?

20 A. Yes.

21 Q. Can you read it?

22 A. I believe it says 6/6/94. It's hard to tell.

23 It's either 5/6 or 6/6.

24 Q. Look at the next photograph as well. Never

25 mind. You don't have a next photograph.

220

1 What is the photograph showing, No. 118?

2 A. I'm seeing two people working on the valve for

3 the 72-inch waterline. It appears as if they are excavating

4 the hole for the pump station.

5 Q. I want to show you now report 54, your

6 inspection reports from Exhibit 64, and tell me what date

7 does report 54 relate to.

8 A. 5/6/94.

9 Q. And can you tell me, I'm pointing to a section

10 of that report that reads excavation of. Would you read

11 that?

12 A. Yes. Excavation of pump station foundation

13 under way.

14 Q. Based on that report and what you can see of the

15 date stamp in the lower right hand corner and what you see

16 in the photograph itself, wouldn't you agree that that

17 photograph was taken on May 6, 1994?

18 A. It appears like it, yes.

19 Q. Would you grab that red permanent marker and

20 just draw a line out to the 72-inch waterline that you

21 referenced?

22 A. (Witness complies).

23 Q. And put A I guess next to that.

24 A. (Witness complies).

25 Q. So point A on Exhibit 118 is the 72-inch

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1 waterline at least to the point where it had been completed
 2 as of May 6, 1994; is that right?
 3 A. Yes.
 4 Q. Let's go back for a moment to Exhibit 117 and
 5 the bottom photograph on that exhibit. Comparing Exhibit
 6 117 with Exhibit 118, can you tell me which of those two
 7 photographs was taken earlier?
 8 A. Probably the one on 117.
 9 Q. Why do you say that?
 10 A. Because the hole isn't being dug.
 11 Q. The hole for the pump station?
 12 A. That's correct.
 13 Q. Now, looking at Exhibit 118, are you able to see
 14 the Olympic Pipe Line marker?
 15 A. I see something in the ground down by right in
 16 front of where the bucket for that yellow backhoe is. I
 17 can't tell if that's the same stake that you had shown here
 18 on Exhibit 117 or not.
 19 Q. Would you circle what you are talking about?
 20 A. Yes. Mark it B?
 21 Q. Yes, please. Let me hold that up.
 22 I realize that you don't know if that's a stake
 23 for Olympic or not, but the item that you just circled as
 24 exhibit B is a point to the north of where the foundation
 25 for the pump station is being dug; is that right?

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1 A. That's correct.
 2 Q. I want to make sure I've got the orientation of
 3 the photograph correct.
 4 And based on earlier photographs that we have
 5 reviewed and your own recollection, at a point to the south
 6 of the 72-inch line or at least where the trench for the
 7 72-inch line was being dug there was another Olympic Pipe
 8 Line marker; is that right?
 9 A. Yes.
 10 Q. Now, on Exhibit 117 we see the item that you
 11 marked as C in the photograph that you just said was
 12 probably taken before the photograph Exhibit 118?
 13 A. Yes.
 14 Q. And what do you call that again?
 15 A. Well, what they use on highways is the flexible
 16 guide post and they have a reflector on the top, and in
 17 areas where you don't have a guard rail you would drive
 18 these into the ground. They had apparently gotten them and
 19 painted them with their own special paint and installed them
 20 in the ground.
 21 Q. And that looks like the flexible guide posts for
 22 Olympic that you had seen on other occasions?
 23 A. Yes.
 24 Q. Is the area that you marked C within the area
 25 that was excavated for the pump station foundation?

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1 A. No.
 2 Q. Is the area that you marked C outside of the
 3 area that's depicted in photograph Exhibit 118, or can you
 4 tell?
 5 A. Outside of the area?
 6 Q. Yes.
 7 A. I'm confused about what we are talking about.
 8 Q. So am I. What I'm trying to get at is, is the
 9 area where this marker that you marked C located within the
 10 area that's now disturbed as part of the overall project and
 11 depicted in Exhibit 118?
 12 A. Yes.
 13 Q. Can you see the marker that you identified as C
 14 on Exhibit 117, this precise marker, anywhere on Exhibit
 15 118?
 16 A. I can't see it, no.
 17 Q. Do you know whether during the excavation
 18 utility markers placed there by utilities to locate their
 19 lines, including Olympic markers, were removed by workers?
 20 A. They would have been removed if they had been
 21 doing work in that same location, yes.
 22 Q. Do you have a specific recall of markers being
 23 removed?
 24 A. No.
 25 Q. Did you ever see anybody remove a marker?

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1 A. Not that I recall.
 2 Q. Let me ask you this. Do you have a recollection
 3 of markers being there at some point and then later during
 4 the project being gone?
 5 A. No, I don't recall that they were necessarily
 6 gone. I don't recall anything like that, no.
 7 Q. When you compare Exhibit 117 with Exhibit 118,
 8 does it appear to you that the markers shown in Exhibit 117
 9 is no longer there by the time the work that's being done in
 10 Exhibit 118 is being carried out?
 11 MR. SCANLAN: Objection. It calls for
 12 speculation.
 13 Q. You can answer the question.
 14 A. I see something there -- I don't know what
 15 it is -- on the bottom of page 118.
 16 Q. What is it that you see?
 17 A. The things I circled.
 18 Q. I see. The items that you circled at point B.
 19 A. Yes. These easily could be a variety of
 20 different things. These could be construction stakes for
 21 alignment of the pipe that goes through that area. It also
 22 was in the same vicinity as the open air manhole, the gap
 23 manhole for the drainage.
 24 Q. On Exhibit 117 near where you've circled the two
 25 heads, do you see a berm I guess of earth that runs between

<p>1 the approximate location of the 72-inch line to the left of 2 the photograph to the pipe stored to the right of the 3 photograph? 4 A. Yes. 5 Q. And that's the approximate location of where 6 that 16-inch waterline ran; isn't that right? 7 A. Well, no. The 16-inch waterline ran across 8 diagonally through this area. This was put there to allow 9 the loader to haul material back and forth to the pipe 10 behind the area that we can see. 11 Q. So that was actually built up? 12 A. Yes. 13 Q. At one point the 16-inch line had been exposed 14 and then this was built up over it. Is that what you are 15 saying? 16 A. This is built up to get access to the area in 17 between the reservoir and the pump station. The 16-inch 18 waterline is still down buried as shown in the drawings and 19 crosses it. 20 Q. I don't know how I'm going to show that. Why 21 don't you put a line out showing the beginning of the area 22 that was built up to allow access and the end of the area at 23 least as shown so far in photograph 117. 24 A. (Witness complies). 25 Q. And mark that F.</p>	225	<p>1 know if you are able to tell us based on things that you 2 recognize in the photograph whether any part of Exhibit 118 3 depicts the ground above the 16-inch waterline and the 4 Olympic pipeline? 5 A. Yes, it does. 6 Q. Why don't you, before drawing, point to the area 7 and then tell me how you know the area is shown there. 8 A. The area that I circled is approximately in the 9 same location that the 16-inch waterline existed as well as 10 the Olympic pipeline. 11 Q. Why don't you make that C. 12 A. (Witness complies). 13 Q. How do you know that? 14 A. From the valve and the excavation for the pump 15 station I know the approximate location. 16 Q. So it's an area that's approximate as far as you 17 are concerned? 18 A. Yes. 19 Q. Thanks. You probably ought to hold this up. To 20 recapitulate, in this photograph the pipe marked A is the 21 72-inch line; is that right? 22 A. Yes. 23 Q. At the end of that pipe where the two workers 24 are working is a valve? 25 A. Yes.</p>	227
<p>1 A. (Witness complies). 2 Q. So you have circled the area and marked it F 3 that was built up to allow access of the front end loader? 4 A. Yes. 5 Q. I have circled an area and I've marked it G. 6 Okay. Is that the area under which the 16-inch line is 7 buried? 8 A. That's part of the area. Actually the 16-inch 9 line is more of a diagonal across that space, but yes. 10 Q. Is that also the area, at least as we know from 11 looking at the diagram, under which the Olympic pipeline is 12 buried? 13 A. Yes. 14 Q. Now, can you see in the top photograph of 15 Exhibit 117, this area that we are calling G, the marker 16 that you've identified as C at all? It's hard to see. I 17 understand if you don't. But can you make anything out in 18 there? 19 A. I can't see other than on C. 20 Q. Are you able to tell by looking at Exhibit 118 21 whether the area, the surface above the 16-inch waterline 22 and the Olympic pipeline is depicted in that photograph? 23 MR. SCANLAN: Objection. It calls for 24 speculation. 25 Q. I'm not asking you to speculate. I just want to</p>	226	<p>1 Q. The item marked B are some stakes in the ground 2 that you have said you don't know if they are construction 3 stakes or what they are, but they could be Olympic markings? 4 A. Yes. 5 Q. The area marked C is the area you recall from 6 drawings and your involvement on the work site as being the 7 area through which the 16-inch waterline and the Olympic 8 pipeline ran? 9 A. Yes. 10 MR. FINEGOLD: Could you show it this way? 11 (Exhibit No. 119 is marked 12 for identification) 13 Q. Why don't you take a look at Exhibit 119, Mr. 14 Franklin. Flip it over and look at the back too. 15 Exhibit 119 is a photograph that we obtained 16 from Earth Tech. ET-PH0000012; is that right? 17 A. Yes. 18 Q. Do you recognize this as a photograph similar to 19 others that you took on the job site at the Dakin-Yew pump 20 station? 21 A. Yes. 22 Q. It's hard to see, but there is a date stamp in 23 the lower right hand corner, which if you look at it long 24 enough you will start to believe it says May 6, 1994. 25 A. Okay.</p>	228

229

1 Q. Based on the work that's being done and the
2 daily report that we looked at before and our examination of
3 photograph Exhibit 118, are you prepared to agree that that
4 photograph is dated May 6, 1994?
5 MR. FLOYD: I'm going to object to that
6 question. You are testifying, counsel. I can't see any
7 date at all on mine.
8 MR. NICOLL: You need to get your eyes examined.
9 MR. FLOYD: Maybe I do. I don't have x-ray
10 vision.
11 Q. Would you agree it's on or about May 6, 1994?
12 A. Yes.
13 Q. And the work that's being done here, is that
14 work for excavating the foundation of the pump station?
15 A. I can't really tell.
16 Q. It's hard to tell. Look at Exhibit 118. Which
17 piece of gear, what piece of equipment is being used to
18 excavate the pump station in Exhibit 118?
19 A. A larger backhoe.
20 Q. A larger backhoe?
21 A. Hm-mmm.
22 Q. And what's being used here in Exhibit 119?
23 A. It appears to be the same one.
24 Q. Now, there are some things on this exhibit that
25 I would like to try to understand. And first of all, you

230

1 see these orange lines painted on the ground in different
2 places?
3 A. Yes.
4 Q. And an orange circle in the foreground around a
5 couple of stakes?
6 A. Yes.
7 Q. What are those orange lines, if you know?
8 A. They appear to be the outline of the pump
9 station, the outside line of it.
10 Q. So do you know who painted the outline?
11 A. No.
12 Q. Do you recall the outline of the pump station
13 being painted to aid in the excavation of the vicinity?
14 A. Yes.
15 Q. And it's painted in orange as is shown on this
16 photograph?
17 A. Yes.
18 Q. Based on that, based on the daily inspection
19 report, based on the ghost-like image of 5/6/94 in the lower
20 right hand corner, this appears to be a photograph of work
21 being done on May 6, 1994; is that right?
22 A. I believe so.
23 Q. Do you know what these two stakes in the
24 foreground are? And I'm going to circle those and call them
25 A. Do you know what those two stakes are, can you recall?

231

1 A. There is a wood stake that would normally be
2 used to identify a construction point. The range rod that's
3 colored red and white is probably an engineering --
4 Q. I'm sorry. First do you know what it is?
5 A. No, I can't tell for sure what it is.
6 Q. I know that you don't know. Do you have a
7 belief as to what it probably is?
8 MR. SCANLAN: Objection. It calls for
9 speculation.
10 MR. NICOLL: I understand. I just want to know.
11 A. It appears to be a survey, a piece of material
12 for surveying.
13 Q. Something that a surveyor would use?
14 A. Yes.
15 Q. Inside the circle marked A is another painted
16 circle, orange circle painted on the ground. Do you see
17 that?
18 A. Yes.
19 Q. Do you know what that is or why it's there?
20 A. No.
21 Q. Now, if I could have the photograph back, I'll
22 take a stab at drawing a couple of arrows to these orange
23 painted lines. I don't know what to label them. I've just
24 drawn some arrows at some of but not all of the orange
25 painted lines that are visible in Exhibit 119.

232

1 And I would like you to first take a look at my
2 arrows and confirm that they are going out to the orange
3 painted lines.
4 A. Yes, they are.
5 Q. Those are the orange lines that you testified
6 about a moment ago that were painted by somebody to mark the
7 area for excavating the pump station?
8 A. Yes.
9 Q. Now I've drawn two circles and the letter B with
10 arrows pointing out to the two circles. So both circles
11 will be considered B.
12 And those are drawn out to what I think are or
13 look to me like stakes in the photograph, but I would like
14 you to identify what they are, if you can.
15 A. They appear to be wood stakes with an orange
16 paint on top.
17 Q. And what, if you know, are those placed there
18 for?
19 A. To identify a location.
20 Q. Which specific location, do you know?
21 A. I wouldn't know, but appears like it might be a
22 corner of a building.
23 Q. Can you tell looking at this photograph whether
24 the photographer, you or whoever took it, is looking to the
25 north, to the east, to the south, to the west, or something

233

1 else?

2 A. Looking westward.

3 Q. So looking in the direction of the reservoir?

4 A. Yes.

5 Q. And the water treatment plant would be behind?

6 A. Yes.

7 Q. And the 72-inch line would be to the left of the

8 photograph?

9 A. Yes.

10 Q. Are you able based on that to tell us whether

11 the area of ground above the 16-inch waterline and the

12 Olympic pipeline is depicted in the photograph that we see

13 here, Exhibit 119?

14 A. Yes.

15 Q. Is it in the photograph?

16 A. Part of it is.

17 Q. Are you able to circle it?

18 A. I could.

19 Q. Why don't you circle it and mark it C.

20 A. (Witness complies).

21 MR. FLOYD: What was that area again?

22 Q. C marks -- if I understand your testimony right,

23 and you correct me if I'm wrong -- you drew a circle around

24 the area that you believe is approximately the area of the

25 ground above the location of both the 16-inch waterline and

234

1 the Olympic pipeline?

2 A. Yes, as far as it goes.

3 Q. Just out of curiosity, are you able to identify

4 the people in this photograph?

5 A. No.

6 (Exhibit No. 120 is marked

7 for identification)

8 Q. Take a look at Exhibit 120, the front and the

9 back. Exhibit 120 I'll represent to you is another Earth

10 Tech photograph that we obtained from your counsel. And

11 it's marked ET-PH0000015.

12 A. Yes.

13 Q. Do you see that?

14 A. Yes.

15 Q. Do you recognize the scene depicted in the

16 photograph?

17 A. Yes.

18 Q. To the right is a building in the upper right

19 hand corner. Is that the water treatment plant?

20 A. Yes.

21 Q. And then you can see some area in front of the

22 water treatment plant on the left of the photograph that's

23 kind of dug away. Do you see that?

24 A. Yes.

25 Q. Is that the excavation for the pump station?

235

1 A. I believe so.

2 Q. And there is a gentleman, well, a man, standing

3 on top of what looks like a manhole?

4 A. Yes.

5 Q. And this connects with the 72-inch waterline,

6 does it not?

7 A. Yes, it does.

8 Q. So the aspect of the photograph is looking

9 towards the northeast; is that correct?

10 A. Yes, it is.

11 Q. And behind and to the left of the photographer

12 is the area where the 16-inch waterline runs and where the

13 Olympic pipeline runs?

14 A. Yes.

15 Q. That area is not actually depicted in this

16 photograph?

17 A. That's correct.

18 Q. Exhibit 120 shows some equipment in it. And

19 let's start with the piece of equipment, yellow piece of

20 equipment immediately behind the manhole. What is that?

21 A. That's a boom crane.

22 Q. Doesn't excavate; right?

23 A. Right.

24 Q. To the left of the boom crane appears to be a

25 John Deere front end loader with a backhoe. Do you see

236

1 that?

2 A. Yes.

3 Q. On Monday you testified that there was a piece

4 of equipment, another type, a Case piece of equipment.

5 C-a-s-e; is that right?

6 A. Right.

7 Q. Is this the piece of equipment that you were

8 referring to?

9 A. It appears to be. I didn't mean to imply it was

10 a Case 580. I mean it was that type of equipment when I was

11 referring to that.

12 Q. I want to clarify that because I've been all

13 through the inspection reports and I know that you pretty

14 diligently reported on what equipment was being used on the

15 job; right?

16 A. Yes.

17 Q. And I couldn't find a Case 580, but I could find

18 continual reference to this John Deere.

19 A. Right.

20 Q. So is this backhoe then the piece of equipment

21 that was used for part of the excavation in the vicinity

22 around the pump station?

23 A. Yes.

24 Q. Including uncovering the 16-inch waterline?

25 A. Yes.

237	<p>1 MR. BENINGER: Do you mind if we show that?</p> <p>2 MR. NICOLL: In fact, what I'm going to do,</p> <p>3 David, is just quickly circle these things that we have</p> <p>4 identified. Okay?</p> <p>5 Q. Let's hold that up. Point A is the excavation</p> <p>6 for the pump station that you referred to; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. On Exhibit 120. Point B is the manhole cover</p> <p>9 that connects to the 72-inch waterline; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Although I haven't drawn any letter to it, in</p> <p>12 the upper right hand corner of the photograph is the water</p> <p>13 treatment plant; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. The direction that I'm pointing in right now is</p> <p>16 a northeasterly direction; is that right?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. The piece of equipment marked C is the boom</p> <p>19 crane; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And the piece of equipment marked D in the</p> <p>22 background is the John Deere front end loader with the</p> <p>23 backhoe attachment?</p> <p>24 A. Yes.</p> <p>25 Q. Let's talk for a moment about dates. Again in</p>	239	
238	<p>1 the lower right hand corner, tell me if you are able to</p> <p>2 discern the date of that photograph.</p> <p>3 A. It appears to be 5/9/94.</p> <p>4 Q. Obviously the excavation for the pump station</p> <p>5 has progressed beyond where it was on 5/6/94 from the</p> <p>6 photographs; right?</p> <p>7 A. Yes.</p> <p>8 Q. So even if hard to read, nonetheless you are</p> <p>9 satisfied that that's on or about May 9, 1994?</p> <p>10 A. Yes.</p> <p>11 Q. Can you identify the person standing on top of</p> <p>12 the manhole cover?</p> <p>13 A. No.</p> <p>14 Q. Can you identify the person operating the boom</p> <p>15 crane?</p> <p>16 A. No.</p> <p>17 Q. What's the trailer in the background? Can you</p> <p>18 identify that with the honey bucket next to it?</p> <p>19 A. It was the contractor's office site.</p> <p>20 Q. IMCO's office site?</p> <p>21 A. Yes.</p> <p>22 Q. Had you been in that office site?</p> <p>23 A. Yes.</p> <p>24 Q. Did you go into that office site on any kind of</p> <p>25 regular basis?</p>	<p>1 A. I believe that's where we had some of our office</p> <p>2 weekly meetings.</p> <p>3 Q. Other than the weekly meetings would you go in</p> <p>4 there for other reasons?</p> <p>5 A. Communication with contractors, yes.</p> <p>6 Q. And the guy that you communicated with mostly</p> <p>7 was Greg Burrese; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Did they, IMCO, have a set of drawings in this</p> <p>10 office site?</p> <p>11 A. Yes.</p> <p>12 Q. When you were on the job site did you also have</p> <p>13 a set of drawings with you?</p> <p>14 A. Yes.</p> <p>15 Q. Where did you keep your set of drawings?</p> <p>16 A. In the plant.</p> <p>17 Q. In the water treatment plant?</p> <p>18 A. Yes.</p> <p>19 Q. After the job was finished did you take your</p> <p>20 personal set of drawings with you?</p> <p>21 A. Yes.</p> <p>22 Q. And where did you put those?</p> <p>23 A. Those were brought down to the Bellevue office</p> <p>24 where I was working at the time.</p> <p>25 Q. Did you like write on your drawings, make notes?</p>	240

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1 MR. NICOLL: If you want, since I need to get up
 2 anyway and stretch my legs for a second, maybe it would save
 3 everybody some time if I just have the court reporter mark
 4 all the photographs in order and then I will circulate the
 5 photographs and you guys can shuffle them.
 6 MR. BENINGER: Off the record for a few moments.
 7 (Off the record)
 8 (Exhibit Nos. 123 through 148
 9 are marked for identification)
 10 MR. BENINGER: Back on the record after a break,
 11 continuing with the deposition of Mr. Franklin.
 12 Q. Mr. Franklin, we have gone through and tried to
 13 organize these photographs. But before we move on to I
 14 think it's Exhibit 122 I wanted to take a look back for a
 15 moment at Exhibit 118. Could you flip back?
 16 I'm going to draw a line out to two pieces of
 17 equipment that are operating in the background and I'm going
 18 to call these two points D. And I have written it up in the
 19 top. There is D.
 20 Do you see that equipment in the background?
 21 A. Yes.
 22 Q. First what are those pieces of equipment?
 23 A. One is a backhoe and the other is a forklift.
 24 Q. Can you tell me what they are doing, do you know
 25 by looking at the photograph or by memory?

242

1 A. No, I don't know what they are doing.
 2 Q. Is the backhoe digging?
 3 A. I can't tell.
 4 Q. It might be just sitting there?
 5 A. Right.
 6 Q. Okay. Now we are looking at Exhibit 121. See
 7 at the top of Exhibit 121 the end of the 72-inch line
 8 protruding?
 9 A. Yes.
 10 Q. And in the lower right hand corner, it's hard to
 11 make out but you might be able to make it out, date stamp?
 12 A. There is something there. I can't tell what it
 13 is.
 14 Q. The excavation that's depicted in the
 15 photograph, can you tell us what that is for?
 16 A. The bottom part of the pump station.
 17 Q. Can you identify the individual who is
 18 photographed down in the hole?
 19 A. No.
 20 Q. Can you tell us what the long tube or pipe or
 21 stake, whatever that item is in the left hand corner of the
 22 photograph?
 23 A. It appears to be an engineering rod.
 24 Q. What's that used for?
 25 A. For running elevations.

243

1 Q. When you say running elevations, you mean
 2 determining height above sea level basically?
 3 A. Yes.
 4 Q. There is a pool, it looks to me anyway like a
 5 pool of water, muddy water at the bottom. Do you see that?
 6 A. Yes.
 7 Q. Is that what it is?
 8 A. I believe so, yes.
 9 Q. How would you characterize the earth that the
 10 backhoe, the digger, is digging through there?
 11 MR. SCANLAN: Object to the question as vague.
 12 Q. Are there different ways or words that engineers
 13 use to describe the nature quality compaction content, if
 14 you will, of earth through which one digs through a project?
 15 A. Yes.
 16 Q. Using terms that are understandable to you and
 17 then perhaps we can explain them, how would you characterize
 18 the earth through which this digger is digging for the pump
 19 station foundation?
 20 A. It appears to be rock.
 21 Q. That's a term I think I understand. Would you
 22 agree that this photograph is probably taken on or around
 23 May 9, 1994 based on the other photographs that we have seen
 24 and the daily inspection reports that you prepared?
 25 A. Yes.

244

1 Q. Now we go to the next photograph which is
 2 Exhibit 122. And this appears to be, would you agree with
 3 this, is a photograph taken on the same day of the same
 4 hole?
 5 A. Yes.
 6 Q. Go back to 121 for a moment. In this photograph
 7 is the camera angle pointed in a direction basically
 8 southerly?
 9 A. Yes.
 10 Q. So the backhoe tracks in the photograph are
 11 situated towards the west; is that right?
 12 A. Actually towards the east. I mean the backhoe
 13 is facing eastward.
 14 Q. The backhoe is pointed to the east, but the
 15 tracks are on the west side of that hole?
 16 A. Yes.
 17 Q. And you notice that three yellow legs are
 18 underneath the articulating arm of the backhoe?
 19 A. Yes.
 20 Q. What are those to; do you know?
 21 A. Those are probably level legs.
 22 Q. What does that mean?
 23 A. It's a leg that supports an instrument that
 24 determines the horizontal elevation and the horizontal
 25 plane.

245

1 Q. And do you know who was using that equipment?
 2 A. IMCO would have been.
 3 Q. If you can hand me the photograph I'm going to
 4 do a little bit of drawing on it here.
 5 I've marked some items in the photograph that we
 6 have been discussing. First, do you agree that A is the
 7 72-inch line that runs out from the water treatment plant?
 8 A. Yes.
 9 Q. B is the engineering rod I think you identified?
 10 A. Yes.
 11 Q. C is the pool of muddy water at the bottom of
 12 the foundation that's being dug for the pump station?
 13 A. Yes.
 14 Q. D is the tracks of the backhoe that's doing the
 15 excavating?
 16 A. Yes.
 17 Q. And finally E is the tripod for shooting
 18 elevations?
 19 A. Yes.
 20 Q. And the rock is obvious I guess in the
 21 photograph.
 22 Where on this photograph, if you are able to
 23 determine, would the 16-inch waterline and the Olympic
 24 pipeline be running?
 25 A. Approximately in the location of where the

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1 tripod is. Maybe further to the west of that, ten, fifteen
 2 feet.
 3 Q. Somewhere around the tripod maybe further to the
 4 west ten or fifteen feet?
 5 A. Yes.
 6 Q. Go to 122. And we might as well state for the
 7 record that 122 is an Earth Tech photograph 0000011. Now,
 8 we've talked about this a little bit and this has a lot of
 9 the same features as the one before.
 10 One thing I wanted to point out and circle in
 11 the photograph is the top of that engineering rod which I
 12 will call A. Why is that orange bit on there? What's that
 13 for?
 14 A. That appears to be prism for an electronic
 15 distance measuring device, EDM for short.
 16 Q. So that confirms to you that it was being used
 17 to shoot elevation?
 18 A. Yes.
 19 Q. Down at the bottom of this pit there appears to
 20 be some orange marking. Do you see that; some more paint on
 21 the ground?
 22 A. Yes.
 23 Q. Do you know what that is and why it's there?
 24 A. I would speculate that it's the corner of a pump
 25 station.

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1 Q. Beyond speculation you don't know; is that
 2 right?
 3 A. Right.
 4 Q. In Exhibit 122 I have circled that paint and
 5 marked it B. Okay?
 6 A. Yes.
 7 Q. I asked you this before but I will ask again.
 8 Do you recognize and can you identify the individual who is
 9 at the bottom of the pit?
 10 A. No.
 11 Q. As with the photograph before, this photograph
 12 is looking in sort of a southerly, this one maybe perhaps
 13 more southeasterly direction; is that correct?
 14 A. Yes.
 15 Q. Let's flip to Exhibit 123. Exhibit 123, if you
 16 look at the front of it and also the second page, Exhibit
 17 123 is an Earth Tech photograph 0000783. Do you see that?
 18 A. Yes.
 19 Q. Is this a photograph of an area that you
 20 recognize?
 21 A. Yes.
 22 Q. And the area is what?
 23 A. The area is in the vicinity of the 72-inch
 24 installation from the reservoir -- or from the filtration
 25 plant to where the 72-inch is encased in CDF eventually.

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1 Q. Eventually encased in CDF. Why don't you hold
 2 it up.
 3 A. (Witness complies).
 4 Q. Now let's identify some objects in that
 5 photograph. Okay? First would you put an arrow running to
 6 the 72-inch line out to the margin?
 7 A. (Witness complies).
 8 Q. Mark that A. Next would you put an arrow to the
 9 general area of the pump station excavation out to the
 10 margin and mark that B?
 11 A. (Witness complies).
 12 Q. Thanks. Next would you take a look down in this
 13 corner down near the exhibit number and there is a date
 14 there. Can you read that date?
 15 A. Yes. 5/10/94.
 16 Q. That was the date made by your camera?
 17 A. Yes.
 18 Q. Above that date in that very corner there is a
 19 partially visible white and red stake. Do you see it?
 20 A. Yes.
 21 Q. Could you circle that?
 22 A. (Witness complies).
 23 Q. Mark it C.
 24 A. (Witness complies).
 25 Q. And tell us what it is, if you know.

249	<p>1 A. I don't know.</p> <p>2 Q. Is this to the best of your knowledge some type</p> <p>3 of utility marker?</p> <p>4 A. I don't really know.</p> <p>5 Q. Now, in the photograph you will see two exposed</p> <p>6 pipelines; right?</p> <p>7 A. Yes.</p> <p>8 Q. The top pipeline, why don't you draw a line to</p> <p>9 that out to the margin and mark it D.</p> <p>10 A. (Witness complies).</p> <p>11 Q. And could you tell us what pipeline that is?</p> <p>12 A. Yes. That's the 16-inch waterline.</p> <p>13 Q. Now, if you would, please, go to the pipeline</p> <p>14 that's exposed below that, draw a line out towards it and</p> <p>15 out to the margin and mark it E and tell us what that is.</p> <p>16 A. That appears to be the Olympic pipeline.</p> <p>17 Q. That's the Olympic pipeline exposed in the</p> <p>18 trough that's eventually going to be where that 72-inch line</p> <p>19 runs out?</p> <p>20 A. Yes.</p> <p>21 Q. Now, I'm going to tax your memory a little bit,</p> <p>22 but if it's too hard go back to the drawing.</p> <p>23 Do you remember the elevation that was shown on</p> <p>24 Exhibit 97 and drawing P-1 attached to Exhibit 116?</p> <p>25 A. I remember the drawing.</p>	251	<p>1 Q. Why don't you hold the two of them up. Go like</p> <p>2 this. I will do it for you.</p> <p>3 So the manhole the man is standing on in Exhibit</p> <p>4 120 is the manhole shown in the photograph just above the</p> <p>5 72-inch line marked A in Exhibit 123; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. On Exhibit 123 is item A the 72-inch line?</p> <p>8 A. Yes.</p> <p>9 Q. And item B is the area of the pump station</p> <p>10 excavation?</p> <p>11 A. Yes.</p> <p>12 Q. Item C is a marker of some sort?</p> <p>13 A. That's right.</p> <p>14 Q. Item D is the 16-inch waterline?</p> <p>15 A. Yes.</p> <p>16 MR. BENINGER: Please point where item D goes</p> <p>17 to.</p> <p>18 MR. NICOLL: Yes.</p> <p>19 MR. BENINGER: That's the 16-inch waterline?</p> <p>20 Q. That I'm pointing to right now, that's the</p> <p>21 16-inch waterline; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Item E is the Olympic pipeline?</p> <p>24 A. Yes.</p> <p>25 Q. And south you have indicated is along the right</p>
250	<p>1 Q. You remember the drawing. And you remember that</p> <p>2 elevation of 253.6 feet?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. Was that elevation, that shot, was that</p> <p>5 elevation put on the drawing, located on the drawing, to the</p> <p>6 south of these exposed pipes?</p> <p>7 A. Yes.</p> <p>8 Q. Would you indicate on the drawing where south of</p> <p>9 the exposed pipes would be located just by putting a S below</p> <p>10 the letter E. I'm sorry. I'm telling you what to do.</p> <p>11 Wherever you think south is.</p> <p>12 A. South is on the right of the drawing.</p> <p>13 Q. It's on the right of the photograph?</p> <p>14 A. There is no place to really write it properly.</p> <p>15 Right here.</p> <p>16 Q. So you put an S and circled it. Thank you.</p> <p>17 Do you see the 72-inch line that you marked as</p> <p>18 item A?</p> <p>19 A. Yes.</p> <p>20 Q. Above that line is what happens to be a manhole</p> <p>21 cover or a manhole; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Is that the manhole that the fellow was standing</p> <p>24 on in our earlier photograph Exhibit 120?</p> <p>25 A. Yes.</p>	252	<p>1 side of this photograph?</p> <p>2 A. That's correct.</p> <p>3 Q. Now, at the point in time at which photograph</p> <p>4 123, Exhibit 123, 5/10/94 was taken, the CDF had not been</p> <p>5 poured along the trench; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. The building shown in the background, that's the</p> <p>8 water treatment plant, water treatment facility?</p> <p>9 A. Yes.</p> <p>10 Q. What's this white piece of tape or string or</p> <p>11 rope?</p> <p>12 A. A measuring tape.</p> <p>13 Q. A measuring tape running from the west opening</p> <p>14 of that 72-inch line to some point further to the west; is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. What was that for; why was it being used?</p> <p>18 A. We were identifying the extent of where the CDF</p> <p>19 was going to go.</p> <p>20 Q. Flip to the next --</p> <p>21 MR. FLOYD: Can I see that photograph? Chris,</p> <p>22 it's 12 o'clock.</p> <p>23 MR. NICOLL: It's fine with me.</p> <p>24 MR. BENINGER: We are off?</p> <p>25 MR. NICOLL: Okay with everybody?</p>

253

1 MR. BENINGER: We are going off the record.
 2 This will be the lunch break for Mr. Franklin's deposition
 3 on tape four.
 4 (Noon recess)
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255

1 Q. It could be either the pump station or the
 2 trench for the 72-inch?
 3 A. The trench for the 72-inch and 60-inch across
 4 Hannah Creek, that was excavated deeper than the rest of the
 5 pipes.
 6 Q. Do you see it looks like visqueen and the hose
 7 and in the upper right hand corner?
 8 A. Yes.
 9 Q. Look at Exhibit 123. You see the section or the
 10 part of Exhibit 123 that you marked as or we marked or
 11 somebody marked as being the area of the pump station
 12 excavation?
 13 A. Yes.
 14 Q. See how part of that is covered in visqueen?
 15 A. Yes.
 16 Q. Can you look again at the visqueen in Exhibit
 17 124 in the upper right hand corner?
 18 A. Yes.
 19 Q. Can you tell me from your memory was visqueen of
 20 that sort being used in connection with the excavation of
 21 the trench for the 72 and 60 inch lines?
 22 A. Yes, it was.
 23 Q. So that actually doesn't help you to decide
 24 whether it's the pump station or --
 25 A. No.

254

1 AFTERNOON SESSION
 2 June 22, 2000
 3 1:20 p.m.
 4
 5 MR. BENINGER: We are back on the record for the
 6 afternoon with Mr. Franklin, a continuation of tape number
 7 four. Go ahead.
 8
 9 EXAMINATION
 10 BY MR. NICOLL:
 11 Q. Mr. Franklin, now you have in front of you
 12 Exhibit 124. If you look in the lower right hand corner of
 13 that exhibit there is a date stamp like many of the others.
 14 Can you --
 15 A. I'm guessing, but it looks like it's 5/11/94.
 16 Q. That's what I concluded. When I look at this
 17 photograph, and for the record it's ET-PH0000543, it looked
 18 to me like a photograph of excavation of the trench for the
 19 72-inch line, but I just wasn't sure.
 20 I'm wondering if you look at this and, based on
 21 your seeing and perhaps the other photographs and your
 22 memory, tell us accurately what this particular excavating
 23 project is related to.
 24 A. I can't really. It could be two different
 25 things.

256

1 Q. Or the trench? Okay. Let's move to the next
 2 photograph, Exhibit 125. Exhibit 125 is a photograph from
 3 Earth Tech. It's ET-PH0000454. Do you see that?
 4 A. Yes.
 5 Q. You recognize the scene depicted in this
 6 photograph?
 7 A. Yes.
 8 Q. And do you see the date in the lower right hand
 9 corner?
 10 A. Yes.
 11 Q. Can you tell us what that date is?
 12 A. 5/11/94.
 13 Q. And that's the date made on the photographs from
 14 the camera you used; is that correct?
 15 A. Yes.
 16 Q. This is a photograph that shows a particular
 17 event occurring. Can you tell us what that event is?
 18 A. They are forming up for the foundation of the
 19 pump station base.
 20 Q. Do you see in the upper section of the
 21 photograph towards the left of the center that same 72-inch
 22 waterline? Is that right?
 23 A. Yes.
 24 Q. And to the right of the photograph there are
 25 several things that you can see. One is the tracks, if you

257

1 will, of one of those excavation -- one of the pieces of
2 excavation equipment. Do you see that?

3 A. Yes.

4 Q. And you see that green hose as well?

5 A. Yes.

6 Q. What was that used for, the green hose?

7 A. It would have been pumping out water.

8 Q. From the pump station?

9 A. From the hole where the pump station will be,
10 yes.

11 Q. Now, you see that ladder that's coming out of
12 the corner of the hole?

13 A. Yes.

14 Q. And if you go to the top of the ladder and
15 slightly over to the left and above, there appears to be
16 some stakes there or a stake, I'm not sure which. Can you
17 see that?

18 A. Yes.

19 Q. Can you tell us what that is?

20 A. It appears to be marking for the pipeline.

21 Q. The Olympic pipeline?

22 A. Yes.

23 Q. Let's find that red pen that's there in front of
24 you and do a couple of things. If you would allow me to --
25 I will do the drawing for this so I know exactly what I want

258

1 to circle here.

2 Let's hold it up so you can take a look at that
3 first. Are you able to see that on the camera?

4 MR. BENINGER: Yes.

5 Q. I have circled in a bubble and marked as A the
6 72-inch line at the top of Exhibit 125; is that right?

7 A. Yes.

8 Q. And I have marked as B in another bubble the
9 Olympic pipeline marker in the upper portion of Exhibit 125;
10 is that right?

11 A. Yes.

12 Q. Now, looking at Exhibit 125, can you indicate
13 the area, if it's visible here, that shows the surface, the
14 ground surface below which the 16-inch waterline and the
15 Olympic pipeline ran on Exhibit 125?

16 A. Yes.

17 Q. Okay.

18 A. (Witness complies).

19 Q. You've marked as C, you have put a big circle
20 and marked as C as shown on Exhibit 125 the area where both
21 the 16-inch waterline and the Olympic pipeline ran; is that
22 correct?

23 A. Yes.

24 MR. NICOLL: The rest of you, can see that?

25 MR. FLOYD: Thanks.

259

1 Q. Do you recognize any of the people photographed
2 in Exhibit 125?

3 A. No.

4 Q. When you took this picture do you remember why
5 you took it?

6 A. No.

7 Q. Just documenting progress?

8 A. Yes.

9 Q. It's probably becoming very clear to everybody,
10 but because of the different ways that transcripts might be
11 used in the course of a case I wanted to just make clear on
12 the record that this photograph, Exhibit 125, is looking in
13 a direction due south?

14 A. Yes.

15 Q. To the left would be the water treatment plant,
16 to the right would be Hannah Creek and the reservoir?

17 A. Yes.

18 Q. And where the worker with the blue shirt and the
19 white hard hat whose back is to us at the far side of the
20 pump station foundation form is standing on the side of the
21 pump station where that 24-inch discharge line eventually
22 will come out?

23 A. Yes.

24 Q. It comes out at a higher level, but it comes
25 out?

260

1 A. Yes.

2 Q. Let's turn to the next one. It's Exhibit 126.

3 A. You know, excuse me a minute. On 125 --

4 Q. Yes.

5 A. The thing I marked as B very easily could be the
6 telephone connection as well as a hand hole or something
7 like that for the telephone. I believe that went across in
8 the same location.

9 Q. It could be the pipeline marker, it could be a
10 telephone marker?

11 A. Yes.

12 Q. We know from Exhibit 123 -- let's hold up 123
13 here. We know from Exhibit 123 that the Olympic pipeline
14 runs at a level below the 16-inch line to the west of the
15 opening of that 72-inch line; right?

16 A. Yes.

17 Q. The Olympic line is item E, the 72-inch line is
18 item A; right?

19 A. That's correct.

20 Q. You remember we had some question about the
21 marker that's shown as point number C in the upper right
22 hand corner of Exhibit 112. Do you remember that?

23 A. Yes.

24 Q. Now if you look at Exhibit 125 again, I'm going
25 to continue to hold this up. Do you see any similarity

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1 between the marker and you have marked as item C on Exhibit
 2 123 and item B on Exhibit 125?
 3 A. Yes. I see a similarity. I also see that up on
 4 the top of the hill, and this appears as if it's down below
 5 and that's what's causing me concern. I see two different
 6 locations.
 7 Q. What you are seeing of course is that you have
 8 got one view in Exhibit 123 that's looking straight on at
 9 the opening of the 72-inch line; right?
 10 A. Yes.
 11 Q. And then you have another view that's looking at
 12 the same general location but from the side?
 13 A. Right. I don't know what that is. That could
 14 be something besides a marker for the Olympic pipeline.
 15 From what I'm seeing, this is higher than this is. This
 16 appears like it's over here up by item A.
 17 Q. Does your camera have a telephoto lens on it?
 18 A. No.
 19 Q. Does it have a telephoto feature where you can
 20 push a button --
 21 A. No.
 22 Q. -- and it comes up closer? Do you have any
 23 expertise in reading photographs, two dimensional
 24 photographs for purposes of determining distance and that
 25 sort of thing?

262

1 A. No.
 2 Q. You'll notice how the stake in the upper right
 3 hand corner of Exhibit 123 is in a grassy patch. Do you see
 4 that?
 5 A. Yes.
 6 Q. Do you notice how in Exhibit 125 the stake
 7 that's marked B is also in a grassy patch?
 8 A. There is grass around it, yes.
 9 Q. Do you notice how there seems to be some
 10 excavation material I think we always call dirt that runs
 11 along the side of the 72-inch line, from a point of the
 12 72-inch line down to some point at the ground level near
 13 that stake, item B?
 14 A. Yes.
 15 Q. You'll notice how on Exhibit 123 there seems to
 16 be dirt that's I think probably also excavation material,
 17 but you can tell me, running down to the grassy section that
 18 the stake is on?
 19 A. It appears to be.
 20 Q. I'm going to ask the question a slightly
 21 different way. And that is, do you have a recollection
 22 independent of the photographs of there being any markers
 23 for a utility at the approximate location of B on Exhibit
 24 125 and C on 123 other than the Olympic pipeline?
 25 A. I believe there was a telephone line marking out

263

1 there as well. What I see here looks like it's an opening
 2 for a hand hole of a telephone line and that's what caused
 3 me to wonder just what it was.
 4 Q. Let's move on. Let's look at Exhibit 126.
 5 Exhibit 126, if you look in I think what is the upper left
 6 hand corner -- it depends on how you hold that exhibit --
 7 is there a date stamp on it?
 8 A. There is a date stamp.
 9 Q. And it's a photograph ET-PH0000456.
 10 A. Yes.
 11 Q. This is a different vantage point or a vantage
 12 point different from the photograph shown in Exhibit 123; is
 13 that right?
 14 A. Yes.
 15 Q. But essentially the same scene although
 16 apparently a day later?
 17 A. That's correct.
 18 Q. Now this photograph has some differences from
 19 the -- this one, 126, is different in some ways from 123.
 20 For example, there is a small piece of what appears to be
 21 conduit or something that is now in the foreground closer to
 22 the photographer than the Olympic pipeline and the 16-inch
 23 waterline; is that right?
 24 A. Yes.
 25 Q. Do you know what that conduit is?

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1 A. I believe that's a telephone system conduit.
 2 Q. Do you see on the right portion of the
 3 photograph below that clump of grass on Exhibit 126 a white
 4 object that looks like a stake to me anyway?
 5 A. I see something there. I'm not sure what it is.
 6 Q. You are not sure what it is, okay.
 7 MR. SCANLAN: Counsel, do you want to mark what
 8 you are talking about? I want to make sure.
 9 MR. NICOLL: Actually I'm going to get to the
 10 marking of all of this stuff.
 11 Q. Take a look at that.
 12 A. Okay.
 13 Q. I will hold it up. We are looking at Exhibit
 14 126 and I'm going to take you through the various things I
 15 have marked. Okay?
 16 A. Okay.
 17 Q. First I have marked as A the conduit which you
 18 have identified as appearing to be the telephone line
 19 conduit?
 20 A. Yes.
 21 Q. And that's there. Then I've marked as B this
 22 little white thing on the side of the picture which you are
 23 not sure what it is?
 24 A. That's correct.
 25 Q. I've marked as C the segment of Olympic Pipe

<p>1 Line's exposed pipeline? 2 A. Yes. 3 Q. I've marked as D the segment of the exposed 4 16-inch waterline? 5 A. Yes. 6 Q. I've marked as E a couple of stakes in the back 7 ground of the photograph? 8 A. Yes. 9 Q. And I've marked as F the portion of the opening 10 of the 72-inch line that you can see in the top of the 11 photograph on Exhibit 126? 12 A. Yes. 13 Q. And I've marked as G some what is that? 14 A. That's extra lean concrete. 15 Q. Pardon me? 16 A. It's concrete that was poured around the 72-inch 17 previously and there was extra so they deposited it in the 18 hole. 19 Q. That's just -- 20 A. Waste. 21 Q. -- leftover waste concrete? 22 A. Yes. 23 Q. Now, look at the markings labeled as E. When 24 you look at those markings, does that help you in any way to 25 determine what those particular stakes or markings relate</p>	<p>265 265 1 A. Yes. 2 Q. The reason I ask is that it just looks to me, 3 and I again could be wrong, but it looks to me like this on 4 Exhibit 125, if you look at the hose, the hose running out 5 of the pump station appears to go over the top of the berm I 6 guess between the two holes and into the trench for the 7 72-inch line. Do you see that? 8 A. Yes. 9 Q. Is that what it appears like to you as well? 10 A. Yes. 11 Q. Can you explain that? 12 A. Other than the fact that the trench continued 13 downward towards Hannah Creek, it would have been natural 14 for them to drain it into that area. It would have been the 15 lowest place to drain. 16 Q. Both of these photographs were taken on May 17 11th? 18 A. Yes. 19 Q. As you can see, right: You notice that the 20 green hose in Exhibit 125 runs down into the trench pretty, 21 well, not pretty far, but further to the west and almost in 22 line with where the track on the backhoe was located. Do 23 you see that? 24 A. Yes. 25 Q. Now you see in this head-on view on Exhibit 126</p>
<p>266 1 to? 2 A. They appear to be on top of where the Olympic 3 pipeline was. 4 Q. And do you recall from memory what the markings 5 around the Olympic pipeline or for the Olympic pipeline on 6 that work site said? Was there any writing on them or 7 coloring, anything like that? 8 A. There was a writing on it identifying it as 9 Olympic pipeline. As I recall they were white with a red 10 marking on them. 11 Q. Was there any significance to this waste 12 concrete that you can think of? 13 A. No. 14 Q. It's just dumped there? 15 A. Right. 16 Q. And was the water from the hole being excavated 17 for the pump station being drained into the trench being dug 18 for the 72-inch line? Is that what the green hose was for? 19 A. No. That green hose would have been to pump it 20 out. 21 Q. So you were trying to pump water out of the 22 trench for the 72-inch line? 23 A. Yes. 24 Q. As well as pump water out of the hole for the 25 pump station?</p>	<p>268 268 1 that the hose, and are you pretty satisfied that the hose 2 that I'm pointing at in the upper left hand corner of 3 Exhibit 126 is the same hose as shown in Exhibit 125? 4 A. It very easily could be. 5 Q. Well, I don't see any other green hoses that go. 6 You tell me. 7 A. I would assume it is, yes. 8 Q. There is certainly no other green hoses draining 9 out of the pump station; right? 10 A. No. 11 MR. SCANLAN: Objection. It calls for 12 speculation. 13 Q. From your memory was there any other hose that 14 drained the pump station excavation but one? 15 A. Not to my knowledge. 16 Q. Would you agree based on Exhibit 126 that the 17 hose that drains the pump station comes in at a point in the 18 trench for the 72-inch line further to the west from both 19 the 16-inch waterline and the Olympic pipeline? 20 A. Yes. 21 MR. SCANLAN: I will object. It assumes facts 22 not in evidence. 23 Q. The green hose in the upper left hand corner of 24 the photograph, Exhibit 126, enters the trench, wherever it 25 comes from, at a point further to the west from the Olympic</p>

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1 pipeline and the 16-inch waterline. Do you agree with that?

2 A. Yes.

3 Q. Let's look at Exhibit 127. Exhibit 127 is also

4 a photograph taken by you dated May 11, 1994; is that right?

5 A. May 12.

6 Q. I'm sorry. May 12? May 1?

7 MR. VERWOLF: Is 128 the one you want?

8 MR. NICOLL: It might be.

9 Q. Let's look at 128. Thanks. Exhibit 128 is a

10 photograph dated May 11, 1994. And you took it; is that

11 right?

12 A. Yes.

13 Q. It's photograph ET-PH0000457; is that right?

14 A. Yes.

15 Q. I'm going to take a couple seconds with this

16 photograph and draw some circles on it. Okay? Take a look

17 at what I've marked up there.

18 A. Okay.

19 Q. Let's hold it up. Now, Exhibit 128 has been

20 marked up so that we can identify landmarks here. A is the

21 opening with the manhole cover of the 72-inch line?

22 A. Yes.

23 Q. B is the 16-inch waterline exposed in the trench

24 for the 72-inch line?

25 A. Yes.

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1 Q. C is the Olympic pipeline exposed in the trench

2 for the 72-inch line?

3 A. Yes.

4 Q. D are some stake markings along the southern

5 side of the trench for the 72-inch line?

6 A. Yes.

7 Q. Are these the ones that you testified a few

8 moments ago with respect to a different photograph appear to

9 be markings for the Olympic pipeline?

10 A. Yes.

11 Q. E is the green hose that we were talking about

12 in photographs 126 and 125; is that right?

13 A. Yes.

14 Q. And looking at E you can see, can you not, that

15 it goes towards the hole for the pump station foundation?

16 A. Yes.

17 Q. Marked as F is the conduit for the telephone

18 line; is that right?

19 A. Yes.

20 Q. Marked as G --

21 MR. SCANLAN: Can I interrupt? There are an

22 awful lot of things that he said he thinks probably what

23 they are and you are now asserting they are and I want to

24 avoid that confusion.

25 Q. F is what you thought probably was the conduit

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1 for the telephone line?

2 A. Yes.

3 Q. G is that odd little white thing that we don't

4 know what it is; is that right?

5 A. That's right.

6 Q. Do you now have a better idea of what it might

7 be in light of this photograph?

8 A. Well, not really. It's not real clear.

9 Q. And H is another stake with an orange top; is

10 that correct?

11 A. Yes.

12 Q. Do you know what that is?

13 A. I believe it's a cut stake for the alignment of

14 the 72-inch.

15 Q. It's part of the overall Dakin-Yew pump station

16 project?

17 A. Yes.

18 Q. And then of course there is the date stamp of

19 5/11/94 in the lower right hand corner; right?

20 A. Yes.

21 Q. This is a photograph that looks pretty much to

22 the east at the treatment plant?

23 A. Yes.

24 Q. And the pump station is to the left where the

25 white visqueen is?

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1 A. Yes.

2 Q. Now I guess we go to 127.

3 A. Okay.

4 Q. I want to make sure that I have the same one

5 that you have. Yes.

6 Is Exhibit 127 a photograph that you took on

7 about 5/12/94?

8 A. Yes.

9 Q. And it is photograph ET-PH0000368?

10 A. Yes.

11 Q. It shows you looking to the east towards the

12 water treatment plant; right?

13 A. Yes.

14 Q. Now, is there a crane that's lowering another

15 section of the 72-inch line to join up with the valve that's

16 shown in Exhibit 128 at point A?

17 A. Yes.

18 Q. Do you remember how long that section was?

19 A. No.

20 Q. I notice also in the trench that I can't see the

21 Olympic pipeline any longer. Do you see that?

22 A. Yes.

23 Q. What happened there; do you recall?

24 A. I don't recall just what happened at that time.

25 Q. What does it look like to you?

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1 A. It appears there is CDF placed in the trench
 2 bottom.
 3 Q. That's that controlled density fill you spoke
 4 about the other day?
 5 A. Yes.
 6 Q. Do you recall if there was any representative of
 7 Olympic Pipe Line present when its line was covered with
 8 CDF?
 9 A. No, I don't.
 10 Q. Do you recall there later being an issue, a
 11 level of concern about whether Olympic was going to object
 12 to its pipeline having been covered with CDF?
 13 A. No.
 14 Q. Was this the CDF that was mixed too dense or was
 15 it properly mixed?
 16 A. In this area I don't know. I don't know the
 17 location of what the original CDF was for.
 18 Q. Do you recall attempting to scrape through this
 19 CDF to see if it would be easy to dig through?
 20 A. No.
 21 Q. Do you recall if anybody else did it?
 22 A. I don't recall if they did or not.
 23 Q. On the job site who took responsibility, if you
 24 know, for contacting Olympic to make sure that Olympic
 25 representatives were present when events were taking place

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1 in connection with the pipeline?
 2 A. The contractor's representative.
 3 Q. So IMCO?
 4 A. Yes.
 5 Q. That's not a responsibility that you took on
 6 yourself; is that right?
 7 A. That's correct.
 8 Q. Was there ever a time when you thought an
 9 Olympic representative should be contacted but had not been
 10 contacted on this job site?
 11 A. Not to my knowledge.
 12 Q. Do you recall whether or not an Olympic pipeline
 13 representative was supposed to be present whenever its
 14 pipeline was backfilled, covered over with CDF or dirt or
 15 any other material?
 16 MR. SCANLAN: Would you repeat the first part of
 17 that question?
 18 Q. Do you recall if there was a directive or
 19 instruction from Olympic Pipe Line as to whether or not its
 20 representative was supposed to be present whenever its
 21 pipeline was covered over with dirt or fill or CDF or other
 22 material?
 23 MR. SCANLAN: Just so I'm clear, you are
 24 referring to the contract specifications or are you in terms
 25 of Olympic --

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1 MR. NICOLL: Somebody from Olympic specifically
 2 different from the contract specifications.
 3 MR. SCANLAN: Oral or written or all the above?
 4 MR. NICOLL: Oral, written, all of the above.
 5 Just his own recollection of what the requirements of
 6 Olympic Pipe Line were with respect to notification when
 7 backfilling.
 8 A. No, I don't recall getting anything from Olympic
 9 Pipe Line.
 10 Q. You didn't get anything personally from Olympic
 11 Pipe Line?
 12 A. No.
 13 Q. Did you ever get anything from George Nordby
 14 regarding Olympic Pipe Line's requirements and
 15 specifications for the right-of-way and the pipeline?
 16 A. No.
 17 Q. Any instructions from George Nordby or any of
 18 your superiors about when and under what circumstances
 19 Olympic Pipe Line representatives should be at the site?
 20 A. Only in regards to what the contractor was
 21 supposed to do, and that was notify them of any activity on
 22 site.
 23 Q. If you were aware that the contractor had not
 24 notified Olympic Pipe Line when Olympic was supposed to be
 25 notified, would you bring that to the contractor's

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1 attention?
 2 A. Yes.
 3 MR. SCANLAN: Objection. It calls for
 4 speculation.
 5 Q. At least as you understood your duties on the
 6 job site, you would consider it to be one of your duties to
 7 make sure that the contractor notified Olympic Pipe Line?
 8 A. Yes.
 9 MR. SCANLAN: Object to the form of the
 10 question. It calls for speculation.
 11 Q. Looking back at Exhibit 127, it's a little bit
 12 washed out I guess, but do you see in the right hand side of
 13 the photograph another one, that tripod, yellow tripod?
 14 A. Yes.
 15 Q. What was that?
 16 A. It's a level instrument.
 17 Q. For taking elevations?
 18 A. For carrying elevations, yes.
 19 Q. This is an instrument that was operated by the
 20 contractor, IMCO?
 21 A. Yes.
 22 Q. Are you able to make out the pipeline markings
 23 or what we have been calling the pipeline markings on
 24 Exhibit 127?
 25 A. No.

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1 Q. Just take a look at what I have circled and
 2 marked. On Exhibit 127 I have circled and marked as A the
 3 tripod that we just spoke about for shooting elevations?
 4 A. Yes.
 5 Q. I have circled and marked as B the length of
 6 72-inch pipe that's being lowered into place to connect up
 7 at the valve fitting; is that right?
 8 A. Yes, that's correct.
 9 Q. And then I have circled and marked as C the area
 10 of CDF that has been I guess poured over the top of the
 11 Olympic pipeline; is that right?
 12 A. Yes.
 13 MR. BENINGER: Point to C again. Thank you.
 14 Q. In the background between C and B you can see
 15 the 16-inch waterline still exposed; right?
 16 A. Yes.
 17 MR. FLOYD: Did he indicate that you couldn't
 18 see the pipeline markers?
 19 MR. NICOLL: He said he couldn't see it.
 20 MR. FLOYD: I can see it clearly.
 21 Q. Why don't you look over here. See where I'm
 22 pointing? Can you tell if those are the markers?
 23 A. I can't tell. I can see something but I don't
 24 know what it is. It's real light
 25 Q. Why don't I circle what you can see and we'll

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1 just mark it as D and say that.
 2 MR. SCANLAN: Let's be clear that he didn't
 3 previously testify that they were the pipeline markers, but
 4 he thought it was possible they were there.
 5 MR. NICOLL: What we've been calling them.
 6 MR. SCANLAN: I just don't want later someone
 7 saying Tom Franklin testified these are the pipeline markers
 8 and that's not what he has testified to.
 9 MR. VERWOLF: I believe he did indeed testify
 10 that he believed those to be the pipeline markers.
 11 MR. SCANLAN: I think there is a difference from
 12 saying believed to be and were. Why don't we ask the
 13 witness to clarify if he knows for certain what they are.
 14 Q. I will go back to that in a minute. But for the
 15 record, what Francis said, just pointed out as something
 16 that can be seen there, I have circled and marked as D?
 17 A. Yes.
 18 Q. And this is what you just indicated, that you
 19 can see something there but you really can't tell what it
 20 is?
 21 A. That's right.
 22 Q. Now let's go back to Exhibit 128. Do you see D?
 23 A. Yes.
 24 Q. Do you see D there on Exhibit 128, the
 25 photograph from May 11, 1994? Is one of those markers a

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1 marker for the Olympic pipeline?
 2 A. I believe it is.
 3 Q. Is there anything else you can think of that it
 4 would be given the coloration of the marker and its location
 5 and your memory?
 6 A. No.
 7 Q. Exhibit 129 is another photograph I'm holding up
 8 now and I'm going to give to you to look at. This is the
 9 photograph that you took; is that right?
 10 A. Yes.
 11 Q. You took it on May 12, 1994; is that correct?
 12 A. Yes.
 13 Q. It's photograph ET-PH0000379; is that right?
 14 A. Yes.
 15 Q. Is this a photograph taken either shortly before
 16 or shortly after photograph number 127? And I would ask
 17 you to take a look at the man in 127. He is crouching and
 18 the same man in 129 is walking away?
 19 A. Yes.
 20 Q. It appears to be taken about the same time; is
 21 that right?
 22 A. Yes.
 23 Q. I selected this photograph mostly because it
 24 just gave us a slightly closer-up view of the CDF material.
 25 And that's what I'm pointing to here in 129 is the CDF that

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1 covers the Olympic pipeline as of May 12th; right?
 2 A. Yes.
 3 Q. Underneath the tripod that you can see in
 4 Exhibit 127 and 129 is a white stake, white and orange or
 5 white and red stake. Do you see that?
 6 A. I see something there. I don't think it's a
 7 stake.
 8 Q. What do you think it is?
 9 A. I think it's an extension rod for running
 10 levels.
 11 Q. So it's part of the equipment used by the
 12 contractor to shoot elevations during the project?
 13 A. Yes.
 14 Q. Why don't we turn to 130. Now, Exhibit 130 is a
 15 photograph that you took; is that right?
 16 A. Yes.
 17 Q. And it is photograph ET-PH0000361; is that
 18 correct?
 19 A. Yes.
 20 Q. Now, does this photograph show an additional
 21 section or sections of the 72-inch line being lowered into
 22 position?
 23 A. Yes.
 24 Q. Look on the left hand side of the photograph
 25 which would be the southerly side of the photograph. Do you

<p style="text-align: right;">281</p> <p>1 see any stakes or markings in the ground along the southerly 2 side of that trench?</p> <p>3 A. Yes.</p> <p>4 Q. And are those the same stakes or markings that 5 we've been referring to as the ones for the Olympic 6 pipeline?</p> <p>7 A. It appears as if they are, yes.</p> <p>8 Q. Why don't you circle those and call them A.</p> <p>9 A. (Witness complies).</p> <p>10 Q. The plywood or whatever that wood is that's 11 underneath the 72-inch line, what do you call those? Are 12 those braces or what do you call those?</p> <p>13 A. A brace that would be work suitable.</p> <p>14 Q. When you are referring to those pieces in 15 inspection reports or other reports in the construction 16 project, what would they be called?</p> <p>17 A. A brace or a block of some kind.</p> <p>18 Q. Now, they are sitting in some kind of cement 19 like looking material. Is that CDF?</p> <p>20 A. Yes.</p> <p>21 Q. Do you see the crane in the middle of the 22 photograph on the upper portion?</p> <p>23 A. Yes.</p> <p>24 Q. And behind that there is a front end loader with 25 a backhoe attachment at the back?</p>	<p style="text-align: right;">283</p> <p>1 the trench for the 72-inch line running from the water 2 treatment plant was dug that there was also excavation 3 exposing the 16-inch line across, and I thought you said 4 exposing the 16-inch line across the area even in front of 5 the area where the pipeline -- or I'm sorry -- the pump 6 station foundation had been dug. But I could be wrong in my 7 recollection of that. But it is the reason why I selected 8 these photographs.</p> <p>9 Is it your position that at the time the trench 10 for the 72-inch line was dug further excavation going to the 11 north along the 16-inch line on the eastern side -- I'm 12 sorry, the western side of what was to become the pump 13 station had also been performed?</p> <p>14 A. No, sir.</p> <p>15 Q. And that's clearly shown in these photographs we 16 have just been looking at; right?</p> <p>17 A. What's clearly shown?</p> <p>18 Q. It's clearly shown that no excavation of the 19 16-inch line outside of the immediate trench for the 72-inch 20 line has been performed?</p> <p>21 A. At this time, right.</p> <p>22 Q. At this time. Another thing probably worth 23 noting in Exhibit 130 is that by the date of this 24 photograph, which is May 13, 1994, the 16-inch waterline is 25 now also covered with the CDF material; is that right?</p>
<p style="text-align: right;">282</p> <p>1 A. Yes.</p> <p>2 Q. Is that the John Deere tractor that was used for 3 some of the excavation?</p> <p>4 A. Yes.</p> <p>5 Q. Where on Exhibit 130 has the hole for the pump 6 station been dug?</p> <p>7 A. On the right corner.</p> <p>8 Q. Would you draw an arrow to where that area is?</p> <p>9 A. (Witness complies).</p> <p>10 Q. Thanks. You have drawn an arrow with the letter 11 B. Thanks.</p> <p>12 Now, are you able to see some ground, surface 13 area, ground surface area beneath which the 16-inch 14 waterline and the 16-inch Olympic pipeline run on this 15 photograph Exhibit 130?</p> <p>16 A. Yes.</p> <p>17 Q. Would you indicate the area through which those 18 run to the best of your knowledge approximately?</p> <p>19 A. (Witness complies).</p> <p>20 Q. You have circled an area which appears that this 21 crane is sitting basically on top of and labeled it C; is 22 that right?</p> <p>23 A. Part of the area is where the crane is, yes.</p> <p>24 Q. Now, on Monday I think you testified, or at 25 least my recollection of your testimony is, that at the time</p>	<p style="text-align: right;">284</p> <p>1 A. It appears that way, yes.</p> <p>2 Q. What are these blue things sticking up over near 3 the point that you marked as B coming out of the hole for 4 the pump station?</p> <p>5 A. Those are conduits.</p> <p>6 Q. Lengths of conduit to be used for what?</p> <p>7 A. For this pipe installation over here, that's a 8 drain pipe that you asked about earlier in the day to drain 9 the manhole.</p> <p>10 Q. And these conduits over in the hole for the pump 11 station near point B, those are going to be used for what?</p> <p>12 A. The same thing.</p> <p>13 Q. Draining the same manhole or draining something?</p> <p>14 A. Some other system or something.</p> <p>15 Q. Flip to the next photograph. I think it's 131.</p> <p>16 MR. BENINGER: We have ten minutes, Mr. Nicoll.</p> <p>17 Q. Tell us what Exhibit 131 is, what it shows.</p> <p>18 A. It shows the upper level of the pump station 19 forming and rebar.</p> <p>20 Q. Are you able to read the date of this photograph 21 in the lower right hand corner?</p> <p>22 A. Some of it.</p> <p>23 Q. How much of it?</p> <p>24 A. It looks like it's 6/29/94.</p> <p>25 Q. That's how I read it. Is it correct to say that</p>

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1 this photograph is looking in a northwesterly direction?
 2 A. Yes.
 3 Q. So you as the photographer are standing with
 4 your back to the water treatment facility, the existing
 5 water treatment facility?
 6 A. It would be in that direction.
 7 Q. And the man standing in the foreground with the
 8 white T-shirt has his hand resting on the portion of the
 9 pump station where the 24-inch discharge line exits on the
 10 south side; is that right?
 11 A. Yes.
 12 Q. What is all the iron rebar? It's all rebar;
 13 right?
 14 A. Yes.
 15 Q. That's for the form for pouring the concrete
 16 wall?
 17 A. Yes. The walls in the pump station.
 18 MR. BENINGER: Hold that up while we talk.
 19 Q. What I'm pointing to is all the rebar for the
 20 concrete wall on the upper portion of the pump station;
 21 right?
 22 A. Yes.
 23 MR. BENINGER: Mention the discharge as well.
 24 Q. And I'm pointing now to the exit of the 24-inch
 25 discharge on the south side of the pump station; is that

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1 correct?
 2 A. Yes, that's correct.
 3 Q. Now, why was all this visqueen around the
 4 exterior of the ditch?
 5 A. It's a standard practice to keep erosion
 6 controlled.
 7 Q. In other words, when it rains the rain is going
 8 to run off and not --
 9 A. Saturate the area.
 10 Q. And not saturate the area. You notice at the
 11 top of the pump station there is a ladder that comes up. Do
 12 you see the top of the ladder coming up?
 13 A. Yes, I do.
 14 Q. And that's on the northwest corner of the pump
 15 station; right?
 16 A. Yes.
 17 Q. And then there is a man crouching next to that.
 18 If you would hold that up so the camera can see it?
 19 A. Yes.
 20 Q. I don't imagine that you can look at that guy
 21 and remember back and know what he was doing so I'm not
 22 going to ask you that. But if you look directly to the
 23 north of him there appear to be two long lengths of large
 24 diameter pipe; is that right?
 25 A. Yes.

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1 Q. I say long. Who knows how long they are, but
 2 they are lengths of large diameter pipe; right?
 3 A. That's correct.
 4 Q. Those pipe, they don't stick out of the pump
 5 station, do they?
 6 A. No.
 7 Q. So they are resting on solid ground somewhere to
 8 the north and west of the pump station?
 9 A. Yes.
 10 Q. If you look at that ladder and take that as our
 11 sort of point of reference and you move to the left on the
 12 photograph which would be to the south from the ladder,
 13 there appears to be the top of a crane; is that correct?
 14 A. Yes.
 15 Q. And the crane appears not to be in use at the
 16 time as the boom is boomed all the way back; is that
 17 correct?
 18 A. Yes.
 19 Q. Now that crane is not down in a hole, is it?
 20 A. No.
 21 Q. It's on level ground next to the pump station?
 22 A. Yes.
 23 Q. Do you know what the piece of yellow equipment
 24 in the upper right hand corner or northwest corner of the
 25 photograph is doing?

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1 A. No.
 2 Q. What's all the wood around the exterior of the
 3 pump station on the east side? What's that wood there for?
 4 A. That's a form support for pouring concrete.
 5 Q. Are the workers then in the process of adding
 6 this wood or taking it off?
 7 A. They are putting it on.
 8 Q. The concrete for the lower section has obviously
 9 already been poured?
 10 A. Yes.
 11 MR. BENINGER: We have about three minutes
 12 whenever would be good for you.
 13 MR. NICOLL: Why don't you go off record for a
 14 minute, David.
 15 MR. BENINGER: Going off record.
 16 (Off the record)
 17 MR. BENINGER: Back on the record. This is the
 18 continuation of Tom Franklin's deposition. This is tape
 19 number five.
 20 Q. Mr. Franklin, I've taken Exhibit 131 that we've
 21 been talking about and circled some of the features that we
 22 identified.
 23 First would you agree that A is the 24-inch
 24 discharge on the south side of the pump station?
 25 A. Yes.

289	<p>1 Q. B is the large diameter pipe that's resting on 2 the ground to the north and west of the pump station? 3 A. Yes. 4 Q. C is the crane that is resting on the ground to 5 the west on the west side of the pump station? 6 A. Yes. 7 Q. And D is some equipment that's working to the 8 northwest of the pump station doing something? 9 A. It's sitting there. 10 Q. Or maybe not working? 11 A. It's sitting there. 12 Q. You know it's not working? 13 A. I didn't see anybody in the cab. That's why I 14 said I wasn't sure if it was running or not. 15 Q. Again this is the state of things on June 29, 16 1994; is that correct? 17 A. Yes. 18 Q. As of that date was the hole to expose the 19 section of the 16-inch waterline that the 24-inch discharge 20 line was going to tap into dug? 21 A. I don't know. I don't know. 22 Q. Let's go to the next photograph which is Exhibit 23 132. Exhibit 132 is an Earth Tech photograph, ET-PH0000358. 24 A. Yes. 25 Q. Do you remember taking this photograph?</p>	291	<p>1 Q. By width do you mean the way that I'm indicating 2 with my pen? 3 A. Yes. 4 Q. And length you mean that way? 5 A. That's correct. 6 Q. And I'm going to do another little drawing 7 exercise here. So I've drawn two arrows, one indicating 8 length, the other width. Why don't you fill in the 9 approximate dimensions of those? 10 A. (Witness complies). 11 Q. Those are feet; right? 12 A. That's correct. 13 Q. Eight feet by four feet approximately. And how 14 much of the 16-inch line was exposed? Was it also 15 approximately eight feet? 16 A. That would be correct, yes. 17 Q. Is this the first hole that was dug or the 18 second hole that was dug? 19 MR. SCANLAN: Object as to vague. 20 Q. Well, is this the first hole that was dug to 21 expose the 16-inch waterline for purposes of installing the 22 tee joint to connect the 24-inch discharge line? 23 MR. SCANLAN: Withdraw the objection. 24 A. I believe it's the first hole. 25 Q. What is it about the photograph that leads you</p>
290	<p>1 A. Yes. 2 Q. I cannot find a readable date on the photograph. 3 Can you? 4 A. No. 5 Q. Do you remember the date on which you took this 6 photograph? 7 A. No. 8 Q. Can you tell us what this is a photograph of? 9 A. Yes. As I was talking last Monday, there was a 10 picture taken showing the waterline having been excavated 11 for the thrust block and where the tee would go in prior to 12 the removal of that 16-inch waterline, and that's what this 13 is of. 14 Q. So this is the 16-inch waterline shown running 15 through Exhibit 132; is that right? 16 A. Yes. 17 Q. Could we hold that up? Do you mind if I circle 18 that? It's obvious. I have circled as A the 16-inch 19 waterline in the hole that you just described on Exhibit 20 132; is that right? 21 A. Yes. 22 Q. Can you give us the approximate dimensions of 23 this hole? 24 A. It is approximately four to five foot wide and 25 the length of it is maybe eight feet.</p>	292	<p>1 to believe that it's the first hole? 2 A. They are already as far to the south as they can 3 go. The CDF that was supporting the 72-inch pipe is already 4 at the south end of what we see and we couldn't have gone -- 5 we wouldn't have planned to go any further. 6 MR. VERWOLF: You haven't identified the angle 7 of the photograph yet. Can you do that? 8 Q. Where on this photograph, if you know, is south, 9 and where is north, where is east, where is west? 10 A. South is ahead of you. 11 Q. Does that -- 12 A. To the north and south and east instead of north 13 and west. The pipeline ran that direction, northwest, 14 southeast in direction. 15 Q. So the photographer's back, your back, is to the 16 north? 17 A. Yes. 18 Q. And you are looking south? 19 A. Yes. 20 Q. So the four foot width indicator at the top of 21 the photograph is the southern portion of the photograph and 22 then the letter A at the bottom of the circle around the 23 16-inch waterline is at the northern end of the photograph? 24 A. Yes. 25 Q. Now, indicate please for us where the CDF is,</p>

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1 if you can see it.

2 A. The CDF is where the X's are on either side of

3 where the pipe is.

4 Q. You have put two X's or plus marks, depending on

5 how you look at it, to indicate where the CDF is. How do

6 you know that that's CDF?

7 A. Because of the vertical wall. It was poured and

8 filled up to support, filled to the top of the 72-inch pipe

9 and it created a vertical wall that was stripped and forms

10 and left as is.

11 Q. Now a portion of the hole dug for access to the

12 16-inch waterline was dug using the John Deere front end

13 loader with the backhoe attachment that you described

14 earlier; is that right?

15 A. Yes.

16 Q. And that piece of equipment is the one

17 identified as D on Exhibit 120; is that right?

18 A. Yes.

19 Q. Let's turn to Exhibit 64, the daily inspection

20 reports. Specifically I would like you to take a look at

21 report number 96.

22 A. They are not in order.

23 Q. They are in order in a different way because

24 they are in the order they were sent to Wan Huang. So it's

25 aggravating.

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1 It's in the stack of reports that ends with July

2 12 I think.

3 A. Okay.

4 Q. So the letter of transmittal is dated July 12.

5 And then you work backwards from there. Got it?

6 A. Yes.

7 Q. Do you have report number 96 in front of you?

8 A. Yes.

9 Q. That's your signature in the lower right hand

10 corner?

11 A. Yes.

12 Q. At the time you made this report the events that

13 you report had occurred within a relatively short period of

14 time beforehand?

15 A. Yes.

16 Q. This is a report that you made in the ordinary

17 course and scope of the business that you were conducting in

18 as Barrett Consulting Group field representative on the

19 project involving the Dakin-Yew pump station; is that right?

20 A. Yes.

21 Q. The entries that you made were true and correct

22 at the time you made them?

23 A. Yes.

24 Q. Now, we talked about this a little bit on

25 Monday, but I want to go into a little more detail with the

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1 benefit of some of those photographs.

2 First of all, you note the equipment in use on

3 that day. Do you see that?

4 A. The equipment that was on site that day, yes.

5 Q. On site, okay. Some of that equipment -- all of

6 that equipment was on site, whether it was used or not you

7 don't know?

8 A. That's correct.

9 Q. Is John Deere front end loader with the tractor

10 with the backhoe assembly located here as equipment?

11 A. Yes.

12 Q. Is that the JD410B?

13 A. Yes.

14 Q. Backhoe; right?

15 A. Yes.

16 Q. Now, we talked about this section. It says in

17 the middle of the second paragraph I guess reads excavation

18 of 24-inch between pump station and large diameter pipe

19 began.

20 That's the excavation between the northwest

21 corner of the pump station and a point out to the northwest

22 to tie-in to that great big diameter pipe; right?

23 A. Yes.

24 Q. And it says with Olympic Pipe Line

25 representative on site during excavation near line. Then it

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1 says more work tomorrow.

2 Your reference to more work tomorrow, is that a

3 reference to more work on the excavation of the 24-inch line

4 between the pump station and the large diameter pipe?

5 A. I would assume that's the case, yes.

6 Q. That's how you wrote it; right?

7 A. Right.

8 Q. Then the next line reads efforts this p.m. on

9 exposing 16-inch waterline for tomorrow's waterline tie-in

10 and four inch tap to drain to storage pipe system. Am I

11 reading that right?

12 A. Yes.

13 Q. Would that mean then that the photograph that is

14 Exhibit 132 is of a hole that was dug during the afternoon

15 or the p.m. of July 6, 1994?

16 A. Yes.

17 Q. So although we can't see the date stamp on here,

18 because we have the benefit of your inspection report we

19 know this photograph was taken on July 6, 1994?

20 A. Within a day of that time, yes.

21 Q. It could have been the following day?

22 A. Yes.

23 MR. VERWOLF: Was the picture taken on July 6 or

24 not or do we know.

25 Q. Do you know?

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1 A. I don't know.
 2 Q. But the range -- it couldn't have been taken on
 3 July 5th?
 4 A. No.
 5 Q. You are saying it could have been taken on July
 6 7th because the hole was dug on July 6th?
 7 A. Yes.
 8 Q. But no work was done on July 6th beyond digging
 9 the hole. The pipe wasn't cut?
 10 A. Right.
 11 Q. Nobody was inserting tee joints?
 12 A. That's correct.
 13 Q. So on July 6th we know that the work did not
 14 progress beyond what's shown on Exhibit 132?
 15 A. Yes.
 16 Q. But we don't know for sure it progressed this
 17 far, as far as it's shown on Exhibit 132 on July 6th?
 18 A. Right.
 19 Q. There could have been additional excavating on
 20 July 7th?
 21 A. Yes.
 22 Q. In fact we know there was additional excavating
 23 on July 7th?
 24 A. Yes.
 25 Q. Let's go back a day to July 5th. It's page

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1 ET0006445. Part of Exhibit 64; do you see that?
 2 A. Yes.
 3 Q. This is your report 95; right?
 4 A. Yes.
 5 Q. And it's dated July 5, 1994 and you signed it?
 6 A. Yes.
 7 Q. As with all the other reports, this is a record
 8 of your regular activities on the job site for Barrett?
 9 A. Yes.
 10 Q. And the events that are recorded here occurred
 11 at or about the time you wrote it down?
 12 A. Yes.
 13 Q. And it's true and correct?
 14 A. Yes.
 15 Q. You'll notice that on July 5th there was
 16 assembly of ductile pipe tee for Thursday's 20-inch pump
 17 station tie-in to 16-inch existing line. Testing will be
 18 performed prior to insertion. Do you see that?
 19 A. Yes.
 20 Q. The reference to a 20-inch pump station tie-in,
 21 you really intended that be 24 inches; right?
 22 A. Yes.
 23 Q. July 5th was a Tuesday; is that correct?
 24 A. Yes.
 25 Q. Above that there is some discussion of what's

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1 going on in another section of the job and that was it says
 2 carpenters -- why don't you read that, carpenters pour.
 3 A. Carpenters pour of second level pump station
 4 began at 8:10 a.m. and grout placement procedure went well.
 5 Treemies -- t-r-e-e-m-i-e. Treemies, two and more -- used
 6 and plus or minus three foot lifts with vibration progressed
 7 until a 11:30 completion. The wall top was covered with wet
 8 burlap and rebar straightened.
 9 Q. What is this line? What are treemies?
 10 A. It's a hose device to allow the concrete to
 11 slide down into the concrete forms without hitting the
 12 reinforcing bar.
 13 Q. What's being described here is that the concrete
 14 for the second level was being poured into the forms that
 15 the carpenters had built, those wood forms around the iron
 16 rebar?
 17 A. Yes.
 18 Q. And I note it also says the rebar was
 19 straightened on July 5th. Do you see that?
 20 A. Yes.
 21 Q. Looking back at Exhibit 131, and in light of
 22 everything we have been discussing with Exhibit 132 and the
 23 inspection reports, can you tell me whether or not the crane
 24 that's identified as item C is sitting, or any part of it is
 25 sitting on or near the area for the excavation to expose the

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1 16-inch waterline?
 2 MR. SCANLAN: Objection. It calls for
 3 speculation.
 4 A. No, you can't tell.
 5 Q. Let's turn to report number 97. So you have to
 6 flip a couple of pages the other way.
 7 Report number 97 is a record of your activities
 8 on the site of the Dakin-Yew pump station job for Barrett
 9 Consulting; is that right?
 10 A. Yes.
 11 Q. We see your signature in the lower right hand
 12 corner?
 13 A. Yes.
 14 Q. It consists of two pages; is that right?
 15 A. Yes.
 16 Q. And you signed the second page as well?
 17 A. Yes.
 18 Q. Did you make the entries on report 97 or at
 19 about the time the events are recorded?
 20 A. Yes.
 21 Q. And is it true and correct?
 22 A. Yes.
 23 Q. Now, this exhibit provides or says that City
 24 personnel were on site and began closing valves on the
 25 16-inch. I take that to mean the waterline?

301	<p>1 A. Yes.</p> <p>2 Q. To isolate work at 5:05 a.m. and complete at</p> <p>3 5:40.</p> <p>4 So you started your day that day at five o'clock</p> <p>5 in the morning and you were there when the City workers were</p> <p>6 shutting off the valves for the 16-inch line?</p> <p>7 A. Yes.</p> <p>8 Q. While this work was going on it appears the next</p> <p>9 line says, three man crew was working on removing material</p> <p>10 from beneath the 16-inch line. Is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Does that mean, if I understand correctly, that</p> <p>13 some guys got down in the hole that is shown on Exhibit 132</p> <p>14 and were digging?</p> <p>15 A. Yes.</p> <p>16 Q. Did you see them personally dig?</p> <p>17 A. Yes.</p> <p>18 Q. So you know that they were down there. Were</p> <p>19 they using a backhoe?</p> <p>20 A. No. They were using hand shovels.</p> <p>21 Q. Hand shovels. So does it appear to you, and</p> <p>22 when you look at Exhibit 132, that the material beneath the</p> <p>23 16-inch line in the hole that's depicted there has been</p> <p>24 removed by somebody who has shoveled?</p> <p>25 A. Some of it has.</p>	303	<p>1 Q. The solution for taking care of the water</p> <p>2 apparently was arrived at. You say use of 55 gallon can to</p> <p>3 catch water from tee and pump from there. Could you explain</p> <p>4 that?</p> <p>5 A. Yes. Perhaps that's not the best way to</p> <p>6 describe what was done. But what they had was they had a 55</p> <p>7 gallon drum cut so that they had an end that would hold</p> <p>8 water. So they used the end that would hold water and they</p> <p>9 put that underneath the pipe and pumped out of it.</p> <p>10 Q. How did they dewater the pipe?</p> <p>11 A. With a pump. A lot of --</p> <p>12 Q. How did they get into the pipe to dewater it?</p> <p>13 A. They cut the pipe and that drained the water</p> <p>14 from the pipe.</p> <p>15 Q. And they cut the pipe on July 7th?</p> <p>16 A. I don't know. I have to read more about it. I</p> <p>17 don't remember the exact date.</p> <p>18 Q. Why don't you read the whole thing?</p> <p>19 A. It says problems arose when the hole to the tee</p> <p>20 was not positioned properly and the plan to tap into the</p> <p>21 16-inch was abandoned today with rescheduled tomorrow.</p> <p>22 Do you want me to read more?</p> <p>23 Q. No. That's fine. Do you take it from that that</p> <p>24 they did not tap into the 16-inch waterline on the 7th?</p> <p>25 A. That's right. They did it the next day</p>
302	<p>1 Q. So based on that and reviewing report number 97,</p> <p>2 what do you think is more likely; that Exhibit 132 was taken</p> <p>3 on the 6th of July or the 7th of July?</p> <p>4 A. It's more likely to be the 7th.</p> <p>5 Q. And is that what you recall or you just have no</p> <p>6 recollection?</p> <p>7 A. I don't have any recollection of it.</p> <p>8 Q. According to report number 97 you then had some</p> <p>9 discussions with Greg about how water was going to be</p> <p>10 drained out of the hole; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Where was this water going to come from?</p> <p>13 A. From within the pipe.</p> <p>14 Q. So what was going to happen? What was going to</p> <p>15 happen to the pipe as a result of water getting into the</p> <p>16 hole given that the valves to the 16-inch line had been shut</p> <p>17 and that segment of line had been isolated?</p> <p>18 A. It still has water in it. When they go to cut</p> <p>19 the pipe, water will come out. And if you have a way to</p> <p>20 control the water, it's certainly a lot easier to deal with.</p> <p>21 Q. And were you satisfied initially with the way</p> <p>22 that Greg, I guess that's Greg Burress from IMCO, had chosen</p> <p>23 to dewater or control the water in that hole?</p> <p>24 A. I don't know about satisfying is a right word.</p> <p>25 I was asking to find out what his plans were.</p>	304	<p>1 according to this report.</p> <p>2 Q. Do you have a memory of that or are you going</p> <p>3 solely by the report?</p> <p>4 A. I'm going by the report actually. I don't</p> <p>5 recall the specifics intimately.</p> <p>6 Q. Who dug the hole for the tee, the hole that we</p> <p>7 see on Exhibit 132? Who was the person who initially</p> <p>8 excavated that hole, if you know?</p> <p>9 A. I don't know his name.</p> <p>10 Q. Are there some of the people at IMCO who operate</p> <p>11 equipment whose names you do know?</p> <p>12 A. No.</p> <p>13 Q. You don't know the names of any of the people?</p> <p>14 A. No.</p> <p>15 Q. I'm going to state some names and you tell me if</p> <p>16 they are recognizable to you.</p> <p>17 A. Okay.</p> <p>18 Q. Calvin Vanderpol?</p> <p>19 A. Yes, I remember the name.</p> <p>20 Q. But you don't know if he was the one who</p> <p>21 operated the backhoe to dig that hole?</p> <p>22 A. No.</p> <p>23 Q. Britton Lukes?</p> <p>24 A. I don't remember the name.</p> <p>25 Q. How was the location of the initial hole shown</p>

<p>305</p> <p>1 in Exhibit 132 selected; who selected that position? 2 A. I don't know. 3 Q. Were you involved in or consulted in deciding 4 whether the hole should be dug in one spot as opposed to 5 another? 6 A. No. That was determined by the designer and 7 IMCO during the process of forming the change order. 8 Q. If you know, who would normally or usually have 9 been involved on the job site in determining where a hole 10 such as the one shown in Exhibit 132 would be dug? 11 A. Well, if we had already established the change 12 order plans of where the location was supposed to be, the 13 surveyor and the contractor would get the stakes done and 14 proceed from staking typically. 15 Q. Well, of course by this time the location of the 16 16-inch and 24-inch tie-in had been determined? 17 A. We knew where it was, yes. We knew where the 18 pipes were. 19 Q. You had the plans. They had been delivered on 20 May 13th or 16th, or whatever it was; right? 21 A. Yes. 22 Q. Do you recall whether the ground for the area of 23 the excavation had been painted such as it was painted for 24 the excavation of the pump station? 25 A. I don't recall that being done, no.</p>	<p>307</p> <p>1 representative present when the hole dug on Exhibit 132 was 2 excavated? 3 A. Do I -- 4 Q. Do you recall having such a conversation? 5 A. No, I don't remember talking to him. It was a 6 known fact that we would contact them when we were doing 7 work around the pipeline. 8 Q. The contractor would do that? 9 A. Yes. 10 Q. You didn't feel it was necessary to tell the 11 contractor that? 12 A. That had been discussed over time and everybody 13 was aware that they were supposed to be on site. 14 Q. Were you present when the hole in Exhibit 132 15 was dug? 16 A. I may -- 17 Q. Not with shovels but with the backhoe. 18 MR. FLOYD: You are saying the portion of 132 19 that was dug with the backhoe; correct? 20 Q. The portion of 132 that was dug with a backhoe. 21 A. I may not have been there specifically at that 22 time, but I was around at that time, yes. 23 Q. Do you remember witnessing, watching the 24 backhoe digging the backhoe portion of the 16-inch pipeline 25 hole?</p>
<p>306</p> <p>1 Q. If it had been done do you think you would 2 recall it? 3 A. Yes. 4 Q. Do you recall there being similar stakes as were 5 shown in the foundation excavation site for the pump 6 station? What do you call them, contractor's stakes or 7 engineering stakes, the ones that were painted orange on the 8 top, do you recall those being in the ground at the corners? 9 A. What I recall is the contractor identifying or 10 making a mark on the CDF area where the waterline was so he 11 could find it easily when they went to look for it. And I 12 believe that's what they used to determine the location of 13 the waterline was previous exposure. 14 Q. Did you have any discussions with members of the 15 contractor's staff before they started digging for the 16 16-inch line concerning the presence nearby of the Olympic 17 pipeline? 18 A. Yes. We knew it was there. 19 Q. You knew it was there. And they told you they 20 knew it was there and you told them it was there? 21 A. Yes. 22 Q. And it was there on the diagram? 23 A. That's right. 24 Q. Did you have any discussions with the contractor 25 concerning the need to have an Olympic Pipe Line</p>	<p>308</p> <p>1 A. No, I don't. 2 Q. Go back to report number 97. It says problems 3 arose when hole for tee was not positioned properly and the 4 plan to tap into the 16-inch was abandoned today with 5 reschedule tomorrow. 6 The tapping in to the line as you just described 7 it was basically -- you were just going to cut into it? 8 A. Yes. 9 Q. Because you had to remove a section of the line 10 in order to insert the tee? 11 A. Yes. 12 Q. So there was no need to put a tap drain on it 13 and bleed the water off that way? 14 A. Right. 15 Q. Again you are saying that cutting into the 16 16-inch line to insert the tee joint did not occur on July 17 7th? 18 A. That's correct. 19 Q. It says revisions to the distance of 90 degree 20 elbow from 12 feet to plus or minus 9 feet so edge of 21 reducers are not in CDF when tee is inserted? 22 A. Yes. 23 Q. What reducers? The reducers to the 16-inch? 24 A. That's the only ones that are being reduced, 25 yes.</p>

<p style="text-align: right;">309</p> <p>1 Q. So you are talking about the side of the tee 2 joint that's going to connect into or join into the southern 3 end of the 16-inch line that goes into the CDF? 4 A. As well as the north end, yes. 5 Q. There is CDF in the north end? 6 A. No. There is reducers at the north end. 7 Q. Right. But there is no CDF at the north end? 8 A. That's correct. No. 9 Q. So basically the problem with the hole on 10 Exhibit 132 is that it wasn't long enough. Instead of eight 11 feet long it needed to be like ten feet or more longer? 12 A. That's correct. 13 Q. So you could move it -- 14 A. To the south -- 15 Q. -- to the tee joint down? 16 A. To the north and west, yes. 17 Q. Then it says the pipe still needs to pass 18 through the second wall footing. But that's the 24-inch 19 discharge line that has to pass through the second wall 20 footing; right? 21 A. Yes. 22 Q. And it says water pressure was restored at 23 approximately 8:30 by City personnel. Is that 8:30 a.m.? 24 A. Yes. 25 Q. So all the decisions concerning whether or not</p>	<p style="text-align: right;">311</p> <p>1 Q. Let me ask the question differently. If you 2 were reporting on something that you hadn't personally 3 observed, would you note it in the report? In other words, 4 I was told by Greg that such and such happened to 5 differentiate the situation where perhaps you didn't see 6 that such and such happened but you were told by Greg that 7 it happened. 8 A. That's my normal trend is to respond by saying 9 who is responding to my statement or who said my statement. 10 If it's secondhand I will usually respond by naming the 11 person that I was told by. 12 Q. The reason for that is you want to be able to 13 differentiate later between that which you saw and that 14 which you learned because someone else told you? 15 A. Yes. 16 Q. And that's important to you in writing these 17 reports; is that correct? 18 A. Yes. 19 Q. I'm assuming it's important to you which it 20 would probably be important to anybody writing this report. 21 It says, and area excavated to fit tee in near 22 the CDF placement. 23 Help me here. Does that mean that the four foot 24 wide area was widened or does that mean that the digging 25 necessary to elongate the hole was lengthened, or both?</p>
<p style="text-align: right;">310</p> <p>1 you're going to be able to proceed on July 7th with 2 insertion of the tee joint in the hole that's shown on 3 Exhibit 132 were made by 8:30 a.m.? 4 A. Yes. 5 Q. And that work was called off? 6 A. Yes. 7 Q. And the tee joint was not inserted on July 7? 8 A. That's correct. 9 Q. And you are positive about that? 10 A. That's what I wrote. 11 Q. Now then it says, some of the hole dug for 12 today's work was backfilled and an area excavated to fit tee 13 in near the CDF placement. Work begins at valve shut off 14 approximately 4 a.m. 15 using Exhibit 132 and pointing to whatever you 16 can recall, how much of the hole was backfilled and where 17 was it backfilled? 18 A. I really don't know. I don't remember. 19 Q. Did you see it or were you told that? 20 A. No, I was -- I saw it. 21 Q. If you hadn't seen it you wouldn't have written 22 it down? 23 A. Right. 24 Q. Did you only write down things that you saw? 25 A. That's a hard question to answer all the time.</p>	<p style="text-align: right;">312</p> <p>1 A. I really don't remember. From my recollection, 2 the reason we moved and manipulated things was because it 3 wasn't just a 90 degree angle. We had a pipeline that was 4 coming on an angle like this and we had more than just a 90 5 degree angle to deal with. 6 We had to also swing the pipe more than just 90 7 degrees so we could get a 90 degree on the waterline. 8 Q. You had an odd? 9 A. Right. 10 Q. Odd angle to catch it? 11 A. That was what I was referring to by having to 12 dig and adjust to get the pipe properly aligned. 13 Q. Now you will forgive me, but because it's 14 written this way it made me think that what happened was 15 there must have been some widening of the hole. It says 16 some of the hole for today's work was backfilled and area 17 excavated to fit tee in near the CDF placement. 18 Because the CDF placement, is that the point 19 located on Exhibit 132 where you put the two X's; right? 20 A. Yes. 21 Q. In order to further excavate in the area of the 22 CDF you really would have to widen it, wouldn't you, or 23 would you deepen it? 24 A. What I was referring to necessarily would have 25 been in the direction where the tee went to. The tee came</p>

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1 off in this direction. What we had to do was widen the
2 alignment of the pipe trench so that we could come across at
3 a direct right angle to the system.
4 It wasn't necessarily the pipe width here that
5 was messed with. It was the area out in front.
6 Q. So if you would, using the red marker, circle
7 the approximate area where the additional widening or
8 additional excavating was done in order to fit the tee joint
9 in.
10 A. It would have been in this vicinity here as well
11 as back up the hill to where the pipe alignment actually
12 was, because they had placed -- they had planned to put it
13 in one position and came to recognize that this wasn't going
14 to work that way. They had to have more angles into the
15 pipe system. And so they had to widen the trench up here.
16 Q. They had to widen the trench towards the east?
17 A. Yes.
18 Q. And south and they also had to -- and the south?
19 Am I right? Or just towards the east?
20 A. Just towards the east. And that was really the
21 primary location. They also removed dirt from back here.
22 So that once they got the thrust block in place that would
23 have been formed properly as well.
24 Q. They removed some earth from the west side where
25 you have just indicated.

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1 A. That's right.
2 Q. And then when was the excavation work done to
3 lengthen the hole from eight to ten or more feet?
4 A. It would have been the day of the 7th, the day
5 of the 7th for the position for the new alignment.
6 Q. So now I've put B in the area of the additional,
7 approximate location of the additional widening, excavating
8 done to widen that hole to the east and C in the area that
9 you drew showing the area of additional excavating to widen
10 the hole towards the west?
11 A. Yes.
12 Q. Is that correct?
13 A. Yes.
14 Q. Was this done on July 7th?
15 A. I believe so, yes.
16 Q. Now, was this additional widening on B and C
17 done using that John Deere backhoe?
18 A. To my knowledge it was done by hand any time we
19 went down to the level of the pipe itself.
20 Q. Above the level of the pipe, of the 16-inch
21 pipe, it would be done by backhoe, but once on a level with
22 the 16-inch pipe the guys went out with the shovels and dig
23 with shovels?
24 A. Yes.
25 Q. You said to your knowledge. Did you not observe

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1 it?
2 A. I might not have been there all the time. I'm
3 not claiming I can be any place at any given time unless I
4 know for sure I was.
5 Q. You didn't write down which way they did the
6 excavation. So can we take it that you are making an
7 assumption about how it was excavated?
8 MR. FLOYD: Object to the form of the question.
9 That's not what he said.
10 Q. I want to be clear about what you said.
11 A. Just because I didn't identify what I was
12 talking about doesn't mean that I wasn't there when it was
13 being done.
14 Q. I understand that. And just because you don't
15 remember it doesn't mean you weren't there either, and I
16 understand that.
17 A. That's right.
18 Q. Look again in report 97 up to the third line
19 where you wrote three man crew was working on removing
20 material from beneath the 16-inch line. Do you see that?
21 A. Yes.
22 Q. And when you wrote that, you testified earlier,
23 that you meant they got shovels and they dug by hand to
24 remove the material from underneath that line?
25 A. Yes.

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1 Q. Now later here you write some of the hole dug
2 for today's work was backfilled and an area excavated to fit
3 tee in near the CDF placement.
4 A. Yes.
5 Q. I note the difference in how you described guys
6 digging using shovels around that line and how you describe
7 the excavating to fit tee in near the CDF placement. Now
8 you know yourself better than I know you. And you know why
9 you select words better than I know why you select words and
10 you were there and I wasn't there.
11 Based on your writing of this inspection report
12 can you tell us whether or not the backhoe was used to do
13 the additional excavating that's referred to on report
14 number 97 as having occurred after the water pressure was
15 restored at approximately 8:30?
16 A. Well, from what I see, basically the area for
17 the tee, this area B here, would have probably been
18 excavated by a backhoe. The stuff behind it in C, perhaps
19 an area up above the pipe would have been scraped and
20 removed by the backhoe.
21 Q. What part of the hole, Exhibit 132, was
22 backfilled; do you recall?
23 A. It would have been the area over next to the CDF
24 where we didn't need to put concrete. It was not meant to
25 be a thrust block area and we weren't expecting it to be

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1 bonded to the CDF.
 2 Q. How much of that was backfilled; do you recall?
 3 A. I don't recall.
 4 Q. Was it backfilled before the additional
 5 excavation work alongside the areas B and C was done?
 6 A. My recollection is it was done at the same time.
 7 They would take some of the dirt and position it.
 8 Q. They take a little bit over here and they dump
 9 it over there?
 10 A. Right.
 11 Q. So they dig a little bit from the area around B
 12 or C and then they dump it into the area where the two X's
 13 are on Exhibit 132; is that right?
 14 A. Yes.
 15 Q. And did they not fill it all the way up to level
 16 with the top?
 17 A. No.
 18 Q. Just around the pipe?
 19 A. Right.
 20 Q. Did they cover the pipe back in that area?
 21 A. I don't recall. I don't believe so.
 22 Q. Were they at the same time lengthening the hole
 23 in Exhibit 132 to its full ten foot or more or less length?
 24 A. It was already wide enough I believe to be able
 25 to accept it. I don't believe we widened anything more than

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1 what was already there. We just created more of a space.
 2 Q. We are thinking the eight feet this way and this
 3 way as length and the four foot this way as width.
 4 A. Right.
 5 Q. So you are saying they didn't actually need to
 6 go two feet further to the north?
 7 A. Not that I remember. I believe they had already
 8 exposed it wide enough for the tee to be dug and placed.
 9 Q. But I thought -- I mean forgive me if I'm wrong,
 10 but I thought that you wrote problems arose when hole for
 11 tee was not positioned properly. And the plan to tap in to
 12 16-inch was abandoned. Reschedule tomorrow. And then it
 13 says revisions to the distance of 90 degree elbow. That's
 14 the elbow on the east end of that length of 24-inch
 15 discharge line; right?
 16 A. Yes. That was moved.
 17 Q. That was moved two to three feet or so closer to
 18 the pump station?
 19 A. Yes.
 20 Q. And that didn't necessitate a relocation of the
 21 tee?
 22 A. No. No. That was the same angle of approach
 23 that I was talking about earlier where we came down from the
 24 90 degree angle and had to come up with another angle to get
 25 to where the waterline alignment was.

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1 Q. What you said makes no sense to me at all. I'm
 2 sorry.
 3 A. There are pictures, drawings in here that show
 4 the 24-inch line installed and that would help describe what
 5 I'm talking about.
 6 Q. We'll get to that and we'll come back and you
 7 can explain it better. So what I'm going to do is hold this
 8 out and it will help us understand what happened with
 9 Exhibit 132.
 10 Just a couple more points on report 97. At the
 11 bottom you say excavation continued and was complete for
 12 24-inch pipe to be placed beneath Olympic line to connect
 13 pump station to loop system installed previously.
 14 That again refers to the 24-inch suction line
 15 that's going off to the northwest to connect up with the
 16 large diameter pipes; is that right?
 17 A. Yes.
 18 Q. Let's move to report 98. Now, on report 98 we
 19 have another report of your inspection, inspection report.
 20 And on this report you have signed it in the lower right
 21 hand corner?
 22 A. Yes.
 23 Q. And it's a two page report so you signed the
 24 second page as well; right?
 25 A. Yes.

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1 Q. These reports are Bates numbered ET0006440 and
 2 441; right?
 3 A. Yes.
 4 Q. You report on the equipment on the job site; is
 5 that correct?
 6 A. Yes.
 7 Q. And that equipment includes the 410B backhoe; is
 8 that correct?
 9 A. Yes.
 10 Q. Now, could you read that first paragraph for us
 11 of your report?
 12 A. City of Bellingham water valve crew began
 13 closing the 16-inch waterline down at 4 a.m. and IMCO
 14 personnel on site at 5:15 p.m. to begin draining line for
 15 tee insertion for 20-inch pump station connection.
 16 Q. By that you meant the 24-inch pump station
 17 connection?
 18 A. Correct.
 19 Q. Keep going.
 20 A. The connecting area has been excavated near
 21 72-inch pipe CDF insulation by -- I believe it's supposed to
 22 be insulation by bulk and IMCO began cutting pipe 6 a.m.
 23 The pipe was mostly drained by 6:30.
 24 Q. Now, let's take a couple of things here. First,
 25 what was the connecting area; what is that?

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1 A. That's where the tee went in.
 2 Q. That's the area that was being excavated in
 3 connection with what we see in Exhibit 132?
 4 A. Yes.
 5 Q. This says the connecting area has been excavated
 6 near 72-inch pipe CDF. Is CDF insulation?
 7 A. No. That's the term I used at the time.
 8 Q. It says the connecting area has been excavated
 9 near 72-inch pipe CDF insulation by bulk. What do you mean
 10 by bulk?
 11 A. The insulation is a one piece unit or bulk
 12 space. They filled the whole volume in CDF.
 13 Q. You weren't referring to the excavation?
 14 A. No.
 15 Q. As bulk excavation, whatever that would be?
 16 A. I don't know what that is either.
 17 Q. And IMCO began cutting pipe at approximately 6
 18 a.m.; is that right?
 19 A. Yes.
 20 Q. And you saw that; you witnessed that?
 21 A. Well, that's one I might have -- I don't recall
 22 that specifically. I see my time start was 7:30, 7 to 5:30
 23 and I believe I wrote that in every day because that was my
 24 normal work time. From what I remember, I was there the
 25 entire time from four on.

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1 Q. If that pipe was cut, water would have come
 2 flowing out of it; right?
 3 A. Yes.
 4 Q. And do you recall being there when the 16-inch
 5 pipe was cut and water was flowing out of it?
 6 A. Yes.
 7 Q. So you saw something like that?
 8 A. Yes.
 9 Q. And the pipe was mostly drained by 6:30. Now,
 10 again, you touched on this and let's make it clear. The
 11 start time here says 7 o'clock. But your testimony is and
 12 your recollection is that you were actually there earlier
 13 than 7 o'clock; is that right?
 14 A. Yes.
 15 Q. Is report number 98 a portion of Exhibit 64?
 16 A. Yes.
 17 Q. Does it record the events at or about the time
 18 that those events occurred?
 19 A. Yes.
 20 Q. Is it true and correct?
 21 A. Yes.
 22 Q. It says Ray Bailey came to the site. Ray Bailey
 23 is a City employee; right?
 24 A. Yes.
 25 Q. And observed the progress; is that right?

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1 A. Yes.
 2 Q. Did he see -- was he there when the pipe was
 3 cut?
 4 A. I don't recall.
 5 Q. Do you recall if he observed any part of the
 6 assembly of the tee joint?
 7 A. He did.
 8 Q. So he was there to observe that?
 9 A. Yes.
 10 Q. On the same day you asked Greg Burress from IMCO
 11 to repair the 16-inch. Is it the 16-inch or a 16-inch?
 12 A. It's the same 16-inch pipe.
 13 Q. The same 16-inch near the 60, 48-inch tie-in
 14 that was damaged in late May. And this was undertaken while
 15 work on the tee was in progress; is that right?
 16 A. Yes.
 17 Q. Let's look at Exhibit 133. What does 133 show?
 18 A. It shows four of IMCO's people working on the
 19 tee installation.
 20 Q. Installing it looks like the northern most
 21 reducer to the 16-inch pipe; is that right?
 22 A. Yes.
 23 Q. And the pipe, the tee is being held in place by
 24 straps suspended from something above; is that right?
 25 A. Yes.

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1 Q. Do you remember what was holding it in place?
 2 A. No.
 3 Q. Can you tell if the tee is connected on the
 4 southern end, the reducer of the tee is already connected on
 5 southern end to the 16-inch line?
 6 A. No, you can't.
 7 Q. And to the back of the guys who are leaning
 8 against and bent over the pipe is basically a wall of earth?
 9 A. Yes.
 10 Q. There seems to be a pump to drain water out of
 11 the hole?
 12 A. Yes.
 13 Q. And there is a box behind the guy with the blue
 14 sweatshirt, hooded sweatshirt, that has some kind of green
 15 rags or something in it. Do you see that?
 16 A. Yes.
 17 Q. And this is the work that is occurring in
 18 connection with report 98?
 19 A. Yes.
 20 Q. Did these guys ever install -- how far did IMCO
 21 get before the work was called off on July 7?
 22 A. I don't recall.
 23 Q. Did they cut the pipe open? Look back at report
 24 number 97. The paragraph says problems arose when hole for
 25 tee was not positioned properly. And the plan to tap into

<p>325</p> <p>1 16-inch was abandoned today with reschedule tomorrow. 2 Right? 3 A. Yes. 4 Q. I mean if they had already cut into the line 5 there wouldn't be any need to do a valve shut off the 6 following day; right? 7 A. Not necessarily. From what I'm reading here 8 they probably did not cut into the pipe. 9 Q. Water pressure was restored by 8:30 in the 10 morning by City personnel? 11 A. Right. That tells me they probably did not cut 12 into the pipe, because I don't remember a collar being 13 installed on this pipe system. 14 Q. What's the date of Exhibit 133? 15 A. 7/7/94. 16 Q. It's July 7, 1994. On July 7, 1994, according 17 to Exhibit 93, these guys from IMCO are inserting the tee 18 into the 16-inch waterline; is that right? 19 A. That's what the date says. 20 Q. Do you have any explanation for that? 21 A. The camera probably had the wrong date on it. 22 It may be a day late or something. 23 Q. Well, did you have to calibrate the date on the 24 camera every day? 25 A. No.</p>	<p>327</p> <p>1 my own camera for the last several years. 2 Q. For part of the job were you using a camera 3 supplied by Earth Tech? 4 A. Yes. 5 Q. Do you know if that camera still exists? 6 A. That was the one that had gotten lost and I had 7 to go buy one of my own after that. 8 Q. What kind of camera was the one that took 9 Exhibit 133? 10 A. I don't know. It might have been my camera. It 11 might have been the other camera that I bought, the second 12 camera that I bought. I don't know. 13 Q. But you are sure it wasn't the first Earth Tech 14 camera? 15 A. No, I'm not sure of that. 16 Q. It could have been the first Earth Tech camera? 17 A. It could have been. 18 Q. Look ahead a couple of photographs. 19 A. Which one? 20 Q. Keeping going. That photograph, pull that out. 21 Take a look at Exhibit 136. And it is ET-PH0000353. Can 22 you identify that scene? 23 A. Yes. That's the location of the 16-inch 24 waterline that was repaired in report 98 referred to. 25 Q. So you will notice on this exhibit -- well, did</p>
<p>326</p> <p>1 Q. What kind of camera -- 2 A. But that was in the area -- that was a time 3 frame when I had lost a camera and then used my own for a 4 certain length of time and then had to go and buy another 5 one. I don't remember the exact time frame, but that 6 happened in June or July of that year. 7 So there is a possibility that this might have 8 been my own personal camera. And I noticed there were a 9 couple of pictures that had been returned to me when they 10 made copies of relatives that were part of the picture 11 negatives. So that could explain that situation. 12 Perhaps I had a different camera and it didn't 13 have the right date on it. 14 Q. Up until this date all the other dates have 15 corresponded or seemed to correspond with -- 16 A. Within a couple days. 17 Q. -- the inspection reports? 18 A. Within a couple days, yes. 19 Q. Do you still own the camera that produced 20 Exhibit 133? 21 A. No. 22 Q. You don't. What happened to that camera? 23 A. You lose cameras relatively often in the 24 construction industry, whether they fall or they get 25 misplaced. This was six years ago and I haven't had to use</p>	<p>328</p> <p>1 you use the same camera to take this picture as you used to 2 take Exhibit 133? 3 A. I don't know. 4 Q. Were you carrying around two cameras on the same 5 day? 6 A. No. I wouldn't think so. 7 Q. Were you ever carrying around two cameras on the 8 job site? 9 A. No. 10 Q. Exhibit 136 is a photograph of work being done 11 to repair the 16-inch near the 60, 48-inch tie-in; is that 12 right? 13 A. Yes. 14 Q. The following day -- July 8 by the way was a 15 Friday; right? 16 A. Yes. 17 Q. The following day, the day after July 8 was 18 Saturday and no work was done. And the next time that 19 people were working on the job was what, July 11th; is that 20 right? 21 A. Yes. 22 Q. I'm going to quickly look at July 11th here. 23 It's report number 99, part of Exhibit 64. Scanning it for 24 the second time I don't see any reference to the repair of 25 the 16-inch waterline. Do you?</p>

<p style="text-align: right;">329</p> <p>1 A. No. It would have been the 8th. The 8th was 2 the date it was repaired.</p> <p>3 Q. So it was repaired on the 8th. Take a look at 4 Exhibit 136 and tell me is there a date on the photograph?</p> <p>5 A. Yes.</p> <p>6 Q. What is that date?</p> <p>7 A. July 8, 1994.</p> <p>8 Q. July 8, 1994?</p> <p>9 A. Yes.</p> <p>10 Q. And the date on Exhibit 133 showing the workers 11 assembling the tee joint and connecting it to the 16-inch 12 waterline, if I understand your testimony, was taken using 13 the same photograph as took Exhibit 136; is that right?</p> <p>14 MR. BENINGER: Same camera.</p> <p>15 Q. Same camera?</p> <p>16 A. That's my -- I don't know for a fact that it 17 was, but I believe it was the only way. It had to have been 18 the same camera.</p> <p>19 Q. So, photograph 136, it corresponds, the date on 20 that photograph corresponds nicely with the work that was 21 done and reported on report 98 for repair of the damage to 22 the 16-inch waterline; correct?</p> <p>23 A. Yes.</p> <p>24 Q. But the date on Exhibit 133 showing work being 25 done on the tee intersection with the 16-inch waterline line</p>	<p style="text-align: right;">331</p> <p>1 believe they cut the collar and cut some of the pipe and put 2 a five foot piece of pipe or something in there and repaired 3 it in that manner.</p> <p>4 Q. Can you tell me if what's photographed in 5 Exhibit 136, is that the beginning of the repair process or 6 the middle or the end?</p> <p>7 A. I believe it's at the beginning of the repair 8 process itself.</p> <p>9 Q. Do you recall what time of day the beginning of 10 the repair process on the damaged section of the 16-inch 11 waterline started?</p> <p>12 A. No.</p> <p>13 Q. Do you recall what time of day the clock meter 14 on your camera would switch over?</p> <p>15 A. I never paid attention, no.</p> <p>16 MR. NICOLL: That takes us right up to 3:30.</p> <p>17 MR. SCANLAN: If you have a couple questions in 18 this thread you want to do I will --</p> <p>19 MR. NICOLL: All I wanted to do was to identify 20 some things on photographs so that we just did it while it 21 was fresh in my our minds which is why I was looking for the 22 red marker.</p> <p>23 Could you give me 136, please? Thank you.</p> <p>24 Q. We are going to be able to get back to it but 25 for now, just to close up, I'm going to ask you to look at</p>
<p style="text-align: right;">330</p> <p>1 does not correspond because of the date of July 7th on the 2 photograph?</p> <p>3 A. That's correct. That's what I'm seeing.</p> <p>4 Q. So do you have an explanation for that?</p> <p>5 A. No.</p> <p>6 Q. Take a look at the south end of Exhibit 133. I 7 know we have to stop in just a few minutes and so I will try 8 to get this in.</p> <p>9 Do you know what time of day the work was done 10 to repair the 16-inch waterline shown on 136?</p> <p>11 A. No, I don't.</p> <p>12 Q. It says that the work to repair that line was 13 done while the work on the tee was in progress. Do you 14 remember what time of day the work on the tee was in 15 progress?</p> <p>16 A. They started working on it very early in the 17 morning on the 8th.</p> <p>18 Q. Cracking open on the 16-inch line -- well, in 19 order to repair that 16-inch line did they have to crack it 20 open to take the segment out that was damaged and replace it 21 with good pipe?</p> <p>22 A. They cut it, yes.</p> <p>23 Q. And is that what's shown here on Exhibit 136?</p> <p>24 A. What I'm seeing on 136 is the place where they 25 put a collar on. And when they went back to replace it I</p>	<p style="text-align: right;">332</p> <p>1 what I've circled on Exhibit 133 and put an A next to it and 2 hold it up for the camera.</p> <p>3 Is that the date stamp on the photograph, 4 Exhibit 133, showing the date of July 7, 1994?</p> <p>5 A. Yes.</p> <p>6 Q. And hold up 136. And show -- actually if you 7 could hold it so it's turned that way. There you go.</p> <p>8 This is Exhibit 136. And is what I'm pointing 9 to and what is marked and circled as A, is that the date of 10 that photograph showing July 8, 1994?</p> <p>11 A. Yes, it does.</p> <p>12 Q. One last question. Do you, and if I have asked 13 it before I apologize.</p> <p>14 Do you have any recollection at all of what make 15 or model of camera it was that you were using for these 16 photographs 132 and 136?</p> <p>17 A. No.</p> <p>18 Q. None at all?</p> <p>19 A. It was just a cheap model I bought at K-Mart 20 that had a date thing on it. That was the only thing that 21 counted.</p> <p>22 Q. Did you personally calibrate the date on it, set 23 the date?</p> <p>24 A. Yes.</p> <p>25 Q. And did it come with instructions for how to do</p>

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1 that?
 2 A. Yes, it did.
 3 Q. Did you follow those instructions?
 4 A. I don't recall quite honestly.
 5 MR. NICOLL: Okay. That's all I have for today.
 6 MR. BENINGER: We'll go off the record now?
 7 MR. NICOLL: Yes.
 8 (The deposition adjourned
 9 at 3:35 p.m.)
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C E R T I F I C A T E

1
 2 STATE OF WASHINGTON)
 3 COUNTY OF KING)
 4 I do hereby certify:
 5 1. That I am a Notary Public in and for the State of
 6 Washington;
 7 2. That each witness before examination was by me
 8 duly sworn to testify to the truth, the whole truth and
 9 nothing but the truth;
 10 3. That the foregoing deposition was taken
 11 stenographically by me and reduced to transcript form under
 12 my direction;
 13 4. That I am not a relative or employee or attorney
 14 or counsel of any of the parties to said action, or a
 15 relative or employee of any such attorney or counsel, and
 16 that I am not financially interested in the said action or
 17 the outcome thereof;
 18 5. That each witness was given the opportunity to
 19 read and sign the deposition after the same was transcribed,
 20 unless indicated in the record that the parties and each
 21 witness waived the signing;
 22 6. That all objections made at the time of said
 23 examination to my qualifications or the manner of taking the
 24 deposition, or to the conduct of any party, have been noted
 25 by me upon said deposition;

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A F F I D A V I T

1
 2 STATE OF WASHINGTON)
 3) ss.
 4 COUNTY OF KING)
 5
 6 I have read my within deposition, and
 7 the same is true and accurate, save and except for
 8 changes and/or corrections, if any, as indicated by me
 9 on the correction sheet hereof.
 10
 11
 12 _____
 13 THOMAS W. FRANKLIN
 14
 15
 16 Subscribed and sworn to before me this
 17 _____ day of _____, 2000.
 18
 19
 20
 21 _____
 22 Notary Public in and for the
 23 State of Washington,
 24 residing in _____
 25 Commission expires _____

24 Susan Cannon, Court Reporter
 25 Deposition taken on: 6-22-00

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1 7. That the deposition as transcribed is a full,
 2 true and correct transcript of the testimony, including
 3 questions and answers, and all objections, motions, and
 4 exceptions of counsel made and taken at the time of the
 5 foregoing examination;
 6 8. That I have made arrangements for delivery of the
 7 deposition to the appropriate place of filing.
 8
 9
 10 IN WITNESS WHEREOF, I have hereunto set my hand and
 11 affixed my official seal this _____ day of
 12 _____, 2000.
 13
 14
 15
 16
 17 _____
 18 Notary Public in and for
 19 the State of Washington,
 20 residing at Kirkland.
 21 Commission expires 5-13-02
 22 CA-NN-05-507PS
 23
 24
 25

<p>0</p> <p>0 [1] 210:17</p> <p>0000011 [1] 246:7</p> <p>0000783 [1] 247:17</p>	<p>134 [1] 175:21</p> <p>135 [1] 175:22</p> <p>136 [14] 175:23 327:21 328:</p> <p>10 329:4,13,19 330:10,23-24</p> <p>331:5,23 332:6,8,16</p>	<p>18,22 185:10 199:5,15 201:</p> <p>17 212:8,12 214:9,15 215:18</p> <p>216:22 259:21 285:9,24 288:</p> <p>23 289:19 291:22 295:18 296:</p> <p>3 305:16 309:18 318:14 319:</p> <p>4,12,14 320:16</p>	<p>60 [4] 215:2 255:21 323:13</p> <p>328:11</p> <p>60-inch [4] 211:6 214:3,6 255:</p> <p>3</p> <p>64 [5] 220:6 293:19 298:1</p> <p>322:15 328:23</p>
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM -----

KATHERINE DALEN, Individually
and as the Personal Represent-
ative of the Estate of STEPHEN M.
TSIORVAS, and as Guardian
ad Litem for ANDREW R. TSIORVAS
and GEORGE K. TSIORVAS,

Plaintiffs,

-vs-

No.

99-2-01468-1

OLYMPIC PIPE LINE COMPANY, a
foreign corporation, EQUILON PIPELINE
COMPANY LLC, a foreign corporation, and
EQUILON ENTERPRISES, LLC, a foreign
corporation, and FRED CROGNALE, FRANK HOPF,
RON BRENTSON and JOHN DOES,

Defendants.

OLYMPIC PIPE LINE COMPANY, a foreign
corporation,

Third-Party Plaintiff,

-vs-

IMCO GENERAL CONSTRUCTION, a domestic
corporation,

Third-Party Defendant.

DEPOSITION UPON ORAL EXAMINATION
OF

THOMAS FRANKLIN, VOLUME 3 --

October 24, 2000

Cheryl Macdonald, Court Reporter
MA-CD-OC-A457LC

00338

FRANK S. KING, as the Personal
Representative of
the Estate

of WADE B. KING,
and FRANK S. KING
and MARY L. KING,
individually, and
TRACY K. BELL,
individually, and
JASON KING,
individually,

Plaintiffs,

-vs-

No.

99-2-01467-3

OLYMPIC PIPE LINE COMPANY, a
foreign
corporation, EQUILON
PIPELINE COMPANY
LLC, a foreign
corporation, and
EQUILON
ENTERPRISES, LLC, a
foreign
corporation, and
FRED CROGNALE,
FRANK HOPF, RON
BRENTSON and JOHN
DOES,

Defendants.

OLYMPIC PIPE LINE
COMPANY,

a foreign corporation,

Third-Party Plaintiff,

-vs-

IMCO GENERAL CONSTRUCTION CO., a domestic
corporation, and JOHN DOE DEFENDANTS ONE
THROUGH FOUR,

Third-Party Defendants.

DEPOSITION OF THOMAS FRANKLIN,
VOLUME 3

9:45 a.m.
October 24, 2000
1201 Third Avenue
Suite 5200
Seattle, Washington

Cheryl Macdonald, Court Reporter

00339

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00342

1

(Marked Exhibit 252.)

2

THE VIDEOGRAPHER: This is the

videotaped

3

portion in the deposition of Tom Franklin.

My name is

4

Steve Dahl. I am the videographer from
ProVideo

5

Seattle, located at 80 South Washington,
Suite 200 in

6

Seattle, Washington, 98104. This
deposition is being

7

recorded this 24th day of October 2000.
The time is

8

approximately 9:44 a.m., and we are at
1201 Third

9 Avenue, Suite 5200 in Seattle,
Washington.

10 This deposition is being
recorded in the
11 matter of Katherine Dalen, et al., vs.
Olympic Pipe
12 Line Company, et al., case No. 99-2-
01468-1 in the
13 Superior Court of the state of Washington
in and for
14 the county of Whatcom and was noticed by
Christopher
15 Nicoll.

16 Will counsel and all present
please identify
17 themselves for the record and will the court
reporter
18 please swear in the witness.
19 MR. NICOLL: Well, for the record
the
20 witness is already sworn. This is the third
day of

21 your deposition, Mr. Franklin. You
recognize that
22 you're still under oath; is that right?

23 THE WITNESS: Yes.

24 MR. NICOLL: I'm Chris
Nicoll. I'm
25 representing Olympic Pipe Line at this
deposition.

00343

1 MR. WOLFE: I'm John Wolfe
on behalf of
2 Frank Hopf.

3 MS. MARCHESE: Lisa Marchese on
behalf of
4 the city of Bellingham.

5 MR. VERWOLF: Nick Verwolf on
behalf of
6 Equilon Enterprises and Equilon Pipeline
Company.

7 MS. ANDERSON: Patricia Anderson
for the
8 plaintiffs.

9 MR. FLOYD: Francis Floyd for
Imcc.

10 MR. SCANLAN: Terry Scanlan

representing

11 Earth Tech.

12

13

EXAMINATION

14 BY MR. NICOLL:

15 Q. Mr. Franklin, when we last left
off we were

16 talking about some odd date stamping on
photographs

17 depicting work that was being done to put
the tee joint

18 in the ground connecting the 16-inch wire
line with the

19 24-inch discharge line from the pump
station. Do you

20 recall that?

21 A. Yes.

22 Q. Since the deposition I know some
period of

23 time has passed, but since the date of that
deposition,

24 have you gone back and done any
investigating or

25 further inquiry to see if you can find or
understand an

00344

1 explanation for why those dates were what
they were?

2 A. No.

3 Q. I'd like to move on, then, in the
inspection

4 reports to the inspection report for July
11th, and in

5 front of you there's a stack of exhibits.
What I need

6 you to do is to pull out the one, Exhibit
64. So in

7 Exhibit 64, if you would turn, please, to
the

8 inspection report for July 11, and as you'll
recall,

9 they're arranged kind of oddly because
they're all

10 attached to transmittal letters to the city.

11 A. You said 6 and 11?

12 Q. No, July 11, 7-11. Should be
report No. 99.

13 A. Okay, I've got it.
14 Q. All right. Now, July 11th was,
according to
15 this report, a Monday; is that correct?
16 A. Yes.
17 Q. And again, as with other reports,
you listed
18 the equipment that was in use on that date,
right?
19 A. Yes.
20 Q. You identified what the weather
was like,
21 the condition of the site, the temperature
of the air,
22 those sorts of things?
23 A. Yes.
24 Q. Now, if you'll turn your
attention to the
25 second paragraph. You state here, "Welding
of joints
00345
1 was completed over the weekend and tested
by Harbor
2 Mechanical." Earlier in this case, a
fair amount of
3 time ago now, we took a deposition of a
fellow named
4 Rodney Staples, who was, we thought or
believed, was
5 the Harbor Mechanical representative on
the job.
6 However, Mr. Staples told us that on that
job he wasn't
7 working as Harbor Mechanical. He was simply
working as
8 an employee of Imco.
9 And I wanted to clarify, at least
for my own
10 understanding, when you refer to Harbor
Mechanical in
11 the inspection reports, are you actually
referring to
12 Rodney Staples or would you know? Can you
even
13 remember?
14 A. As far as I knew, Harbor
Mechanical was a

15 name that was on his equipment and that's
where I got
16 that name from. I assumed he was a
subcontractor.

17 Q. But you know who Rodney Staples
is?
18 A. Yes, I do.

19 Q. And you know, looking at this
entry on
20 report No. 99, "welding of joints was
completed over
21 the weekend and tested by Harbor
Mechanical," can we
22 correctly or fairly take that to mean was -
- that
23 welding of joints was completed over the
weekend and
24 tested by Rodney Staples?
25 A. Yes.

00348

1 Q. There's no other individual
that you
2 identified with Harbor Mechanical?
3 A. If I recall, there was another
individual
4 that came in halfway through the project,
and because
5 he was behind on his welding he also
assisted in it.
6 That's the only recollection I have.

7 Q. Do you remember that person's
name?
8 A. No, I don't.

9 Q. Next paragraph says, "I talked
to Curt of
10 Bellingham maintenance and arranged for him
to turn
11 system off within the plant so piping can be
removed,"
12 et cetera. Do you see that entry?
13 A. Yes.

14 Q. Do you remember Curt's full
name?
15 A. No.

16 Q. And when you say of Bellingham
maintenance,
17 did you mean city of Bellingham?

18 A. Yes.
19 Q. Would you have gone anywhere to
speak with
20 him or spoke with him by phone or do you
recall?
21 A. I don't recall.
22 Q. Were there city people, city of
Bellingham
23 people, present at the job site from time
to time?
24 A. Yes.
25 Q. The job site itself was sort of
right next
00347
1 to a big water treatment facility, a big
brick
2 building; is that right?
3 A. Yes.
4 Q. Were there city employees working
in that
5 brick building during the construction
project?
6 A. Yes.
7 Q. About how many were in that
building, if you
8 know?
9 A. There was always someone there, I
would say,
10 one to five people.
11 Q. Were there any supervisory people
there, as
12 far as you're aware?
13 A. Yes.
14 Q. And who would they be? Who were
they?
15 A. A man that was supervisor of the
treatment
16 plant was there most of the time.
17 Q. Was that Bill Evans?
18 A. Yes. I don't even remember
the name.
19 Q. I'm sorry, Tom Evans?
20 A. No, it wasn't Tom.
21 Q. Bill Evans?
22 A. Yes.
23 Q. And how about a fella named
McCourt?

24 A. At times he came to the
site. Bill was
25 primarily the supervisor that was on site
most of the

00348

1 time.

2 Q. Bill Evans?

3 A. Evans.

4 Q. Any others from the city from
time to time?

5 This fellow Curt perhaps and others?

6 A. Not usually. They may have come
to the

7 site, but typically, no.

8 Q. Looking at the second page of
report No. 99,

9 you'll see at the top on the continuation of
the report

10 it reads, "Pipe wrapping and repair of
damaged areas

11 being done this p.m." What did you mean by
pipe

12 wrapping?

13 A. The large diameter pipe that was
to carry

14 fresh water from the treatment plants had a
plastic

15 wrap around it for protection. The joints
between each

16 of the sections of the pipe were left
unwrapped, and

17 those were wrapped at the time after the
testing and

18 welding had been completed.

19 Q. When you refer to large diameter
pipes, do

20 you include the 24-inch line or are you
specifically

21 speaking about the 60-inch and 48-inch
lines?

22 A. Both of them had plastic wrap.
All of them

23 had plastic wrap.

24 Q. All of them had plastic wrap.
So they were

25 all wrapped in the same way with plastic
wrap around.

00349

1 them when all the testing and welding was
completed?

2 A. Yes.

3 Q. You recall seeing during various
times

4 during the project the Olympic pipeline
exposed, right?

5 A. Yes, sir.

6 Q. It was not wrapped with the
plastic wrap,

7 was it?

8 A. No.

9 Q. Now, the next part of that
sentence reads,

10 "and repair of damaged areas being done this
11 afternoon." So, pipe wrapping and repair of
damaged

12 areas. Do you recall what damaged areas were
being

13 repaired?

14 A. The damaged areas I'd be
referring to would

15 be damage to the large diameter pipes, 54
and 60-inch

16 or 60 and 72-inch pipes. When they would be
moved from

17 one place to the other you'd get damage from
the

18 ground surfaces being rubbed up against them.
Those

19 would be repaired.

20 Q. So that would be damage on the
exterior of

21 the pipe?

22 A. Yes.

23 Q. And these water pipes were made of
steel?

24 A. Yes.

25 Q. What was their thickness again?

00350

1 A. Approximately a quarter inch.

2 Q. How would those pipes be
repaired?

3 A. You'd remove the plastic wrap and
wrap it

4 again with undamaged wrapping material so

that you had

5 the same protection on that section of pipe.

6 Q. So this was damage to the wrapping and not

7 damage to the pipe?

8 A. That's correct.

9 Q. Were there any times when the exterior of

10 the pipes themselves, the water pipes that were being

11 installed during the project, had, you know, marks or

12 gouges or anything like that in them that needed to be

13 addressed in the context of construction, needed to be

14 taken care of?

15 A. Not to my knowledge.

16 Q. Then it says, "An effort by operator of hoe pack mounted on J. D. 792 to begin backfill of 72,

18 60-inch trench this p.m. was stopped as no special

19 effort to compact beneath the pipes, such as jumping

20 jack tampers, has been done, and labor working on pipe

21 wrapping."

22 Could you explain what was going on here?

23 What was that all about?

24 A. They were backfilling areas that needed

25 immediate labor attention to be able to do it properly,

00351

1 hand work, and they didn't have the people to do it,

2 and so I just suggested to Greg that he wait on the

3 backfilling material until he had the people to do the

4 work properly. He wasn't getting compaction so we just

5 stopped the activity.

6 Q. And if I understand you correctly

-- correct

7 me if I'm wrong -- the issue there was the ground

8 needed to be sufficiently compacted so that these pipes

9 would be properly supported after all backfilling was

10 concluded; is that right?

11 A. Yes, that's correct.

12 Q. And what you saw on July 11 was that the

13 preliminary compaction to backfilling wasn't being done

14 properly because there wasn't enough labor?

15 A. Yes.

16 Q. And then the last entry that I have a

17 question about reads, "Work assembling angle at 24-inch

18 DIT begun with a 33-degree bend inserted off a one-foot

19 flange using a mega lug." First of all, the initials

20 DI, what do those means?

21 A. Ductile iron.

22 Q. And then the word tee, T E E, that's the tee

23 joint, right?

24 A. That's correct.

25 Q. That's the tee joint that we've been talking

00352

1 about that connected the 16-inch main to the 24-inch

2 discharge line coming off the pump station?

3 A. Yes.

4 Q. The 30-degree bend was something that was

5 going to be used to be able to connect that tee joint

6 to the 24-inch line that was coming off the pump

7 station; is that right?

8 A. Yes.

9 Q. And a one-foot flange, am I reading that

10 correctly?

11 A. Yes.
12 Q. What would this -- what was this
flange
13 going to be used for?
14 A. I don't know.
15 Q. And a mega lug, is that a kind
of a tool?
16 A. Mega lug is a device that
attaches to the
17 bell of the pipe itself and is used to
restrain it.
18 Q. Why don't we look at the next
report which
19 is report No. 100, July 12. As with all the
other
20 reports you've identified the
subcontractors on site,
21 the size of the crew, the day of the week,
the weather
22 conditions, all those things, right?
23 A. Yes.
24 Q. This is report No. 100, correct?
25 A. Yes.

00353

1 Q. Now, the main question I have on
this one
2 has to do with the paragraph in the
middle. It says,
3 "During our weekly meeting Imco brought up
their plan
4 to enlarge the" -- I can't really read that
word but --
5 "second floor door removal to obtain an
6 eight-foot-by-eight-foot hole to pass soda
ash silos
7 through it. John Hatch said that wouldn't
be possible,
8 that assembly in place was expected. An
effort to cut
9 the silo in half and assemble parts will be
planned."
10 Is it fair to say that there was
some
11 conflict that developed between Earth Tech,
or Barrett
12 at that time, and Imco at that time over how
the soda

13 ash assembly was going to be conducted and
carried out?

14 A. Yes.

15 Q. And this conflict started to really
arise
16 about this time on July 12?
17 A. Yes, yes.
18 Q. Barrett didn't want and said that
it could
19 not be done to enlarge the door on the
second floor in
20 order to put the silos in, in order to put
the silos
21 into the second floor?
22 A. Well, actually I think what Imco
said, or
23 what Barrett said, was that the plans showed
an opening
24 in the wall to be cut for the silo bin
itself, and that
25 was a certain dimension, and structurally it
was
00354
1 determined by Earth Tech people that that
was the
2 largest opening that would be allowed for
this. And
3 the contractor went ahead prior to
discussing that with
4 us and assembled a silo as one piece, and
that's the
5 conflict.

6 Q. Do you know if this had an impact
for Imco
7 in terms of the -- its cost in order to
complete this
8 job?
9 A. No, I don't.

10 MR. FLOYD: Objection to the
form of the
11 question, lack of foundation.
12 Q. You don't know?
13 A. No, I don't know.
14 Q. Let's turn to July 13th, report
101. Again,
15 this report was prepared by you, right?
16 A. Yes.

17 Q. Towards the -- it's, I guess, the
third
18 paragraph of the narrative, you wrote, "Work
extending
19 the 24-inch ductile iron were from tee to
pump station
20 placing an 11-degree bend next to 33-degree
bend and
21 working toward pump station wall footing.

A five
22 gallon container of chlorine solution
being used on
23 pieces being installed."
24 When the line connecting the
discharge to
25 the pump station and to the tee was being
installed,

00355

1 was it being worked backwards from the
tee to the
2 station?

3 A. That's what I remember, yes.

4 Q. And that's what this says,
right?

5 A. Yes.

6 Q. At the time that you were
installing the

7 discharge line or that Imco was
installing the

8 discharge line and that you were there
observing it,

9 was the footing for that wall already in
place?

10 A. No.

11 Q. You knew where it would be?

12 A. Yes.

13 Q. So you wanted to make sure that
the

14 discharge line wouldn't conflict with the
footing?

15 A. That's correct.

16 Q. And that has something to do
with the way

17 these bends were being worked out; is
that right?

18 A. Yes.

19 Q. There was a reference at the end

that was a

20 little bit confusing to me, and I was
wondering if you
21 could explain it. It says, "The material
will not
22 obtain more than 94.8 percent" -- this is
with
23 reference to densities -- "at second
joints of the 60
24 and 72-inch pipes. It's felt that
material will be
25 contaminated from edge of trench
material."

00356

1 MR. FLOYD: Wait a minute.
You're reading

2 this thing backwards now, aren't you?

3 MR. NICOLL: No.

4 MR. FLOYD: You read "the
material will not

5 obtain more than 94.8 percent"?

6 MR. NICOLL: Right. And then I

--
7 MR. FLOYD: You read the line
before that.

8 Now you're reading the line after it.

9 MR. NICOLL: Yes. The material
-- I'm

10 referring -- okay. Why don't I just read
the whole

11 paragraph.

12 Q. "Densities at second joints of
60 and 72-

13 inch pipes pass except for south side of
72-inch. The

14 material will not obtain more than 94.8
percent. It's

15 felt that material may be contaminated from
edge of

16 trench material. With backfill stockpiled,
completed

17 efforts to remove and replace this
material will be

18 made and will return at 9:30 a.m.
tomorrow."

19 Working backwards, Anville, was
Anville the

20 company that was doing the testing to make
sure that
21 the CDF densities were acceptable?
22 A. Yes.
23 Q. And backfill stockpile, what was
the
24 backfill stockpile?
25 A. That is a good well-draining
granular

00357

1 material used to fill the hole that was
created for the
2 pipe excavation.
3 Q. But that's not the CDF, that's
something
4 else?
5 A. No. Right, that's correct. It's
not CDF.

6 Q. And is this the material, the
backfill
7 material, that was felt to have been
contaminated from
8 the edge of the trench?
9 A. Yes.
10 Q. So, in other words, just normal
dirt was
11 getting mixed in with the nice drainage
stuff?

12 A. That's right.
13 Q. And that was going on south of the
72-inch
14 line, not in the area of the tee joint?
15 A. That's correct.

16 THE VIDEOGRAPHER: Pardon me, we
need to
17 turn off cell phones. It's causing quite a
bit of
18 disruption. Thank you very much. Pardon me.
19 MR. NICOLL: Did we get that last
testimony?

20 Q. Now, let's turn to report No. 103,
July 18.
21 MR. FLOYD: Which one are you on?
22 MR. NICOLL: Report 103, July
18.
23 MR. FLOYD: I've got 103.
24 MR. SCANLAN: You're looking at

July 15.

25 MR. FLOYD: There's two report
103's so
00358

1 maybe you should --
2 MR. NICOLL: Let's clarify that,
clear that
3 up.
4 Q. Look at -- before we get to 103,
look at
5 report 102 dated July 14. Do you see that?
6 A. Yes.
7 Q. And you wrote that report; is
that correct?
8 A. Yes, I did.
9 Q. Now, if you would flip to report
No. 103,
10 the first 103.

11 MR. FLOYD: Dated July 15?
12 A. Okay.
13 Q. Do you see that one that reports,
"no

14 activity on site today, contractor working
four 10-hour
15 shifts"?
16 A. Yes.
17 Q. And you wrote that report?
18 A. I did.
19 Q. Now let's look to July 18th,
1994.

20 A. Yes.
21 Q. That's also numbered report No.
103 and it
22 consists of two pages; is that right?
23 A. Yes.
24 Q. Did you just accidentally
misnumber that?
25 A. I made a mistake, yes, sir.

00359

1 MR. FLOYD: That throws all the
subsequent
2 reports off then.
3 MR. NICOLL: We'll just go by
dates. I'm
4 sure we can handle it.
5 MR. FLOYD: Have to throw them
all out now.

6 Q. Couple of things about this.
First, you
7 note on July 18 that Triad is a
subcontractor on site
8 and that it has two electricians. Do you
see that?
9 A. Yes.
10 Q. You also notice the equipment
that's being
11 used on the site as you've done in the past?
12 A. Yes.
13 Q. You note crew sites, and I just
want to make
14 sure I've got these abbreviations correctly.
It says
15 "three carp." Does that mean carpenter?
16 A. Yes.
17 Q. "Three op." Does that mean
equipment
18 operators?
19 A. Yes.
20 Q. And three laborers?
21 A. Yes.
22 Q. People doing noncarpentry,
nonequipment
23 operation?
24 A. Yes.
25 Q. And then of course there was the
00360
1 superintendent or foreman named Greg Burris;
is that
2 correct?
3 A. Yes.
4 Q. Was Greg usually on the site?
Was he the
5 one who was usually on the site for Imco?
6 A. Yes.
7 Q. What about Paul Krakenberg? Was
he usually
8 on site?
9 A. Typically, yes.
10 Q. What role did -- if you know, what
role did
11 Paul play with respect to Greg? Who was the
12 superintendent?
13 A. Greg was the superintendent. Paul
was the

14 office engineer.
15 Q. So Paul would report to Greg?
16 A. Yes.
17 Q. All right. And towards the end of
the third
18 paragraph there's a reference here which
reads, "I
19 talked to Greg about material above the 90
percent
20 density requirements. There's plus 1.5 feet
above the
21 pipe which will require 96 percent test
results.
22 Piping on the south side and middle of pipes
require
23 excavation and movement of material."
24 Earlier in this paragraph there is
a
25 reference to backfilling of 60 and 72-inch
pipes. Is

00361

1 your reference in this paragraph to the
requirement for
2 excavation on the south side and the middle
of the
3 pipes a reference to required excavation
around the 60
4 and 72-inch pipes?
5 A. I believe so.
6 Q. And that would be, again, to the
south of
7 the connection between the 24-inch line and
the tee
8 joint?
9 A. Yes, to the south and west,
primarily west.
10 Q. Now, bottom line of the first page
of the
11 July 18 report there's a sentence that
reads,
12 "Excavations for 24-inch DI connecting pump
station to
13 60-inch was begun, again, as trench did not
run true to
14 line and error made in layout which made
connection
15 impossible. A widened trench was dug to the

north and

16 past the gas line with gas company personnel
present to

17 allow pipe placement. This work will
proceed

18 tomorrow."

19 What I'd like to do with respect
to this is

20 take a look at some of the old photographs
that we've

21 been looking at before in this case. And
specifically,

22 if you could hand me the 140, 141 and 142,
would you

23 take a look at those, and first of all, it's
going to

24 be important to sort of hold them up so the
camera can

25 see them.

00362

1 A. (Indicating).

2 Q. That's Exhibit 140. That shows
an excavator

3 doing some digging in the trench along the
south side

4 of the pump station; is that right?

5 A. Yes.

6 Q. Could you look at the next one,
141?

7 A. (Indicating).

8 Q. And 141 also shows the same
thing, an

9 excavator doing some digging in a trench
along the

10 south side of the pump station?

11 A. Yes.

12 Q. And finally 142, can you hold that
up?

13 A. (Indicating).

14 Q. That shows the 24-inch tee joint
with the

15 24-inch line wrapped in plastic; is that
correct?

16 A. Yes.

17 Q. Let's look at 142 for a moment.
Tell me,

18 does 142 have a visible date stamp in the

lower

19 right-hand corner?

20 A. Well, there's a date stamp there
but I can't

21 read it. It's too light. All I can read is
-- make

22 out -- is 94.

23 Q. Can you recall looking at the
photograph

24 Exhibit 142, and based on the description in
the July

25 18 report, which direction was the trench
widened?

00363

1 A. Well, this isn't referring to
this pipe.

2 It's referring --

3 Q. Oh, it's not? It's referring to
a different

4 one?

5 A. Yes.

6 Q. "Excavation for 24-inch DI
connecting pump

7 station to 60-inch was begun, again, as
trench did not

8 run true to line." Okay. So is this
talking about the

9 one on the north side of the pump station?

10 A. Yes, sir.

11 Q. The suction line, the 24-inch
suction line?

12 A. The one on the north side, I'm not
going to

13 go there.

14 Q. You're not going to go there any
more, okay.

15 Did this have to be -- did the trench on the
north side

16 then have to be dug after it had been once
backfilled?

17 A. No.

18 Q. It was still open?

19 A. Yes.

20 Q. And this is the trench where the
pipeline

21 was -- the Olympic pipeline was hanging
exposed for a

22 while?
23 A. Yes, sir.
24 MR. SCANLAN: Just so we're
clear, when
25 you're saying "this," you're referring to a
photograph
00364
1 or to a report?
2 MR. NICOLL: I'm going to go
back to that
3 photograph, actually. I think we've got
that one in
4 the record.
5 MR. FLOYD: I'm going to
object to the
6 phrase it was "hanging" because I don't
think it was
7 ever hanging. It may have been exposed,
but I don't
8 think it was hanging.
9 MR. NICOLL: I apologize to
everybody. I
10 didn't bring a copy of this. I thought it
was already
11 in the record.
12 (Marked Exhibit 253.)
13 Q. Mr. Franklin, I'm going to show
you Exhibit
14 253, which is a color Xerox of a photograph
that we
15 obtained from Earth Tech.
16 MR. VERWOLF: What's the Earth
Tech number?
17 MR. NICOLL: Why don't you read
the Earth
18 Tech number off the back.
19 THE WITNESS: 856. Four zeros,
856. ETPH.
20 MR. NICOLL: Why don't you hold
that up.
21 MS. MARCHESE: I'm sorry, didn't
hear the
22 last part of the number.
23 THE WITNESS: 856, four zeroes
first.
24 Q. Does Exhibit 253 photograph the
trench to

25 the north side of the pump station that
report July 18,

00365

1 1994 refers to needing to be widened?

2 A. That is the location, yes.

3 MR. SCANLAN: Do you want to put
the date of

4 the photo in the record since it's not
corresponding to

5 the report you're referring to?

6 MR. NICOLL: Right. Well, this
appears to

7 be a July 26, 1994 date.

8 Q. Can you see that?

9 A. Okay, yes.

10 Q. So this would be a photograph that
would

11 have been taken apparently after the work
that's

12 referred to in the July 18, '94 report; is
that

13 correct?

14 A. Yes.

15 MR. NICOLL: I'm sorry for the
confusion.

16 I just wanted to clarify that for myself.
It wasn't

17 that clear to me in the report.

18 Q. Do you recall on the following
day -- I

19 imagine -- was it on July 18, 1994 that
Olympic Pipe

20 Line people were present?

21 A. I believe so. That's what it's
labeled.

22 Q. That's what this references?

23 A. What the report says, yes.

24 Q. But you can't recall their
names or --

25 A. No. I didn't get involved with
them.

00366

1 Q. Did you personally see them there
or did you

2 base your report on what others reported to
you?

3 A. No. I saw them there.

4 Q. How did you identify them as
Olympic Pipe
5 Line people?
6 A. I could have gone up and asked
them. I
7 believe I did.
8 Q. And were you there while they
were there?
9 A. Yes.
10 Q. Did you observe how they -- what
they did
11 during this excavation work?
12 A. No, I didn't.
13 Q. Did they remain present during
the
14 excavation that was done?
15 A. As far as I know, yes.
16 Q. Do you recall any report of a
difficulty
17 getting the Olympic people to attend the
excavation
18 work that's reported on July 18?
19 A. No.
20 MR. SCANLAN: No, you don't
recall or no,
21 there wasn't any?
22 A. I don't recall of any
difficulty.
23 Q. Let's look at the report on --
well, let me
24 just double-check my notes here -- the
report on July
25 19th. Now, this report is numbered 104. I
believe
00367
1 it's the only 104; is that correct?
2 A. It is numbered 104.
3 Q. You wrote the report?
4 A. Yes.
5 Q. It's your signature at the
bottom?
6 A. Yes, sir.
7 Q. Again, it refers to two Triad
electricians
8 on site, right?
9 A. Yes.
10 Q. The part about this report is --

says,
11 "Assembly of 24-inch DI was begun without
bedding. I
12 asked bedding be placed and compacted
before pipe
13 assembly and all joints have mega lugs."
So we're
14 clear, is this the 24-inch ductile iron
pipe to the
15 north of the pump station about which --
or which is
16 depicted in photograph 253, or is this the
one on the
17 south side, or do you know?
18 A. I don't know.
19 Q. Do you recall there being a
problem with
20 assembly or laying of the 24-inch discharge
line
21 without bedding?
22 A. I don't recall of it.
23 Q. I know there's a photograph in
here that
24 will help us. Look at Exhibit 141, would
you, and in
25 the lower -- why don't you hold that up for
the camera,
00368
1 first of all. Am I correct that Exhibit 141
is a
2 photograph of the process of laying the 24-
inch
3 discharge line along the south side of the
pump
4 station?
5 A. Yes, it is.
6 Q. If you look in the lower right-
hand corner,
7 does that date appear to you to be July 19,
1994 or can
8 you tell?
9 A. I really can't tell.
10 Q. The earlier reports that we've
been
11 reviewing, for example, the report on July
11th, talks
12 about work assembling angle at 24-inch DIT

had begun,

13 and then the July 13 report says, "work
extending the
14 24-inch DI from tee to pump station placing
11-degree
15 bend next to the 33-degree bend and working
toward the
16 pump station wall footing."

17 When I read that it sounded to
me like the

18 pipe was being laid earlier on July 11th,
12th, 13th,

19 connecting the tee joint to the discharge
side of the

20 pump station?

21 A. All I mentioned was that the
bends were
22 being put on, and that's there at the bottom
near the

23 tee.

24 Q. So this reference, then, in the
July 19

25 report could be a reference to a problem
with the
00369

1 bedding underneath the discharge line on the
south side

2 of the pump station?

3 MR. SCANLAN: Object to the form
of the

4 question.

5 MR. FLOYD: Yeah. It's already
been asked

6 and answered. He says he doesn't know.

7 A. They were working on both pipes
at the same

8 time.

9 Q. If Exhibit 141 is a photograph
taken on July

10 19 -- just assume that it was -- would that
mean that

11 the work being described in the July 19
report must

12 have been on the north section?

13 MR. SCANLAN: Object to the form
of the

14 question. Calls for speculation.

15 MR. NICOLL: Terry, I respect
the fact that
16 you're here in the dep, and I don't have
any problem
17 with that, but you're not really
representing a party
18 here, and that would really be a party's
objection.

19 MR. SCANLAN: Well, I'm going to
make my
20 record.

21 MR. FLOYD: I'll make the
objection.

22 MR. NICOLL: You kick Francis and
he'll say.

23 MR. FLOYD: No, I think he can
handle it

24 himself.

25 MR. VERWOLF: Actually, Mr. Nicoll
is
CC370

1 correct. Mr. Scanlan does not represent a
party in the

2 litigation. He represents the witness to
protect

3 privilege.

4 MR. NICOLL: I have no problem
with that

5 part of it.

6 MR. SCANLAN: I'll make a record
as long as

7 I go along, and if later you guys want to do
what you

8 want to do, that's fine.

9 THE VIDEOGRAPHER: You're getting
a little

10 bit in the picture. I need to make sure
that you guys

11 aren't too close together.

12 MR. NICOLL: I'll state the
question again.

13 Q. If this photograph, Exhibit 141,
was taken

14 on July 19, would that have to mean that the
work

15 described in the July 19th report regarding
assembly of

16 the 24-inch ductile iron was begun without
bedding,
17 would that have to mean that that report was
referring
18 to the ductile iron pipe connecting the
north side to
19 the 60-inch line from the --
20 MR. FLOYD: Object to the form of
the
21 question. It's compound and confusing. Go
ahead and
22 answer.
23 MR. SCANLAN: And I'm going to
make the same
24 objection.
25 A. From what I'm seeing, the picture
having

00371

1 been taken 6-22 with assembly in one place,
that when
2 I'm referring to beginning of assembly of
the 24-inch
3 ductile iron, it must be the north.
4 Q. Don't be misled by the 6-22
that's
5 handwritten down there. That's the date
when the
6 picture was put into evidence. You'll see
that that's
7 6-22-00.
8 A. That's correct.
9 Q. You testified earlier that you
couldn't read
10 the faint red date --
11 A. That's correct.
12 Q. -- in the lower right-hand corner
that's
13 actually on the photograph, and I'm just --
you
14 know, maybe someday we'll get a better copy
of that
15 photograph and we'll be able to read the date
better,
16 and if the date says July 19, right, if the
date on the
17 photograph is July 19, if the photograph was
taken on

18 July 19 by you, would that not -- wouldn't
that mean
19 that the work described in the July 19 report
must have
20 been going on on the north side?
21 MR. FLOYD: I'm going to object
again to the
22 form. It's compound and it's getting
argumentative
23 because the witness has previously
testified that he
24 used different cameras and the dates did
not always
25 coincide.

00372

1 MR. NICOLL: Now you're
coaching the
2 witness. It's not necessary.
3 MR. FLOYD: No. I'm objecting and
making a
4 record. Go ahead and answer.
5 MR. SCANLAN: I'm going to note an
objection
6 just that it calls for speculation.
7 A. My guess is I'm referring to the
north side.
8 MR. FLOYD: And I'll move to
strike.
9 Calling for -- he said he guessed.
Speculation.
10 Q. Don't want you to guess. And I
know that
11 because I'm asking you to assume a fact
sort of
12 inherently calls for that, but I still
don't want you
13 to guess. What I want you to do is to
assume that the
14 photograph, Exhibit 141, was taken on July
19. If that
15 was true, if that photograph was actually
taken by you
16 on July 19, would it then mean that the work
described
17 with respect to the 24-inch ductile iron
pipe in your
18 report of July 19 must have been on the

north side, the

19 suction line, or whatever you want to call
it?

20 MR. SCANLAN: Same objection.

21 MR. FLOYD: Same objections.

22 A. Yes.

23 Q. Let's move on to the July 20th
report. Do

24 you have that in front of you?

25 A. Yes.

00373

1 Q. You wrote this report?

2 MR. WOLFE: What's the number of
the report?

3 MR. NICOLL: It's numbered 105.

4 A. I did write it.

5 Q. And you signed it?

6 A. Yes.

7 Q. It refers to two Triad
electricians being on

8 site and two Norton people, right?

9 A. Yes.

10 Q. Norton was Norton Corrosion; is
that right?

11 A. I believe so.

12 Q. Now, the reference that I wanted
to talk

13 about here is -- look at the middle. It
says, "The

14 24-inch DI" -- ductile iron -- "south of
pump station

15 is being backfilled for fitting of first
wall panel."

16 Do you see that?

17 A. Yes.

18 Q. And then it talks about
"Densities of sub

19 grade will be taken before steel placement.
Densities

20 on sub grade attain 99 percent and are
acceptable." Is

21 that right?

22 A. Yes.

23 Q. Now, that's of course referring
to the

24 connection between the tee joint and the
discharge side

25 of the pump station?

00374

1 A. Yes.

2 Q. Now, the next paragraph cures the
problem,

3 and I apologize. It says, "Now the
bedding is now in

4 place for the 24-inch DI north of pump
station." So

5 that clarifies the earlier problem, and I
apologize for

6 taking us through that. So now we know that
the day

7 before, July 19, was actually in fact
talking about

8 bedding problems on the north of the
pump station,

9 right?

10 A. Yes.

11 Q. And just as with the line on the
discharge

12 side, the line on the other side, the north
side, was

13 going to be plastic wrapped?

14 A. Yes.

15 Q. Look at the report for July 21,
please.

16 You'll notice that this is another report
made by you.

17 It's report No. 106?

18 A. Yes.

19 Q. Signed by you?

20 A. Yes.

21 Q. This report refers to, at the
bottom,

22 "concerns about space for soda ash supply
caused me to

23 request any further progress be terminated
as it may

24 interfere with soda ash activities." Do you
see that?

25 A. Yes, sir.

00375

1 Q. Did that decision on your part
cause any

2 conflict between yourself, Barrett and Imco?

3 A. Not that I recall.

4 Q. It goes on and says, "pour
started on roof
5 approximately 12-30." That would be pouring
concrete
6 on the roof of the pump station?
7 A. Yes.
8 Q. "First placement in MH." What
does MH mean?
9 A. Manhole.
10 Q. "And footing for retaining wall
has no
11 fibers in concrete."
12 A. Right.
13 Q. What does -- what are you referring
to, "no
14 fibers in concrete"? What does that mean?
15 A. The fibers that were placed in the
concrete
16 that was supposed to be part of the roof
construction,
17 plastic fibers are installed, and it aids in
tension
18 for the concrete itself. You wouldn't have
needed them
19 for channeling a manhole or other items that
they had
20 done before. So they would do that first.
21 Q. So because there was no fibers in
the
22 concrete you used the concrete for something
other than
23 the roof?
24 A. Prior to, yes.
25 Q. Prior to the roof. And then it
says, "Once

00376

1 these are poured remainder of truckload
rejected as
2 it's past time." Did you make the decision
to reject
3 the truckload?
4 A. I don't recall. Could have been
myself or
5 Anville.
6 Q. Why was it past time, if you
remember?
7 A. I don't remember.

8 Q. Then it says, "With appropriate
mix the roof

9 took until 4 p.m. and the cleanup load of
four" -- is

10 that "cubic yards" --

11 A. Yes.

12 Q. -- "delivered at 4:30 p.m. for 31
cubic

13 yards total in roof area. A swale was
established near

14 vent on the north side to keep water flow
east to curb.

15 The top will be brush-finished and burlap-
saturated and

16 will be placed with a soaker hose at high end
for

17 cure." Did I read all that correctly?

18 A. Yes.

19 Q. Do you recall if there was any
excess

20 concrete material?

21 A. No, I don't.

22 Q. So naturally it would follow you
wouldn't

23 know if there was what was done with it?

24 A. That's right.

25 Q. I wanted to pop back for a moment
to a
00377

1 report on July 19.

2 MR. FLOYD: On July 19?

3 MR. NICOLL: Yeah, report No. 104.

4 Q. There's a reference in the last
paragraph

5 that says, "Plumber, Greg Burris, Bill Evans
and I

6 determined location of process piping from
garage vault

7 to flume. Some pipe will not have 2-inch TYP
spacing

8 as indicated in plans." Is plumber a person
or a

9 position?

10 A. A position.

11 Q. Do you remember who the person
was?

12 A. No, I don't.

13 Q. Greg Burris, we know. Bill Evans,
that's
14 the supervisor at the water treatment
facility?

15 A. Yes.

16 Q. Did you note in your inspection
reports

17 every time that Bill Evans came down to the
18 construction site?

19 A. No.

20 Q. All right. Now, 7-25-94, report
No. 107.

21 This is your report. You wrote it, you
signed it?

22 A. Yes.

23 Q. Again, it refers to
subcontractors, in this
24 case Triad, two electricians, right?

25 A. Yes.

00378

1 Q. Action Concrete cutting one and
two laborers

2 from Norton Corrosion, is that right?

3 A. Yes.

4 Q. The third paragraph reads, "The
second layer

5 of plastic to be placed around 24-inch
suction line to

6 pump station will receive wrapping that's
been cut for

7 ease of application, John hatch approved the
method of

8 sealant."

9 Now, I know that earlier in the
deposition

10 we had some confusion about which side was
the suction

11 and which side was the discharge. As you sit
here

12 today, do you know, is this reference, 24-
inch suction,

13 a reference to the pipe that connected the
60-inch line

14 to the north side of the pump station?

15 MR. FLOYD: Did you say 60 or 16?

16 MR. NICOLL: 60, six zero.

17 A. I don't know.

18 Q. Skip down to the last paragraph
on this
19 page, and it says, "Backfilling area near
24-inch tee
20 and retaining wall footings. Forms being
constructed
21 for first wall pattern and dowels being
epoxy placed
22 into southwest pump station corner. Once
backfill is
23 approximately two feet above pipe hand
compacting ended
24 and hoe pack used plus 96 percent densities
were
25 obtained by hand compaction."
00379

1 So if I could have the photograph
book. If
2 we look at the -- at photograph 145, you can
hold up
3 145 for the camera.

4 MR. FLOYD: Exhibit or photograph
number?

5 MR. NICOLL: It's Exhibit 145.

6 Q. Hold it up just again for a
second.

7 A. (Indicating).

8 Q. In the lower left-hand corner of
the
9 photograph you can see that some of the pipe
there is
10 covered with earth. Do you see that?

11 A. Yes.

12 MR. SCANLAN: You mean right here
13 (indicating)?

14 MR. NICOLL: Yes.

15 Q. And in the lower right-hand
corner of the

16 photograph I think the date is pretty
clearly there,

17 July 25th?

18 A. Yes.

19 Q. Now, look at -- and of course
that

20 photograph shows the south side of the
pump station;

21 is that correct?

22 A. Yes.
23 Q. Do you recognize the laborer in
the
24 photograph? Do you know who that is?
25 A. No, I don't. I do recognize him,
but I
00380
1 don't know who he is.
2 Q. Do you recall who he worked for?
3 A. No.
4 Q. Why don't you flip to the earlier
5 photograph, I think it's 144, and hold that
one up.
6 A. (Indicating).
7 Q. That's also a photograph of the
south side
8 of the pump station; is that right?
9 A. Yes, it is.
10 Q. And it shows how the pipe wrapped
in plastic
11 runs down to the tee joint?
12 A. Yes.
13 Q. Now, the date on Exhibit 144 is
not as clear
14 as the date on Exhibit 145 was, but
nonetheless, based
15 on a comparison of the two photographs, can
you tell us
16 whether it appears they were both taken on
the same
17 day?
18 A. No. I can't tell whether they're
taken on
19 the same day, but 144 was taken before 145.
20 Q. And how do you know that?
21 A. Because 144 shows the footing
forms in
22 place, and 145 shows the footing have been
poured.
23 Q. And that's -- and the forms were
constructed
24 on the 25th, according to the July 25th
report,
25 inspection report; is that right?
00381
1 A. Yes.
2 Q. So if we look at the July 26th

inspection

3 report, No. 108, prepared and signed by
you, right?

4 A. Yes.

5 Q. There's a note in the middle of
the page

6 that says, "Norton Corrosion personnel are
continuing

7 to drill annode beds near filter storage
pipe." What

8 were they using to drill these annode
beds?

9 A. Well, they started out with an
auger.

10 Q. Can you describe the auger for
us?

11 A. From my recollection it was about
a one-foot

12 diameter auger, maybe a foot and a half, had
flights of

13 about six foot in length and it was part of a
drill

14 assembly.

15 Q. And is it listed on any of the
equipment on

16 report No. 108 of July 26, '94?

17 A. No, it's not.

18 Q. Would you normally list
subcontractor

19 equipment?

20 A. Normally, yes.

21 Q. Where was the filter storage pipe
located on

22 the job site?

23 A. The filter storage pipe was along
a corridor

24 of Whatcom Creek. There was a driving
corridor that

25 went down to the waste site and out into
the streets

00382

1 itself. It was north and west of the pump
station.

2 Q. So it was away from -- some
distance away

3 from the tee joint intersection with the
16-inch line

4 and the 24-inch line?
5 A. Yes. It was on the other side
of the pump
6 station, easily.
7 Q. Easily on the other side of the
pump
8 station?
9 A. Yes. Roughly in the same area
as the gap
10 manhole, air gap.
11 Q. Now, it says, as you read on, it
says,
12 "Layout for the four annodes to be connected
to 24-inch
13 suction line to pump station." That would be
on the
14 north side, right?
15 A. Yes.
16 Q. "They're ten feet from oil
pipeline and 30
17 feet from closest 24-inch pipe in front of
button floor
18 of pump station (sic)."
19 MR. FLOYD: Bottom floor.
20 MR. NICOLL: I'm sorry, bottom
floor.
21 Q. Bottom floor of pump station.
Did I
22 eventually get that right?
23 A. Yes.
24 Q. Because they were ten feet from
the
25 pipeline, did you feel it was unnecessary to
call or

00383

1 ask for the pipeline representatives to be
present
2 during that drilling?
3 A. I had nothing to do with it.
That was Greg
4 Burris's decision to call him.
5 Q. So Norton was a subcontractor of
Imco?
6 A. Yes.
7 Q. And it was entirely up to Imco
to decide
8 when and whether it was appropriate for

Olympic people

9 to be out there. Is that what you're saying?

10 MR. FLOYD: Object to the form of the

11 question. Lack of foundation. Calls for speculation.

12 Q. As far as you know.

13 A. What was the question again?

14 Q. As between yourselves and, Imco you're

15 telling me that it was Imco's responsibility to decide

16 when and whether to call out Olympic Pipe Line to be

17 present during work of this sort, the drilling, the

18 work that was being done by Norton Corrosion?

19 A. Yes.

20 Q. Look at the report of July 27th. Again,

21 this is report No. 109 prepared by you and signed by

22 you; is that right?

23 A. Yes.

24 Q. There's a reference here to Norton having

25 two people on site and Harbor Mechanical having two
00384

1 people on site. I guess the Harbor Mechanical people

2 would be Rodney Staples and whoever that other person

3 was who was assisting him?

4 A. Yes.

5 Q. At the top it says, "Carpenters working on

6 preparing forms to pour the lower wall panel next to

7 south pump station wall placing spreaders into treemies

8 to pour grout and concrete beginning at one p.m."

9 Could you look back at the photograph that was Exhibit

10 -- I think it's 144, the one that had the
form poured?

11 MR. SCANLAN: 145.

12 Q. 145.

13 A. I was looking for a wallboard.
They're all

14 the same pictures.

15 Q. Is the work that is shown as
having been

16 completed on Exhibit 145 different from the
work that I

17 just described, read from your report dated
July 27th?

18 A. Well, the 27th date, July 27
report is

19 referring to the wall itself. The footing is
what was

20 poured and shown in the picture. The same
wall and

21 footing one versus the other.

22 Q. Right. In the middle there's a
reference,

23 says "laborer for Imco" is waiting the
second level of

24 pump station walls -- I'm sorry -- "is
coating the

25 second level of pump station walls with first
coat of

00385

1 coal tar. About eight gallons used." What
is this

2 coal tar material?

3 A. Coal tar is a material that is
applied to

4 the outside of a concrete wall that's going
to be

5 buried in dirt to keep moisture from passing
through.

6 Q. Do you recall what the brand was
of this

7 coal tar manufacturer?

8 A. No.

9 Q. Was it a common brand, one that
you were

10 familiar with?

11 A. Well, I wouldn't have paid any
attention to

12 it. Typically I would have looked at it for
its
13 material acceptability, but that would have
been it,
14 and I don't recall.

15 Q. Do you recall where Imco stored
this stuff?

16 A. No.

17 Q. Welding and shields -- looking
down on the
18 same exhibit, report 109. "Welding and
shields

19 completed on 24-inch suction line and blind
flange

20 placed between" -- is that OI or DI?

21 A. DI.

22 Q. -- "DI and steel pipe for testing
24-inch

23 DI. Again, this is on the north side of the
pump

24 station, the suction line; is that right?

25 A. Yes.

00386

1 Q. And am I correct in assuming here
that the

2 backfill of the 24-inch and placement of
access ramp

3 referred to thereafter all relates to the
suction line

4 on the north side of the pump station?

5 A. Yes.

6 Q. By this time, by July 27th, was
the

7 backfilling of the discharge line on the
south side

8 completed?

9 A. I don't know for sure.

10 Q. Look at July 28th, report No.

110 or

11 numbered 110.

12 A. Did you say 110?

13 Q. 110, dated July 28, '94. Looking
at report

14 No. 110, you prepared it, you signed it?

15 A. Yes.

16 Q. And at the very top of the
narrative it

17 reads, "Norton personnel completing annode
bed
18 placement in front of pump station, lower
area 20 feet
19 to 30 feet from door, six feet deep. This
allows the
20 24-inch suction line to be wrapped a second
time and
21 backfilled prior to pressure test."

22 Where was this annode bed
placement taking
23 place with respect -- in relation to the
location of
24 the tee joint assembly?

25 A. The tee joint assembly is to the
south and

00387

1 west of the pump station. The annode beds
were
2 installed to the north and west.

3 Q. Can you give us an idea of how
many feet

4 away from the tee joint assembly the annode
beds were?

5 A. Probably 80 feet.

6 Q. Now, there's a reference here to
a pressure
7 test. What was the pressure test going to
be?

8 A. Of the ductile iron pipe to
validate its

9 leak proof capabilities.

10 Q. Would that be the ductile iron
pipe on the

11 north side only or the south side as well?

12 A. North side.

13 Q. North side only. The north side
only was

14 the ductile iron or was there south?

15 A. Both of them had ductile iron.

16 Q. I'd like to just take a look at a
couple of

17 photographs here that are of some interest.
Would you

18 take a look at and compare Exhibits 142 and
146? These

19 are on two photographs. First hold up on

142.

20 A. (Indicating).

21 Q. Exhibit 142 is a photograph, is it
not, of

22 the installed tee joint connected to the 24-
inch

23 discharge line with the wrap, with the
plastic wrap

24 around it?

25 A. Yes.

00388

1 Q. Now, you'll notice that in the
foreground,

2 between the end of the earthen wall and the
beginning

3 of the tee joint, there's no concrete,
right?

4 A. Yes.

5 Q. I'm correct?

6 A. You're referring to the lean
concrete

7 surface or face?

8 Q. No. Why don't you hold it up
again and I'll

9 help you out there. Do you see at the
bottom where the

10 shims are, the wood?

11 A. Yes.

12 Q. And do you see where the valve
stem is?

13 A. Yes.

14 Q. Could you hold that up and point
to the

15 valve stem for us.

16 A. (Indicating).

17 Q. There's actually two valve stems
there,

18 aren't there?

19 A. Yes, there is.

20 Q. There's one where your finger is
pointing

21 and then there's one right up above that on
the other

22 side of the pipe?

23 A. Yes.

24 Q. Now, I mean to the bottom of the
photograph.

25 from there. Between the bottom of the
photograph and
00389

1 the tee joint there's no concrete; is that
correct?

2 A. Well, there's some shims in
there, yes,

3 that's what you see, and open air space
or light.

4 Q. Now look at the other
photograph that I

5 asked you to --

6 A. 145.

7 Q. 146. Do you see 146, could you
hold that up

8 for us?

9 A. (Indicating).

10 Q. Can you see that? Now, 146 is a
photograph

11 that has a date stamp in the lower right-hand
corner.

12 Can you read the date stamp?

13 A. 7-21-94.

14 Q. And what does it show?

15 A. It shows a form in a V shape with
concrete

16 filled inside it.

17 Q. And where is that form with
concrete filled

18 inside it in relation to the tee joint and
the 24-inch

19 discharge?

20 A. It's opposing the 24-inch on the
21 opposite side resisting movement.

22 Q. Is this what would be called a
thrust block?

23 A. Yes.

24 Q. So that shows that the thrust block
was

25 poured on about July 21st, '94?

00390

1 A. Yes, yes.

2 Q. Do you recall who poured that?

Was that an

3 Imco pour?

4 A. Yes, it would have been.

5 Q. And looking back at July 21st we

see -- if

6 you go back to the July 21st inspection
report, No. 106

7 -- are you on 106 there? There are
references to

8 concrete being poured and MH and footing for
retaining

9 walls, et cetera, right?

10 A. On the roof, yes, and concrete for
the

11 manhole and footing for retaining walls.

12 Q. I mean, I couldn't find a
reference in the

13 inspection report specifically to pouring for
a thrust

14 block. Do you recall whether inclusion of
the thrust

15 block was sort of an added on item, an
additional thing

16 that was requested?

17 A. Yes. It was added on and
requested.

18 Q. Who requested it?

19 A. Earth Tech. Earth Tech and --

20 Q. Barrett?

21 A.

Barrett.

22 Q. And
the city?

23 A. And
the city.

24 Q. Do you recall, did the request
originate

25 with the city or with Earth Tech?

00391

1 A. From my recollection it was
something that

2 the city asked for.

3 MR. FLOYD: Time for a break?

4 MR. NICOLL: Now would be a good
time for a

5 break.

6 THE VIDEOGRAPHER: Going off the
record.

7 The time is approximately 10:59 a.m.

8 (Recess.)

9 THE VIDEOGRAPHER: Back on the

record. The

10 time is approximately 11:14 a.m.

11 Q. All right. Mr. Franklin, I have
a couple of

12 questions. I wanted to go back to a
photograph that we

13 talked about earlier, weeks and weeks ago,
which is

14 Exhibit 95. And for everybody's benefit,
I'll just

15 hold up what that exhibit is.

16 MR. VERWOLF: Which one?

17 MR. NICOLL: Exhibit 95. And

it's a

18 photograph where the date stamp is visible of
July

19 18th.

20 Q. Would you take a look at that and
hold it up

21 for the camera?

22 A. (Indicating).

23 Q. That's a photograph that shows,
again, the

24 wrapped discharge line coming out of the
south side of

25 the pump station and ending in the tee
joint; is that

00392

1 right?

2 A. Yes.

3 Q. And do you see the date stamp of
July 18,

4 '94?

5 A. Yes.

6 MR. NICOLL: I'd like to have
this next

7 photograph marked. It's ETPH 0000975. I
think it will

8 be Exhibit 254.

9 (Marked Exhibit 254.)

10 MR. NICOLL: It's photograph No.
975. It

11 will be Exhibit 254. Way back when I gave
you guys a

12 set of photos this would have been in the
set.

13 Q. Why don't you hold this up for

the camera,

14 Mr. Franklin, and you can haul it down and
take a look

15 at it. That's a photograph, you can see a
date stamp

16 in the lower right-hand corner of July 25,
'94; is that

17 correct?

18 A. Yes.

19 Q. And that shows the initial stages
of

20 backfilling over top of the -- what we know
to be the

21 discharge line on the south side of the pump
station;

22 is that right?

23 A. Yes.

24 Q. There are two black tubes
coming up from

25 around the vicinity of where the tee joint
would be.

00393

1 Do you see those two black tubes?

2 A. Yes.

3 Q. Can you tell us what those are?
Why don't

4 you show them also at the same time.

5 A. (Indicating).

6 Q. Point to them, if you would.

7 A. (Indicating).

8 Q. What are those two black tubes?

9 A. Those are the ductile iron pipe

used for

10 accessing the valves through the valve
stems.

11 Q. Now, you'll recall we talked
about a

12 photograph a few moments ago. I think it
was Exhibit

13 146. No, it's 143. 142. Why don't you
hold up 142.

14 Point again at the valve stems.

15 A. (Indicating).

16 Q. The two valve stems right there?

17 A. There and there (indicating).

18 Q. Is that where those ductile iron
tubes would

19 have connected? They go down and fit over
top of those
20 two valve stems you just showed us in Exhibit
142?

21 A. Yes.

22 Q. And would those also be referred
to

23 sometimes as risers?

24 A. Yes. The pipe would be.

25 Q. Pipe would be referred to as a
riser and

00394

1 that's for access to the valve stem?

2 A. Yes, correct.

3 Q. How do you turn the valves on the
-- on that

4 tee joint, once the earth is in place?

5 A. Inside the pipe is a retainer rod
that sets

6 down on top, and it comes up to within a
couple of

7 inches of the top where it's cast into a
concrete

8 piece. And then there's another hexagonal
shape or

9 square shape tool that you would actually
connect onto,

10 and that would drive down to the valve stem
and turn

11 it. So inside these risers are another piece
of metal

12 that you'd use to actually make the
connection.

13 Q. And that piece of metal would fit
over top

14 of the hexagonal shape, the nut on the top
of the valve

15 itself?

16 A. Yes.

17 Q. And then those, the tops of the
risers, are

18 those -- were those visible above grade
after the

19 compacting was completed?

20 A. Yes. The concrete pad would be
poured on --

21 around the top of the pipe, and that would

allow you to

22 be able to find it and have a stable
environment for

23 the valve cover.

24 Q. That was done sometime later, the
pouring of

25 that concrete pipe?

00395

1 A. Right. After you completed the
fill of the

2 roadway.

3 Q. The fill of the what?

4 A. The fill of the road above the
pipe.

5 Q. And approximately when was that
all

6 completed?

7 A. Late summer, early fall.

8 Q. September time frame?

9 A. September-ish.

10 Q. Let's move on or march through
these

11 reports. I think we're now on the report
for August

12 3rd, which actually you reach by going
backwards.

13 A. Here we are.

14 Q. Now, the report on August 3rd is
numbered

15 114; is that correct?

16 A. Yes.

17 Q. You wrote it and you signed it?

18 A. Yes.

19 Q. It refers back to a report of
August 1, and

20 then the report of August 1 also refers
back to -- the

21 report of August 1 lists as subcontractors
and

22 equipment on the job site. Take a quick
look back and

23 confirm that.

24 A. Yes, it does.

25 Q. The first paragraph of the
narrative for

00396

1 report numbered 114 reads, striping. Is

that right,

2 striping forms?

3 A. Stripping forms.

4 Q. "Stripping forms" --

5 So that should be S T R I P P I

N G?

6 A. Could be.

7 Q. -- "forms inside pump station

completed and

8 removal of wall forms as well. Pressure in
24-inch DI

9 suction line up to 92 PSI and John Hatch
approved test

10 at that PSI, not 100 PSI as required. The
system had

11 92 PS before I saw it so gauge was taken
from system

12 to zero, then twisted back on and read 92
PSI.

13 Will check PSI in a.m. to validate no
leaks." One

14 quarter hour allowed?

15 A. One quart.

16 Q. "One quart per hour allowed."

Now, to be

17 clear, are you referring to the 24-inch
ductile iron

18 line to the north of the pump station?

19 A. Yes.

20 Q. So not the discharge line?

21 A. No.

22 Q. Was the discharge line pressure
tested?

23 A. I don't recall.

24 Q. The paragraph -- I'm sorry. The
report goes

25 on into the next paragraph and says, "I
arrived on site

00397

1 at approximately noon and found that bedding
densities

2 for Hannah Creek crossing pipe were tested
in the

3 morning and backfill began." Was it unusual
for you to

4 arrive at the work site at noon?

5 A. Yes.

6 Q. And if you did arrive late at the
work site

7 for some reason, you'd always reflect that
or report
8 it?

9 A. I would try to.

10 Q. That paragraph goes on after the
sentence

11 that I just read and says, "I found the
center of east
12 and center pipes filled to near top and
nothing west of
13 center. The round pipe was out of alignment
by
14 approximately four inches. I asked Greg to
halt use of
15 ram hoe in pipe vicinity and backfill full
length both
16 sides of all pipe."

17 This work was being done away from
the area

18 of the discharge line; is that right?

19 A. Well, I need to get a little
background into

20 what I am referring to. From what I'm
remembering, I

21 believe this is the area along Hannah Creek
-- or not

22 Hannah Creek but Whatcom Creek. It would be
the large

23 diameter pipe near the outwash system. It
would be

24 away from pump station.

25 Q. And so the alignment or the out-
of-alignment

00398

1 problem was in a different section of pipe?

2 A. Yes. In the area where it was
going to be

3 connecting onto the existing water system
itself.

4 Q. Then the next paragraph starts
with,

5 "Excavation for air gap manhole foundation
and

6 placement of steel for support wall." That
is all work

7 that was occurring to the north side of the
pump
8 station; is that right?

9 A. Yes.

10 Q. Now, there's a reference at the
bottom which
11 says, "Triad mobilizing to site today." And
then
12 there's a reference at the top that says,
13 "Subcontractors Triad three people in
afternoon."

14 Could you explain what you meant by that, as
best you
15 can recall, what was happening?

16 A. During the project at times there
would be
17 work that was available to the electricians.
Other

18 times there would be nothing for them to do
because the
19 work that they need to do was in the same
vicinity as

20 what work Imco needed to do. So off and on
they'd be

21 on the site or be gone for up to a week or
two at a

22 time.

23 Q. So they were -- when you say
mobilizing to
24 the site they were bringing their equipment
on and
25 getting ready to do some work?

00399

1 A. Yes.

2 Q. Switch to August 4th. This is
report

3 numbered 115 and you prepared it and you
signed it? Is

4 that all right?

5 A. Yes.

6 Q. It's a two-page report --

7 A. Yes.

8 Q. -- but I'm mainly interested in
the first

9 paragraph which reads, "The pressure test
of 24-inch

10 ductile iron suction line for pump station

lost only

11 one and a half PSI overnight. The line
was accepted

12 regarding leak test. The refilling effort
was

13 unsuccessful as apparatus lost much water
during pump

14 up and only 60 feet pressurized. Other
water lines

15 with higher loading will require correct
equipment and

16 procedures. There was much air in the
pipe. This may

17 have prohibited adequate measurement of
water loss

18 over" -- is that "16 hours"?

19 A. Yes.

20 Q. Is the system that was pressure
tested and

21 leak tested referred to here, does that
also include

22 the discharge side of the pump station?

23 A. No. It would only be the
suction line.

24 That was the only line that was tested with a
blind

25 flange.

00400

1 Q. At that time the pumps and things
weren't

2 hooked up so that it was a complete system?

3 A. Right.

4 Q. You had the blind flange on the -
- or

5 suction, I guess, on the inlet side of the
pump station

6 so you could test that entire system for
pressure?

7 A. Yes.

8 Q. Did you also have at that time a
blind

9 flange -- why would you have, but a blind
flange on the

10 discharge side of the pump station?

11 A. No, we wouldn't have.

12 Q. Instead what was happening, if I
understand

13 correctly, is that the valve connecting the
24-inch
14 line at the tee joint was closed to allow
water to flow
15 through the 16-inch main; is that right?
16 A. Yes.
17 Q. In order to do the pressure
testing for the
18 24-inch suction line on the north side of
the pump
19 station, would it have been necessary to
close the
20 water main at the tee joint?
21 A. On the north side?
22 Q. Yeah.
23 A. There's no tee joint on the north
side.
24 Q. No, no. I mean, would it have
been
25 necessary to shut the water off from flowing
through

00401

1 the 16-inch water main in order to test --
in order to
2 pressure test the system on the north side
of the pump
3 station?
4 A. No.
5 Q. They're not connected?
6 A. They're not connected.
7 Q. There's a reference, then, in
the next
8 paragraph that says, "Electrical work
inside the pump
9 station was planned by Triad." Did you
meet with the
10 Triad people at that time?
11 A. No, not normally I wouldn't.
12 Q. Did you know that -- in the most
general
13 sense, did you recognize, identify the Triad
people?
14 A. Yes.
15 Q. Do you recall sitting here who
they were?
16 A. No.
17 Q. Had you worked with them before?

18 A. No, I hadn't.
19 Q. After the 4th, go to August 8th -
- I note,
20 by the way, that there's a report from
August 5, report
21 numbered 116 which says that there was no
activity on
22 the site on that day because the contractor
was working
23 four 10-hour shifts; is that correct?
24 A. Yes, he was.
25 Q. And on August 8 you prepared a
report
00402
1 numbered 117 and you signed it; is that
right?
2 A. Yes.
3 Q. And that's the report that you're
looking at
4 in Exhibit 64?
5 A. Yes.
6 Q. On this day there was a --
the following
7 equipment at the site. It was a Hitachi
ES 150
8 backhoe, right?
9 A. Yes.
10 Q. Was that the larger of the
backhoes?
11 A. I believe so.
12 Q. There's a JD 792 with hoe pack, a
Cat 950
13 loader, a Hyster forklift, a JD -- that's
John Deere, I
14 guess -- 410 B backhoe and an air
compressor?
15 A. Yes.
16 Q. Third paragraph says, "Work began
on
17 interior of pump station grinding and
sacking the
18 exposed concrete surfaces." Could you
just quickly
19 explain what that means?
20 A. Removing the debris that was left
after the
21 concrete was poured from the forms. You'd

have lips of

22 concrete that would be ground off and tie
holes filled

23 in so that you'd have a smooth surface.

24 Q. The next paragraph reads, "Triad
personnel

25 preparing to place the next section of PVC
electrical

00403

1 ducts from existing CDF ducts to pump
station." Where

2 was that work taking place in the pump
station, as you

3 recall?

4 A. Well, actually it was outside the
pump

5 station, between the pump station and the
garage of the

6 filter plant.

7 Q. So on the east side of the pump
station?

8 A. Yes.

9 Q. The next paragraph says, "Norton
Corrosion

10 personnel on site this p.m. welding
connections to 60

11 and 72-inch pipes and beginning annode bed
along

12 reservoir north of pipe. Excavation is
encountering

13 hard rock." I want to be sure the excavation
referred

14 to here is the excavation in connection with
beginning

15 the annode bed along the reservoir north of
the pipe?

16 A. Yes.

17 Q. Let's skip to report dated August
9, report

18 No. 118, prepared and signed by you; is that
correct?

19 A. Yes.

20 Q. Now, this report, which is part
of Exhibit

21 64, with respect to equipment tells us to
refer back to

22 8-18-1994 IDR?

23 A. 8-8.
24 Q. Do you see
that?
25 A. It says, "see
8-8 IDR."
00404
1 Q. IDR means what?
2 A. Independent
daily report.
3 Q. Inspection
daily report?
4 A. Which would have -- 8-8 is the
one before
5 it, 117.
6 Q. So the same equipment as on
August 8th was
7 there on August 9th?
8 A. Yes.
9 Q. Now, at the top it says, "Imco
backhoe
10 backfilling the four-inch DI and two-and-
a-half-inch
11 PVC placed in between the 60 and 72-inch
pipes along
12 access to reservoir." In relation to the
tee joint, is
13 that to the north or to the south or is it
more to the
14 west?
15 A. What was the question again?
16 Q. In relation to the tee joint, is
the
17 location of this backhoe backfilling to the
north or to
18 the south?
19 A. It's to the west, actually.
20 Q. It then goes on and says, "I
asked the
21 wrapping be folded properly and gave Greg
22 specifications on plastic wrapping of ductile
iron
23 pipe. I asked he obtain AWWA procedures."
What does
24 AWWA stand for?
25 A. American Waterworks Association.
00405
1 Q. And had there been any problem in

how Imco

2 was wrapping ductile iron pipe up to that
point?

3 A. No, there hadn't. But this is a
smaller

4 pipe and I assume different material being
used.

5 Q. At the bottom, it says, "Triad is
continuing

6 assembly of PVC electrical conduit mating
with pump

7 station penetrations. By Friday sacking and
grinding

8 pump stations should be done." This refers
back to the

9 same work you were talking about on the east
side of

10 the pump station outside near the roof?

11 A. Yes.

12 Q. And the sacking and grinding is
basically

13 smoothing out the interior concrete walls?

14 A. Yes.

15 Q. Then the next line says,
"Excavation this

16 p.m. to correct valve for 60-inch pipe pump-
out. The

17 valve would not open due to slanting valve
box sleeve.

18 Both pipe" -- and I lose the ability to read
this. I

19 think it says "needs" but I can't --

20 A. That's correct, it does.

21 Q. "Both pipe needs this." What
pipes?

22 A. The two pipes that we had seen
earlier, the

23 ones that are shown in this black -- the two
pipes that

24 go up vertically.

25 Q. Could you point those out in
Exhibit 254?

00406

1 A. (Indicating).

2 Q. Those are those ductile iron
risers to the

3 valve stems on the 24-inch -- I'm sorry --

on the tee

4 joint to the 24-inch and 16-inch lines?

5 A. Yes.

6 MR. FLOYD: Is he talking about
the same

7 valve in that exhibit or is he giving that
as an

8 illustration?

9 THE WITNESS: I was talking
about the same

10 valves.

11 Q. What was the -- what was the
problem with,

12 if you know, with those valves, those
valve stems?

13 A. From what I remember the stems
did not stay

14 in absolute alignment. They were allowed to
move one

15 way or another during the compaction
process, and they

16 didn't put the extension in for the valve
connection at

17 that time, because it wasn't appropriate as
far as they

18 were concerned, and as a result the stems
came out of

19 alignment. They weren't able to do that.
So they had

20 to go back and take it out.

21 Q. And the "they" that you're
referring to, is

22 that Imcc?

23 A. Yes.

24 Q. Now, it says the bottom section
of -- well,

25 the rest of this report refers to other
things, PVC,

00407

1 utility conduit, the soda ash bin and other
things. Do

2 you see that on the next page? These other
things are

3 not --

4 A. Yes.

5 Q. These things are not related to
the tee

6 joint or the 24-inch discharge line?
7 A. No.
8 MR. NICOLL: Could you show the
witness
9 Exhibit 252.
10 MR. VERWOLF: Sorry, Chris, was
the last
11 report No. 118?
12 MR. NICOLL: It was.
13 Q. I have been going through some of
these
14 documents and trying to understand them in
the context
15 of what we're doing, and so one of the ones
that I
16 pulled out, Mr. Franklin, is Exhibit 252,
which is
17 Bates numbered IMC 0000639 through 643.
Do you see
18 that?
19 A. Yes.
20 Q. That appears to be a letter dated
August 8,
21 1994 to Paul Krakenberg of Imco from John
Hatch of
22 Barrett Consulting Group copying Huang Wan of
the city
23 of Bellingham and yourself?
24 A. Yes.
25 Q. Now, do you recall generally this
letter or
00408
1 this issue?
2 A. No, I don't.
3 Q. Taking a look at the letter, this
seems to
4 have something to do with lining the pump
station
5 suction and discharge headers, and I wanted
to ask you
6 a question about that. Where are the
suction and
7 discharge headers? Are they in the pump
station itself
8 internally?
9 A. Yes.
10 Q. So this doesn't have to do with

the piping

11 going out of the pump station -- lining of
the piping

12 going out of the pump station and going
underground?

13 A. No, it doesn't.

14 Q. And the issue raised in the letter
August 8,

15 1994, Exhibit 252, would not have
necessitated any

16 excavation?

17 A. No.

18 Q. So correcting the problem wouldn't
have

19 required anybody to dig anything?

20 A. No.

21 Q. Let's look at August 10, 1994.

This is a

22 report numbered 119 prepared and signed by
you; is that

23 correct?

24 A. Yes.

25 Q. This report lists equipment on the
job site

00409

1 as JD 792 hoe ram, Hitachi EX 150 backhoe,
JD, John

2 Deere, 410 B backhoe, Cat 950 loader, two
Hyster

3 forklifts and an air compressor?

4 A. Yes.

5 Q. It also shows that there was two
Triad

6 people and two Norton people as
subcontractors on site?

7 A. Yes.

8 Q. And there was one operator, one
equipment

9 operator, from Imco?

10 A. Yes.

11 Q. And six laborers?

12 A. Yes.

13 Q. You also circled the day of the
week I

14 noticed, this being a Wednesday?

15 A. I did.

16 Q. Imco personnel, looking at the

narrative, it

17 reads, "Imco personnel continuing
installation of four-

18 inch and will make connection to 16-inch
water line.

19 Chlorine powder has been added to line and
the valve

20 will be open to fill four-inch for bacteria
testing and

21 closed for pressure test." Where was the
four-inch

22 connected to the 16-inch water line?

23 A. I don't remember.

24 Q. Do you recall generally if it was
-- was it

25 to the north of the tee joint?

00410

1 A. I'm sorry.

2 Q. Then there was some work over in
the

3 vicinity of that annode bed which was, as
you said, 80

4 feet to the north --

5 A. To the north, yes.

6 Q. -- of the tee joint. And then
there was

7 some work moving rock at the annode bed
in that same

8 location, right?

9 A. Yes.

10 Q. It says here "the work taking
most of the

11 day," right?

12 A. Yes.

13 Q. Would the Imco -- was the Imco
backhoe

14 operator, the equipment operator, the
person who was

15 doing that work, pulling the rock out?

16 A. Yes.

17 Q. And then "The Imco labor
personnel were

18 grinding and sacking the pump station in
the upper

19 level." Do you see at the middle of the
page?

20 A. Yes.

21 Q. And the Imco laborer was also
working on the
22 soda ash bins?
23 A. Yes.
24 Q. Which would also be in the upper
level of
25 the --
00411
1 A. No, that's in the plant.
2 Q. Back in the plant. That's
right. The next
3 paragraph reads that "CDF was placed around
the
4 electrical duct work to the pump station
this p.m."
5 Who would have poured the CDF or shoveled
it or
6 whatever?
7 A. It would have been either Imco
or Triad.
8 Could have been Triad people.
9 Q. And that's in the vicinity of
that work on
10 the east side?
11 A. Yes.
12 Q. Of that pump station again?
13 A. Yes.
14 Q. Now, let's look at the report from
August
15 11, '94. The report on August 11, '94 is
numbered 120,
16 and was prepared and signed by you; is that
correct?
17 A. Yes.
18 Q. Again, there was one operator and
five
19 laborers?
20 A. Yes. Not again.
21 Q. On the previous day there had
been six
22 laborers?
23 A. Right.
24 Q. The equipment in use on August
11th was the
25 same equipment that was in use on August
10th,
00412

1 according to your report; is that correct?
2 A. Yes.
3 Q. And that would have included the
Hitachi
4 backhoe?
5 A. Yes.
6 Q. As well as the John Deere
backhoe?
7 A. Yes.
8 Q. The subcontractors on site were
two Triad
9 electricians. Do you recall who they were?
10 A. No.
11 Q. Do you recall if one of those
Triad
12 electricians was the Triad foreman or
supervisor?
13 A. No, I don't.
14 Q. Now, it says in the first
paragraph of the
15 narrative, "Imco earth work activity
includes
16 completing backfill of four-inch wire line
and areas in
17 pump station vicinity, excavation of
chlorine manifold
18 vault and drainage items from wetlands which
flowed to
19 Hannah Creek."
20 At the bottom you'll see a
paragraph that
21 reads, "Excavation of pump station using
ram hoe and
22 Hitachi backhoe is taking several hours,
about two
23 thirds of the day. The operator is back
and forth
24 using both pieces of equipment. One third
of the time
25 both pieces are used. Confining space is an
obvious
00413
1 reason in duration. The excavated material
is choking
2 the site."
3 Where was this excavation taking
place?

4 A. Well, I believe I misstated the
fact that it
5 was a pump station excavation. I assume it
was the
6 manifold vault for the reservoir, because
that's what
7 they were doing the excavation for, and
that was next
8 to the reservoir, probably 300 feet away
from the pump
9 station.

10 Q. Well, look at that first line.
 It says,
11 "Imco earth work activity includes
 completing backfill
12 of four-inch water line at areas in pump
 station
13 vicinity." Is that erroneous, do you
think?

14 A. Well, the four-inch pipe very
easily could
15 have come from the pump station, but the
excavation
16 that they're referring -- I'm referring to
 down at the
17 bottom would have been the vault, because
that was much
18 larger activity and was right next to the
reservoir,
19 and there was a lot of rock in that vicinity.

 And
20 that's where the area would have been choked
 up because
21 they didn't have room.
22 Q. Was Imco doing the excavating in
the
23 vicinity of the reservoir?

24 A. Yes.

25 Q. They were? Wasn't that Baugh?

00414
1 A. Baugh was through with it in that
area.

2 Q. Look at the next page. I'll read
from

3 the first paragraph. It says, "The
telephone conduit

4 in front of southwest pump station corner

15 feet from

5 the 72-inch line was damaged severely by Imco loader.

6 It was only approximately one-and-a-half feet below

7 grade at that time. About half the wires were cut.

8 U S WEST personnel on site repairing wires. Two people

9 from noon on working on wires." Do you see that?

10 A. Yes.

11 Q. Does that refresh your recollection about

12 where the excavation was occurring?

13 A. No, not really. The loader would have been

14 hauling material from the excavation of that vault

15 through that area and to the stockpile, which would

16 have been to the north of the pump station.

17 MR. FLOYD: Five minutes remain on

18 videotape.

19 MR. NICOLL: Like to turn to some

20 photographs, and since I want to do that I'm thinking

21 maybe we should break a couple of minutes early for

22 lunch and come back a couple of minutes early.

23 THE VIDEOGRAPHER: This is the end of tape

24 No. 1 in the deposition of Tom Franklin. The time is

25 approximately 11:51 a.m. Going off the record.

00415

1 (Lunch recess.)

2 THE VIDEOGRAPHER: Back on the record. This

3 is the beginning of tape No. 2 in the deposition of Tom

4 Franklin. The time is approximately 1:34

p.m.

5 BY MR. NICOLLS:

6 Q. We're back on the record. Before
we broke

7 we were talking about inspection report 120
from August

8 11, 1994, and you still have that open in
front of you?

9 A. Yes, I do.

10 Q. On August 11, '94, do you recall
what time

11 you arrived at work?

12 A. No.

13 Q. There's no notation in your report
that you

14 arrived at a time different than the 7:00
start time,

15 but did you usually arrive at a time
different than the

16 7:00 start time?

17 A. No. I would usually be there at
7:00.

18 Q. And where would you usually
report?

19 A. I didn't report. I just went to
the site

20 and started observing the activities or went
to work

21 doing one thing or whatever I was going to do
that day.

22 Q. Where would you be when you'd be
filling out

23 the inspection reports? In your car?

24 A. Most of the time in my truck.

25 Q. And your truck would be parked
where?

00416

1 A. In the parking lot right in the
filtration

2 plant area.

3 Q. That would be on the sort of north
side of

4 the filtration plant?

5 A. Yes.

6 Q. Do you have a recollection
independent of

7 the inspection report for August 11, '94 of

what you

8 were doing on that day on the job?

9 A. No.

10 Q. Of course you took photographs,
as we've

11 already discussed, from time to time on the
job site?

12 A. Yes.

13 Q. In front of you, you should have
exhibits

14 from a different deposition but are all
part of this

15 case. Starting at Exhibit 194, why don't
you flip open

16 this binder, take a look at Exhibit 194.

Going to hold

17 that up for the camera.

18 A. (Indicating).

19 Q. Do you see in the lower right-hand
corner of

20 the exhibit, there is a date stamp of 8-11-
94?

21 A. Yes.

22 Q. I recognize that we've earlier
identified

23 that there can be, I suppose, a question
about the

24 accuracy of those date stamps. But what is
that, the

25 photograph on 8-11-94, a photograph of?

00417

1 A. It's a photograph of the inside
of the

2 reservoir.

3 Q. The reservoir is the portion of
the job that

4 was being worked by Baugh Construction not
by Imco; is

5 that right?

6 A. That's correct.

7 Q. Do you have a recollection, based
on looking

8 at that photograph, of having been inside
the reservoir

9 on August 11, 1994?

10 A. Yes.

11 Q. You do?

12 A. I would have taken the picture.
13 Q. Okay. Do you recall why you were
in the
14 reservoir on that date?
15 A. Not particularly.
16 Q. Why don't you flip through the
next couple
17 of photographs, Exhibit 195, also a
photograph of the
18 inside of the reservoir?
19 A. Yes.
20 Q. And 196, is that also a photograph
of the
21 inside of the reservoir?
22 A. No.
23 Q. Is there anything in Exhibit 195
or 196 that
24 you can tell from looking at it that you're
25 specifically focusing on?
00418
1 A. No.
2 Q. How about 194?
3 A. No.
4 Q. Is it fair to say that you
usually took
5 photographs in order to make a record of
a specific
6 thing?
7 A. No, not necessarily.
8 Q. Just went in there, checked
it out?
9 A. Yeah. You get a lot of other
activities
10 coinciding just by taking pictures a lot of
times, and
11 in the future you can go back to pictures
and it will
12 help you to reconstruct different things,
different
13 activities.
14 Q. In order to get inside the
reservoir, did
15 you have to gain access through a manhole
cover on the
16 72-inch pipe?
17 A. No.
18 Q. There was another way to get at

it?

19 A. Through the roof.

20 Q. From the roof?

21 A. Yes.

22 Q. Do you recall if that's probably
how you got

23 in on this day?

24 A. Yes, sir.

25 Q. Do you recall ever going in
through the

00419

1 72-inch line?

2 A. Never.

3 Q. Do you recall whether anybody was
4 accompanying you inside the reservoir on the
day that

5 you took Exhibit 194 and 195?

6 A. No. I don't recall.

7 Q. Would it have been unusual for
you to go

8 into the reservoir unaccompanied?

9 A. No, it would not be unusual.

10 Q. Now, Exhibit 196 is another
photograph. Why

11 don't you hold that up for the camera.

12 A. (Indicating).

13 Q. It also has a clearer date stamp
of 8-11-94,

14 right?

15 A. Yes.

16 Q. That looked to me to be a
photograph of the

17 soda ash bin, but I don't know.

18 A. That is correct.

19 Q. That's correct?

20 A. Yes.

21 Q. So that meant that through --

on the day

22 that you took the photograph, Exhibit 196,
you were

23 spending at least some of that time up in
the water

24 treatment facility?

25 A. Yes.

00420

1 Q. Do you recall looking at that
photograph

2 that you were in fact in the water
treatment facility

3 on August 11, 1994?

4 A. Yes.

5 Q. In fact, it's also referred to
in report

6 120, the August 11, '94 inspection report,
isn't it?

7 A. What is?

8 Q. "Work on soda ash silos
continuing today"?

9 A. Yes.

10 Q. Is there something that you're
focusing on

11 in photograph Exhibit 196, in particular?

12 A. Perhaps. I really don't know.

13 Q. The description in your
inspection report

14 says, "Welding legs to east silo and
installing more

15 steel beams for floor support are planned. I
talked to

16 Rodney Staples and Imco people about gap in
existing

17 floor to the bottom of the beam. That gap is
being

18 filled upon beam placement." (sic)

19 MR. SCANLAN: Actually, I think
that's to

20 the top of the beam.

21 MR. NICOLL: Top of beam, yes.

22 Q. Do you see that?

23 A. Yes.

24 Q. Is any of that description on this
August 11

25 report reflected in the photograph, Exhibit
196?

00421

1 A. No.

2 Q. How about in the next photograph,
Exhibit

3 197? Could you hold that up?

4 A. (Indicating).

5 Q. Is the gap in the existing floor
to the top

6 of the beam depicted in that photograph?

7 A. No.

8 Q. How about the welding?
9 A. The welding is shown. There are
welds shown
10 in here that are fresh.
11 Q. And areas where more steel beams
might be
12 installed. Is that shown in the photograph?
13 A. Yes.
14 Q. So what part of your day on
August 10 -- I'm
15 sorry -- August 11, '94 were you in the
reservoir and
16 in the water treatment facility? What time
of day?
17 Morning, afternoon or do you recall?
18 A. I don't know. I don't recall.
19 Q. Where were you, if you
remember, when you
20 first learned that the Imco backhoe
operator had
21 struck, as reported on the second page of the
August
22 11th inspection report, and damaged the
telephone
23 conduit?
24 A. I don't remember.
25 Q. Do you remember whether you
witnessed it?

00422
1 A. I remember that I probably -- I
just don't
2 remember.
3 MR. FLOYD: Counsel, I'm going to
object to
4 your question. Mischaracterizes the
exhibit. You said
5 Imco backhoe operator. It said Imco loader,
two very
6 distinct pieces of equipment.
7 MR. NICOLL: Oh, okay.
8 Q. So basically you don't remember
whether you
9 saw it happen or whether somebody told you
about it?
10 A. That's correct.
11 Q. You do remember going there and
looking at

12 it, though?

13 A. Yes.

14 Q. And you remember that U S WEST
personnel

15 came on site?

16 A. Yes.

17 Q. Do you remember photographing
them?

18 A. No.

19 Q. Did you know any of the U S WEST
personnel

20 who came?

21 A. No.

22 Q. Do you remember if anybody else
was

23 assisting them in the repair work that they
were doing?

24 MR. SCANLAN: Just point of
clarification,

25 you mean anyone else other than U S WEST
employees?

00423

1 MR. NICOLL: Yeah.

2 A. No, I don't remember.

3 Q. In your report, the second page
of the

4 August 11, '94 report, you state, "U S WEST
personnel

5 on site repairing wires. Two people from
noon on

6 working on wires."

7 A. What date is this?

8 Q. Second page of your August 11,
'94 report.

9 About four lines down, exactly four lines
down it says,

10 "U S WEST personnel on site repairing wires.
Two

11 people from noon on working on wires."

12 A. Yes.

13 Q. Do you see that?

14 A. Yes.

15 Q. As you read that report, do you
have any

16 recollection of who those two people were
that you were

17 referring to?

18 A. No.
19 Q. Can you tell us whether you were
referring
20 to people different from the U S WEST
personnel or do
21 you just not remember?
22 A. I just don't remember.
23 Q. Did you typically leave the job
site at any
24 point as a matter of routine at any point in
the
25 morning?
00424
1 A. Not on a routine, no.
2 Q. Again, a coffee break or
something else like
3 that?
4 A. Sure. It typically wouldn't be a
routine
5 like that because I don't drink coffee.
6 Q. And when would you normally break
for lunch
7 or did you not have a routine?
8 A. No. I'd break for lunch. It
would be right
9 around noon.
10 Q. That would be, what, about an
hour break?
11 A. A half hour.
12 Q. And would you typically eat
lunch in your
13 truck or somewhere on the site?
14 A. Not on the site typically.
15 Q. So you'd drive somewhere?
16 A. Yes.
17 Q. Now, the last part of the first
page of
18 report numbered 120 says, "Excavation of
pump station
19 using ram hoe and Hitachi backhoe is
taking several
20 hours. About two thirds of the day the
operator is
21 back and forth using both pieces of
equipment." Were
22 you personally observing this or was that
reported to

23 you by someone else?

24 A. I would have been observing it.

25 Q. So you would be sort of paying
attention on

00425

1 and off between doing other things?

2 A. Yes.

3 Q. Did you fill in this report as the
day

4 progressed?

5 A. Typically, yes.

6 Q. So the stuff that you have at the
beginning,

7 "The Imco earth work activity includes
backfill of

8 four-inch wire line," et cetera, is something
that you

9 observed early in the day?

10 A. Yes.

11 Q. And then the "completion of annode
bed near

12 reservoir" is something that you observed
sort of next?

13 A. Or at the same time.

14 Q. Would you have gone -- would you
have gone

15 to that annode bed near the reservoir if
you wrote it

16 in this report?

17 A. Yes.

18 MR. SCANLAN: Objection, calls for
19 speculation.

20 MR. NICOLL: Well, I'm just asking
as a

21 matter of practice.

22 Q. As a matter of practice, do you
write down

23 things that you do?

24 A. Yes.

25 MR. SCANLAN: Same objection.

00426

1 Q. So do you have a recollection of
having gone

2 to the annode bed near the reservoir on
August 11, '94?

3 A. No.

4 Q. But based on your practice would

you say

5 it's likely that you did?

6 MR. SCANLAN: Objection, calls for
7 speculation.

8 A. Yes.

9 Q. Now, if you went to the annode bed
near the

10 reservoir, was that about that time, probably
the time,

11 at least in the chronology of events that
occurred on

12 August 11, that you would have gone into the
reservoir

13 to see what's happening inside?

14 A. Perhaps.

15 Q. Well, this description reads,
"Completion of

16 annode bed near reservoir and backfilling as
other bed

17 was done"?

18 A. Yes, that's what's written.

19 Q. "Using detail of revised drawing
provided by

20 ICS." Who is ICS?

21 A. Intermountain Corrosive Services,
I believe

22 is the name of the company.

23 Q. Then it says, "Splicing is being
covered

24 with wraps of electrical tape half-inch thick
layers."

25 What splicing are they referring to -- are
you

00427

1 referring to there? Is that of the anti-
corrosion

2 stuff?

3 A. Yes.

4 Q. So that would be on equipment in
the annode

5 bed outside of the reservoir?

6 A. I believe so, yes.

7 Q. Now, do you have a recollection
of whether

8 you went into the reservoir on August 11,
'94 before or

9 after checking on the status of the soda ash

silos?

10 A. I wouldn't -- I don't remember.

11 Q. But again, chronologically, on,
or at least

12 in order of writing, on report numbered 120,
reference

13 to events occurring near the reservoir
precede

14 reference to events occurring at the soda ash
silos.

15 Do you agree with that?

16 A. Yes.

17 Q. And again, based on your
practice, does it

18 make it then more likely that you went to
the reservoir

19 and took the photographs that we saw,
Exhibits 194 and

20 195, prior to going on to the soda ash
silos?

21 MR. SCANLAN: Objection, calls
for

22 speculation.

23 MR. NICOLL: Just asking for your
practice.

24 A. More likely.

25 Q. Do you recall how much time you
spent over

00428

1 there by the reservoir looking at the annode
bed and

2 related stuff and how much time you spent in
the

3 reservoir examining it, taking photographs?

4 A. No.

5 Q. How much time would it take you
to get into

6 the reservoir?

7 A. 15 minutes maybe.

8 Q. Because you got to get up to the
top and

9 then climb down a ladder, right?

10 A. Right.

11 Q. And how much time would it take
you to get

12 out of the reservoir? Same or a little
longer?

13 A. Approximately the same amount of
time.

14 Q. Now, would it be fair to say
that, you know,

15 you've got how many rungs on the vertical
ladder going

16 from the top of the reservoir down into the
bottom?

17 A. Probably 25.

18 Q. Is that something that you did on
a fairly

19 -- on a regular or irregular basis going
into the

20 reservoir?

21 A. I would say irregular.

22 Q. That would be because it's
cumbersome

23 getting down there, right?

24 A. Among other things, yes.

25 Q. Dark, cold?

00429

1 A. Well, you had to put on a safety
harness as

2 well to go inside even just on the ladder.

3 Q. The 15 minutes that you just
mentioned to

4 us, did that incorporate the time that it
took to put

5 the safety harness on and everything else?

6 A. Yes.

7 Q. So when you go into the
reservoir, given

8 that it's on an infrequent basis, would you
take more

9 time than what, I don't know, but take a
fair amount of

10 time in inspecting the interior of the
reservoir?

11 A. Yes.

12 Q. So about how long on average --
and I assume

13 there aren't that many times -- would you
spend in the

14 reservoir when you went in to inspect it?

15 A. I would inspect it probably 45
minutes to an

16 hour.

17 Q. Do you remember on August 11, 1994
how long
18 you actually spent in the reservoir?

19 A. No.

20 Q. If it had been significantly
shorter or
21 longer than your average amount of time, do
you think
22 that would be something that you'd remember?

23 A. Perhaps.

24 Q. Or if there had been a reason to
note the
25 need for additional time at the reservoir,
you would

00430

1 have noted it in your inspection report?

2 A. Yes, that's correct.

3 Q. So after spending
approximately somewhere
4 around an hour and a half in conjunction
with going
5 into the reservoir -- and by the way, how
much time did

6 you spend at the annode bed?

7 A. I really don't know.

8 Q. Was there a usual amount of time
you spent

9 looking at the annode bed? I'm going to
guess there

10 probably wasn't but --

11 A. No.

12 Q. Did you watch -- did you actually
watch the
13 backfilling of the annode bed occur?

14 A. I don't recall it.

15 Q. Did you watch the splicing of
being covered
16 with wraps of electrical tape by ICS?

17 A. I would have seen that, yes, some
of it at

18 least.

19 Q. But you don't have a specific
recollection
20 of it?

21 A. Right.

22 Q. Your belief that you would have
seen it is

23 based upon the fact that you wrote it down in
such

24 detail?

25 A. Yes.

00431

1 Q. And then you'd have to go from
the reservoir

2 back to the main plant, the water treatment
facility,

3 in order to get to the soda ash silos?

4 A. Yes.

5 Q. Now, that would require walking
back through

6 or around the pump station area; is that
right?

7 A. Yes.

8 Q. Do you recall doing that on
August 11?

9 A. No.

10 Q. Upon -- but it would take you,
what, about

11 five, ten minutes to get from the reservoir
to the

12 treatment facility?

13 A. Approximately, yes.

14 Q. When you got to the water
treatment

15 facility, you went inside, obviously, and
went to the

16 area where they were working on the soda ash
silos. Do

17 you recall how much time you spent there?

18 A. No.

19 Q. Was that something that you did
on a

20 recurring enough basis to be able to tell us
what an

21 average amount of time would have been?

22 A. Yes. I would say probably 20
minutes I

23 would have spent minimum in there doing that,
talking

24 to the people and looking at the activity.

25 Q. Given the description of the work
here,

00432

1 "work on soda ash silos continuing today,

welding legs

2 to east silo and installing more steel beams
for floor

3 support are planned," you talked to Rodney
Staples and

4 Imco people about gap in existing floor,
does that

5 tickle or refresh any kind of recollection
about the

6 precise amount of time you spent up there?

7 A. No.

8 Q. Given the detail of that
description, were

9 you reporting on things you actually
observed or things

10 that you were told or do you know?

11 A. Both.

12 Q. Both. Now, again, based on your
practice of

13 how you complete these inspection reports,
do you

14 believe or is it your opinion that likely it
was after

15 you went to the reservoir and examined the
inside of

16 the reservoir that you then went to the soda
ash silos?

17 MR. SCANLAN: Objection, calls for
18 speculation.

19 A. More likely.

20 Q. Now, the next entry in the report
says,

21 "A question about whether the inside of pump
station

22 gets sealed came up. Specification
indicates sealer is

23 applied but not pigment sealer inside the
structure. A

24 letter requesting CO" -- which I guess means
change

25 order -- and costs will be sent." Do you see
that?

00433

1 A. Yes.

2 Q. Do you recall having a discussion
about that

3 issue?

4 A. Not particularly. Not
specifically, I

5 don't, no.

6 Q. In light of that I'm going to
take it that

7 you also don't recall where such a
discussion would

8 have occurred?

9 A. No, I don't.

10 Q. Now, this latter part, excavation
of pump

11 station using ram hoe and Hitachi backhoes
taking

12 several hours, about two thirds of the
day, the

13 operator is back and forth, we've
gone over this

14 description before. Written as it
is, after the

15 section about questions about the inside
of the pump

16 station, and based on your practice, can
you tell us

17 whether your observations of the
activities, of the

18 excavation activities, occurred after your
discussion

19 about use of sealer inside the pump
station?

20 A. I really can't say. It could
have happened

21 directly as I list things, but there's a
possibility it

22 didn't as well.

23 Q. Would it be fair to say, based on
this

24 report, and whatever recollections you have,
as well as

25 your photographs, that at least for the
first part of

00434

1 the day, your attention was focused on the
annode beds,

2 the inside of the reservoir and the soda ash
silos?

3 A. Yes.

4 Q. It was later, then, that your

attention got

5 refocused on the excavation activities by
virtue of

6 your comment about excavated material
choking the site

7 and telephone conduit being damaged. Is
that fair?

8 A. Yes, yes.

9 Q. Now, you say about -- you say
that the

10 telephone conduit was only approximately one-
and-a-half

11 feet below grade at the time. How did you
determine

12 that, or do you recall?

13 A. I don't recall how I determined
that.

14 Q. You don't recall if you measured
it yourself

15 or if you were told it by somebody else or
anything

16 like that?

17 A. No.

18 Q. Did you know a fellow named
Britton Lukes?

19 A. Name doesn't sound familiar.

20 Q. Did you know any of the backhoe or
Imco

21 operators by name?

22 A. I could have at the time. I don't
recall at

23 this time.

24 Q. Could you recall a description of
the person

25 who was operating the backhoe -- sorry --
loader at the

00435

1 time that the telephone wires were damaged?

2 A. No.

3 Q. Do you recall how much time you
spent out of

4 your day dealing with, reporting on,
inspecting,

5 whatever, the telephone conduit damage?

6 A. Actually, it wasn't conduit. It
was just

7 the wires. I think they were laid bare in

the hole,

8 but I really don't know. It wouldn't have
been

9 something I would have spent a whole lot of
time on,

10 because the people that are doing the work
are

11 responsible for their own wiring
connections, and if

12 things go bad then they have to come back
and fix it.

13 I wouldn't have been too involved in that.

14 Q. Well, in light of that why did
you make a

15 note of it?

16 A. Because it was a function that was
occurring

17 on site, and I felt I needed to make note of
it.

18 Q. You felt that you needed to make a
note of

19 damage that was caused by the general
contractor?

20 A. Yes.

21 Q. The next thing you note is that
Imco was

22 continuing sacking of pump station interior
upper and

23 lower rooms, which is what we were talking
about

24 before, smoothing out the walls basically,
right?

25 A. Yes.

00436

1 Q. In order to make that statement,
would it be

2 fair to say that you went into the pump
station and saw

3 what they were doing?

4 A. Yes.

5 Q. Do you recall, again, how much
time you

6 spent in there?

7 A. No, I don't.

8 Q. August 11, as you report, it was a
nice day.

9 The weather was fair, the temperatures

between 56 and

10 80 degrees, the site condition was good?

11 A. Yes.

12 Q. Based upon that, can you tell us
whether it

13 was more or less likely that you spent more of
your

14 time indoors or outdoors?

15 MR. SCANLAN: Objection, calls for
16 speculation.

17 A. I don't know.

18 Q. You don't have any specific
practice in that

19 regard?

20 A. No.

21 Q. The last entry deals with the
excavation of

22 the chlorine vault, which you and Greg
discussed. "The

23 rock excavation depth is seven feet, two feet
is extra.

24 When the work is done times of active use by
operators

25 of equipment versus standby time will be
determined."

00437

1 A. Yes.

2 Q. Do you see that?

3 A. Yes.

4 Q. Where was the chlorine vault
going to be

5 put?

6 A. It was right next to the
reservoir along the

7 pipeline, the water large diameter pipe.

That was what

8 I had made a comment about earlier that I
thought

9 probably was what I was talking about when
I said

10 excavation of pump station using ram hoe
and Hitachi

11 backhoe on the first page.

12 Q. It says here, "When the work is
done times

13 of active use by operators of equipment
versus standby

14 time will be determined." As you read
that, can you
15 confidently say that what you and Greg were
discussing
16 was not something that was yet to occur but
something
17 that was in the process of occurring?
18 A. No. It's something that was in
the process

19 of occurring.
20 Q. Now, you weren't present, were
you, when
21 Imco did the work required in order to fix
the valve

22 stems on the two valves on the tee joint?
23 A. I don't remember being there.

24 Q. You don't remember witnessing
it?

25 A. Right.
00438

1 Q. And you didn't make a notation,
as far as I
2 can tell from having read your inspection
reports, of
3 having seen it?

4 A. No.
5 Q. I'd draw your attention to
report 124,
6 numbered 124, dated August 17, 1994.

Second full
7 paragraph reads, "Excavation of valve stem
for 72-inch
8 pump-out system at Hannah Creek being done
this a.m."

9 Do you see that?
10 A. Yes.
11 Q. Then the bottom line says, "The
72-inch pump

12 out valve stem was straightened and
permanent
13 extensions placed in both 60-inch and 72-inch
pump-out

14 stems, two spacers each." Do you see that?
15 A. Yes.

16 Q. I've searched through your
inspection
17 reports and couldn't find a similar entry for

the valve
18 stems related to the 22-inch -- I'm sorry --
24-inch

19 discharge and the tee joint. Would it be
fair to say,

20 sir, that if you had witnessed those valve
stems being

21 straightened yourself you would have made a
note of it

22 in your inspection report?

23 A. Yes.

24 Q. Did anybody report to you, as far
as you can

25 recall, when the -- when after August 9,
1994 the valve
00439

1 stems on the tee joint were repaired?

2 MR. FLOYD: I'm going to object
to the form

3 of the question because there's no evidence
that the

4 valve stems were ever damaged or required
repair.

5 There's a difference between straightening
the valve

6 stems and straightening the conduit leading
from the

7 valve stem.

8 MR. NICOLL: Whatever.

9 A. I don't recall them telling me
when it was

10 fixed. I don't recall them telling me when
it was

11 fixed.

12 Q. But at some point obviously you
became aware

13 that it was fixed?

14 A. Yes.

15 Q. Do you remember when that
was, becoming

16 aware that it was fixed?

17 A. No.

18 Q. In order to correct the
problem of the

19 seating of the valve stem, excavation
of that area

20 around the tee joint would have been

21 necessary, right?
the MR. FLOYD: Object to the form of
22 question.
23 A. They would have had to dig down a
certain
24 distance. They wouldn't necessarily have to
go all the
25 way down to the nut itself to straighten the
stem out.

00440

1 Q. Do you recall being involved in
discussions
2 in which the extent of digging in order to
do the work
3 on the valve stem on the tee joint was
brought up?

4 A. No.
5 Q. At that point, on August 11 --
I'm sorry,
6 August 9, 1994 -- how would you describe
your level of
7 confidence in the people operating the Imco
excavation
8 equipment?

9 MR. FLOYD: Object to the form of
the
10 question, lack of foundation.

11 Q. I'm asking about your confidence
in their
12 performance.

13 MR. FLOYD: You haven't asked him
if he even
14 has an opinion regarding that.

15 A. At that time I had no concern
over their
16 confidence of operation of the backhoes. I
wasn't
17 aware nor had a need to be concerned about
it.

18 Q. How about subsequently?
19 MR. SCANLAN: Object to the form.
Vague as
20 to time.

21 MR. NICOLL: Subsequent to August
9, 1994.

22 MR. SCANLAN: Same objection.

23 A. No. I don't have any recollection
 of a lack

24 of confidence.

25 Q. Do you recall whether you spoke
 with anybody

00441

1 at Imco about the need to fix or correct, or
call it

2 what you will, the valve stem connections
on the tee

3 joint?

4 A. Yes. I would have talked to
Greg about

5 that.

6 Q. That would have been your
practice?

7 A. Yes, only because he had to use
it time and

8 again. It wasn't a question of me having
to make sure

9 they did it right. He had to do it right
because he

10 had to turn it on and off several times
within the next

11 month.

12 Q. This is something he would have
 known he

13 needed to do?

14 A. Sure.

15 Q. More likely than not he brought it
 to your

16 attention; is that right?

17 A. I wouldn't say that.

18 Q. So you were walking around on the
 site and

19 checking to make sure that things like
valves are

20 properly hooked up and that sort of --

21 A. I would have been talking to him
primarily

22 about doing the backfilling operation,
making sure it

23 stayed straight up, and paid attention to
that aspect

24 of backfilling.

25 Q. Now, regardless of how much
 digging had to

00442

1 be done to get those valve stems fixed or
proper, some

2 excavation had to be done, right?

3 A. Yes.

4 Q. We know from prior testimony and
from all

5 these exhibits that underneath the
intersection of the

6 tee joint with that 16-inch water line the
Olympic

7 pipeline ran, right?

8 A. Yes.

9 Q. Was there any discussion -- when
the issue

10 of work to fix these two valve stems came
up, was there

11 any discussion at all about contacting
Olympic Pipe

12 Line to make sure they were present for any
digging

13 that was done?

14 A. I don't recall.

15 Q. There's no reference in your
August 9,
16 August 10 or August 11 reports about Olympic
Pipe Line

17 or gas company personnel being contacted,
you agree

18 with that, right?

19 A. Yes.

20 Q. There's no reference in those
about Olympic

21 Pipe Line or gas company personnel being
present, do

22 you agree with that?

23 A. No reference to them, yes.

24 Q. If they had been present it's
the kind of

25 thing you typically noted in your reports,
isn't it?

00443

1 A. Typically, yes.

2 Q. Did anybody ever report to you,
anybody,

3 that on August 11, sometime in the morning,
an Imco

4 equipment operator while digging down to
uncover those

5 valve stems struck the Olympic Pipe Line
with the

6 backhoe?

7 A. No.

8 Q. Did anybody ever report to you
that after

9 that occurred the pipeline was uncovered
using hand

10 shovels and the people present saw visible
damage on

11 the exterior of the pipeline?

12 A. No.

13 Q. Was it ever reported to you,
sir, that one

14 of those people present ordered the others
not to

15 report the incident to you?

16 A. No.

17 Q. How did you get along with Paul
Krakenberg?

18 A. Oh, okay, adequately.

19 Q. No friction between the two of
you?

20 A. Oh, there'd be times when we'd
have

21 disagreements.

22 Q. Did you trust him?

23 A. I had no reason not to trust
him. Yes, I

24 trusted him.

25 Q. Now, Paul Krakenberg, where was
he usually

00444

1 located?

2 A. They had a trailer on site that
was their

3 office and that would typically be his
location.

4 Q. If he wasn't the superintendent
or the

5 foreman on the job but was the site
engineer, whatever

6 you referred to him as, you wouldn't have
listed him on

7 your inspection report; is that right?

8 A. What was the question again?
9 Q. Well, Imco had other people
on the site
10 other than Greg Burris and five laborers on
August 8,
11 1994; is that right?
12 A. Well, typically, no. You mean as
far as --
13 I'm not sure -- ask the question again.
14 Q. When you would fill out these
inspection
15 reports about people who were on the site
working from
16 Imco, would you include the people in the
trailer?
17 A. No.
18 Q. So there came a point in time,
didn't there,
19 when Greg Burris left the Dakin-Yew facility
to work at
20 another job somewhere up in the San Juan
Islands?
21 A. There might have been a short
period of
22 time. I don't recall if that happened or
not. Seemed
23 like there was a point in time when Greg was
gone for a
24 week or two. I wouldn't -- I don't remember
it being
25 any longer than that.
00445
1 Q. And Paul Krakenberg became his
replacement
2 during the period that he was gone, Greg was
gone?
3 A. Yes.
4 Q. Didn't during this period of time
you and --
5 who was your boss -- John Hatch --
6 A. John Hatch.
7 Q. -- express concern to Imco over
the level
8 and quality of supervision at the work site?
9 A. I don't recall that.
10 Q. Didn't you ask for Greg Burris to
come back?

11 A. If I did I don't remember it.
12 Q. Did you know Mark Graham from
Triad
13 Electrical?
14 A. Yes. I recall the name now. I
remember
15 seeing it in my daily reports Mark from
Graham. Mark
16 who?
17 Q. Mark Graham from Triad.
18 A. Yes.
19 Q. Did you have much interaction
with him?
20 A. It was on and off. Like I
mentioned, they
21 were on the site at times and gone -- I
had some. I
22 wouldn't say it was a lot.
23 Q. It's hard to tell from looking
at the
24 inspection reports reading through them. Did
you have
25 any problems with performance of Triad?
00446
1 A. No.
2 Q. Did you have any specific
problems with Mark
3 Graham?
4 A. The only problems I had with Mark
were
5 problems he had with Imco, like difficulty
with
6 schedules and that. If the contractor
wasn't ready he
7 couldn't do his work and that created some
friction
8 between the two companies.
9 Q. Could you explain to us or
describe for us
10 what the problem was? Was it Mark who was
late or was
11 it Imco who was late?
12 A. Typically it would be Imco
impeding on his
13 progress.
14 Q. So Mark would be ready to go
forward, but

15 Imco wasn't ready for him so he'd have to do
nothing?

16 A. Yes.

17 Q. And did these interactions with
Mark cause

18 you to become doubtful of his word or his
honesty?

19 A. No.

20 Q. Did you know him personally?

21 A. No.

22 Q. Did you know him at all by
reputation?

23 A. No.

24 Q. Do you now know him either
personally or by

25 reputation?

00447

1 A. No.

2 Q. Did you know some of the laborers
on the job

3 site, on the work site, the Imco laborers?

4 A. What do you mean know? You mean
by name?

5 Q. Yeah. Did you know like, say, by
name or

6 anything like that?

7 A. Just by name.

8 Q. Did you know of a laborer by the
name of

9 Johnnie, an Imco laborer named Johnnie?

10 A. I remember the name, yes.

11 Q. Do you recall whether he was one
of the Imco

12 laborers working or that you saw him working
at the job

13 site in August 11th, 10th, 9th?

14 A. I remember him being on site. I
don't

15 remember the specific days or activities.

16 Q. Do you have some recollection,
even if you

17 can't tie it to a specific date, of
excavation being

18 done in the August time frame to uncover the
valve

19 stems near the tee joint?

20 A. No.

21 Q. Do you have any recollection of
disturbed
22 soil near those valve stems?
23 A. No, I don't.
24 Q. Do you recall whether or not the
valve stems
25 for the tee joint were repaired at least by
the time
00448
1 the valve stems for the 60-inch were
repaired later in
2 August?
3 A. No, I don't.
4 Q. You just have no recollection
about that?
5 A. I don't know when it was done,
no.
6 Q. On August 11, the same equipment
that was
7 listed on August 10 was on the site and in
use; isn't
8 that right?
9 A. Yes.
10 Q. One of those pieces of
equipment was an
11 Hitachi EX 150 backhoe. Do you agree with
that?
12 A. Yes.
13 Q. Which of the backhoes was that?
Can you
14 describe it for us, generally?
15 A. It was a larger backhoe. It was
larger than
16 the Cat or the JD -- I shouldn't say Cat. I
don't
17 remember whether it was JD, but it was the
larger of
18 the pieces of equipment there.
19 Q. Do you remember how it was --
there's no
20 notation here, so I can't tell, but do
you have any
21 specific recollection as to what kind of
bucket or
22 shovel was attached to it on August 11?
23 A. No, I don't.
24 Q. There were times, were there not,

on the job
25 site, when it was using a straight-edged
bucket or a
00449
1 flat-edged bucket?
2 A. Yes.
3 Q. And there were also times when it
was using
4 a bucket that had teeth?
5 A. Yes.
6 Q. How many teeth would be on a
particular
7 bucket? It would depend on the width of the
bucket,
8 right?
9 A. Yes.
10 Q. Do you recall whether in light of
the type
11 of excavation that was going on on August
11, 1994 the
12 Hitachi EX 150 was using a narrower or a
wider bucket?
13 A. I don't recall.
14 Q. Part of the work they were doing
involved
15 digging through some pretty -- digging
through rock; is
16 that right?
17 A. Yes.
18 Q. When digging through rock would
the Hitachi
19 backhoe typically use one type of a bucket
as opposed
20 to another?
21 MR. SCANLAN: Calls for
speculation.
22 Q. If you know.
23 A. You would typically use one that
had teeth
24 in it, but it only takes five minutes to
change a
25 bucket on a backhoe so they could have very
easily

00450

1 changed five or six times that day.
2 Q. But you don't know if they did?
3 A. No.

4 Q. Are you sure there was no
excavation around

5 the pump station on August 11?

6 MR. FLOYD: Object to form of the
question,

7 argumentative. He's already answered the
question.

8 MR. NICOLL: He hasn't.

9 MR. FLOYD: He has.

10 A. That's what I remember.

11 Q. Pardon?

12 A. That's what I remember was the
excavation

13 was for the vault next to the reservoir.

14 Q. I know, but you write here in,
well, really

15 three separate places about excavation in
the vicinity

16 of the pump station on your August 11, 1994
report,

17 right?

18 MR. FLOYD: Counsel, can you
reference those

19 for him, please? I only see one.

20 MR. NICOLL: I'll be happy to.

21 Q. In the first two lines of the
report you

22 say, "Imco earth work activity includes
completing

23 backfill of a four-inch water line at
areas in pump

24 station vicinity." Later you write on
the bottom,

25 "Excavation of pump station using ram hoe and
Hitachi

00451

1 backhoes taking several hours. The
excavated material

2 is choking the site." And then finally at
the end you

3 write, "The telephone conduit in front of
southwest

4 pump station corner 15 feet from the 72-inch
line was

5 damaged severely by Imco loader."

6 MR. FLOYD: I'm going to object
that that is

7 very misleading because they obviously are
identifying

8 three different areas.

9 MR. VERWOLF: Counsel, I'm going
to object

10 --

11 MR. NICOLL: Yeah. This is
getting a

12 little bit --

13 MR. FLOYD: No, it's not.

14 MR. NICOLL: Yes, it is actually.

15 MR. FLOYD: What you're doing is
wrong.

16 MR. NICOLL: I can't possibly
mislead a guy

17 who's got the report in front of him. And I
object to

18 what you're doing, Francis, because you're
trying to

19 coach him into a response.

20 MR. FLOYD: I object. He doesn't
need

21 coaching. What you're doing is --

22 MR. NICOLL: Well, then, why don't
you just

23 say object to the form of the question. I
think

24 you're mischaracterizing. Let the record
speak for

25 itself.

00452

1 MR. FLOYD: You're
mischaracterizing the

2 testimony.

3 Q. Tom, I'm not asking you to guess
at anything

4 other than what's in the report. I mean,
you wrote the

5 report?

6 A. Yes.

7 Q. Is it fair to say that on three
separate

8 occasions you refer to equipment operation
in the

9 vicinity of the pump station?

10 A. Yes, I do.

11 Q. Were you in error on each of

those three
12 separate times?
13 A. I only made reference to error
about the
14 excavation of the pump station using the
ram hoe and
15 Hitachi backhoe in relationship to the
chlorine vault
16 construction, that that was what that activity
was for.
17 Q. But you said that they were -- that
he was
18 back and forth?
19 A. No. I said he was hauling dirt
back and
20 forth with a loader to remove the
excavation from the
21 vault site.
22 Q. Do you recall whether this
excavation was
23 occurring in the afternoon or the morning
or both?
24 A. Both.
25 Q. So, in light of what you're
saying, why, if

00453

1 you know -- I mean, maybe you don't know.
What would
2 have put the operator in a position to be
digging in
3 front of the southwest pump station corner so
as to be
4 able to damage the U S WEST cable?
5 MR. SCANLAN: Object to the form
of the
6 question.
7 A. I'm not sure that the digging was
what
8 damaged it. Perhaps the back loader movement
could
9 have damaged the wire as well.
10 Q. Is it fair to say that you can't
say, based
11 on your own observations, that there wasn't
digging
12 using a piece of equipment by Imco in front of
the pump

13 station on August 11, 1994?
14 MR. SCANLAN: Object to the form of
the
15 question.

16 MR. FLOYD: Same objection.
17 A. No, I --

18 MR. FLOYD: What do you mean by "in
front of
19 the pump station"? Compared to what?

20 Q. Let's say that you can't say that
there was
21 no digging using Imco equipment?

22 MR. SCANLAN: Can you answer the
23 question?

24 MR. NICOLL: Let me rephrase the
question.

25 Q. You cannot say that there was no
digging on
00454

1 August 11, 1994 by Imco personnel using Imco
equipment

2 in the vicinity of those two risers from the
tee joint?

3 A. No. From the information that's
on the

4 report I cannot say that they did not do
that.

5 Q. It's possible?

6 A. It's possible they were, yes. I'm
firming

7 a negative, yes.

8 (Recess.)

9 THE VIDEOGRAPHER: Going off the
record.

10 The time is approximately 2:29 p.m.

11 (Recess.)

12 THE VIDEOGRAPHER: Back on the
record. The

13 time is approximately 2:41 p.m.

14 Q. We were talking a moment ago
about, I'm

15 sorry, about report No. 120. I wanted to
show you a

16 photograph which is Exhibit 200 and was
used in the

17 deposition of Mark Graham. Take a look at
that.

18 MR. VERWOLF: What was that?
19 MR. NICOLL: 200.
20 Q. Try not to be influenced by the
writing on
21 the photograph.
22 A. (Indicating).
23 Q. There are a couple of stem-
shaped looking
24 things that are orange on the top. Do you
see those?
25 They're actually inside a circle that's
labeled
00455
1 "valve stem risers." But I'm not going to
ask you to
2 agree -- I'm going to ask you if you agree
with that.
3 Is that the approximate location of the
valve stem
4 risers off the tee joint?
5 A. Yes.
6 Q. So do you agree with the
representation that
7 those are the valve stem risers?
8 A. It could be.
9 Q. In the lower right-hand corner of
that
10 photograph there's a date stamp which is
hard to read,
11 but looks to me, at any rate, like August 9,
1994. Can
12 you read it?
13 A. Yes. It could say that.
14 Q. Does the condition of the
progress of the
15 construction that's depicted in Exhibit 200
sort of go
16 along with your recollection of what the
status was on
17 that date, August 9, 1994?
18 A. Yes.
19 Q. If you hand me back the photos
you'll see
20 that later on, if you look at Exhibit 23,
later on
21 August 22nd, do you see the date in the
lower

22 right-hand corner of Exhibit 203?
23 A. Yes.
24 MR. FLOYD: Is it --
25 MR. NICOLL: 203.

00456
1 Q. Hold up 203, thanks.
2 A. (Indicating).
3 Q. That's an August 22, 1994 date
stamp
4 photograph, right?
5 A. Yes.
6 Q. And you took the photograph?
7 A. Yes.
8 Q. In fact, you took all these
photographs?
9 A. Most all of them I believe I did.
10 Q. And that shows further progress
from the
11 earlier photograph, Exhibit 200, on the
outside of the
12 pump station; is that right?
13 A. Yes.
14 (Marked Exhibit 255.)
15 Q. Exhibit 255, if you turn it over,
has a
16 number associated with it. It's ETPH
0000958. Do you
17 see that?
18 A. Yes.
19 Q. Now, rather than lug all the
photographs up
20 here, I just had this photograph made during
the lunch
21 break. This is a photograph of a couple of
fellows
22 working next to a U S WEST truck that I
obtained from a
23 set of photographs that contain those August
11 dated
24 photographs that we had earlier, the ones of
the inside
25 of the reservoir and of the soda ash silos.
But I

00457

1 can't read a date on it. Does anything
about this
2 photograph, Exhibit 255, refresh any

recollections for

3 you?

4 A. It appears to be the same time
frame as

5 the 8-11 damage to the telephone wiring.

6 Q. But does it actually refresh your
7 recollection in that regard?

8 A. That I'm sure that it's that date
or that

9 this is the function?

10 Q. Yes.

11 A. No, I'm not positive of it.

12 Q. Do you recognize the people in
the
13 photograph?

14 A. I recognize that they were out
there, yes.

15 I remember the -- this does appear as if
it's the same

16 situation that I referred to in --

17 Q. August 11?

18 A. -- in the August 11 activity.

19 Q. Do you remember the two guys in
the
20 photograph?

21 A. Just from observation. No.

That's all.

22 MR. SCANLAN: I'm sorry, Chris,
are you

23 asking him whether these guys are
construction guys or

24 U S WEST guys?

25 MR. NICOLL: No. I'm just asking
if he

00458

1 remembered them.

2 MR. SCANLAN: Okay.

3 Q. I can't tell very well myself,
but can you

4 tell by looking at the photograph which
direction you

5 were pointing your camera? Was it to the
west and

6 north, south to east, northwest?

7 A. I can't tell.

8 Q. You notice the pile of earth in
the

9 background. There's like a triangle at the
top of the
10 photograph that's formed on one side by the
truck, on
11 the top by, you know, the bucket and then on
the bottom
12 by the pile of earth. Do you see that?

13 A. Yes.

14 Q. See how it's black in the
background?

15 A. Yes.

16 Q. Was the back of the -- I'm sorry.
By August

17 11, 1994, had some of the exterior bulkheads
on the

18 pump station been treated or painted with
that tar

19 material?

20 A. I don't recall.

21 Q. Take a look at Exhibit 201. Hold
it up for

22 the camera.

23 A. (Indicating).

24 Q. Exhibit 201 has a fairly clear
date stamp of

25 August 9, 1994; is that right?

00459

1 A. Yes.

2 Q. You took Exhibit 1, you took that
3 photograph?

4 A. I believe I did.

5 Q. That shows the easterly and
northerly

6 exterior walls of the upper level of the
pump station;

7 is that right?

8 A. Yes.

9 Q. And it shows that they're painted
black?

10 A. Yes.

11 Q. What is that black stuff?

12 A. That is the coal tar that we
talked about

13 earlier.

14 Q. Do you remember I showed you a
photograph

15 earlier? I think it was Exhibit 95.

Exhibit 95 -- I

16 apologize, Tom. It's not Exhibit 95.
It's Exhibit

17 193. Hold up Exhibit 193.

18 A. (Indicating).

19 Q. Exhibit 193 is a photograph of
the southern

20 exterior wall of the pump station; is that
right?

21 A. Yes.

22 Q. And are you able to see a date on
that

23 photograph?

24 A. No. I can see something there,
but I can't

25 make it out.

00460

1 Q. That shows, though, that the
bulkhead hasn't

2 been poured yet, right, the retaining wall?

3 A. The second wall section?

4 Q. The second wall section.

5 A. Yes. First one has been poured
but the

6 second one hasn't.

7 Q. So that would put the date of
that

8 photograph somewhere prior to August 11, is
that right,

9 based on the earlier inspection reports?

10 A. I don't remember when the second
wall

11 section was worked on.

12 Q. Well, because we're getting
towards the end

13 of the afternoon we'll let the reports speak
for

14 themselves for now, but what is that man
in the

15 photograph applying to the wall?

16 A. It appears as if he's applying
coal tar.

17 Q. Black coal tar?

18 A. Yes.

19 Q. Now, in Exhibit 255, can you
tell whether

20 the area that I'm pointing to on the top

of the

21 photograph, that triangular area that I
described

22 earlier, is the coal tar wall, coal tarred
wall of the

23 pump station?

24 MR. SCANLAN: First as a shadow,
you're

25 asking?

00461

1 MR. NICOLL: Yeah.

2 A. I can't tell whether it's the
building or

3 just the background of the forest behind the
south

4 side. Obviously the telephone line went
north/south.

5 Q. Right.

6 A. So we're either looking south
towards the

7 trees and the native growth behind where
this truck is

8 or we're looking --

9 Q. Back towards the pump station?

10 A. Right. Could be either way.

11 Q. So you took a photograph that was
either --

12 since the line is oriented north/south, the
orientation

13 of the photograph itself is north/south --
either

14 towards the south or towards the north?

15 A. Yes. And from looking at what
I'm seeing

16 there, we're probably looking to the south
because

17 shadows from the overhang appear to be going
northward.

18 So I would speculate that we're looking
southward.

19 Q. Do you know what time of day this
photograph

20 was taken?

21 A. No.

22 Q. So how does shadowing help you
determine the

23 direction?

24 A. If it's on one side or the other
you know

25 that the south side is where the shadows
wouldn't go.

00462

1 Q. Going to turn your attention now
to the

2 meeting minutes which is Exhibit 103. Do
you know who

3 prepared the meeting minutes?

4 A. If I remember, Paul Krakenberg
was the one

5 that would normally do that.

6 Q. The first meeting minutes that I
see are

7 from March 1, 1994. Do you see that one?

8 A. Yes.

9 Q. It has a Bates number of ET
0004852. And it

10 says that there's going to be a meeting every
Tuesday

11 at
9:00 a.m.?

12

A. Yes.

13 Q. Why don't you turn to page ET
0004786 for

14 the meeting minutes of March 22, 1994.

15 A. 4786?

16 Q. 4786.

17 A. I'm not sure I know where that's
at.

18 Q. Well, it's three pages in. It
should be

19 just three pages in. I'm going to go
chronologically

20 through these things.

21 A. 4786?

22 Q.

Right.

23 A. Okay.

24 Q. Use the darker number. This is
under

25 submittals. It talks about the difference
between shop

00463

1 drawings and design specifications.

Statement is that

2 "Paul mentioned that transmittal No. 20 was
not

3 reviewed by Bob. John replied the reason
being the

4 office interpreted the transmittal as a shop
drawing.

5 The definition of project data that required
6 specifically by the specifications for the
project. A

7 shop drawing is everything else. Shop
drawings are

8 unofficially reviewed. Barrett stays away
from field

9 dimensions and fits which are Imco's
area. On items

10 such as pipe layout Barrett will do a
math check on

11 angles, et cetera, or look at the details
from the

12 suppliers required by the
specifications."

13 What I was going to ask you
about was who

14 was responsible, if you recall, for
putting together

15 the as-built drawings? Who actually put
the as-built

16 drawings together for this project?

17 A. Me.

18 Q. You did?

19 A. Yes.

20 Q. So who was in possession of the
as-built

21 drawings?

22 A. I'm not sure they were in the
project

23 records when I left.

24 Q. Are you still working for Barrett
-- or I'm

25 sorry, Earth Tech?

00464

1 A. Yes.

2 Q. Do you know if the city has as-
built

3 drawings?

4 A. No, I don't.

5 Q. The next page 4787 says, "Greg
handed in
6 contract clarification No. 1 proposing to
reroute the
7 conduit trench, et cetera, and then Dean
asked Greg to
8 ensure Triad is aware of all clarifications."
And then
9 the next statement says, "A contract
clarification log
10 will be kept here on site by Jane." Is Jane
Jane

11 Campbell?

12 A. I don't know.

13 Q. You don't know. Was a contract
14 clarification log kept?

15 A. I'm not aware of that either.

16 Q. Did you ever see one?

17 A. No.

18 Q. So you wouldn't know where the log
is today?

19 A. No.

20 Q. Flip ahead to page 4770, which is
the
21 meeting on March 29, 1994. First look at the
first

22 page of that. That's 4769. Shows that you
were
23 present?

24 A. Yes.

25 Q. I see also that Bill Evans was
there.

00465

1 A. Yes.

2 Q. From the city of Bellingham,
right?

3 A. Yes.

4 Q. And who is Jeffrey Sathe?

5 A. I don't know.

6 Q. Did you have any idea what he
did with the
7 city of Bellingham?

8 A. No.

9 Q. Was there always a
representative from the
10 city of Bellingham at these meetings?

11 A. I don't know that that's the

case.

12 Q. Usually?

13 A. Usually, yes.

14 Q. What would they do? What would
these city

15 representatives do at the meetings,
typically?

16 A. Well, primarily Bill was there
because most

17 of the time or the times that he would be
there we

18 would be doing an inside in his area. A
lot of times

19 we'd have our meetings in the filtration
plant itself

20 where there was more room.

21 Q. So the meeting was being held at
the

22 treatment facility and it was good to
invite Bill?

23 A. Well, not only that, but a lot of
activity

24 was in the plant itself, and so we were
right close by

25 and could refer to different activities,
easily.

00466

1 Q. Switching over to the next page,
4770.

2 Under work quality section 5.3, says, "Tom
advised Imco

3 to be attentive to the plans and to do
things right the

4 first time. Iron workers need to be more
attentive to

5 details per drawings." Do you recall what
it was that

6 --

7 A. Iron workers not paying attention
to what

8 they needed to do.

9 Q. This is based on your
observations?

10 A. Yes.

11 Q. The next item under schedule says
item 5.4.

12 The sentence I'm interested in here says,

"All utility

13 locators have been to site. Greg will be
potholing for

14 the 60-inch and 48-inch lines. He will dig
up where

15 Imco plans to make final connection to the
48-inch

16 line. John suggested Imco know the
whereabouts of the

17 36-inch line. Greg will inform Bill of his
plans for

18 potholing."

19 My question here is, you know,
could you

20 explain what the context of all this
discussion about

21 potholing was? Why was there the
discussion going on

22 at that time?

23 A. No, I can't really. March 29
would have

24 been the first month of the project. My
assumption is

25 that we're just locating the different
utilities and

00467

1 different actions that need to be addressed
so that

2 they can be addressed properly at the
right time.

3 Q. Digging was about to get under
way?

4 A. Yes.

5 Q. And it was important to you and
to Imco to

6 know where the underground utilities were?

7 A. Yes.

8 Q. So that during digging they
wouldn't be

9 struck or damaged?

10 A. Right.

11 Q. Page 4762, which is the second
page of the

12 meeting minutes for April 5, 1994. Do you
see that?

13 A. Yes.

14 Q. You were there?

15 A. I was labeled, yes.
16 Q. And Bill Evans and Jeffrey Sathe
were also
17 there?
18 A. Yes.
19 Q. Along with Paul Krakenberg, Greg
Burris and
20 Jane Campbell.
21 MR. SCANLAN: Are you asking if
he recalls
22 or if he's just reading what's on the piece
of paper?
23 Q. Do you recall it being any
differently than
24 is reflected on the piece of paper?
25 A. I don't recall one way or the
other.
00468
1 Q. Do you recall what role Jane
Campbell played
2 at these meetings?
3 A. No.
4 Q. Have no idea what her position
was?
5 A. (Shaking head).
6 Q. No?
7 A. No, I don't.
8 Q. If you bumped into her on the
street you
9 wouldn't know her?
10 MR. SCANLAN: Asked and answered.
11 A. No.
12 Q. Looking at item 6.4, ET 0004762.
It says,
13 "John requested that any impacts on
operations be shown
14 on the three weeks scheduled. Imco will
comply. Greg
15 will be potholing this afternoon. There is
a conflict
16 with the 60-inch and 36-inch pipes. Will be
looked at
17 after the meeting. Paul warned Bill to be
prepared for
18 line breakage since there is always a risk
when
19 digging. Bill will try to fill the

reservoirs before
20 potholing after lunch. John asked for a
schedule
21 update."
22 Do you recall that exchange?
23 A. No.
24 Q. Do you know -- well, the only Bill
listed on
25 the list of attendees was Bill Evans. Do you
recall

00469

1 what his response was at all?
2 MR. SCANLAN: Asked and answered.
3 A. No, I don't.
4 Q. Skip ahead to the meeting for May
3, '94

5 which is ET 0004764. According to the
document you

6 were in attendance along with John Hatch.
Do you have

7 any reason to doubt that?
8 A. No.
9 Q. On this page under work quality
it says,

10 "Tom said during pipe excavation more
stakes are

11 needed. John said he will get Christenson
to make

12 offsets. Tom asked Greg to show him where
he wants

13 offsets." Since the only Tom on the list
is you, I'm

14 going to ask you, do you recall these
events? Do you

15 recall saying, "We need more stakes during
excavation"?

16 A. Yes.

17 Q. What stakes? What kind of stakes
were

18 needed?

19 A. We needed more stakes across Hannah
Creek.

20 We hadn't cleared that area and it was going
to be

21 cleared, and I believe it came up earlier in
our

22 conversations about having a survey crew

come out and

23 provide survey stakes going out to the
reservoir from

24 the angle of the large diameter pipe coming
out of the

25 clear well.

00470

1 Q. Did this have anything to do with
locating

2 utilities or was it just to mark the
direction --

3 A. The pipe.

4 Q. -- the pipe was going to go?

5 A. Just the pipe.

6 Q. And Christenson was the survey
company?

7 A. Yes.

8 Q. Did you know this individual from
the city

9 Diane Kil-wane or Kil-wine?

10 A. No, I didn't.

11 Q. Did you know what her role was or
what her

12 position was?

13 A. She had just been hired, if I
remember

14 right. She had come up from Arlington or
something and

15 she was just getting her feet wet. She
wasn't involved

16 in the project at this stage.

17 Q. So you don't really know why she
was there?

18 A. No.

19 Q. Flip to the minutes for May 10,
'94. Look

20 at page -- well, first ET 0006720 showing
that you and

21 John Hatch were there from Barrett, right?

22 A. Yes.

23 Q. Now, look under safety item 11.4.
It says,

24 "Barrett called to have L and I come out and
inspect

25 pump station excavation. It is their
policy to call

00471

1 L and I whenever they don't feel the site
is safe."

2 And then, "Imco complied with L and I
regulations and

3 had a PE inspect and design our slopes. Was
asking in

4 the future more notice is given to Imco
about Barrett's

5 concerns. Imco would also like the
opportunity to call

6 L and I on their own." Did you call L and
I?

7 A. Yes, sir.

8 Q. Were you instructed to do that or
did you

9 just do it on your own?

10 A. I did it on my own after talking
to John.

11 Q. After talking to John Hatch?

12 A. Yes.

13 Q. Had you raised the issue with Imco
prior to

14 calling L and I?

15 A. We had talked about it, yes.

16 Q. And I take it you weren't
satisfied with

17 their responsiveness?

18 A. Well, no. I would be much more
satisfied

19 having an L and I person come out who has
experience in

20 excavation and quick capability of
determining whether

21 a site is safe or not.

22 Q. This had to do with like shoring
and sloping

23 of the sides of trenches and things like
that?

24 A. Yes. We were going down 20 feet
deep and

25 with a slope that was approximately three
quarter to

00472

1 one.

2 Q. And this didn't cause you to
be concerned

3 about the quality of the Imco excavators?

4 A. No. Very common this occurs.
5 Q. Go to item 11.9, which is on page
6722. Do
6 you see it?
7 A. Yes.
8 Q. It says, "Greg asked John if the
gas company
9 is okay about the CDF. John said he spoke
to Steve at
10 Olympic Pipe Line and their main concerns
are
11 cathartic protection and excavating again."
Do you
12 remember this discussion about CDF?
13 A. Not particularly, no.
14 Q. This had to do with pouring CDF
over the
15 Olympic pipeline after it was buried and
after the
16 72-inch line had been put in place; is
that right?
17 A. I believe so.
18 Q. Do you know -- and if you don't
it's okay,
19 but do you know why John Hatch called OPL
instead of
20 Greg Burris or somebody from Imco?
21 A. No, I don't.
22 MR. SCANLAN: Objection,
mischaracterizes
23 the exhibit. This says, "John said he spoke
with." It
24 doesn't say that he made a call.
25 MR. NICOLL: Sorry.
00473
1 MR. SCANLAN: Well, I mean, it
suggests he
2 took an affirmative steps and that's what
it says.
3 MR. NICOLL: You're right.
4 Q. Let's look at May 17. This is
page 4648.
5 First of all, let's check the attendees.
You were in
6 attendance along with John Hatch?
7 A. Yes.
8 Q. Bill Evans and Wan Huang were

there from the

9 city of Bellingham?

10 A. Yes.

11 MR. SCANLAN: Are you testifying
that you

12 recall that or that you're basing it on
what's written

13 --

14 A. What's written on the --

15 Q. You don't recall anything
differently,

16 though, right?

17 A. No.

18 Q. There's a reference here about
-- on item

19 11.2 on page 4648. It says,
"Intermountain checked

20 pipe as okay although there was
mechanical damage.

21 John asked that any damage to coating be
fixed

22 immediately." Is this Intermountain
Corrosion Service,

23 do you know?

24 A. I would assume that. I don't know
for a

25 fact that it is Intermountain.

00474

1 Q. Now, the reason I ask is because
there was

2 some reference somewhere else to an
Intermountain gas

3 -- Intermountain Natural Gas or
Intermountain Gas

4 Company or something like that, and I just
wanted to

5 determine, if you know, whether this is the

6 Intermountain Corrosion Services people or
if this is

7 Intermountain something else?

8 A. Well, from the references
they're making in

9 the note I would say it was Intermountain
Corrosion.

10 Q. And the references that lead you
to that

11 conclusion have to do with the damage to

coating?

12 A. Yes.

13 Q. If you look at page 4649, item
12.9,

14 there's a reference here that "John gave
Paul plans

15 with piping changes. Greg asked if Imco
should

16 backfill walls before laying the 24-inch.
John is

17 meeting with a fireman at 10 a.m. today
to see if we

18 will be able to drain the line."

19 Do you know whether these are
the piping

20 changes related to the 24-inch discharge
line which

21 were reflected in drawings dated May 13?

22 A. No. I don't know that that could
be -- that

23 is the case. It could have been the large
diameter

24 pipe changes that we made as well.

25 Q. Let's look at the minutes for May
31, '94.

00475

1 These don't have an ET number. Instead they
seem to

2 have an OPL 5002354 number, which I will
represent

3 means they came from the city of Bellingham
records.

4 This is a meeting that it appears you were
not present

5 for. Do you see the attendance list?

6 A. Yes.

7 Q. Who is Bob Morley?

8 A. He is a person that works for --
worked for

9 Barrett at the time.

10 Q. Did he sometimes come up and
spell you as

11 on-site inspector?

12 A. Yes.

13 Q. There are references in here to a
broken

14 water line, 16-inch permanent repair. Do you

see that,
15 item, 14.2 and 14.3?
16 A. Yes.
17 Q. Do you recall during excavation by
Imco a
18 section of the 16-inch water line being
broken?
19 A. Yes. I remember, there were
pictures of it
20 as well.
21 Q. And this didn't cause you to be
concerned
22 about the quality of Imco excavation?
23 A. No, as it happens that utility
lines can get
24 damaged during excavation. It happens.
25 Q. Look at the June 7 meeting
minutes, page

00476

1 0004585. This is a meeting that you were
present for;
2 is that right?
3 A. Yes. It's listed.
4 Q. That's what it says?
5 A. Right.
6 Q. And you don't have any reason to
disagree?
7 A. No.
8 Q. There was, under item 15.3, there
was
9 discussion about scheduling the tie-in to
the 24-inch
10 tee. We've discussed that earlier in your
deposition?
11 A. Yes.
12 Q. This does seem to suggest that the
schedule
13 had to be changed. You'll recall that the
tie-in
14 actually occurred somewhere around the 7th
or the 8th
15 of July, and this seems initially to be
scheduled for
16 the 22nd of June, right?
17 A. Yes. Primarily because they're
asking for
18 -- we were asking for a three-week schedule

so they

19 were starting to project that out.

20 Q. But as we know that got changed
later?

21 A. Yes.

22 Q. And, in fact, if you turn to the
minutes for

23 June 21, 1994, 0006710?

24 A. June 24?

25 Q. June 21. Meeting No. 17. At this
meeting

00477

1 it appears, at least, you're listed as
having been

2 there?

3 A. Yes.

4 Q. And it also lists several people
from the

5 city of Bellingham, and I want to pause just
for a

6 moment and ask you, Wan Huang, was he the
engineer in

7 charge of this project from the city side or
do you

8 know?

9 A. He was project manager, I guess
is what

10 you'd call it, for the city.

11 Q. Bill Evans, as we know, was the
12 superintendent out at the --

13 A. Filtration plant.

14 Q. Filtration plant. Bill McCourt,
you didn't

15 recall what he did. Do you recall?

16 A. He's maintenance superintendent.

17 Q. And Gary Hess, who was he? What
did he do?

18 A. I don't remember.

19 Q. Now, this says that the tie-in to
the

20 24-inch tee and the 16-inch line will be
postponed to

21 the 7th of July. Do you see that?

22 A. Yes.

23 Q. Do you remember if the city had
any specific

24 input as to scheduling on that?

25 A. Yes. They were the ones that had
to shut

00478

1 down the system so that it could be drained.

2 Q. Okay. Now, let's look at the
minute

3 meetings on July 5th, page 4261. Take you -
- I'm going

4 to ask you to take a couple of seconds just
to scan

5 through this because I'm going to ask you
some

6 questions about it.

7 MS. MARCHESE: Sorry, date again,
counsel?

8 MR. NICOLL: July 5. The page
numbers are

9 4261 and 4262.

10 MR. FLOYD: Would this be a good
time for a

11 five-minute break?

12 MR. NICOLL: Sure, it's fine with
me.

13 THE VIDEOGRAPHER: Going off the
record.

14 The time is approximately 3:20 p.m.

15 (Recess.)

16 THE VIDEOGRAPHER: Back on the
record. The

17 time is approximately 3:30 p.m.

18 Q. Why don't you turn to the minute
meetings

19 for July 5th if you hadn't already. You
were there,

20 okay. Talked a little bit about the
attendance list.

21 I'm going to focus on this one again. You
don't have

22 any reason to believe you weren't there as
reported on

23 this document, do you?

24 A. No, I don't.

25 Q. Listed as attending for the city
of

00479

1 Bellingham are Wan Huang, who we've already
spoken

2 about, and Gary Hess, who we've spoken
about, and Bill

3 McCourt, who we've spoken about. There's a
fourth

4 person here is Ray Bailey. Do you know who
Ray Bailey

5 is?

6 A. He was maintenance
superintendent for the
7 city as well.

8 Q. Any recollection as to why he
was attending
9 the meeting on July 5th?

10 A. I believe he was directly
involved with the

11 crew that was going to be shutting down the
water line

12 for the tee installation.

13 Q. The installation of the tee joint
into the

14 16-inch water line?

15 A. Yes.

16 Q. I also asked you to review this
document,

17 the July 5 meeting minutes. Have you had a
chance to

18 do that?

19 A. I read through it once, yes.

20 Q. You notice under schedule 19.1,
"Greg Burris

21 went over the three-week schedule, there was
discussion

22 about the shut down." That's the shut down
of the 16-

23 inch water line; is that right?

24 A. Yes.

25 Q. "It was determined that since the
operation

00480

1 should take approximately six hours, five
a.m. would be

2 a better time to start"?

3 A. Yes.

4 Q. Now, as I read through this I
didn't see any

5 mention of scheduling Olympic Pipe Line
inspectors or

6 observers, did you?
7 A. I don't see any mention of it.
8 Q. I don't see any mention of
calling the one
9 call utility locator service or anything
like that.
10 Did you see anything about that?
11 A. No, I didn't.
12 Q. Independent of what's contained
on these
13 minute meetings -- meeting minutes -- do
you recall a
14 discussion about trying to schedule the
utility --
15 underground utility locator or somebody from
the
16 Olympic Pipe Line in connection with the shut
down?
17 A. Not specifically, no.
18 Q. Now, let's look at the next
minutes, which
19 is July 12, '94. Do you have those in front
of you?
20 A. Yes.
21 Q. This document says that you were
present for
22 the meeting. Do you have any reason to doubt
that?
23 A. No, I don't.
24 Q. Document says that Wan Huang and
Gary Hess
25 from the city of Bellingham were there. I
note under
00481
1 item 20.1, "Paul mentioned that Imco may
need to demo
2 the door. Greg measured the silo. Will not
fit in the
3 doorway. Imco and Barrett will have to
decide how to
4 get the silo in the building." Is that
when the issue
5 about how to get the soda ash silo into the
building
6 first reared its head?
7 A. Yes, I believe.
8 Q. There's a reference under

schedule, item

9 20.12 sub one on page 6702. It says that
John had a

10 few comments. The only John on the list is
John Hatch?

11 A. Yes.

12 Q. The first comment was, "When
installing the

13 24-inch piping make sure you know how the
pipes should

14 be installed and tested." Do you know, do
you recall,

15 why he said that?

16 MR. SCANLAN: I object to the form
of the

17 question. Are you asking for what he said
or are you

18 asking to perceive a state of mind?

19 MR. NICOLL: I'm asking, first
of all, if

20 John -- I'm sorry -- if Tom knows from his
discussions

21 with John why John mentioned this.

22 A. No, I don't.

23 Q. Had there been a problem in the
installation

24 of the 24-inch pipe that preceded this
project meeting

25 on July 12, '94?

00482

1 A. I'm not sure. I know the first
time we went

2 to actually go and do the work that we
abandoned it and

3 went back the next day because we weren't
prepared.

4 Q. There's a reference to tested,
how the

5 24-inch piping should be tested. Do you
know of your

6 own knowledge what the reference to how the
pipe should

7 be tested was?

8 A. No, I don't.

9 Q. Can't recall it?

10 A. No.

11 Q. Do you recall there being any

problem with
12 testing the piping?
13 A. No problem with testing it, no.
14 Q. Now, I notice on -- in the
narrative, at
15 least, of the meeting that there was no
 mention or
16 reference of Olympic Pipe Line?
17 A. I didn't see any either.
18 Q. I'm looking at the schedule or
 what appears
19 to be a schedule attached to it. This
 would be the
20 three-week schedule. Am I right?
21 A. Yes.
22 Q. There's an item on the first
page of the
23 schedule that says 16x24 tee. Do you see
that about
24 seven lines down?
25 A. Yes.
00483
1 Q. That's the tee joint?
2 A. Yes.
3 Q. It's listed as -- there's
shadowed in or
4 colored in is the box for 7-7?
5 A. Yes.
6 Q. And then it says -- underneath
that it says,
7 "Assemble 16 by 24 tee and air test," and
that's
8 shadowed in as July 5, right?
9 A. Yes.
10 Q. Do you recall that occurring?
11 A. No.
12 Q. I had some questions about some of
 these
13 other things just real quickly. There's an
item
14 underneath that says S.A.S.O.G. Do you
 see that?
15 A. Yes, I do.
16 Q. Do you know what that is?
17 A. I assume it's -- no, I don't,
 but I would
18 guess it's the soda ash they're referring

to.

19 Q. At the bottom of the page
there's a
20 reference to 24-inch pipe at PS, P/S, and a
four-inch
21 drain?

22 MR. SCANLAN: Are you sure
that's not PVC?

23 MR. NICOLL: It looks like P/S
to me, but

24 why don't you tell us, Tom, if you know.

25 A. No, I don't know.

00484

1 Q. Was there any 24-inch PVC being
used at that
2 site?

3 A. No, not that I recall.

4 MR. SCANLAN: The only reason why
I raise

5 that is you've got the documents you used
earlier that

6 referenced the intersection of the PVC and
the four-
7 inch.

8 MR. NICOLL: I don't know. Well,
it's

9 something to look back into.

10 Q. And then on the next page,
there's a
11 reference at the top line to 24-inch exterior
pipe at

12 PS. Do you see that?

13 A. Yes.

14 Q. What -- is that something
different than the
15 24-inch discharge or suction?

16 A. I would assume -- my guess would
be it's

17 both. He's talking about both pieces of
pipe.

18 Q. For some kind of work scheduled
between the
19 11th and the 14th of July?

20 A. Right.

21 Q. And then there's a reference in
the third

22 page. It's hard to read. Third page of the

schedule

23 at the top. It seems to say pressure test -
- something

24 -- all lines. Do you see that?

25 A. I see something there, yeah.
Pressure. I

00485

1 think it says pressure test.

2 Q. And it seems to be scheduled for
July 28th?

3 A. 25th and 28th.

4 Q. 25th and 28th, you're right. And
then

5 backfill both 24-inch lines seems to be
scheduled for

6 the 28th?

7 A. Yes.

8 Q. Does that pretty much comport
with your

9 recollection about when things actually
occurred, when

10 those things actually occurred?

11 A. Yes.

12 Q. Look at the minute meetings --
meeting

13 minutes for July 26th, page 6706.

14 A. Yes.

15 Q. The first page there's a
reference to a

16 person in attendance named Mark Ladin, L A D
I N?

17 A. Yes.

18 Q. Do you know who that person is?

19 A. No.

20 Q. Somebody from the city of
Bellingham?

21 A. That's what it says, yeah.

22 Q. Item 22.3 on the next page, 6705.
There's a

23 reference here to "Tom said the bags on the
24-inch

24 line south of the pump station are damaged.
There's no

25 easy way to walk around down there. Imco is
aware of

00486

1 both situations and is attending to it."

Are these the

2 plastic bags that were around the 24-inch
line?

3 A. I guess. I don't really know.

4 Q. You don't remember?

5 A. I didn't write it so I don't know
what he's

6 referring, to quite honestly.

7 Q. Backfilling wouldn't have been
completed by

8 July 26, though?

9 A. I don't know.

10 Q. Look at, attached to that set of
minutes,

11 page 6707. It's the first page of, I guess
what would

12 be, the three-week calendar, three-week
schedule?

13 A. Yes.

14 Q. There's a reference to "start
electrical and

15 P/S as much as possible between 8-3 and 8-
4." Do you

16 see that?

17 A. Yes.

18 Q. And then there's also a reference
to

19 "exposed PVC in pump station," and the
calendar seems

20 to scratch in 8-9 and 8-10. That would be -
- PVC would

21 be internal to the pump station, wouldn't
it?

22 A. Yes.

23 Q. Let's look at the meeting on
August 9. I'm

24 sorry, August 2nd. There's a reference on
page 4190

25 under item 23.9. Says "Bill Evans and Wan
Huang will

00487

1 be on vacation the week of August 15, '94."
Do you

2 have any knowledge of -- well, did it mean
anything to

3 you that those two guys wouldn't be there?

4 A. No.

5 Q. Look at August 9, 1994. Do you
see the

6 first page?

7 A. Yes.

8 Q. Any reason to believe that you
weren't at

9 that meeting?

10 A. No.

11 Q. Look at page 4162, item 24.5.

There's a

12 statement here that says, "Barrett feels an
additional

13 foreman is needed to oversee the whole
operation on

14 site. Imco agrees and has placed Greg in
the field

15 more often." Do you remember earlier I
asked you a

16 question about whether there were any
issues between

17 yourself and Paul Krakenberg, whether you
had

18 confidence in Paul, and I had asked you to
take a look

19 at this comment under work quality item
24.5. Do you

20 recall that issue being raised, the issue
raised in

21 24.5, at the
meeting?

22 A.

No, I don't.

23 Q. Do you recall having any kind of
concerns

24 about the quality of the Imco supervision
on the job

25 site at around that time?

00488

1 A. I don't recall that, no.

2 Q. Was John Hatch regularly at the
job site?

3 A. No.

4 Q. You were the one who was there?

5 A. Yes.

6 Q. As between yourself and John, in
light of

7 the fact that you were the one who was on

the site and

8 he wasn't, who, between the two of you,
would have been

9 more likely the person to raise a concern
like that, as

10 is raised here at 24.5?

11 A. Me.

12 Q. But as you sit here you can't
remember that

13 you had the concern or what it was based
upon?

14 A. That's right.

15 Q. What would be a better indication
of what

16 was going on in your mind at the time? Would
it be how

17 you feel today or what you remember today or
what's

18 written in the meeting minutes?

19 MR. SCANLAN: Object to the form
of the

20 question. Calls for speculation.

21 A. The meeting minutes.

22 Q. Item 24.6 states, "Tom asked that
copies of

23 the specifications to the work currently
being

24 performed be available in the field." Do you
recall

25 that?

00489

1 A. Not specifically, I don't, no.

2 Q. Do you have any reason to doubt
that you

3 asked that?

4 A. No. I very easily could have.

5 Q. Would it sitting here today -- I
mean, would

6 it surprise you that specifications weren't
available

7 in the field?

8 A. No, it wouldn't surprise me.

9 Q. That's kind of routine. Is that
routine?

10 A. Yes. It's not unusual for people
to do the

11 work without the plans handy to them.

12 Q. Would that include heavy
equipment

13 operators, backhoe operators?

14 A. Well, no. I was referring to
laborers doing

15 work inside a vault or inside the pump
station. As I

16 recollect, that is what I would have been
referring to.

17 We had a lot of problem with the chlorine
vault because

18 there were plumbing activities that needed
specific

19 people to do them, and we didn't get people
with a

20 qualified background to do that work, and
we had some

21 problems and had to go and replace some of
the valves

22 within the chlorine vault, which is next
to the

23 reservoir.

24 Q. Was the problem the quality of
the people

25 doing the work or the level of instruction
that they

00490

1 were given?

2 A. My guess is it was a level of
instruction

3 they were given.

4 Q. Which is why you wanted the specs
available?

5 A. Right.

6 Q. Did you know that there weren't
7 specifications available on site through
Imco, at, say

8 for example, their trailer?

9 A. I knew it was at the trailer.

10 Q. You just wanted it to go from the
trailer to

11 the people in the pump station?

12 A. Yes.

13 Q. There's a mention on item 24.8
about Bill

14 voicing concerns of the soda ash door being
open for

15 long periods of time for security reasons.
Do you have

16 any recollection of that independent of
what's written
17 here?

18 A. No.

19 Q. Oh, I noticed also in the minutes
for August

20 9 that there was no reference in here to OPL
or the gas

21 or oil company or the pipeline or anything
like that.

22 Did you notice that as well?

23 A. I didn't notice it, but I don't
see it.

24 Q. Look now at August 16 meeting.
It's 4147

25 ET 0004147. Do you see it?
00491

1 A. Yes.

2 Q. Any reason to believe that you
weren't at

3 that meeting as represented?

4 A. No.

5 Q. Item 25.5 indicates that "Bill
McCourt asked

6 for a space to be cleared on the chlorine
loading

7 dock." Do you know why? Do you recall it?

8 A. I don't recall it, but that's
what it says

9 here.

10 Q. Okay. Look at the minutes for
the meeting

11 on August 23rd, 1994. Says ET 0004138. Do
you have

12 any reason to believe you weren't at this
meeting?

13 A. No, I don't.

14 Q. Why don't you look at the item
under 26.1,

15 just read it to yourself.

16 A. (Complying).

17 MR. NICOLL: Why don't we go
ahead and stop

18 and change the tape.

19 THE VIDEOGRAPHER: This is the

end of tape

20 No. 2 in the deposition of Tom Franklin.
The time is

21 approximately 3:58 p.m. Going off the
record. Let me

22 correct that. It's 3:53 p.m. going off the
record.

23 (Recess.)

24 THE VIDEOGRAPHER: Back on the
record. This

25 is the beginning of tape No. 3 in the
deposition of Tom

00492

1 Franklin. The time is approximately 3:58
p.m.

2 Q. Have you got August 23rd in front
of you? I

3 asked you to take a look at 26.1. Do I read
this

4 correctly that this is saying that Greg
Burris had been

5 transferred to another job?

6 A. Yes.

7 Q. Do you recall that?

8 A. I believe he did, yes.

9 Q. We talked about this a little bit
earlier,

10 and at that time you didn't have a
recollection that he

11 had transferred to a different job?

12 A. Right.

13 Q. But this refreshes your
recollection about

14 that?

15 A. At least for a certain length of
time he

16 went. I don't remember if he was gone for
good or not.

17 I don't think he was. I thought he came
back.

18 Q. Now, is this statement here
accurate as far

19 as you recall that John Hatch was concerned
about the

20 lack of supervision of the
operation?

21 A. Yes.

22 Q. Were you also
concerned?

23 A. I guess, yes, if that's the proper
term for
24 it, yes, I was concerned.
25 Q. The next statement that I saw was,
"John was
00493
1 concerned about the line of communication."
Do you see
2 that?
3 A. Yes.
4 Q. Is that an accurate statement
about what
5 John said at that meeting?
6 A. I don't remember the meeting,
quite
7 honestly. I don't remember activities going
on during
8 that meeting.
9 Q. Do you recall John being
concerned about the
10 communication?
11 A. Yes.
12 Q. Did you share that concern?
13 A. Yes, I did.
14 Q. The next statement says, "What
was being
15 said didn't always get to the person in
the ditch"?
16 A. Yes.
17 Q. Did you share that belief?
18 A. Yes.
19 Q. It says, "The dirt work and the
outside
20 piping are near completion. Greg will be
back to shoot
21 the coordinates again." Do you remember what
that
22 means, "shoot the coordinates"?
23 A. I can only --
24 Q. Well, don't speculate. If you
don't know
25 just say you don't.

00494

1 A. No, I don't.
2 Q. Can you recall any specific ways

in which

3 the communication issues addressed in
paragraph 26.1

4 manifested themselves, you know, some
examples of how

5 the person in the ditch didn't get word from
the office

6 or whomever about what needed to be done?

7 A. Yes. I mentioned earlier I was
concerned

8 about the plumbing within the chlorine
manifold, and

9 that vault system itself was a major
problem. I felt

10 that it needed to be taken apart and
redone again

11 because it wasn't done properly the first
time.

12 Q. Was that the only one?

13 A. That's the only thing I can
remember right

14 now, yes.

15 Q. Look at item 26.5. It's on page
ET 0004139.

16 This seems to have something to do with work
around the

17 creek itself?

18 A. Yes.

19 Q. Do you recall that, what that was
about?

20 A. It was just backfilling the pipe
that

21 carried Hannah Creek, that they had put the
gravel and

22 rock inside the pipe the way they were
supposed to, but

23 they hadn't finished the backfilling on the
sides so

24 that we wouldn't get sediment from the
backfill into

25 the creek.

00495

1 Q. There was some concern, I guess,
about

2 altering the creek itself during this
construction?

3 A. Putting sediment into it would

be something

4 that isn't desirable, and the fact that
once you get

5 your backfill completed and they put rock
on top of it

6 that would hold the sediment in place and
that hadn't

7 been done yet.

8 Q. Look at item -- well, on the
next page

9 there's an item about -- impacts on plant
operations is

10 the heading. It's ET 0004140. And item
26.14 reads

11 that "Bill said the tee handle for operating
the valves

12 was transformed by someone. Imco can use it
for the

13 duration of the project but he would like it
returned

14 to him afterwards." Do you have any
recollection about

15 this and what it's about?

16 A. No, I don't.

17 Q. Does this -- do you know if this
has

18 anything to do with the valve stems off the
tee joint?

19 MR. SCANLAN: Asked and answered.

20 A. No.

21 Q. Take a look at the minutes for
August 30,

22 '94.

23 A. August 30?

24 Q. Yeah. That should be 0004131.

25 A. Okay.

00496

1 Q. Item 27.1 seems to deal with
problems

2 encountered in the context of the soda ash
silos?

3 A. Yes.

4 Q. Now, this report says that you
were present?

5 A. It does.

6 Q. Do you have any reason to
disbelieve that?

7 A. No.
8 Q. It also says that Mark Graham, for
that
9 matter, from Triad was present and Wan
Huang, Bill
10 Evans from the city of Bellingham. Any
reason to doubt
11 the accuracy of that?
12 A. No.
13 Q. It says -- do you have any
recollection of
14 the discussion at this meeting concerning
the soda ash
15 silo problem, the problem that Imco claimed
to have
16 been encountering and receiving compensation
in
17 relation to that problem and the effect that
it had on
18 trust between Barrett and Imco?
19 A. No. I don't remember it changing
anything
20 or having an impact or reflecting an impact.
21 Q. Do you remember the discussion,
though, at
22 the meeting?
23 A. No. I remember it being
discussed. I don't
24 remember the discussion.
25 Q. The last two sentences in that
paragraph

00497

1 27.1, at least on the first page, page 4131,
read,
2 "Barrett feels Imco could have mentioned
this more
3 appropriately. It all comes down to how
things are
4 presented. Paul said it all comes down
to the
5 unwritten rule of trust and respect both of
which are
6 lacking on this job."
7 That sounds like a pretty
incendiary
8 statement. I'm not going to ask you again.
Are you

9 sure you don't remember that discussion?
10 MR. SCANLAN: Objection, asked and
answered.

11 MR. FLOYD: I'll join in that
objection.

12 MR. NICOLL: I think I'm allowed
to problem
13 his memory a little bit.

14 MR. FLOYD: Same objection.

15 A. No, I don't remember it.

16 Q. You don't remember, okay. Any
reason to

17 disbelieve it?

18 A. No.

19 Q. Turn to the next page. At the
top, the last

20 sentence, it's reported in these minutes
that "Barrett

21 agreed there was a lack of respect and trust
on this

22 project and they would discuss this with
Imco at a

23 later date." Do you remember making that
statement?

24 A. No.

25 Q. Do you disagree with that
statement?

00498

1 MR. SCANLAN: Object to the
form.

2 A. Yes.

3 MR. SCANLAN: Just so I'm
clear, are you

4 asking if he disagrees that he made the
statement or

5 just that the statement was made by
someone?

6 MR. NICOLL: Why don't I put
it this way,

7 then. You're right, that's a good point.

8 Q. Do you disagree -- are you
contending that

9 nobody from Barrett made that statement?
You're

10 contending that John Hatch didn't make that
statement?

11 A. I don't remember John Hatch making

that

12 statement.

13 Q. And do you feel that there was or
was not a

14 lack of respect and trust between Imco and
Barrett on

15 that job?

16 A. There was no lack of respect on the
project.

17 I don't know about trust. I can only talk
about

18 myself. I didn't have any lack of trust for
Imco.

19 Q. Do you recall whether you spoke
out at that

20 meeting to contradict the statement that's
reported in

21 the minutes?

22 A. No. I don't believe I did.

23 Q. You don't believe you did?

24 A. I did not.

25 Q. You did not. Do you know a guy
named Ken

00499

1 Zangari?

2 A. No.

3 Q. Do you know a guy named Dan

Karrer?

4 A. No.

5 Q. Where inside the treatment
facility were the

6 offices of Bill Evans, do you recall?

7 A. Yes. The front area next to the
stairways.

8 Q. Would you be able to identify it
by looking

9 at a photograph of the exterior?

10 A. Well, his office wasn't visible
directly

11 from the exterior.

12 Q. Do you know if he had a window
looking out?

13 A. Yes, he did.

14 Q. Which direction did he look in
from the

15 treatment facility?

16 A. It would have been westward.

17 Q. Towards the project?
18 A. Yes.
19 Q. Based on your recollection of his
office,
20 could Mr. Evans sit in his office and
look out the
21 window and see what was going on in the
project?
22 A. I believe so.
23 Q. This is a photograph that's
not in the
24 record right now. Why don't we mark
it.
25 (Marked Exhibit 256.)
00500
1 Q. Is his window visible in this
photograph?
2 A. Yes. I believe it's the two or
three
3 windows on the right edge of the bank of
windows.
4 Q. Why don't you take my pen and
just circle
5 those and draw a line out to them and
write "Evans."
6 A. (Complying).
7 Q. Thanks. Could you hold up the
photograph
8 and just point to it for the video camera?
9 A. (Indicating).
10 Q. That's the area, those three
windows?
11 A. Right here (indicating).
12 MR. NICOLL: For everybody else
it's these
13 three double tall windows here
(indicating).
14 Q. How frequently was, if you
know, was Mr.
15 Evans at work during the project?
16 A. Nearly all the time.
17 Q. How often did he come out of the
office and
18 come down to the job site, as you recall?
19 A. Oh, probably two or three times
a week.
20 Q. Did you know what his specific

role was in
21 connection with the project?
22 A. Facilitator.
23 Q. So he kind of facilitated on the
operational
24 side of things?
25 A. Yes.

00501
1 Q. Did he participate in the
meetings? We've
2 been through a bunch of minutes, but did he
participate
3 in the meetings that were held between the
4 subcontractor and Barrett and other
subcontractors?
5 A. As appropriate for scheduling,
yeah.
6 Q. In any other way?
7 A. Well, he's not really -- I
believe only in
8 issues that he was involved in.
9 Q. Were you ever present when Mr.
Evans took
10 photographs of the project?
11 A. I believe I remember seeing him
take
12 pictures, yes.
13 Q. Were you ever present when Mr.
Evans took
14 videotape of the project?
15 A. Could be. I believe so, but I
can't say for
16 sure. I don't remember specifically.
17 Q. Did you ever take video of the
project?
18 A. No.
19 Q. Do you know of anybody besides
Mr. Evans who
20 took videotape -- and yourself -- who took
video of the
21 project?
22 A. No.
23 Q. Do you know of anybody besides Mr.
Evans and
24 yourself who took photographs of the
project?
25 A. I believe Imco first personnel

did, Greg

00502

1 Burris, Paul.
2 Q. Greg Burris, Paul Krakenberg?
3 A. Right.
4 Q. Any others?
5 A. Not that I recall.
6 Q. Do you know whether copies or
duplicates of
7 the videos or photographs taken by others,
Imco, city,
8 were shared with Earth Tech?
9 A. Perhaps they could have been. I
don't
10 recall any.
11 Q. Did Bill McCourt have offices at
the
12 treatment facility?
13 A. No.
14 Q. Do you know where his offices
were?
15 A. No, I don't.
16 Q. Did Mr. Wan Huang have offices at
the
17 treatment facility?
18 A. No.
19 Q. Do you know where his offices
were?
20 A. I believe they were in the city
engineering
21 department.
22 Q. Did you ever visit him there?
23 A. No. Take that back. I did,
actually,
24 during a precon meeting. I believe I did see
him in
25 the offices by city hall.

00503

1 Q. Were there other city of
Bellingham
2 employees who came to meetings or came on
the job site
3 who have offices in the treatment facility
other than
4 Mr. Evans?
5 A. No.
6 Q. How about that Diane whatever-

her-name-was?

7 I can't remember her last name.

8 A. She was only there just a short
time frame.

9 Q. So Bill Evans was obviously not
the only

10 person in that building. Do you recall
others who

11 were, by name?

12 A. No.

13 Q. None that you interacted with?

14 A. Right.

15 Q. Were there specific types of
things that you
16 were required to report to the city while you
were

17 filling the role as on-site inspector?

18 A. No.

19 Q. You didn't have any specific
guidance or
20 requirements that you knew you were obliged
to report?

21 A. No.

22 Q. Did you receive written
correspondence, you
23 yourself personally receive written
correspondence,
24 from city representatives in the context of
this job?

25 A. There could have been
correspondence that I
00504

1 was expected to pass on to Bellingham -- I
mean, to

2 Bellevue office, because I went back and
forth once or

3 twice a week.

4 Q. But nothing specifically directed
to you

5 that you can recall?

6 A. Right.

7 Q. Is it fair to say that you were
the
8 representative of the city on that job site?

9 A. No.

10 Q. You don't think so?

11 A. (Shaking head).

12 Q. You worked for Earth Tech or
Barrett?

13 A. Barrett at the time, yes.

14 Q. And what was Barrett's
relationship to

15 the city, do you know?

16 A. They were designer of the
treatment plant
17 modifications.

18 Q. So what -- I understand that but
why were --

19 if you know, why were you on site, because
you weren't

20 involved with design, were you?

21 A. Not directly, no. I was on site
as to be a

22 construction representative of Barrett for
the
23 activities going on.

24 Q. And your inspection reports would
be sent to

25 whom?

00505

1 A. Barrett.

2 Q. Anywhere else?

3 A. From Barrett they would go to
other places

4 like the city.

5 Q. The city?

6 A. Right. I knew of that, but that
was the

7 only one I knew of.

8 Q. Do you recall if any other types
of

9 recordings were made at the work site such
as, for

10 example, records of tests on piping or
valves, welds,

11 that sort of thing?

12 A. Yes. There were records taken
of welding

13 activities and proof of the welding
testing. Other

14 materials also would get -- would be sent
as well. I

15 mean, rebar, they'd send rebar
certifications

16 for amended materials, those type of
material

17 documentations.

18 Q. Do you recall anybody
coming out and
19 performing tests, inspections, that sort of
thing, who
20 didn't provide a report to Earth
Tech/Barrett?

21 A. Not that I know of.

22 Q. Do you have any recollection of
having
23 yourself personally provided warnings to any
of the

24 Imco employees regarding the location of the
pipeline

25 through the work site, verbal warnings?

00506

1 A. Could you say that again?

2 Q. Do you have any recollection of
yourself

3 personally providing verbal warnings to Imco
employees

4 about the location of the pipeline, the
Olympic

5 pipeline, through the work site?

6 A. No. I don't recall myself saying
anything

7 to them.

8 Q. As the excavation in the site
progressed,

9 what happened to the markings that denoted
the location

10 of the pipeline? I know earlier in your
deposition we

11 talked about the presence of stakes and
things like

12 that.

13 MR. SCANLAN: By pipeline you mean
the --

14 MR. NICOLL: The Olympic
pipeline.

15 A. I don't recall.

16 Q. Wasn't there also -- weren't there
also like

17 painted -- spray painted markings on the
ground that

18 showed where the pipeline ran through the --
19 A. Yes, there was.
20 Q. -- through the site? So it would
connect up
21 the stakes that were at either end of the
work site?
22 A. Yes. I remember doing it myself
at times.
23 Q. As excavation progressed,
obviously things
24 were driving over the site, these markings,
these
25 painted markings, would be rubbed out; is
that right?
00507
1 A. They could have been.
2 Q. Well, why -- would you go back
and respray
3 paint?
4 A. Sometimes, yes, I would.
5 Q. You would?
6 A. Yes.
7 Q. And do you recall what color
spray paint you
8 used?
9 A. No, I don't.
10 Q. Why did you do that?
11 A. Just to keep everybody aware of
what --
12 to remind everybody of the concerns
everybody has.
13 Q. To remind everybody of where
the pipe --
14 where this gas pipeline was running
through the
15 construction site?
16 A. Yes.
17 Q. And was there anybody else
besides yourself
18 who was doing that?
19 A. I believe both Greg and Paul also
did the
20 same thing.
21 Q. So there will be -- well, you
believe it or
22 you remember it?
23 A. I remember it being done besides

myself.

24 Other people also did it. I wasn't always
around to

25 see it being done or know who did it.
00508

1 Q. And what would you do to make
sure that

2 people were aware that this spray painted
line, to the

3 extent that you were doing the spray
painting, was --

4 represented the Olympic pipeline?

5 A. Well, I really didn't have to.
Everybody

6 knew what it was all about. Everybody was
aware of

7 what was going on.

8 Q. Have you been called to
give testimony

9 before the grand jury in the western
district of

10 Washington?

11 A. No, I haven't.

12 Q. You have been interviewed, as I
recall, by

13 the U.S. attorney, though, right?

14 A. Yes.

15 Q. And I'm sorry, but was that under
a grant of

16 immunity or was it just you were given a
statement that

17 you weren't a target or something like that?

18 MR. SCANLAN: We were given a
statement as

19 to Earth Tech and as to Tom Franklin, John
Hatch and

20 George Nordby that we were neither target nor
subject.

21 Q. Have you given a verbal or
written statement

22 to anybody else other than in this
deposition, other

23 than, obviously, to Earth Tech's and your
attorney?

24 A. I mentioned earlier in one of
the

25 depositions that a newspaper person had

contacted me,

00509

1 and I did talk to him for about three or
four minutes,

2 and then the NTSB people.

3 Q. Right. You've given a statement
or had a

4 statement taken by the NTSB?

5 A. Yes.

6 Q. Have you heard any rumors prior
to

7 testifying today about what happened to the
pipeline?

8 MR. SCANLAN: Objection.

9 A. No.

10 MR. SCANLAN: Relevance.

11 MR. NICOLL: Could lead to the
discovery of

12 relevant evidence. I think it's
appropriate.

13 Q. Have you?

14 A. No, I haven't.

15 Q. Earlier I told you or I asked
you whether

16 you had heard that on August 11 during
excavating an

17 Imco backhoe struck the pipeline, the
Olympic

18 pipeline, that it was uncovered, the damage
was seen,

19 and that a person at the site instructed
those present

20 not to say anything to you. Do you remember
those

21 questions?

22 A. I remember you asking that.

23 Q. Based on your dealings and
involvement with

24 Paul Krakenberg, would it surprise you if
Paul

25 Krakenberg had instructed the people present
not to say

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1 anything to you?

2 MR. FLOYD: Object to the form of
the

3 question. Go ahead and answer.

4 A. Would it surprise me if he had
said that?
5 Q. Yeah.
6 MR. SCANLAN: You're asking him
to
7 speculate?
8 MR. NICOLL: No. I'm asking him
to -- this
9 is a way of getting at their --
understanding what
10 their relationship was and what Tom's
feelings and
11 appreciation for Paul Krakenberg was.
12 MR. SCANLAN: Can you rephrase the
question
13 then.
14 MR. NICOLL: Yeah.
15 Q. Would it surprise you if Paul
Krakenberg was
16 the person who instructed the others not to
say
17 anything to you?
18 MR. SCANLAN: Calls for
speculation.
19 MR. FLOYD: Same objection.
Speculation,
20 lack of foundation.
21 A. I don't know how to answer that.
I wouldn't
22 have expected him to do something like that,
no.
23 Q. So you would feel that it would be
out of
24 character for the guy?
25 A. Yes.
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1 MR. SCANLAN: Objection.
2 Q. But you really don't know
anything about him
3 outside of work?
4 A. That's correct.
5 MR. NICOLL: I'm sorry it took so
long guys,
6 but that finishes me up.
7 MR. FLOYD: That's the way it
goes.
8 THE VIDEOGRAPHER: This adjourns

the

9 deposition of Tom Franklin. The time is approximately

10 4:26 p.m., and this is the end of tape No.

3. ProVideo

11 Seattle in Seattle, Washington will retain the original

12 videotapes. Here ends the deposition.

13 (Deposition adjourned at 4:30 p.m.)

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A F F I D A V I T

2

3 STATE OF WASHINGTON)

4) ss.

5 COUNTY OF KING)

6

7 I have read my within deposition, and the

8 same is true and accurate, save and except for changes

9 and/or corrections, if any, as indicated by me on the

10 correction sheet hereof.

11

12

13 FRANKLIN

TOM

14

15

16 SUBSCRIBED AND SWORN to before me this

17 day of _____, 2000.

18

19
20

21

22 _____
Notary Public in and for
the State
23 of Washington, residing at _____.

24
25
00513

C E R T I F I C A T E

1
2
3 STATE OF WASHINGTON)
4) ss.
5 COUNTY OF KING)
6
7 I, the undersigned Notary Public in
and for the
8 State of Washington, do hereby certify:
9 That the annexed and foregoing
deposition of each
10 witness named herein was taken
stenographically before
11 me and reduced to typewriting under my
direction;
12 I further certify that the deposition
was
13 submitted to each said witness for
examination, reading
14 and signature after the same was transcribed,
unless
15 indicated in the record that the parties and
each
16 witness waive the signing;
17 I further certify that all objections
made at the
18 time of said examination to my qualifications
or the
19 manner of taking the deposition, or to the
conduct of
20 any party, have been noted by me upon said
deposition;
21 I further certify that I am not a
relative or
22 employee or attorney or counsel of any of
the parties
23 to said action, or a relative or employee

of any such

24 attorney or counsel;

25 I further testify that I am not in
any way

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1 financially interested in the said action or
the outcome

2 thereof;

3 I further certify that each witness
before

4 examination was by me duly sworn to testify
the truth,

5 the whole truth and nothing but the truth;

6 I further certify that the
deposition, as

7 transcribed, is a full, true and correct
transcript of

8 the testimony, including questions and
answers, and all

9 objections, motions, and exceptions of
counsel made and

10 taken at the time of the foregoing
examination.

11

12 IN WITNESS WHEREOF, I have
hereunto set my

13 hand and affixed my official seal this _____
day of

14 _____, 2000.

15

16

17

18

19

20

CHERYL MACDONALD

21

Notary Public in

and for

22

the State of

Washington,

23

residing at

Seattle.

24

25

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DEAN MOBURG & ASSOCIATES

COURT REPORTERS

1201 THIRD AVENUE, SUITE 2760
SEATTLE, WA 98101 206-622-3110

TO: TERENCE SCANLAN DATE:
October 31, 2000
1301 Fifth Avenue
Suite 3401
Seattle, WA 98101-2605

IN RE: OLYMPIC PIPE LINE LITIGATION
DEPOSITION(S) OF: TOM FRANKLIN, VOL. 3

XXX ENCLOSED IS YOUR COPY OF THE DEPOSITION OF THE ABOVE-NAMED DEPONENT PLUS A CORRECTION SHEET AND SIGNATURE PAGE. PLEASE HAVE THE DEPONENT READ THE DEPOSITION, SIGN THE CORRECTION SHEET AND SIGNATURE PAGE AND RETURN SAME TO ME WITHIN 30 (THIRTY) DAYS OF THIS LETTER. I WILL THEN SEND THE ORIGINAL DEPOSITION TO THE ORDERING PARTY AND FURNISH ALL PARTIES WITH A COPY OF THE CORRECTION SHEET.

 ENCLOSED IS THE ORIGINAL DEPOSITION OF THE ABOVE-NAMED DEPONENT. SINCE DEPOSITIONS ARE NO LONGER FILED IN SUPERIOR AND FEDERAL COURT, I AM SENDING THE ORIGINAL DEPOSITIONS TO YOU FOR RETENTION UNTIL TIME OF TRIAL.

 REGARDING THE ABOVE ENTITLED MATTER:

SINCERELY,
DEAN MOBURG & ASSOCIATES

BY: CHERYL MACDONALD, CCR

CC: Nick Verwolf
Chris Nicoll
Patricia Anderson
Francis Floyd