

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

September 10, 2007 - 9:10 a.m. DAY VI
21 South Fruit Street (Morning Session)
Concord, New Hampshire

RE: DW 04-048
CITY OF NASHUA, NEW HAMPSHIRE:
Petition for valuation pursuant to RSA 38:9

BEFORE: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. Below

Connie Fillion, Clerk
Jeannette McArthur, Clerk

APPEARANCES

Representing the City of Nashua, NH:
Robert Upton, II, Esq.
Justin C. Richardson, Esq.
Linda Regan, paralegal

Representing Pennichuck Water Works, Pennichuck
East Utilities & Pittsfield Aqueduct Co.:
Steven V. Camerino, Esq.
Sarah B. Knowlton, Esq.
Joe Conner, Esq.

Court Reporter:
Pamela Carle, CCR, RPR
New Hampshire CCR No. 98

1 APPEARANCES (Continued)

2 Representing Anheuser-Busch:
3 John T. Alexander, Esq.4 Representing the Town of Milford:
5 E. Maria Reinemann, Esq.6 Representing the Town of Merrimack:
7 Edmund Boutin, Esq.8 Representing PUC staff:
9 Marcia A.B. Thunberg, Esq.10 Representing Residential Ratepayers:
11 Office of Consumer Advocate
12 Kenneth Traum
13 Stephen Eckberg

14 Claire McHugh, pro se

15 Barbara Pressley, pro se

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Good morning. We'll
3 resume the hearing in docket DW 04-048 concerning
4 the petition of the city of Nashua. And before we
5 turn to our first witness, let's take appearances
6 for today, please.

7 MR. UPTON: Robert Upton on behalf of
8 the city of Nashua along with Justin Richardson.

9 CHAIRMAN GETZ: Good morning.

10 MS. REINEMANN: Maria Reinemann, town
11 of Milford.

12 CHAIRMAN GETZ: Good morning.

13 MR. ALEXANDER: Good morning. John
14 Alexander for the Anheuser-Busch.

15 CHAIRMAN GETZ: Good morning.

16 MS. PRESSLEY: Barbara Pressley,
17 intervenor.

18 CHAIRMAN GETZ: Good morning.

19 MS. MCHUGH: Good morning. Claire
20 McHugh, intervenor.

21 CHAIRMAN GETZ: Good morning.

22 MR. HENDERSON: Jack Henderson, Tetra
23 Tech.

1 MR. McCARTHY: Brian McCarthy, Nashua.

2 CHAIRMAN GETZ: I think we just need to
3 get the attorneys who are representatives for the
4 parties.

5 MR. TRAUM: Thank you, Mr. Chairman,
6 Commissioners. Representing the Office of
7 Consumer Advocates, Kenneth Traum.

8 CHAIRMAN GETZ: Good morning.

9 MS. THUNBERG: Good morning,
10 Commissioners. Marcia Thunberg on behalf of
11 staff.

12 MS. KNOWLTON: Good morning,
13 Commissioners. Sarah Knowlton and Steven Camerino
14 from the McLane Law Firm, here today for the
15 Pennichuck Companies; with us today is Donald
16 Ware, the president of Pennichuck Water Works,
17 Inc.

18 CHAIRMAN GETZ: Good morning. Before
19 we turn to Mr. Fuller, let me make sure I
20 understand what our order of procedure is going to
21 be today. We have Mr. Fuller, and then there's
22 the panel of Ms. Hersh, Mr. McCarthy, and
23 Mr. Henderson, and then are we going to hear from

1 Ms. McHugh at that point?

2 MR. UPTON: If that fits in, that's
3 fine. We also have Sansoucy and Walker, the
4 resumption of Sansoucy and Walker, and I want to
5 make sure I get them in today.

6 CHAIRMAN GETZ: That's where I was
7 headed, to see if that -- we would do that after
8 the rest of these witnesses, is pick up on their
9 examination.

10 And I guess there may be just one
11 outstanding issue, with respect to Ms. McHugh, she
12 filed some additional documentation, is how I
13 believe she characterizes it, to her testimony.

14 Was there any objection to that
15 additional filing that she made on -- it looks
16 like August 27th?

17 MS. KNOWLTON: Yes, Chairman Getz. My
18 objection is not so much to the substance but just
19 to the timing of the filing and that we have a
20 procedural schedule in the case, and there was a
21 time set forth for filing pre-filed testimony
22 which has long passed. So that would be the
23 nature of my objection.

1 MR. UPTON: The city has no objection.

2 MS. MCHUGH: May I address the
3 commissioner?

4 CHAIRMAN GETZ: Well, I think at this
5 point we have your filing. I just wanted to find
6 out if there was an objection. Apparently it
7 looks like there is going to be an objection. I
8 think we'll just deal with it prior to you making
9 your testimony.

10 MS. MCHUGH: Thank you.

11 CHAIRMAN GETZ: Is there anything else
12 before we proceed with Mr. Fuller?

13 Okay, hearing nothing, then if you
14 could swear in the witness, please.

15 (ALLAN FULLER, sworn)

16 CHAIRMAN GETZ: Mr. Richardson, please
17 proceed.

18 DIRECT EXAMINATION

19 BY MR. RICHARDSON:

20 Q. Good morning. Could you please state
21 your name and your position?

22 A. My name is Allan Fuller, and I'm a
23 citizen of Nashua, drinking -- drinking -- Nashua

1 drinking water.

2 Q. Doctor Fuller, you -- I understand you
3 prepared testimony on this proceeding on May 22nd,
4 2006, that I'll represent to you is marked as
5 Exhibits 1011, 1011A, and 1011B. Is that correct?

6 A. That's correct.

7 Q. And following the submission of your
8 testimony, did you respond to data requests
9 related to your testimony that I'll represent to
10 you are marked as Exhibits 1034 and 1035?

11 A. That's correct.

12 Q. Do you adopt those exhibits as your
13 testimony in this proceeding?

14 A. I do. Yes.

15 Q. And are there any changes or additions
16 or corrections you'd like to make to your
17 testimony?

18 A. There's always additions in grammar
19 checks and spelling mistakes and so forth, but the
20 one correction I would like to make is that there's
21 a typo that says 1997 is when I first started to
22 work in analytical -- the manufacturing/commercial
23 side of analytical instrumentation; it should be

1 1977.

2 MR. RICHARDSON: And just for the
3 record, that's on page 2, line 8, of Exhibit 1011.

4 Q. And you affirm -- with that one
5 exception, you affirm these documents as your
6 testimony, is that correct?

7 A. Yeah, my statements are accurate,
8 honest, and a good read. I think they should be a
9 necessary read for everybody.

10 MR. RICHARDSON: Thank you. I have no
11 further questions.

12 THE COURT: Okay, then, we can start
13 out with Ms. Pressley, do you have questions for
14 Mr. Fuller?

15 MS. PRESSLEY: Thank you, no.

16 CHAIRMAN GETZ: Ms. McHugh?

17 MS. MCHUGH: No.

18 CHAIRMAN GETZ: Mr. Traum?

19 MR. TRAUM: No, thank you.

20 CHAIRMAN GETZ: Okay, then,
21 Ms. Knowlton.

22 CROSS-EXAMINATION

23 BY MS. KNOWLTON:

1 Q. Good morning, Mr. Fuller. My name is
2 Sarah Knowlton, and I'm representing Pennichuck
3 Water Works today.

4 A. Good morning.

5 Q. Good morning. You indicate in your
6 testimony that you're testifying today as a
7 private citizen, is that correct?

8 A. That's correct.

9 Q. Didn't the city of Nashua submit your
10 testimony on its behalf?

11 A. That's correct.

12 Q. And you hold a doctoral level degree in
13 physics?

14 A. I have a master's in physics and a
15 doctor in physics, yes.

16 Q. And where is your doctoral level degree
17 from?

18 A. University of Maine, Orono, Maine.

19 Q. Can you explain your area of expertise
20 in physics?

21 A. Nuclear magnetic resonance. I have --
22 I've worked on a liquid crystal called ENC, ethyl
23 para para methoxy benzyldene amino cinnamic,

1 looking at the ordering of that liquid crystal in
2 magnetic fields using nuclear magnetic resonance
3 relaxation type studies.

4 Q. We have a great court reporter, but you
5 might want to check in with her when you are done
6 with your testimony and make sure she was able to
7 get that down.

8 A. I have my thesis with me if you'd like
9 to have a copy of it.

10 Q. Thank you very much. What is
11 analytical instrumentation, which I understand to
12 be the primary focus of your work?

13 A. Yeah. I was at the University of
14 Maine; I was in charge of the analytic
15 instrumentation in the chemistry department,
16 University of Maine. I worked with people in the
17 water resources lab, too, when I was up there. And
18 then I got a job working for a company called
19 Nicolet Instrument out of Madison, Wisconsin to be
20 in sales in their mass specs, IRs, nuclear magnetic
21 resonance spectrometers and, so forth.

22 Analytical instrumentation is a
23 technique of looking at and making measurements of

1 materials, looking at impurities in water,
2 impurities in air, looking at identifying
3 molecules, trying to interpret what the molecules
4 are, using all kinds of techniques, but basically
5 the gas chromatographic -- chromatography, a separation
6 technique, infrared spectroscopy, looking at
7 vibrational spectral bands --

8 Q. I think that's an adequate explanation
9 for purposes of my question.

10 A. It's basically the technique that
11 people use for looking at chemicals that are in
12 various materials in a material analysis.

13 Q. Your testimony on page 1 states that,
14 quote, I've worked with people from almost every
15 high tech company, government lab or research
16 university in North America, and beyond to a
17 lesser degree, is that correct?

18 A. That, absolutely.

19 Q. That's a bit of an exaggeration, isn't
20 it?

21 A. No. I have worked with Nobel prize
22 laureates, I have worked with -- sold equipment to
23 MIT, Yale, Harvard University, the Lawrence

1 Research Labs, Oak Ridge National Labs. I've
2 worked with people at EPA, I've worked with people
3 at NRL, National -- Naval Research Labs. I've
4 worked with people all over the place.

5 Q. But there's more. I mean, to say that
6 it's every is --

7 A. Well, I should have said nearly every.

8 Q. Do you have any degree or professional
9 credentials with regard to watershed issues?

10 A. I do not.

11 Q. Are you purporting to be an expert
12 witness on watershed issues?

13 A. No, I'm not. But, let me add to that,
14 though. I have read thousands and thousands of
15 pages on watershed issues, good watershed
16 management practices, and all kinds of
17 environmental information, and because I have the
18 technical background to understand it, I feel that
19 I'm probably as knowledgeable as many people on the
20 issues as far as watershed protection and drinking
21 water protection is concerned.

22 Q. And do you recall being asked to
23 respond to some data requests in this case?

1 A. Oh, well, yes.

2 Q. What I'm showing on the screen here is
3 a data request from Pennichuck Water Works to the
4 city of Nashua, 5-135, and you're listed as the
5 respondent there. Do you remember receiving and
6 responding to this question on behalf of the city
7 of Nashua?

8 A. I guess so. Go ahead.

9 Q. Well, I want to make sure --

10 A. I mean, I -- I saw it, yes.

11 Q. You saw it. And did you draft the
12 answer, this answer that's up on the screen?

13 A. I drafted the whole report. I'm not a
14 paid consultant for anybody.

15 Q. I just want to make sure that's yours.
16 That's all I'm trying to do is make sure that this
17 is yours.

18 A. Yeah, I believe so. Yes, I worked at
19 it.

20 Q. And so the question is what's your
21 formal training and you refer to your degree in
22 physics, but you also refer to your experience as
23 a member of the Penobscot --

1 A. Paddle and Chowder Society.

2 Q. -- Paddle and Chowder Society.

3 CHAIRMAN GETZ: Excuse me, please,
4 Doctor --

5 THE WITNESS: I'm sorry.

6 CHAIRMAN GETZ: -- and, Ms. Knowlton,
7 we need to have one person speaking at a time for
8 the court reporter.

9 MS. KNOWLTON: I'm sorry.

10 CHAIRMAN GETZ: Let's recommence,
11 please.

12 Q. So you indicated your background in
13 watershed is related to your membership in the
14 Paddle and Chowder Society, right?

15 A. That's not my only background. It
16 shows that I paddled many, many rivers throughout
17 the state of Maine and I understand watershed from
18 the point of view of being on the water.

19 Q. Let's pull up your testimony, which is
20 Exhibit 1011, page 3.

21 MS. KNOWLTON: If you could highlight 1
22 through 6.

23 Q. You'll see up on the screen I've

1 highlighted lines 1 through 6 of your testimony
2 which indicate -- which states, quote, that I know
3 that the PUC staff thinks Pennichuck is an
4 excellent steward of the watershed. The PUC staff
5 is flat out wrong and has not looked into the
6 details. Do you see that?

7 A. That's correct.

8 Q. Which of the PUC staff members are you
9 referring to there?

10 A. It's the reports I read. I don't
11 remember which ones who wrote the reports stating
12 that they were good stewards, but someone at PUC
13 staff said that they were good stewards.

14 Q. But you don't know their names?

15 A. No. I don't know the people. Okay? I
16 only responded to the point that the PUC staff
17 seemed to recommend and say that Pennichuck was a
18 good steward of the watershed, and I'm saying
19 that's flat out wrong, and they don't know the
20 situation.

21 Q. Let's go to page 32.

22 MS. KNOWLTON: I would just note for
23 the record that this is page 33 of Exhibit 1011,

1 lines 22 to 23.

2 Q. And if you could just read that
3 sentence that's highlighted, please, out loud.

4 A. It appears that they are biased in
5 favor of Pennichuck and against the ratepayers of
6 Nashua. Some people think the PUC staff has a
7 conflict of interest. That's true.

8 Q. You're one of those people?

9 A. I do. As well as other people in the
10 city of Nashua.

11 Q. Can you name who those folks are?

12 A. Many.

13 Q. Can you name a couple for me?

14 A. Paul Johnson, Tom McGravey. There's
15 others. I mean, I don't know. If you want me to
16 get -- it's hard for me to speak for other people,
17 but there are plenty of people who feel that way.

18 Q. What is the basis for your statement
19 here on line 22 and 23 about the PUC staff?

20 A. What is my statement?

21 Q. What's the basis for your statement
22 that you believe that they have a conflict of
23 interest and that --

1 A. Again, if you read the PUC order of
2 1982, the PUC order says that with the monies that
3 Pennichuck is going to make from selling the land,
4 the buffer land, they're going to use that money to
5 buy stranded water companies that will bail out the
6 PUC.

7 I mean, I think that is a conflict of
8 interest. They're selling off the buffer land for
9 the city of Nashua for their drinking water supply
10 so that PUC can use that money or potentially use
11 that money to bail out stranded water companies?

12 So you're compromising your drinking
13 water supply of Nashua so that you can get revenues
14 to pay off -- to buy water companies? I think
15 that's a conflict of interest.

16 Now, I want to add to that. I think
17 the PUC did that because they read the Sasaki
18 report, and they thought -- and I assume that in
19 their best judgment they thought that it was okay
20 to develop those lands.

21 But as time has gone on, scientific
22 information has said no, that's not good to do. So
23 I'm assuming the PUC made a mistake and they did

1 what they did because Pennichuck had this
2 scientifically based document that suggested it was
3 okay to develop those lands.

4 Q. One of the biggest concerns that you
5 have for the watershed is the increase in
6 impervious surfaces in and around the watershed,
7 is that correct?

8 A. That is correct. That is one of the
9 measures.

10 Q. What are some examples of impervious
11 surfaces?

12 A. Any pavement where the water cannot
13 penetrate into the soil.

14 Q. If you could pull up Exhibit 1011A,
15 page 6. It's on your screen in front of you. You
16 can also look at the hard copy.

17 A. I'd like to look at the hard copy.

18 Q. Right.

19 A. Okay.

20 Q. Can you identify what this photograph
21 is?

22 A. Yeah, I took that from my airplane.
23 That's looking from Amherst, Milford area down

1 Amherst Street towards Nashua towards the east.

2 Q. So Nashua would be --

3 A. Nashua would be to the right-hand,
4 middle corner. Right side, in the middle, actually
5 beyond the edge. That would be downtown Nashua.

6 Q. One of the areas of the development
7 that you've expressed concern about is on Amherst
8 Street, correct?

9 A. Absolutely.

10 Q. And this may be a little bit difficult
11 with our technology, but I'm wondering if you can
12 indicate where on Amherst Street -- and maybe I'll
13 get Daniel to use -- he has some pointers that he
14 can use -- where along Amherst Street you think
15 the development should not have occurred.

16 A. I think there's a better photograph
17 than that to show.

18 Q. Can we start with this one and then you
19 can show me the one that you'd like to look at in
20 a minute?

21 A. That's fine. Do you have a laser
22 pointer?

23 Q. You know, unfortunately, we don't have

1 a laser pointer.

2 A. Well, if you just go out Amherst Street
3 from the lower right-hand side about one-third of
4 the way -- yeah, where that cursor is -- yeah,
5 that's Amherst Street.

6 If you move out there, there's Round
7 Pond, and right where your clicker is, there is --
8 that's the target. You've got the condos on the
9 other side butting up against Pennichuck Brook.
10 You've -- there's plenty of development all the way
11 down that area.

12 Q. So let's just start with the target
13 where the red arrow is?

14 A. Sure.

15 Q. In your view, that shouldn't be there?

16 A. It's probably the stuff that's on the
17 other side of Amherst Street that's more critical,
18 but the further you get away the less critical it
19 becomes.

20 MS. KNOWLTON: So, Daniel, if you could
21 move your marker on the other side of Amherst
22 Street.

23 Q. Tell me what's on the other side of the

1 street.

2 A. Well --

3 Q. Is that the area --

4 A. Repeat the question again? I'm sorry.

5 Q. There's a red arrow on left-hand side
6 of Amherst Street. Is that the area that you're
7 referring to when you're saying it's really the
8 other side of Amherst Street --

9 A. Well, the whole thing -- the whole
10 thing is a potential problem. If you go on the
11 right side which you don't see in this photograph
12 you've the railroad tracks, and on the other side
13 of the railroad tracks that was all Pennichuck
14 land, and that's been developed as much as they
15 possibly can, probably -- there may be some more
16 things they can do -- and that goes to the
17 Pennichuck Pond watershed, so to speak, that feeds
18 Pennichuck Brook.

19 And so that's a program as well. So
20 that feeds -- the one thing you have to understand,
21 the Pennichuck watershed is only 27 square miles.
22 So it's smaller -- 87 percent, I think, is the
23 number I calculated of the size of Nashua. It's

1 probably smaller than the size of Concord
2 physically.

3 So we're talking about something very,
4 very small. And so as you encroach on this
5 watershed, you're putting more and more pressure on
6 this drinking water supply.

7 Q. Mr. Fuller, is there a Kohl's on
8 Amherst Street that you're familiar with?

9 A. I didn't go to Kohl's, but I know about
10 it.

11 Q. Okay, but other commercial developments
12 along that Amherst corridor that we're looking at
13 on Exhibit 1011A, that concerns you, that
14 development that we see along that side of the
15 road, both sides of the road, is that correct?

16 A. One of the things, yes.

17 Q. And is all of this development within
18 the city of Nashua?

19 A. From what we're talking about right
20 now, yes. Amherst also has a big part of
21 development.

22 Q. Wasn't all of that development approved
23 by the city?

1 A. Absolutely.

2 Q. You've also asked -- well, let me
3 restate that. You've asked the Nashua aldermen to
4 close Tinker Road 300 feet on each side of the
5 bridge over the watershed and 500 feet on each
6 side of Manchester Street where it passes over the
7 watershed, is that correct?

8 A. That would be a wise thing to do, and
9 they could have done that when they rebuilt the
10 Tinker Road bridge, but unfortunately they
11 developed all that land on Tinker Road so it's
12 pretty inconvenient for those people that have
13 bought houses from Pennichuck, so it's kind of like
14 the horse has gotten out of the barn.

15 Q. But you asked the aldermen to do this.
16 Have they granted your request?

17 A. That was in 1989 before a lot of that
18 development had taken place, yeah. This is a 1989
19 Union Telegraph, it says watch out for our safe
20 drinking water. That's the time frame.

21 Q. And you also think it would be a good
22 idea to close portions of the Everett Turnpike,
23 correct?

1 A. I said -- well, I said when it was
2 built or whatever it should have been -- someone
3 should have thought about the impact that it would
4 have on the drinking water supply.

5 But I think if there's ever going to be
6 any new road developments or do something with the
7 bridges, I think it's very necessary to think about
8 what they can do to improve the trapping of
9 chemicals and other materials that could possibly
10 go into the drinking water supply.

11 The problem with -- and I've got
12 documentation, by the way, from the Federal
13 Government, from other states and so forth that
14 talk about the impacts of roads on -- road
15 crossings on drinking water supplies and what kind
16 of pollution comes off of it, and there's studies
17 that have been done on the Southeast Expressway and
18 there's tons of debris that comes off of cars over
19 time. Of course the Southeast Expressway has a lot
20 of cars, so it's only proportional to the number of
21 cars.

22 Q. Was it the state of New Hampshire that
23 decided the location of the Everett Turnpike?

1 A. The state of New Hampshire probably
2 decided, yeah. And they also wanted to put the
3 circumferential highway right on top of the ponds
4 at Exit 9, as proposed Exit 9. So it doesn't mean
5 that they're -- they do the right thing.

6 Q. You've also expressed concern in your
7 testimony about the impact of recreational
8 activities near drinking water supplies, right?

9 A. That's correct.

10 Q. And would motorboating on a water
11 supply have a negative impact on the water supply?

12 A. I think it's not the right thing to do,
13 yes.

14 Q. On page 23 of your testimony you state
15 that, quote, one has to be blind to what is the
16 right thing to do to not realize that Manchester
17 is a good steward of their watershed and
18 Pennichuck is a bad steward of their watershed.
19 Is that correct quote from your testimony?

20 A. That's -- that's correct. Manchester
21 has a buffer that's 800 to a mile around, and
22 they've bought all the buildings and camps around
23 their lake and they've done a good job of

1 protecting their watershed.

2 Q. And that's Manchester Water Works
3 you're referring to?

4 A. That's right, they didn't sell off the
5 land.

6 Q. And are you aware that Manchester Water
7 Works allows motorboating in its watershed, which
8 is Lake Massabesic?

9 A. And I think that's wrong.

10 Q. In discovery in this case, do you
11 recall being asked if you believed that what is in
12 the public good of Pennichuck customers outside of
13 Nashua differs from the public good of Nashua
14 ratepayers?

15 A. That's correct, I do.

16 Q. And your answer to that question was
17 yes?

18 A. Absolutely.

19 MS. KNOWLTON: Thank you. No further
20 questions.

21 CHAIRMAN GETZ: Ms. Thunberg?

22 CROSS-EXAMINATION

23 BY MS. THUNBERG:

1 Q. Thank you, Doctor Fuller. I just have
2 a few questions.

3 A. Thank you.

4 MS. THUNBERG: Mr. Chairman.

5 Q. If I could go back to Exhibit 1011,
6 please, on page 3.

7 A. 1011, page 3.

8 Q. Yes, it's page 3 of your testimony.
9 I'm not sure what page it is of the actual
10 exhibit. It's page 4 of the exhibit.

11 A. Okay.

12 Q. And, again, with respect to lines 2 and
13 3 --

14 A. Sure.

15 Q. -- and your statement, I know that the
16 PUC staff thinks Pennichuck is an excellent
17 steward of the watershed, I just want to ask you
18 again, when you made that statement, who of staff
19 did you have in mind as making that statement, and
20 what was the source of the information that formed
21 this statement?

22 A. And that's a good question, and I
23 apologize for not being prepared for that. I would

1 have if I had known that that was a question coming
2 up.

3 I read the staff reports, and I don't
4 know any of the people who wrote those reports, so
5 I -- really nothing personally associated with any
6 of it. But one of the reports, if not more than
7 one, mentioned that -- that Pennichuck was a good
8 steward of the land, and they were saying that
9 because of the CEI reports and things like that.

10 And what they don't understand is while
11 the CEI reports look real good and it shows that
12 Pennichuck is thinking about watershed management,
13 it doesn't really bring into play the fact that
14 Pennichuck, while they have this one thing that I'm
15 good, at the other side of the coin they're
16 actually developing the land and destroying the
17 watershed, and they know -- because the reports are
18 there, they know what the right thing to do is, and
19 what they're doing is not the right thing.

20 Other cities and towns and watershed
21 companies -- areas, New York, in Rochester,
22 New York and the Quabbin and other areas, and if
23 you fly over these things, you'll see it's very

1 clear. Manchester. They're buying up and
2 protecting the watershed with buffers, because
3 there's nothing better than buffers for protecting
4 the watershed.

5 So the staff is reading what Pennichuck
6 presents. I have the technical background to sort
7 of read through what they are saying. I am also a
8 local resident in Nashua, and a bunch of us in
9 Nashua have seen what they have done, and we're
10 saying, my gosh, they're saying they are good
11 people, but in reality, they're destroying the
12 watershed, they're destroying our drinking water
13 supply.

14 Q. Mr. Fuller, when you mentioned reports,
15 are you talking about documents that were filed by
16 staff in this proceeding?

17 A. That's right. That's where I got the
18 impression that staff thought that Pennichuck was a
19 good -- and if I did a search on it, I'm sure I
20 could find it.

21 Q. Are you aware of whether those staff
22 testimonies included testimony from Amanda Noonan,
23 Randy Nepper, and Mark Naylor, do those sound

1 familiar to you?

2 A. I don't know the people. Probably, it
3 sounds similar or familiar, but I don't know.

4 Q. Do you know -- do you recall, then, of
5 the documents that you read in this proceeding
6 from staff whether one concerned customer service?

7 A. I -- I read -- what I read -- what I
8 believe I read was watershed, they were a good
9 steward of the watershed. I'm pretty sure I read
10 that.

11 Q. I'll ask you one other clarifying
12 question --

13 A. But I don't know about customer
14 service. I don't know anything about customer
15 service.

16 Q. Of one of testimonies filed by staff,
17 do you recall reading issues regarding Dig Safe?

18 A. It doesn't -- doesn't -- doesn't flag
19 with me. I don't know -- I mean, I know who
20 Dig Safe is, but that is -- you know, I'm not as
21 concerned about Dig Safe as you might be.

22 Q. Fair enough. So is it fair to say,
23 then, that at this moment in time you have no

1 recollection of specifically where staff made that
2 statement that you're purporting on lines 2 and 3?

3 A. It's in the staff reports. I mean, I
4 can find it; if you want to give me the time to go
5 search the staff reports, I'll find it. I'm
6 telling you I believe I read it.

7 That's -- and the reason why -- and the
8 motivation for even writing what I wrote is because
9 I thought the PUC needs to know from a non-biased
10 person who is just a user of the water and somebody
11 who's concerned about the environmental impacts of
12 the water supply, they've got to know what the
13 truth is.

14 I'm not paid by anyone. What I'm
15 saying is, as far as I'm concerned, is the truth.
16 And I can find that report. But that is one of the
17 motivating factors for me to write what I wrote. I
18 put a lot of time and effort in this because I
19 thought it was extremely important for the PUC to
20 really understand the full picture and get a
21 perspective of what's going on over years.

22 I'm not coming into here just in a
23 little window of time. I've been working on this

1 since 1998, 1997, and I've watched progression of
2 what's going on with that watershed.

3 MS. THUNBERG: Staff would like to make
4 a record request of Mr. Fuller at this time. He
5 has offered to produce the citation in staff's --
6 he calls it reports, but it is, to my knowledge,
7 staff's testimony of where staff made the
8 statement that Pennichuck is an excellent steward.

9 And I'd like to make that record
10 request under staff's exhibits, which are, the
11 series 5,000, and I'm not sure, standing here,
12 what that next number would be.

13 CHAIRMAN GETZ: Okay, we will reserve
14 the next exhibit under staff's exhibit list. And
15 what we would be looking for, Doctor Fuller, is
16 similar to the process for a data request in
17 advance --

18 THE WITNESS: Discovery question.
19 Yeah, I'd be happy to respond to that. I really
20 will. It's a fair question, I appreciate that.
21 It is my motivating factor for writing what I
22 wrote.

23 MS. THUNBERG: And just for

1 clarification, staff is just looking for the
2 citation to that statement that you're purporting
3 was made.

4 A. Okay. In fact, I look forward to
5 looking for it and bringing it up to your
6 attention. I didn't say anything that wasn't true.
7 And I was very careful, by the way -- I want to
8 make this point. I was very careful not to
9 exaggerate. In everything I stated I wanted to be
10 able to document with real documents, and I can
11 support everything I said -- at least I believe I
12 can. Now, we can have a difference of opinion of
13 what the interpretation is.

14 Q. Mr. Fuller, is it fair to say that in
15 your testimony you are critical of Pennichuck's
16 development of the so-called buffer lands?

17 A. Absolutely.

18 Q. And is it also your position that that
19 development caused degradation to the Pennichuck
20 watershed or Pennichuck Brook watershed?

21 A. Absolutely.

22 Q. And with respect to that development,
23 are you aware of whether Pennichuck failed to

1 receive any local approvals for the development?

2 A. Well, I don't know if they failed to --
3 well, they did. In Merrimack's case there was one
4 of the -- one of the building requests, building
5 permit or planning board request was denied and
6 Pennichuck went to court and overruled the planning
7 board.

8 So they obviously got it ultimately,
9 but they overruled the planning board. So it's not
10 to say that people didn't try in some cases to
11 protect the stuff.

12 Nashua has not necessarily done a good
13 job of protecting it, nor has the state DES, nor is
14 the PUC off the hook on this. The fact is they
15 have developed this land, and everybody who -- all
16 you have to do is go to the Internet and start
17 regarding EPA documents and so forth, and you
18 realize that watershed buffers untouched is
19 necessary for drinking water supplies.

20 Q. I just want to make sure I heard you
21 correctly in your most recent response. Did you
22 say that Nashua is not off the hook as far as
23 contributing to the degradation of water quality

1 in the Pennichuck Brook watershed?

2 A. That's correct.

3 MS. THUNBERG: The staff has no further
4 questions. Thank you.

5 THE COURT: Ms. Reinemann?

6 MS. REINEMANN: No.

7 CHAIRMAN GETZ: Mr. Alexander?

8 MR. ALEXANDER: No questions.

9 COMMISSIONER MORRISON: Mr. Fuller?

10 THE WITNESS: Yes.

11 COMMISSIONER MORRISON: At this point
12 in time, do you believe that the city would be a
13 better steward of the watershed?

14 THE WITNESS: I do. I do.

15 COMMISSIONER MORRISON: You seem very
16 critical of the circumstances and the state of the
17 assets today. How would you suggest they be
18 reclaimed or cleaned up?

19 THE WITNESS: Well, I would like to see
20 a total freeze on development inside that
21 watershed as far as the buffers are concerned
22 around the ponds. We've tried to get state
23 bills -- I can't remember the -- 1289 or something

1 like that -- house bill passed unanimously and it
2 was killed in the senate by lobbyists and
3 Pennichuck came out in written statements, which
4 is in my piece here, basically saying that it's
5 going to stop them from developing 500 acres of
6 land.

7 So I'd like to see a freeze put on as
8 far as protecting the watershed. The right thing
9 to do -- and I'd also like to see that monies
10 start going towards the purchase of buffer lands.

11 The city of New York is spending
12 billions of dollars to protect drinking water
13 supply and tributaries around their reservoirs,
14 and money should be put aside for protecting
15 those -- our drinking water supply.

16 It's too small. The problem is you
17 think it's big, but it's really small, and all the
18 water that comes in there is either rainwater or
19 from the Merrimack River, and we've got to do
20 something.

21 I think that -- the reason why I think
22 the city would be better is Pennichuck is kind of
23 not controllable, but the city can be controlled

1 by the people with elections, and so ultimately
2 you have some control what's going on, some
3 control, and hopefully PUC will still be involved
4 with the regional water company or the local water
5 company and still be involved and make sure rates
6 don't go out of sight, things like that.

7 You don't want to see a Massachusetts
8 tax cow or something or -- how should I say it, a
9 place to put retired politicians or something like
10 that, you know. But, anyway, that's --

11 COMMISSIONER MORRISON: You talked that
12 the watershed and the water resource is limited
13 for city of Nashua. Would you recommend that the
14 city stop growing, limit population, limit
15 business size?

16 THE WITNESS: No, not at all. Not at
17 all. I think the city should grow. You can grow
18 without necessarily growing within this small
19 little buffer area. I think what we need is
20 buffers.

21 And we worked closely in trying to work
22 in -- Pennichuck Water Council and other citizens
23 tried to put buffers around the brooks and so

1 forth. But you run into this thing, not in my
2 background, it's my land, I can develop whatever I
3 want, whatever else.

4 Keeley Farms at Building 19 on Amherst
5 Street, the zoning board turned that thing down,
6 and it finally went to court, and the court ruled
7 and said it's okay. Now it's expanding and
8 expanding, and Wal-Mart is trying to get in, and
9 the developer wants -- has gone to court to try to
10 overrule the planning board's ruling saying it
11 can't be built, it shouldn't be built.

12 And so ultimately -- it's a problem
13 New Hampshire has to face. The problem Nashua has
14 is a problem the rest of the state is going to
15 have. We've got growing population, limited --
16 we've got great water resources, but we're trying
17 to build and encroach on these water resources so
18 closely that we're compromising our
19 infrastructure, and we should be thinking about
20 that.

21 Now, the rest of the state is going to
22 have the same problem. As things grow, if you
23 don't start putting protection into these water

1 supplies, you're going to have problems. I'm not
2 trying to save a painted turtle or anything else,
3 I'm trying to save people. That's my concern.

4 COMMISSIONER MORRISON: Thank you.
5 Nothing else.

6 CHAIRMAN GETZ: Redirect,
7 Mr. Richardson?

8 REDIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q. Doctor Fuller, you were asked by staff
11 to identify in response -- there was a record
12 request made for the comments -- the report by
13 staff that you were responding to in your
14 testimony.

15 MR. RICHARDSON: Could we bring up
16 Exhibit 5001 at page 59, section E, please. We
17 probably need to switch.

18 Q. Could you just take a moment to review
19 this and let me know if this is what you were
20 responding to, please?

21 MS. THUNBERG: Excuse me, Justin, this
22 testimony goes on to another page. Are you going
23 to have Mr. Fuller just look at this little bit,

1 or is there more?

2 MR. RICHARDSON: It depends on what he
3 responds.

4 Q. In particular --

5 A. I'm sorry, I'm slow. Okay, I did read
6 that. Maybe there is something you can flag.
7 Well, the number line -- 17, staff has reviewed the
8 record and has not come up with any objective
9 evidence. 18, Nashua has not submitted testimony
10 that can be reviewed or cross-examined which
11 identifies instances of harm or mismanagement by
12 Pennichuck Water Works resulting in irrigation of
13 water quality or increased treatment costs.

14 So I'm sure that that flagged my -- my
15 environmental patriotism, so to speak.

16 Q. So, to the best of your knowledge, was
17 that -- I believe my question was, was that one of
18 the statements or reports that you were referring
19 to when asked by Ms. Thunberg earlier?

20 A. It obviously is part of it. I don't
21 know if there's anything else, but -- and I don't
22 know what the next page says, so.

23 Q. There's a reference to -- I believe

1 this is Mark Naylor's testimony, and on page 20,
2 could you read where he says it is clear, in the
3 middle of that sentence on line 20? I'm sorry,
4 could you read that aloud, please?

5 A. I'm sorry. It is clear to staff that
6 Nashua believes strongly that the city's purchase
7 of parcel M described in the June 1, 1980 report by
8 Sasaki Associates Incorporated as containing
9 critical areas was necessary to protect a very high
10 yield groundwater aquifer.

11 I'm not sure that I know what parcel M
12 is without looking at a map.

13 MR. RICHARDSON: Could you pull up
14 Exhibit 1016B, please.

15 Q. Doctor Fuller, can you locate parcel M
16 on this property and where that high-yield aquifer
17 is?

18 A. I -- I can't read the writing on --

19 Q. Well, are you familiar with the
20 property that the city of Nashua acquired that was
21 referenced there?

22 A. Is that the -- can you blow that one
23 region up? Okay, there's a bunch of yellow boxes

1 plus a green box.

2 Q. I'll represent to you, if you'll accept
3 subject to check --

4 A. Okay.

5 Q. -- that the yellow areas were acquired
6 by the city of Nashua.

7 A. Okay.

8 Q. Is that consistent with what your
9 recollection is to the general nature of the
10 properties that were acquired by the city of
11 Nashua?

12 A. I know there was a large parcel of
13 property and that Pennichuck had wanted to put in a
14 golf course, and I was told at one time they wanted
15 to put a plastics factory in, and the conservation
16 commission came up with money to buy that -- those
17 properties.

18 Q. And I'm going to turn your attention to
19 an exhibit -- I'll bring it to you, it's 1123.
20 I'm not going to bring up the electronic version
21 because it will take too long to load. Do you
22 recognize what this document is?

23 CHAIRMAN GETZ: Mr. Richardson, the

1 purpose of this redirect? Are we still on the
2 issue of the basis of his --

3 MR. RICHARDSON: Yes. Yes.

4 CHAIRMAN GETZ: Okay.

5 Q. Do you recognize what this is?

6 A. It's the aquifer map for the region,
7 yes.

8 Q. Could you explain -- it looks like 1016
9 is down now. Could you just explain what these
10 dark shaded areas represent?

11 CHAIRMAN GETZ: This is going to be
12 really hard to follow on the transcript. I don't
13 know how you're going to -- can you put this in a
14 position so at least we can --

15 MR. RICHARDSON: Yes.

16 A. I think I have a photograph or an image
17 in one of my --

18 Q. Doctor Fuller --

19 A. Yes.

20 Q. -- is this the approximate location in
21 here?

22 A. Yes.

23 Q. Where those properties acquired by the

1 city of Nashua are located?

2 A. That's correct.

3 Q. And why is the fact that there's an
4 aquifer there significant?

5 A. Well, one is it's where the water is
6 stored. It's like a big sandpit, and you just
7 basically put water in the sandpit.

8 The second thing is that the darkest
9 blue areas are the areas where the water travels
10 the fastest, and so if you get pollution in that
11 area it's going to migrate.

12 Q. Just a final question --

13 MS. KNOWLTON: This has gone way beyond
14 the scope of the cross-examination.

15 CHAIRMAN GETZ: You said this was going
16 to be responsive to following up on the issue of
17 the reports, and I'm not seeing a connection. I
18 thought we were looking at an issue raised by
19 staff of what was the basis of his statement on
20 page 3 with respect to characterization of the PUC
21 staff's position and that --

22 MR. RICHARDSON: Okay, what I was
23 trying to do was develop what it was that he

1 believes that the PUC got wrong, in the sense that
2 those -- where Mr. Naylor's testimony that he
3 recognized as being one of the reports that he
4 responded to.

5 CHAIRMAN GETZ: That I followed, and
6 now where are we?

7 MR. RICHARDSON: And now, for example,
8 this is the aquifer that is referred to in
9 Mr. Naylor's testimony, and I want to ask him --
10 essentially, the final question is what is the
11 significance that this property was developed.
12 What was the harm -- what is the objective
13 evidence that there has been a level of
14 mismanagement here that staff was -- that he
15 disagrees with.

16 CHAIRMAN GETZ: Ms. Knowlton?

17 MS. KNOWLTON: I'd like to note a
18 further objection for the record. Mr. Fuller's
19 testimony was submitted after Mr. Naylor's
20 testimony in this case, and it was in response to
21 it, and he could have explained all of that in his
22 response to testimony. I don't think now is the
23 time to do that. He had his chance.

1 CHAIRMAN GETZ: Ms. Thunberg?

2 MS. THUNBERG: Yes. I just wanted to
3 object to the questioning going beyond the cross
4 issue of where was the statement made that
5 Mr. Fuller -- or Doctor Fuller was relying upon,
6 and now we're getting into how Mr. Fuller -- and
7 Attorney Richardson has stated that these
8 questions are about how Mr. -- Doctor Fuller
9 believes Mr. Naylor is incorrect. And so staff
10 feels that this has gone beyond the issues that
11 were raised in cross.

12 CHAIRMAN GETZ: I think staff's
13 correct, and I would --

14 MR. RICHARDSON: Well, if I may
15 respond. I believe this -- we've now located the
16 statement, and I think it's logical to then say
17 why is it that you believe that this statement by
18 staff was -- is -- why he disagrees with it.

19 CHAIRMAN GETZ: I think you're gone too
20 far afield for the proper scope of redirect. I
21 think Doctor Fuller has had plenty of opportunity
22 in his direct testimony and cross, and all this
23 issue for proper redirect was just nailing down

1 the issue raised by staff, which I think you have
2 attempted to do that.

3 MR. RICHARDSON: I can approach it on
4 another basis, Mr. Chairman. I'll move on, but
5 it's going to lead me right back to this, and
6 there's another reason why this document was
7 relevant in response to what was raised during
8 cross-examination.

9 CHAIRMAN GETZ: Okay, let's see where
10 you're going with redirect.

11 BY MR. RICHARDSON:

12 Q. Doctor Fuller, you were asked by
13 Attorney Knowlton a number of questions about what
14 developments had taken place should not have
15 occurred, and I believe you indicated that there
16 were other documents that would show better than
17 the one that was presented to you where those
18 developments are. Is --

19 A. Sometimes a picture is worth a thousand
20 words.

21 Q. Let me turn your attention to -- if you
22 look inside the green box of parcel M, and I'll
23 walk over here. Is -- oh, you can't see that.

1 Is this area that's highlighted up in
2 the top in this green area that was not acquired
3 by the city of Nashua, is that one of those areas?

4 MS. KNOWLTON: Can I just state an
5 objection, or at least seek a clarification? The
6 cross-examination that I did was focused on
7 Amherst Street, and could you please identify for
8 the record for asking your question, if you're
9 talking about Amherst Street here?

10 MR. RICHARDSON: I don't think I need
11 to respond to an objection because I haven't
12 located Amherst Street.

13 A. If you go to page 5 of 1011A, I think
14 you can see the area we're talking about from the
15 air.

16 CHAIRMAN GETZ: My larger concern at
17 this point is going to be these descriptions are
18 going to be impossible to reconstruct in reading
19 the transcript. I think we have to at least be
20 more specific in the language you're using in
21 pointing to positions on the map.

22 THE WITNESS: Okay.

23 CHAIRMAN GETZ: Well, actually, I was

1 addressing Mr. Richardson as well.

2 THE WITNESS: I'm sorry.

3 MR. RICHARDSON: I can clear that issue
4 up, I believe. I have a hard copy of this
5 document.

6 CHAIRMAN GETZ: So now you're focusing
7 on Exhibit 1011A, is that correct?

8 MR. RICHARDSON: I'd like to close the
9 loop on my question on 1016B, I believe.

10 MS. KNOWLTON: Justin, is this --

11 MR. RICHARDSON: This is Exhibit 1016B.

12 BY MR. RICHARDSON:

13 Q. Could you take a pen, and why don't you
14 mark on that document where some of those
15 developments are, if that would work.

16 A. The Pennichuck land that's near the
17 green bar on the right-hand side at an angle, and
18 you see Round Pond as a reference point, that's the
19 railroad tracks, that green line.

20 Everything to the left and downward is
21 what's called Pennichuck's land, and that was land
22 that was developed. There's a series of things,
23 and there's probably some more things that are in

1 there now since those photographs have been taken.

2 So all those buildings are into -- into
3 Pennichuck's land, and they're developments, and
4 those things drain into Pennichuck Brook and their
5 buffer lands.

6 Q. And that is consistent with the
7 location of the high-yield aquifer map on 1123, is
8 that right?

9 A. Yes.

10 MR. RICHARDSON: I have no further
11 questions. Oh, actually, should we -- as a
12 procedural matter, we should probably mark -- if
13 you're going to mark those areas on Exhibit 1016B,
14 we should probably have that marked as an exhibit
15 for the commission's benefit where he identifies
16 it.

17 CHAIRMAN GETZ: Which will be the next
18 Nashua exhibit, is --

19 MR. RICHARDSON: I'll mark it as 1141.
20 (Nashua Exhibit 1141 marked.)

21 CHAIRMAN GETZ: Okay. Ms. Knowlton.

22 MS. KNOWLTON: I'd like to request that
23 what he's marked be put up on Elmo so we can all

1 see what's been done.

2 I'm sorry, but I'm having a hard time
3 from telling what's been marked here what he's
4 referring to. So --

5 CHAIRMAN GETZ: Are you finished with
6 your redirect?

7 MR. RICHARDSON: Yes, I am.

8 CHAIRMAN GETZ: Let's go to a short
9 recross here, because I'd like to also get on the
10 record an explanation of what this is.

11 As I can see this, it looks like a
12 straight line with two arrows in the lower
13 left-hand quadrant of this -- what's newly marked
14 Exhibit 1141.

15 And could you tell me, Doctor Fuller,
16 what that purports to show, your marking?

17 THE WITNESS: That's just one part of
18 the buffer land that's been developed by
19 Pennichuck. There's other developments, but
20 that's just one part.

21 RE CROSS-EXAMINATION

22 BY MS. KNOWLTON:

23 Q. I'm wondering, Mr. Fuller, if I give

1 you this big marker if you can circle what you
2 think should not have been developed that's
3 depicted on this map because that's what I'm
4 unclear about.

5 MS. KNOWLTON: Can I approach this
6 witness with the marker and the exhibit?

7 CHAIRMAN GETZ: Please. Let's make
8 sure you understand what you're being asked to do.
9 Do you understand what she's requesting,
10 Doctor Fuller?

11 THE WITNESS: She wants me to mark the
12 areas that I think that shouldn't have been
13 developed.

14 BY MS. KNOWLTON:

15 Q. And I'm not restricting that to land
16 that was owned by Pennichuck. I'm saying on that
17 Amherst Street corridor on that map, indicate what
18 should have not been developed, in your view.

19 CHAIRMAN GETZ: And I presume once we
20 have this marked up and then copies will be made
21 and circulated to all the parties.

22 MS. KNOWLTON: Thank you.

23 Q. Are you through?

1 A. Not quite. Some of the --

2 Q. Mr. Fuller --

3 MS. KNOWLTON: If I may approach the
4 witness.

5 A. Can I ask a question?

6 Q. Let me just say one thing to the chair
7 first, and then you may address your concern.

8 MS. KNOWLTON: May I approach the
9 witness and take the exhibit and put it on Elmo so
10 that we all can see it?

11 CHAIRMAN GETZ: Please.

12 MS. KNOWLTON: Thank you.

13 THE WITNESS: Here you go.

14 MS. KNOWLTON: I don't have any further
15 questions for Mr. Fuller.

16 CHAIRMAN GETZ: The city has last
17 opportunity.

18 MR. RICHARDSON: No further questions.

19 CHAIRMAN GETZ: Okay, then,
20 Doctor Fuller, you're excused. Thank you very
21 much.

22 THE WITNESS: Thank you.

23 CHAIRMAN GETZ: I think what we'll do

1 now, is I understand the panel will come next, is
2 that correct?

3 MR. RICHARDSON: That's correct.

4 CHAIRMAN GETZ: Let's take a 15-minute
5 recess, and then we'll have the panel in the
6 witness box when we come back. Thank you.

7 (Recess taken.)

8 CHAIRMAN GETZ: Okay, we're back on the
9 record, and, Mr. Richardson, are we going to hear
10 from the Hersh, McCarthy and Henderson panel?

11 MR. RICHARDSON: Yes.

12 (Brian McCarthy, Katherine Hersh
13 and John M. Henderson, sworn)

14 DIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q. Good morning. Could you please state
17 your names and positions.

18 A. (By Mr. McCarthy) Brian McCarthy, an
19 alderman at large in the city of Nashua.

20 A. (By Ms. Hersh) I'm Kathy Hersh. Kathy
21 Hersh. I'm community development director for the
22 city of Nashua.

23 A. (By Mr. Henderson) I'm Jack Henderson.

1 I'm a professional engineer with Tetra Tech.

2 Q. And part of this proceeding did you
3 prepare testimony that has been marked as
4 Exhibit 1012?

5 A. (By Ms. Hersh) Yes.

6 A. (By Mr. McCarthy) Yes.

7 Q. And following the preparation of your
8 testimony, did you prepare data requests -- did
9 you prepare responses to data requests, excuse me,
10 that have been marked as Exhibits 1038, 1039 and
11 1049?

12 A. (By Ms. Hersh) Yes.

13 A. (By Mr. McCarthy) Yes.

14 Q. And do you adopt and affirm those
15 exhibits as part of your testimony in this
16 proceeding?

17 A. (By Mr. McCarthy) Yes.

18 A. (By Ms. Hersh) Yes.

19 A. (By Mr. Henderson) Yes.

20 Q. Are there any changes that you would
21 like to make to your testimony?

22 A. (By Mr. McCarthy) No.

23 MR. RICHARDSON: Thank you.

1 CHAIRMAN GETZ: Ms. Pressley?

2 MS. PRESSLEY: Thank you, no.

3 CHAIRMAN GETZ: Ms. McHugh?

4 And there appears to be no one here
5 from the consumer advocate at the moment. Then
6 Mr. Camerino.

7 I assume, Mr. Camerino, that if the
8 consumer advocate reappears and has a question
9 you're not going to have any objection to going
10 out of order?

11 MR. CAMERINO: No problem. And I would
12 say I actually plan to direct my questions to
13 Alderman McCarthy and Ms. Knowlton has some
14 questions for Ms. Hersh, and we split this panel
15 up in that way.

16 CROSS-EXAMINATION

17 BY MR. CAMERINO:

18 Q. Mr. McCarthy, if Nashua owns this
19 utility, it's Nashua's plan to purchase watershed
20 land, is that correct?

21 A. (By Mr. McCarthy) Yes.

22 Q. And the purpose of those watershed land
23 purchases is to protect the water supply, is that

1 correct?

2 A. (By Mr. McCarthy) Yes.

3 Q. And the source of revenues for those
4 purchases would be the rates that are charged to
5 the customers?

6 A. (By Mr. McCarthy) Yes.

7 Q. And some of that land that you want to
8 purchase is quite expensive, isn't it?

9 A. (By Mr. McCarthy) I wouldn't know until
10 we go to purchase it.

11 Q. Well, it's in areas of Nashua that are
12 desirable for development?

13 A. (By Mr. McCarthy) All of Nashua is
14 desirable for development.

15 Q. In fact, if the land wasn't desirable
16 for development you probably wouldn't be concerned
17 about buying it up, would you?

18 A. (By Mr. McCarthy) Yes, we would be
19 concerned about buying it up to protect it whether
20 it was desirable for development or not.

21 Q. So you're interested in buying any
22 remaining watershed land no matter how expensive
23 it is or where it's located?

1 A. (By Mr. McCarthy) I'm not sure that I
2 said that. We are interested in buying any
3 remaining watershed lands that are acquirable. I
4 don't think we'd pay \$3 million for half an acre of
5 land in the current economic conditions.

6 Q. All right, I understand that. Would
7 you agree with me that some of that land is quite
8 expensive, though, the land that Nashua would like
9 to purchase?

10 A. (By Mr. McCarthy) I would agree that
11 some of it may have very high asking prices.
12 However, we were told when we went to purchase part
13 of parcel M that the piece we wanted was worth \$13
14 million and we eventually acquired it for 2.

15 Q. And if you owned the water company, the
16 cost of those real estate purchases would be put
17 into rate base and charged to customers, correct?

18 A. (By Mr. McCarthy) The cost of those
19 purchases would be paid for out of some of the
20 anticipated savings that we otherwise would
21 anticipate in the rates, yes.

22 Q. So if -- what you're saying is that if
23 you were to achieve savings, you wouldn't return

1 those to customers, you would use them to purchase
2 land?

3 A. (By Mr. McCarthy) I think the purchase
4 of watershed protection lands to protect the supply
5 of water is returning those to the ratepayers.

6 Q. I understand, but you wouldn't return
7 those savings to the customers in the form of
8 lower rates, you would purchase land with it,
9 that's what you're saying, correct?

10 A. (By Mr. McCarthy) I'm saying we would
11 purchase some land. I do not believe from anything
12 I've seen that that would result in us not
13 returning savings to the ratepayer as well.

14 Q. Suppose there weren't savings, would
15 you still purchase the land?

16 A. (By Mr. McCarthy) I'd have to look at
17 it on a -- on a case-by-case basis. I'm not
18 familiar with the details of your conjecture.

19 Q. My conjecture is very simple. You
20 assumed that you will have savings from operations
21 available to purchase land so that the customers
22 won't see a rate increase if you implement your
23 strategy of purchasing watershed land.

1 And my question to you is suppose your
2 assumption of savings is incorrect, would you
3 still purchase the land?

4 A. (By Mr. McCarthy) I -- I might well.
5 If our assumption, which seems to be
6 well documented in our filings before this board is
7 incorrect, then it may be incorrect that those
8 lands are worth as much as you think they are as
9 well.

10 I can't -- I can't conjecture on that
11 without seeing more specifics. All the evidence
12 that is in front of us right now supports that it
13 would be in our best interest and in the best
14 interest of the ratepayers to continue buying land
15 in the watershed after we acquire the utility.

16 Q. Would you still pursue that strategy of
17 buying land to protect the water supply if there
18 were other more cost effective means to protect
19 the water supply?

20 A. (By Mr. McCarthy) I can't begin to
21 imagine what that means. There are no more cost
22 effective measures in front of us, and I would have
23 to understand them fully.

1 I think it's outside the scope of my
2 answering a question here to understand whether we
3 think that additional treatment, getting more water
4 out of the Merrimack, causing water supplies
5 upstate to go down so that there's more water
6 available in the Merrimack, I can't conjecture on
7 those without seeing more facts about them at this
8 point.

9 Q. Well, I'm not asking you to conjecture,
10 I'm giving you a very specific situation, that
11 is -- well, let me take it step by step then so
12 it's easier for you.

13 Is it fair to say that there are ways
14 to protect the water supply and provide a clean
15 and adequate supply of water other than just
16 buying watershed property?

17 A. (By Mr. McCarthy) Well, I don't know of
18 any that are considered to be as good.

19 Q. I haven't asked you that yet. I've
20 asked you is it fair to say that there are other
21 means?

22 A. (By Mr. McCarthy) It may well be.

23 Q. Okay. And you're not an expert in

1 water supply protection, are you?

2 A. (By Mr. McCarthy) No, I'm not, other
3 than what I read from your experts, which says --

4 Q. Excuse me --

5 A. (By Mr. McCarthy) I'm trying to answer
6 your question.

7 Q. And I understand, and you've answered
8 it, which is you are not an expert, and now you
9 want to go on and give a speech, which I would
10 prefer you not to.

11 CHAIRMAN GETZ: Well, let's hold on for
12 a second. If we can go back to the general
13 premise of yes or no answers with an opportunity
14 to explain. Whether -- how you want to
15 characterize the explanation, if the explanation
16 goes too far, then we'll deal with that.

17 But we're going to let the witnesses
18 answer the question and give them an opportunity
19 to explain, and then if they go too far, we'll
20 handle that when it comes. But it's fair for
21 him -- the explanation he started seems reasonable
22 to me.

23 MR. CAMERINO: That's fine,

1 Mr. Chairman, but I'm not getting a yes or no
2 answer first. If he wants to give a direct answer
3 and then give an explanation, that's appropriate.

4 A. (By Mr. McCarthy) I don't think the
5 question is suited to a yes or no answer, it is a
6 question of degrees. My expertise on water supply,
7 which comes primarily from what I read in this case
8 includes filings by even your experts which say
9 that the best mechanism for protecting water
10 supplies is by protecting the watershed lands
11 around them.

12 You are now asking me to conjecture
13 what happens if your experts are wrong and there
14 are better ways to provide them. I would have to
15 read that testimony from your experts that now
16 claim that that is not the best way to protect
17 water supplies, and I would have to understand as a
18 layman what that judgment is that we can make.

19 So my direct answer to your question is
20 I think that everything we know so far says
21 protecting the watershed is best done by buying
22 lands. If there are other ways that you can prove
23 are better doing that, yes, of course we would

1 consider those, but that's not what's in front of
2 us today.

3 CHAIRMAN GETZ: As I recall your last
4 question, you're asking if he's an expert in the
5 area of watershed protection, is that correct?

6 MR. CAMERINO: That was the question.

7 CHAIRMAN GETZ: Let's go through it one
8 step at a time. And I take it your answer was,
9 no, you're not an expert, but you've reviewed all
10 of the documents in this proceeding and through
11 other sources?

12 MR. McCARTHY: Yes. And the specific
13 explanation was to the fact that the question
14 about expertise was based on the previous question
15 he had asked me.

16 CHAIRMAN GETZ: I've got it. Let's go
17 on.

18 BY MR. CAMERINO:

19 Q. So I'm asking you questions that are
20 not related to -- you don't need to be an expert
21 in water supply protection because I'm asking you
22 questions about cost effectiveness.

23 Assume that there are other methods

1 that are more cost effective to protect the water
2 supply and provide a safe and adequate supply of
3 drinking water, more cost effective than buying
4 land.

5 Would you recommend that the municipal
6 utility that you are trying to form pursue those
7 means instead of a less cost effective method, the
8 one I'm premising is less cost effective in my
9 question is watershed purposes?

10 A. (By Mr. McCarthy) I would recommend
11 that the veracity of those assumptions be tested
12 and the final decisions be made based on what the
13 answers are to those questions.

14 Q. So you are not willing to say today
15 that if the other methods are more cost effective
16 that those should be pursued?

17 A. (By Mr. McCarthy) Not until I see what
18 they are, no.

19 Q. Do you have any idea what would happen
20 if Pennichuck Water Works came to this commission
21 with a method of protecting the water supply that
22 wasn't the least cost or most cost effective
23 method of obtaining a safe and adequate supply of

1 water? Do you think that those costs would be
2 allowed to be included in rates?

3 A. (By Mr. McCarthy) They might be if no
4 one else understood that there was a better method
5 for protecting the water supply.

6 Q. Now, if you buy these lands, this is to
7 protect the Pennichuck Brook watershed, is that
8 correct?

9 A. (By Mr. McCarthy) Yes.

10 Q. And the Pennichuck Brook watershed
11 serves -- provides the source of water that
12 supplies what is called the core system of
13 Pennichuck Water Works, correct?

14 A. (By Mr. McCarthy) Yes.

15 Q. That would be the city of Nashua,
16 Merrimack, a little bit of Hollis and Amherst, is
17 that correct?

18 A. (By Mr. McCarthy) I believe that's
19 correct. There are numerous hydrologic connections
20 that can get water from the Nashua supply to many
21 places.

22 Q. That watershed doesn't provide service
23 to the towns of Epping, Newmarket, the

1 satellite --

2 A. (By Mr. McCarthy) No.

3 Q. -- the 21 satellite systems, is that
4 correct?

5 A. (By Mr. McCarthy) That is correct.

6 Q. Now, those costs of acquiring that
7 property, you would include those in the rates of
8 the customers that are served by those systems, is
9 that correct?

10 A. (By Mr. McCarthy) I don't know that to
11 be correct at the moment. I -- we have not
12 explored what the rate structure will be.

13 Q. I thought it was the city's position
14 that it would maintain the current rate structure
15 with the same rates both in and out of the city?

16 A. (By Mr. McCarthy) I think that is
17 correct. The question is whether that would be, in
18 fact, fair if anything that happened that changed
19 the apportionment of costs. And, once again,
20 without seeing an analysis of that from our
21 experts, I can't tell whether we would ask to
22 change that or not.

23 Q. So you don't know whether -- you don't

1 have a position on whether the city will continue
2 to keep the rates the same in and out of the town
3 then?

4 A. (By Mr. McCarthy) My position is that
5 the -- the same as it was previously, that in all
6 likelihood we would do that. If there was some
7 substantial change, then the question would have to
8 be re-examined.

9 Q. Now, when the aldermen are making this
10 decision as to whether to purchase this land and
11 how that affects the rates in and out of the city,
12 what assurances do the customers in those
13 satellite systems have that their interests will
14 be weighed equally to those as the citizens of
15 Nashua?

16 MR. RICHARDSON: Mr. Chairman, this is
17 outside the scope of direct. We're getting into
18 rates now in different communities.

19 I didn't prepare these witnesses on the
20 issue of what the rate structure was going to be
21 because they have submitted testimony, and that's
22 contained in the exhibits, that relates to
23 watershed protection. So to go into rates right

1 now is unfair to these witnesses.

2 MR. CAMERINO: I'm not asking -- first
3 of all, I don't believe there is a limitation on
4 what I can ask Mr. McCarthy because he's decided
5 to split his testimony into different pieces and
6 appear different times in this case. I don't
7 think it means that I have to only ask him
8 questions on the things that he wants to talk
9 about.

10 But more to the point, I'm not asking
11 him about rate making, I'm asking him about the
12 aldermen's decision-making process related to
13 watershed purchases, which is what he says one of
14 the primary reasons that this taking should be
15 approved is that the aldermen are going to decide
16 to buy watershed land.

17 We want to understand how they will
18 make that decision, whether, in fact, they will
19 make that decision, and the impact of that
20 decision on people outside of Nashua.

21 CHAIRMAN GETZ: Two pieces. My
22 understanding with -- the witness schedule today
23 shows Hersh, McCarthy, Henderson as a panel with

1 respect to the May 22nd testimony; do you agree on
2 that, or are you -- let's just deal with that one
3 at a time.

4 MR. CAMERINO: Yes.

5 CHAIRMAN GETZ: That you're going
6 beyond that testimony? You could go beyond that
7 testimony?

8 MR. CAMERINO: I think that I could,
9 first of all. But let me start with how -- but I
10 don't believe I am.

11 CHAIRMAN GETZ: Putting that aside,
12 then the other issue is is this line of inquiry
13 connected to the watershed testimony that's part
14 of May 22nd, and it appears to me that you're
15 asking questions about impacts of decisions with
16 respect to watershed decisions by the city, and
17 you're arguing that those can include issues of
18 rates and effects on customers outside of the core
19 system, and I think that's within the scope of
20 this -- of this testimony.

21 But if you're going to go beyond the
22 May 22nd testimony, then we're going to have to
23 revisit that, because I don't think that's what we

1 intended to do this morning.

2 MR. CAMERINO: All right, when we get
3 there -- I would note that that testimony, even
4 the May 22nd, is not limited to watershed, if you
5 look at it. They go beyond that.

6 BY MR. RICHARDSON:

7 Q. So my question, Mr.
8 -- Alderman McCarthy, is when you're making these
9 decisions to purchase watershed land that is for
10 the benefit of the customers of the core system,
11 what assurance do customers outside of Nashua in
12 the satellite systems have that the aldermen will
13 consider their interest and the impact on them of
14 those decisions?

15 A. (By Mr. McCarthy) I think the board
16 believes and understands that it has a
17 responsibility in this particular case to deal with
18 all of the ratepayers who are impacted, and that
19 those ratepayers outside of Nashua be afforded the
20 same ability to give input to those decisions and
21 it will be weighed the same, and that the board
22 understands that these are regional issues.

23 The board has shown willingness to do

1 that in joining and informing the regional water
2 district and is certainly concerned with the
3 development of the region as a whole. We
4 understand we don't live in a vacuum.

5 Q. But my question goes to the situation
6 where the satellite customers believe that Nashua
7 is purchasing land that doesn't need to be
8 purchased and yet they are going to be paying the
9 cost of that.

10 Is that something that the aldermen are
11 likely to pay any attention to if the aldermen are
12 trying to stop development within the city?

13 A. (By Mr. McCarthy) I don't get the last
14 part.

15 Q. In other words, the purpose of buying
16 the watershed land is to stop it from being
17 developed, right?

18 A. (By Mr. McCarthy) Yes.

19 Q. And if the customers in the satellites
20 outside of Nashua are not going to benefit from
21 that purchase, don't you think they would prefer
22 not to have those costs in their rates?

23 A. (By Mr. McCarthy) They might not, and

1 we would weigh the impact of the costs and the
2 general benefits of the system just as Pennichuck
3 would have to when it makes decisions.

4 None of those satellite systems would
5 benefit from the implementation of any of those
6 other water supply protection mechanisms you
7 conjecture exist either, and yet if the rate stays
8 the same they will pay for the implementation of
9 those in Nashua just as they would pay for
10 watershed protection.

11 Q. Well, in fact, you're talking about
12 improvements to the satellite systems, if I
13 understood you?

14 A. (By Mr. McCarthy) No.

15 Q. I'm sorry.

16 A. (By Mr. McCarthy) You said before if I
17 were faced with other mechanisms, which presumably
18 is a question that relates back to how Pennichuck
19 would do business, would I pay for those instead of
20 buying water protection lands, and the answer is
21 yes.

22 And if you did that, the satellite
23 systems, if the rate stays the same, would pay for

1 those improvements which were of no benefit to them
2 just as they would have to pay for the acquisition
3 of additional water supply protection.

4 Q. But in my question those were less
5 costly measures, weren't they?

6 A. (By Mr. McCarthy) If they are of no
7 benefit, they raise rates in the satellite systems
8 without benefit, those people will probably be --
9 will object to them. Whether they are half the
10 cost or all the cost seems immaterial to me.

11 Q. But if Nashua as its own matter of
12 policy wants to stop development in the watershed,
13 even if that's not the most cost effective means
14 of protecting the water supply, the people outside
15 of Nashua will have to pay for that choice, right?

16 A. (By Mr. McCarthy) They will have to pay
17 for whatever is done to protect water in Nashua if
18 the rate structure stays the same, yes.

19 Q. Now, what percentage of Nashua citizens
20 receive their water service from Pennichuck Water
21 Works, approximately?

22 A. (By Mr. McCarthy) Virtually all of
23 them. There are some wells, but not very many.

1 Q. So that's the same people basically
2 that pay taxes to the city of Nashua, right?

3 A. (By Mr. McCarthy) For the most part,
4 yes.

5 Q. Now, the city doesn't contend that
6 Pennichuck Water Works hasn't maintained an
7 adequate supply of clean, affordable drinking
8 water for residential and commercial purposes,
9 does it?

10 A. (By Mr. McCarthy) If your question is
11 has -- has anyone ever turned on the tap and not
12 gotten water, no, we would not consider that to be
13 the case for the most part.

14 Q. Let me show you your response to data
15 request 1-98 from Pennichuck. This is marked as
16 Exhibit 3077.

17 And the question is does Mr. McCarthy
18 or the city contend that PWW has not maintained an
19 adequate supply of clean, affordable drinking
20 water for residential and commercial purposes, if
21 so, state the basis for this contention and
22 provide all supporting documents. Answer, no.

23 MR. UPTON: And wasn't that his answer?

1 I thought that it was his answer.

2 MR. CAMERINO: That wasn't what I
3 heard, but maybe I wasn't listening closely
4 enough. I apologize if --

5 A. (By Mr. McCarthy) That was my answer.

6 Q. All right, then, I'm sorry. I wasn't
7 listening closely enough. That wasn't a cheap
8 trick, that was lack of attention. I apologize.

9 And similarly you were asked about
10 whether it's Nashua's contention that Pennichuck
11 is not providing safe and adequate service to
12 Nashua residents, and your answer to that was no?

13 A. (By Mr. McCarthy) I believe so.

14 Q. And you're not aware of anyone from the
15 city ever having filed complaints to the PUC
16 regarding Pennichuck Water Works' customer
17 service?

18 A. (By Mr. McCarthy) I'm unaware that they
19 have or haven't. I would have to guess that it has
20 happened on occasion.

21 CHAIRMAN GETZ: Mr. Camerino, you were
22 speaking to actual city employees?

23 MR. CAMERINO: People on behalf of the

1 city.

2 Q. I think what you understood when I
3 asked the question?

4 A. (By Mr. McCarthy) No, I understood you
5 to mean ratepayers. But in either case I am
6 unaware of whether they have or have not.

7 Q. Thank you. Now, am I correct that
8 you've never reviewed Mr. Fuller's testimony?

9 A. (By Mr. McCarthy) That's correct.

10 Q. So -- and I'll just remind you, when
11 we -- the company asked you a data request about
12 whether you had a position on his recommendation
13 that Tinker Road and the Manchester Street bridges
14 be closed and your response was you haven't taken
15 a position on that, is that still true?

16 A. (By Mr. McCarthy) From my understanding
17 and from his testimony this morning, I believe that
18 request was made long before I was a member of the
19 board of aldermen, and I have never seen the
20 request be made.

21 So, no, I mean, it's never been before
22 the board that I know of in my term as an alderman,
23 and therefore I haven't had a position on it.

1 Q. And the same with regard to his
2 position that it would be wise to close the
3 Everett Turnpike if that were possible?

4 A. (By Mr. McCarthy) Yes. That's the
5 first I've heard of that.

6 Q. That was a suggestion in his testimony,
7 and your position -- you don't have a position or
8 you do have a position on that?

9 A. (By Mr. McCarthy) I -- if the question
10 is should we run roads through that watershed the
11 way we have, I would answer that in a vacuum as no.

12 In the cold light of day of having
13 existing roads with a lot of traffic on them and
14 not very many alternatives, I guess I would have to
15 study that in some detail before concluding we
16 could move those roads. If there were a mechanism
17 provided to us to move them out of the water
18 supply, particularly Tinker Road, I would probably
19 support that if -- if it could be done.

20 Q. Now, Mr. McCarthy, is it fair to say
21 that there's been a lot of political infighting in
22 Nashua in recent years?

23 MR. RICHARDSON: Mr. Chairman, I don't

1 see the relevance to the watershed testimony.
2 Again, I think we're back on the prior testimony
3 that was addressed in January relating to
4 management structure. This is not related to the
5 watershed.

6 CHAIRMAN GETZ: Are you laying the
7 foundation for some question relevant to the
8 watershed inquiry?

9 MR. CAMERINO: I can explain the line
10 of inquiry very clearly. The city is putting
11 forward that if it is allowed to acquire the
12 utility it will protect the watershed better by
13 making these significant decisions to purchase
14 land, and we believe -- and these questions will
15 show -- that the board of aldermen and the city
16 government have sufficient internal
17 contentiousness that there is no assurance that
18 they will be able to carry out that kind of
19 strategy.

20 And that it's one thing to say that
21 you're going to make these decisions, it's another
22 thing to show that you have the kind of body that
23 can make those kind of significant decisions.

1 CHAIRMAN GETZ: It's a relevant line of
2 inquiry.

3 MR. RICHARDSON: I'll withdraw the
4 objection.

5 BY MR. CAMERINO:

6 Q. You may have answered that last
7 question, but I've lost it at this point. It's
8 fair to say that there's been a lot of fighting in
9 recent years among the aldermen and other city
10 bodies?

11 A. (By Mr. McCarthy) I think it's fair to
12 say that there is as much contention between the
13 city bodies of Nashua as there are in any other
14 community that I've ever examined.

15 When I travel I tend to turn on public
16 access channels and watch. The same events take
17 place virtually everywhere, and yet throughout that
18 the board has actually been reasonably united on --
19 on direction with regard to the protection of the
20 water supply.

21 Q. So it's your position that what has
22 gone on in the city of Nashua in recent years is
23 similar to what's gone on in other New Hampshire

1 communities?

2 A. (By Mr. McCarthy) Yes.

3 Q. Is it fair to say that the aldermen
4 themselves amongst themselves have been a fairly
5 contention group?

6 A. (By Mr. McCarthy) I think it's fair to
7 say that about any two politicians who are in a
8 room.

9 Q. And the aldermen have had their
10 difficulties with other bodies within the city,
11 haven't they?

12 A. (By Mr. McCarthy) There are differences
13 of agreement between the members of the board of
14 aldermen and other bodies as there typically are.

15 Q. Well, you yourself sued the city with
16 regard to a matter, didn't you?

17 A. (By Mr. McCarthy) Yes, I did.

18 Q. What was that matter?

19 A. (By Mr. McCarthy) The granting of a
20 variance of the Best Ford -- what is now the Best
21 Ford site, which was at the time under agreement
22 with the Tully Company.

23 Q. So that was a proposed development?

1 A. (By Mr. McCarthy) Yes.

2 Q. And city approved it?

3 A. (By Mr. McCarthy) Yes.

4 Q. And you thought it shouldn't have?

5 A. (By Mr. McCarthy) Correct.

6 Q. You had a plaintiff -- co-plaintiff in

7 this case, didn't you?

8 A. (By Mr. McCarthy) Yes.

9 Q. Who was that?

10 A. (By Mr. McCarthy) Director Hersh, who

11 was then Alderman Hersh.

12 Q. So you were both aldermen at the time?

13 A. (By Mr. McCarthy) Yes.

14 Q. And the city was developing land that

15 you thought shouldn't be developed?

16 A. (By Mr. McCarthy) Yes.

17 Q. Now the mayor sued the city a couple

18 years ago, didn't he?

19 A. (By Mr. McCarthy) He may have. You're

20 talking about the recall?

21 Q. Yes.

22 A. (By Mr. McCarthy) Yes.

23 Q. And then --

1 A. (By Mr. McCarthy) The mayor -- I would
2 point out that the mayor in that case sued the city
3 because the city was the legally responsible
4 vehicle for carrying out the wishes of private
5 citizens. The altern --

6 MR. UPTON: If I can, what has this got
7 to do with watershed?

8 MR. CAMERINO: I think -- first of all,
9 I've already explained, that it relates to the
10 capacity of this body to make the kinds of
11 decisions that the city is saying it will make,
12 not just words that this is what we want to do,
13 but can a body that is at war with itself make
14 these kinds of decisions.

15 CHAIRMAN GETZ: Hold on for a second.
16 I think we've established the relevance, I'm
17 concerned about when we get into cumulative or
18 repetitive. Let me ask a direct question, are you
19 talking about a mayor in the question is the
20 current mayor or previous mayor?

21 MR. CAMERINO: It's a current mayor.
22 And just to be clear, Mr. Chairman, this is one of
23 those places where I'll be very direct. It is

1 important to give six or seven very specific
2 recent examples to understand the depth of what is
3 going on in the city so that the commission can
4 determine whether it's credible that this same
5 political body can make the kinds of decisions
6 that Alderman McCarthy says they can make. I
7 really think this is critical.

8 MR. UPTON: You know, this kind of
9 stuff is precisely the sort of thing that should
10 have been directed at the mayor. It should have
11 been directed at the political panel that was
12 present before this commission to present the
13 city's position on the political issues.

14 He's trying to backdoor this. It's
15 unfair. It's unrelated to the watershed testimony
16 except very peripherally because he can now argue
17 it goes to whether or not they can make the
18 decisions about watershed.

19 It should have been directed at those
20 political members of the panel that were present
21 before the commission.

22 MR. CAMERINO: This is one of the
23 key -- all right.

1 CHAIRMAN GETZ: I'll overrule the
2 objection because I think it is relevant. This is
3 different from the general public interest
4 testimony. It does go to the -- how much weight
5 or credibility to assign this particular watershed
6 testimony.

7 But, again, let's -- though it is
8 relevant, I don't want to get into cumulative or
9 repetitive areas. So let's pursue this particular
10 question and see where we go from there.

11 BY MR. CAMERINO:

12 Q. These disagreements are not limited to
13 litigation among the city and the aldermen, is
14 that correct?

15 A. (By Mr. McCarthy) I think -- first of
16 all, I want to go back and answer the question to
17 which our counsel raised an objection.

18 Q. Please, go ahead.

19 A. (By Mr. McCarthy) The issue in that
20 particular case was that a citizen filed a petition
21 with an adequate number of signatures under the
22 city's charter to recall the mayor. The mayor --
23 the city had a responsibility under the wording of

1 the charter to go through that recall process.

2 The issue in the litigation was over
3 whether the legislature had implicitly repealed the
4 charter section of the -- that applied to recalls.

5 There was no disagreement between the
6 mayor and the board of aldermen over that question;
7 there was a disagreement over the wording of the
8 charter and what it meant that had to be settled by
9 litigation. So I think to characterize that as an
10 issue of contentiousness was in fact -- is, in
11 fact, misleading.

12 I was the president of the board at
13 that time. The board did, in fact, hire an
14 attorney to represent itself simply because we had
15 a fiduciary duty to do so because failure to appear
16 probably would have resulted in the award of
17 damages and legal fees which we -- which we needed
18 to defend ourselves against.

19 That was not an issue of contention
20 necessary over the issue itself. There was a legal
21 question that needed to be settled, and the various
22 boards involved had to do certain things as their
23 responsibilities to the charter dictate.

1 Q. Well, in fact, subsequently, even
2 though the mayor was successful, he then had to
3 seek a court order getting the city to pay his
4 fees, didn't he?

5 A. (By Mr. McCarthy) As you would in any
6 proceeding. We're not going to pay the fees
7 without a court order.

8 Q. But those differences also exist --
9 very deep differences -- among the aldermen
10 themselves, don't they?

11 A. (By Mr. McCarthy) Any time there is a
12 group of people who are passionate about what they
13 do in the community they live in there are going to
14 be differences. That doesn't say that the board is
15 dysfunctional.

16 The board, in fact, very often votes
17 unanimously or nearly unanimously on issues that
18 are of importance to the citizens of Nashua. We
19 have never failed to pass a budget or to do things
20 that are necessary in the operation of the
21 community.

22 The fact that there is -- that there is
23 disagreement is a sign of a healthy democracy in my

1 opinion.

2 Q. Let me read to you from an article in
3 the Nashua Telegraph and ask if this is normal in
4 a healthy democracy. This is between two current
5 aldermen.

6 The man is a vile man, Bolton said of
7 Teeboom, he is insulting and he lies. I do think
8 he needs medical help. You can quote me on that
9 Teeboom said of Bolton.

10 That's from the Nashua Telegraph
11 February 24, 2007. Would you characterize that as
12 normal in a political body?

13 A. (By Mr. McCarthy) I might. I haven't
14 read the paper in other communities to see that. I
15 will tell you that regardless of what the opinions
16 of those two people are, they often agree with each
17 other in meetings and that it does not detract from
18 the ability of the board of aldermen to make
19 decisions.

20 Q. Would you agree with the Telegraph
21 article characterization that the exchange between
22 Bolton and Teeboom marks a low point in what often
23 has been a political chasm amongst aldermen.

1 A. (By Mr. McCarthy) I don't -- I'm not
2 going to agree or disagree with journalistic
3 inflection of that.

4 Q. Do you recall an incident where a
5 sitting alderman was taking pictures of the mayor
6 dumping his garbage in a city Dumpster and
7 reported that to the city?

8 MR. UPTON: Mr. Chairman.

9 CHAIRMAN GETZ: Mr. Camerino, I think
10 we've gone far enough down this line of inquiry.

11 MR. CAMERINO: Mr. Chairman, these are
12 in exhibits -- I understand it is distasteful, but
13 I do believe that this is at a level that is
14 highly unusual.

15 And as distasteful as it is -- and it's
16 not comfortable for me in this situation to bring
17 it forward -- it is very important for the
18 commission to understand that this political body
19 that wants to acquire this water system is not
20 like other New Hampshire cities, and the decision
21 the commission is going to make here is
22 irreversible. This same body is the one that's
23 going to make these decisions once if the

1 commission were to allow them to acquire this --

2 MR. UPTON: From what he just said it
3 is so obvious that he is not directing this at
4 watershed but at the whole political process, and
5 he's gotten way afar from the connection of this
6 stuff to the acquisition of land by this -- by the
7 city in the watershed. It's --

8 CHAIRMAN GETZ: Well, again, Mr. Upton,
9 I think there is the connection. I think it's to
10 the point where --

11 MR. UPTON: Connection?

12 CHAIRMAN GETZ: There is a connection
13 as I've stated at least twice so far in the
14 relevant line of inquiry about the credibility of
15 the testimony in terms of whether they can
16 accomplish what they say they can, and I think
17 it's a fair line of inquiry.

18 However, I think the point has been
19 made a couple of times, and I'm just not seeing
20 the necessity of continuing down this path.

21 The one thing I did have, Mr. Camerino,
22 you started to say something about this
23 information is in exhibits?

1 MR. CAMERINO: Yeah, I want to give
2 you --

3 CHAIRMAN GETZ: Well, then, you're
4 going to be able to -- if they're exhibits that
5 are going to be entered into the record then --
6 you've already stated your position here, you can
7 pursue it further in brief at the end of the case.
8 I think we've got enough testimony on this
9 particular line. So I would say move on.

10 MR. CAMERINO: I will, Mr. Chairman. I
11 am going to give the references. I hope the chair
12 can appreciate that just because there's material
13 in documents in this case, we understand the
14 commission's not going to know without some
15 highlighting in these hearings which parts to look
16 at, and, in fact, it isn't possible to read all of
17 that, and that I thought was the purpose of the
18 live testimony.

19 And I do mean it sincerely that it is
20 uncomfortable for me to address something like
21 this in this hearing. I want to give you the
22 specific references in the hope that you will look
23 at them.

1 In particular if you would look at
2 Exhibit 3242, and the pages that I was going to
3 reference specifically, although it's not a very
4 long document, are pages 1 through 3 with regard
5 to some litigation that the city had internally.

6 Page 4 with regard to -- and page 6
7 with regard to disputes within the city and the
8 strong feelings involved. Page 8 related to
9 outstanding contracts that were approved and then
10 disproved -- approved by the negotiating team and
11 then turned down by the aldermen, or approved by
12 the aldermen and vetoed by the mayor.

13 CHAIRMAN GETZ: So all this is within
14 Exhibit 3242, I don't think we have to go through
15 the substance of it.

16 MR. RICHARDSON: I just want to object
17 that the commission has already ruled that the
18 additional evidence at this point is cumulative.
19 I would object to these documents being offered
20 into the record at this point, because he's
21 already asked and answered the question, and we're
22 just going over cumulative information.

23 CHAIRMAN GETZ: Well, I've already

1 ruled on this. I'm going to overrule that
2 objection. Let's move on.

3 MR. CAMERINO: Thank you, I'm finished.
4 Ms. Knowlton is going to question Ms. Hersh.

5 CHAIRMAN GETZ: Do I take it that means
6 that there's not going to be any questions for
7 Mr. Henderson?

8 MS. KNOWLTON: We have none.

9 CROSS-EXAMINATION

10 BY MS. KNOWLTON:

11 Q. Good morning, Ms. Hersh.

12 A. (By Ms. Hersh) Good morning.

13 Q. I understand that one of the primary
14 reasons you want the city of Nashua to take
15 Pennichuck Water Works is that you think Nashua
16 would do a better job protecting the watershed, is
17 that correct?

18 A. (By Ms. Hersh) I do.

19 Q. And one of your primary strategies to
20 protect the watershed is to acquire property in
21 the watershed so that it won't be developed,
22 correct?

23 A. (By Ms. Hersh) That's correct.

1 Q. Not all the watershed is in Nashua, is
2 it?

3 A. (By Ms. Hersh) No.

4 Q. In fact, only about 17 percent of the
5 Pennichuck watershed is in Nashua, right?

6 A. (By Ms. Hersh) That's correct.

7 Q. And some of the watershed is in
8 Merrimack?

9 A. (By Ms. Hersh) That's correct.

10 Q. And Merrimack opposes the taking of
11 Pennichuck Water Works, doesn't it?

12 A. (By Ms. Hersh) From my understanding.

13 Q. Is it possible that if the city were
14 given the right to take the assets of Pennichuck
15 Water Works, that the city of Nashua would be
16 attempting to purchase property in Merrimack to
17 protect the watershed?

18 A. (By Ms. Hersh) I think that it would be
19 something that we would have to look at
20 holistically as far as what individual pieces of
21 property are important to make sure that we protect
22 the watershed.

23 Q. But if there was a parcel that the city

1 determined was important in Merrimack, that might
2 be something that the city would pursue?

3 A. (By Ms. Hersh) That's possible.

4 Q. And if the city was not able to
5 purchase that property voluntarily in Merrimack,
6 the city would have the power of eminent domain to
7 take that property, right?

8 A. (By Ms. Hersh) That's what I
9 understand.

10 Q. So Nashua would be able to use the
11 power of eminent domain to take the actions that
12 it felt was appropriate with regard to the
13 watershed, right?

14 A. (By Ms. Hersh) yes.

15 A. (By Mr. McCarthy) As anticipated by
16 the legislature, I would add.

17 MS. KNOWLTON: I'm focusing my
18 questions right now on Ms. Hersh, thank you.

19 CHAIRMAN GETZ: Mr. McCarthy, I'm not
20 sure that you were here earlier in the week, but
21 the regimen that we're using is that the attorney
22 can direct -- if chooses -- direct the question
23 directly to a particular witness or to the panel.

1 If she's only directing it to a
2 witness, then that witness can answer. If your
3 attorney thinks he wants to follow up with
4 redirect then he can ask you something later, or
5 we can ask something later.

6 MR. MCCARTHY: I'm sorry, Mr. Chairman.
7 My previous appearance before this board when we
8 had a panel we allowed follow-up answers from
9 other members of the panel other than the one to
10 whom the question was directed.

11 CHAIRMAN GETZ: That's why I think that
12 the attorney may make it clear in the first
13 instance, and I think her intent is to just ask
14 questions of Ms. Hersh.

15 MS. KNOWLTON: That is my intent. All
16 my questions from this point forward will be
17 focused on Ms. Hersh.

18 BY MS. KNOWLTON:

19 Q. Are you able to see on the computer
20 screen the document that I'm showing, can you see
21 that adequately?

22 A. (By Ms. Hersh) I can see that fairly
23 well.

1 Q. Okay, I'm looking at RSA -- this is our
2 statutes here in New Hampshire -- RSA 3830,
3 protection of water supply, do you see that?

4 A. (By Ms. Hersh) Yes.

5 Q. And if you would take a minute to read
6 that.

7 A. (By Ms. Hersh) Yes.

8 Q. So under RSA 3830, as we see here up on
9 the screen, as a municipal utility, Nashua would
10 have the power of eminent domain, right?

11 MR. UPTON: That calls for a legal
12 conclusion; she's not a lawyer, she's not got
13 legal training. I don't know how she can answer
14 it.

15 CHAIRMAN GETZ: Let's preface this
16 question. I'm assuming you're not asking for a
17 legal opinion?

18 MS. KNOWLTON: No, I'm not.

19 CHAIRMAN GETZ: You're asking her
20 opinion --

21 MS. KNOWLTON: Her lay opinion.

22 CHAIRMAN GETZ: -- as a layperson what
23 she thinks that means?

1 MS. KNOWLTON: Exactly.

2 CHAIRMAN GETZ: With that proviso,
3 please proceed.

4 BY MS. KNOWLTON:

5 Q. As a layperson, based on your review of
6 this here, do you see that the city would have the
7 power of eminent domain to take property needed to
8 protect the purity of the water that the city of
9 Nashua be supplied?

10 A. (By Ms. Hersh) I do. I also see that
11 Pennichuck Corporation also has the power to take
12 property by eminent domain in Nashua and Merrimack
13 and the other communities in which they operate as
14 a water company.

15 Q. And the statute RSA 3830 that we're
16 looking at doesn't provide any role for the Public
17 Utilities Commission in that process of eminent
18 domain?

19 A. (By Ms. Hersh) This is really beyond my
20 scope. I mean, I can read this directly, but you
21 can read this directly and draw that connection,
22 too.

23 Q. Let's just take a second and read it.

1 If you would look with me on the screen, and the
2 words that I see, it says any municipality or
3 municipal water company supplying water to the
4 public for domestic use shall have the power to
5 take by the exercise of the right of eminent
6 domain any property needed to protect the purity
7 of the water so supplied.

8 Upon petition to the Superior Court or
9 in the case of a village district the board of
10 selectmen of the town or towns within which the
11 district is situated and proceeds thereon as in
12 case of a petition for the layout of highway. Did
13 I read that correctly?

14 A. (By Ms. Hersh) That's correct.

15 Q. And so there's no words in there in
16 that section that referenced the Public Utilities
17 Commission, can we agree on that?

18 A. (By Ms. Hersh) Yes.

19 Q. Now, your view is that you would prefer
20 to pay higher rates for water and have your -- and
21 have the resources protected in the long term,
22 correct?

23 A. (By Ms. Hersh) I never said -- made any

1 comments about rates.

2 Q. Okay, let's pull up your deposition.

3 Do you recall being deposed in this case?

4 A. (By Ms. Hersh) Yes, I do.

5 Q. Okay, let's go to page 127 from your
6 deposition. If you would take a minute and look
7 at what's up on the screen, which is page 127 from
8 your deposition, lines 1 through 7. If you would
9 read that out loud, please, I would appreciate it.

10 MR. UPTON: Can we see the question?

11 MS. KNOWLTON: Sure, let's go to the
12 page before. Sorry, page 126.

13 Q. And I'll read the question.

14 Mr. Donovan was taking your deposition, and his
15 question was, well, because you're so concerned,
16 as you've articulated very eloquently, about the
17 need to have the resources controlled, is that
18 effort worth it, even if the price that would be
19 paid would be high enough that it would cause
20 higher rates than under the current arrangements.

21 Now, let's go to your answer, and if
22 you would read that out loud, please.

23 A. (By Ms. Hersh) If you're asking me

1 whether or not I would prefer to pay higher rates
2 so that my resources were protected in the long
3 term and as opposed to paying lower rates and not
4 having my resources protected in the long term,
5 yes, I would prefer to pay higher rates and not --
6 and have my resources protected in the long term.

7 Q. Is that still your opinion today?

8 A. (By Ms. Hersh) That is still my opinion
9 today.

10 Q. And have you met with any low income
11 groups to discuss whether they share your view on
12 this?

13 A. (By Ms. Hersh) Any low income groups?

14 Q. Low income groups that would be paying
15 rates, water utility rates, whether they would be
16 willing to pay more to protect the -- higher water
17 rates to protect the resources over the long term?

18 A. (By Ms. Hersh) I have not met with any
19 groups with regard to water rates. I'm not sure
20 what low income group means, but.

21 Q. I mean by people that are limited
22 means, financial means.

23 A. (By Ms. Hersh) No.

1 Q. Okay. Are you aware that in 1980 the
2 transfer of a portion of land out of Pennichuck
3 Water Works was approved by this commission here?

4 A. (By Ms. Hersh) Yes.

5 Q. Did you disagree with that decision?

6 A. (By Ms. Hersh) Yes.

7 Q. Why did you disagree with that?

8 A. (By Ms. Hersh) Well, I disagreed -- at
9 that time it was approved by Sasaki -- it was
10 recommended the Sasaki Associates -- and I want to
11 say I did not live in Nashua in 1980 and I was not
12 familiar with what was going on certainly in Nashua
13 at that time -- but-- but in all of the significant
14 amount of information with regard to watershed
15 protection and what's important to -- to maintain,
16 it had come to light that the more land that you
17 protect in your water -- in your watershed, the
18 better off your watershed is.

19 There's been lots of studies about
20 impervious surfaces and imperviousness of
21 watersheds. It's all right there in Pennichuck's
22 watershed management plan about the importance of
23 levels of imperviousness and preventing levels of

1 imperviousness.

2 So when you sell off land that's in the
3 watershed and that land is developed and there's an
4 increase in impervious surface, then that is a
5 detriment to the watershed.

6 Q. Are you aware that the New Hampshire
7 Supreme Court affirmed the commission's decision
8 in that case?

9 A. (By Ms. Hersh) I am not aware one way
10 or the other.

11 Q. Are you aware that the city's position
12 that the proceeds from that ultimate sale of that
13 land should have gone to PWW's customers?

14 A. (By Ms. Hersh) Yes.

15 Q. And if I told you that those revenues
16 from the sale of the land provided the source of
17 capital to later expand Pennichuck Water Works'
18 service outside of Nashua, would it be your
19 opinion that that was a bad thing?

20 A. (By Ms. Hersh) That's a very -- to me
21 that's a very obscure question.

22 Q. But why don't you answer it yes or no.

23 MR. RICHARDSON: She's calling for the

1 witness to speculate.

2

3 CHAIRMAN GETZ: Is it that you don't
4 understand --

5 A. (By Ms. Hersh) Maybe you need to ask
6 the question again.

7 CHAIRMAN GETZ: What I'm trying to
8 understand is do you understand the question or
9 are you just saying --

10 MS. HERSH: I'm saying -- if I
11 understand the question correctly, and I would
12 prefer to have it reread -- I'm saying that there
13 are assumptions made in that that are leading me
14 to -- I can't answer that yes or no.

15 MS. KNOWLTON: Maybe I can ask it a
16 different way.

17 BY MS. KNOWLTON:

18 Q. Have you been here in the hearing room
19 since the hearing commenced this morning to hear
20 Mr. Fuller's testimony?

21 A. (By Ms. Hersh) I did hear Mr. Fuller's
22 testimony.

23 Q. And Mr. Fuller testified that he didn't

1 think it was a good idea that the money that was
2 obtained from the sale of that Pennichuck Water
3 Works land was used to buy water systems outside
4 the city of Nashua, do you recall hearing that?

5 A. (By Ms. Hersh) I do recall him saying
6 that.

7 Q. And would you agree with Mr. Fuller's
8 opinion?

9 A. (By Ms. Hersh) My opinion is that I --
10 that the money that was -- that the land that was
11 sold and the money that was generated from that
12 land should have been used first and foremost in
13 protecting -- in buying the remainder of the buffer
14 that Pennichuck Corporation, Pennichuck Water Works
15 did not own, that they in their own reports since
16 the Sasaki report and continuing have said are
17 important to the protection of the drinking water
18 supply.

19 So the fact that they didn't own the
20 buffers around Bowers Pond and did not buy those
21 buffers around Bowers Pond even though they could
22 have bought them at any time with eminent domain or
23 gone and knocked on the door and asked the person

1 who already owned it who sold it to somebody else
2 for development, those were responsibilities of
3 Pennichuck that they should have taken the money --
4 which would have been a small amount of money
5 relative to the amount of money that they made
6 selling that land -- they should have bought the
7 buffers around the pond as was recommended by their
8 own reports. That's my contention.

9 It's not relevant to the water supplies
10 in the other communities across the state. If
11 Pennichuck had been able to put into place all of
12 the things that they have recommended themselves to
13 do to protect this drinking water supply and then
14 were able to also work to protect other water
15 supplies across the state, that's great. That's
16 not relevant to the other water supplies.

17 Q. Is it your view that no profits
18 generated from service to customers in Nashua
19 should be used to expand Pennichuck Water Works'
20 service outside the city's confines?

21 A. (By Ms. Hersh) I've already explained
22 and answered that question; it's not relevant.
23 It's about making sure -- once we've protected and

1 made sure that our resource is protected, if
2 there's other investments that are appropriate to
3 be made, that's fine. But our resources have not
4 been protected.

5 Q. So let's start with the city of Nashua,
6 that should be the first priority?

7 A. (By Ms. Hersh) That's fine. Yes.

8 Q. Do you know who Karen White is?

9 A. (By Ms. Hersh) Yes.

10 Q. What is her title or position?

11 A. (By Ms. Hersh) She was -- she's retired
12 now. She was a planning director in Bedford.

13 Q. Have you ever worked with her?

14 A. (By Ms. Hersh) She was the person who
15 administratively was responsible for the formation
16 of the regional water district.

17 Q. And do you have an opinion of her in
18 her professional capacity?

19 A. (By Ms. Hersh) I've always had a high
20 respect for her.

21 Q. Ms. Hersh, is it your opinion that it's
22 not good policy for Nashua to be operating water
23 systems far-flung from its core?

1 A. (By Ms. Hersh) Repeat the question?

2 Q. Is it your opinion that it is not good
3 policy for the city of Nashua to be operating
4 water systems far-flung from its core?

5 A. (By Ms. Hersh) I guess I don't have an
6 opinion.

7 Q. Okay, let's take another look at your
8 deposition, page 131, line 17 through 20.

9 A. (By Ms. Hersh) Uh-hum.

10 MR. RICHARDSON: Mr. Chairman, just for
11 the record, I'd like to make the same objection
12 that was made during Mr. Camerino's
13 cross-examination. If this is related to the
14 watershed I think it's a fair question, but I
15 think we're going into the operation of the water
16 system itself which is not what I've prepared this
17 panel for today.

18 CHAIRMAN GETZ: Well, I have question
19 about the --

20 MS. KNOWLTON: This is my last
21 question.

22 CHAIRMAN GETZ: But the relevance is to
23 the watershed testimony?

1 MS. KNOWLTON: This is her -- first of
2 all, this is testimony that she's given under oath
3 as part of this case, and I do think that it's
4 relevant to the watershed issue because what she's
5 just testified to is that she thinks that the
6 number one priority in terms of the city of Nashua
7 should be investing in itself as to the watershed,
8 and there could be other watershed issues
9 affecting these 21 other communities.

10 I think we have a right to know and the
11 commission should hear whether or not she thinks
12 as a representative of the city of Nashua that it
13 makes sense for Nashua to be operating and
14 investing in those communities with whether it's a
15 watershed or otherwise. And this is her only day
16 on the stand. She hasn't testified --

17 CHAIRMAN GETZ: I understand that. But
18 back to your representation that this is your last
19 question --

20 MS. KNOWLTON: This literally is my
21 last question. I'm at the end of my outline. I
22 will sit down where she gives her answer.

23 CHAIRMAN GETZ: Let's hear the

1 question.

2 BY MS. KNOWLTON:

3 Q. So my question is does this refresh
4 your recollection about your position on the
5 city's operation of water systems far-flung from
6 its core?

7 A. (By Ms. Hersh) It does, and I'm reading
8 that testimony; I'm also reading the testimony
9 that's directly above it, and I'm reading the
10 testimony that is also directly below it. Which
11 says -- the question was that's why it's a good
12 idea for the district to handle that, and I said
13 that is correct.

14 Q. And are you aware that the regional
15 water district is not before this commission as
16 part of this case?

17 A. (By Ms. Hersh) I am aware that the
18 regional water district is not before this
19 commission, but I am also aware that eight
20 communities signed on to that regional water
21 district, and we worked very hard to come up with a
22 charter that is agreeable to everyone, and that
23 there is provisions, there are provisions to make

1 sure that the entire Pennichuck system is taken
2 care of.

3 MS. KNOWLTON: And I move to strike
4 that testimony as to the district, and I have no
5 further questions for this witness.

6 MR. RICHARDSON: I object to that
7 motion.

8 CHAIRMAN GETZ: And your basis?

9 MR. RICHARDSON: I think it was a fair
10 response to the question that was asked.

11 CHAIRMAN GETZ: We're going to allow
12 the testimony because it seems to be responsive to
13 the context of the underlying question that was
14 asked and pointed to in the deposition.

15 MS. KNOWLTON: Then may I ask one more
16 question? And I apologize, that really was my
17 last question and I can show you my outline. But
18 if that's going to be her testimony, the district
19 is not, in fact, part of this case.

20 BY MS. KNOWLTON:

21 Q. And I guess I need to know that given
22 the fact that the district is not part of the
23 case, is it still your opinion that it's not in

1 the city's interest to operate systems that are
2 far-flung from its core?

3 A. (By Ms. Hersh) If you look at the
4 testimony above the one you particularly outlined,
5 I said it is not the primary responsibility, and
6 that's what I said.

7 CHAIRMAN GETZ: Well, I think her
8 question was given the fact -- your original
9 answer in the deposition was in the context of the
10 possibility of the district.

11 MS. HERSH: That's correct.

12 CHAIRMAN GETZ: As I understand, her
13 question is without the -- recognizing the
14 district is not in question here, do you still
15 take the same position.

16 MS. HERSH: That same position that the
17 primary responsibility of where we -- of this
18 whole effort would be for the protection of the
19 Nashua's drinking water supply, is that what
20 you're asking?

21 BY MS. KNOWLTON:

22 Q. The question was whether it's good
23 policy. Those were your words. In the absence of

1 the district, is it good policy for Nashua to be
2 operating systems far-flung from the core. It's
3 just a yes or no question.

4 A. (By Ms. Hersh) It's really not a yes or
5 no question.

6 Q. Well, I'd ask you to answer it yes or
7 no, and then if you'd like to explain, but I'd
8 like a yes or no, please.

9 CHAIRMAN GETZ: Well, it could be yes
10 or, no, or I don't know.

11 A. (By Ms. Hersh) Okay, then I'll say I
12 don't know.

13 MS. KNOWLTON: I have nothing further
14 for this witness. Thank you.

15 CHAIRMAN GETZ: Mr. Eckberg, does the
16 OCA have questions for this panel?

17 MR. ECKBERG: Thank you, Mr. Chairman.
18 No, the OCA has no questions for this panel.

19 CHAIRMAN GETZ: Ms. Thunberg.

20 MS. THUNBERG: Thank you, Mr. Chairman.
21 I just wanted to line up exhibits.

22 CROSS-EXAMINATION

23 BY MS. THUNBERG:

1 Q. Thank you. Good morning, members of
2 the panel.

3 My first question, Ms. Hersh and
4 Alderman McCarthy, I believe you testified today
5 that it is one of the benefits of this taking that
6 the city has put forth is that the city will be a
7 better watershed steward, is that correct?

8 A. (By Ms. Hersh) Yes.

9 A. (By Mr. McCarthy) Yes.

10 Q. And Alderman McCarthy and Ms. Hersh and
11 Mr. Henderson, is it also true in your testimony
12 that was filed in May of 2006 that you argue that
13 Pennichuck's development has degraded water
14 quality in the Pennichuck Brook watershed?

15 A. (By Ms. Hersh) Yes.

16 A. (By Mr. McCarthy) Yes.

17 A. (By Mr. Henderson) Yes.

18 Q. And Mr. Alderman McCarthy, a question
19 directed just to you, is that is it also correct
20 that you believe that all of the Southwood
21 Development, even though it may have been
22 completed prior to the city's water supply
23 protection ordinance would comply with the buffer

1 requirements of that ordinance?

2 A. (By Mr. McCarthy) I believe that is the
3 case.

4 Q. Okay, thank you.

5 A. (By Mr. McCarthy) I would hasten to
6 point out that that Southwood Development in that
7 case refers to, I believe, four buildings on one
8 piece of parcel M, the rest of parcel M having been
9 primarily purchased by the city.

10 MS. THUNBERG: Can I please have
11 Exhibit 3228, page 4, pulled up, please. I should
12 ask my question before I pull this exhibit up.
13 Can I have Exhibit 1012, page 14? Thank you.

14 BY MS. THUNBERG:

15 Q. I'd like to draw your attention to
16 lines 13 and 14. And Alderman McCarthy and
17 Ms. Hersh, is it -- this sentence states that
18 Pennichuck strongly and publicly opposed its
19 adoption into law, and you're talking -- this part
20 of your testimony you're talking about the water
21 supply protection ordinance, is that correct?

22 A. (By Mr. McCarthy) Yes.

23 A. (By Ms. Hersh) Yes.

1 MS. THUNBERG: Next can I have
2 Exhibit 3228 pulled up, please. And if you can
3 highlight the first paragraph, please, Pennichuck
4 Water Works.

5 Q. And, Mr. McCarthy, can I please have
6 you read first full paragraph?

7 A. (By Mr. McCarthy) Pennichuck Water
8 Works supports the current amended version of the
9 water supply protection ordinance. We are
10 particularly pleased with provisions that will
11 promote improvement in the management of storm
12 water within the watershed.

13 Q. And would you agree, Alderman McCarthy,
14 that that paragraph states that Pennichuck
15 supports the water supply protection ordinance at
16 that time?

17 A. (By Mr. McCarthy) Yes, and that
18 paragraph is directly in conflict with a
19 conversation I had with Mr. Arel days before the
20 water supply protection district ordinance passed
21 the board of aldermen.

22 MS. THUNBERG: The staff has no further
23 questions. Thank you.

1 CHAIRMAN GETZ: Mr. Reinemann?

2 MS. REINEMANN: No questions.

3 CHAIRMAN GETZ: Mr. Alexander?

4 MR. ALEXANDER: No questions.

5 CHAIRMAN GETZ: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. RICHARDSON:

8 Q. Alderman McCarthy, and Ms. Hersh as
9 well, Attorney Camerino directed questions to you,
10 and I'd like to ask the panel about, what was the
11 most cost effective treatment or watershed
12 protection technique.

13 And you explained the city's
14 involvement in that, and I'd like to say -- I'd
15 like to ask you if the city will make those
16 decisions in a vacuum?

17 A. (By Mr. McCarthy) Absolutely not.

18 Q. I assume you'll rely on someone's
19 technical expertise in that area?

20 A. (By Mr. McCarthy) Yes.

21 Q. And could you give me an example of who
22 that might be?

23 A. (By Mr. McCarthy) I would imagine it

1 would be someone from the engineering firm who we
2 engaged to consult on the operation of the water
3 system.

4 Q. And do you see anyone here in this
5 room?

6 A. (By Mr. McCarthy) There would be
7 someone on that panel with us.

8 Q. And, in fact, Mr. Henderson, am I
9 correct in understanding that's the purpose of
10 your testimony, your involvement in this
11 proceeding?

12 A. (By Mr. Henderson) That's correct.

13 Q. And could you tell me, Mr. Henderson,
14 is it your intent, or have you ever been asked to
15 limit your watershed recommendations to the Nashua
16 core system?

17 A. (By Mr. Henderson) Absolutely not.

18 Q. In fact it would be prudent to -- well,
19 would it be prudent for the city to look at a
20 broader picture and consider some of the satellite
21 systems as well?

22 A. (By Mr. Henderson) By some of the
23 satellite systems do you mean the separate ground

1 water supply systems that are not on the core
2 system, is that what you're --

3 Q. That is correct.

4 A. (By Mr. Henderson) I think that would
5 be -- you know, a holistic method and approach to
6 watershed protection and treatment is the -- the
7 basis of good water supply planning.

8 Q. And is that the basis that you intend
9 to proceed upon in this proceeding?

10 A. (By Mr. Henderson) Absolutely.

11 Q. Now, I'd like to pull up --

12 MR. RICHARDSON: Could we switch the
13 system over, please? Thank you.

14 Q. Well, let me ask before we move on,
15 there were questions about political infighting
16 that were directed, really, to both of you. Did
17 political --

18 MR. RICHARDSON: If we could pull up
19 Exhibit 1016B.

20 Q. Did the political infighting prevent
21 the city from acquiring the land that's shown on
22 this exhibit?

23 A. (By Mr. McCarthy) No, it did not. I

1 think one of the only cases where the infighting
2 may, in fact, have resulted in a bad result for the
3 water supply, as was mentioned before, when the
4 variance was issued on the site where Best Ford is,
5 Mrs. Hersh and I had filed suit and the variance
6 was, in fact, voluntarily relinquished as part of
7 that case by the applicant.

8 Subsequent to that, Mr. Densberger, who
9 was then Alderman Densberger as well, introduced
10 legislation to rezone that site from industrial to
11 commercial and allow an identical development for a
12 different user than the one that originally applied
13 for the variance, and shepherded that legislation
14 through, which is why we find the Best Ford site on
15 that site at the moment.

16 Q. And, Ms. Hersh, if you have anything to
17 add to this, feel free to. How did the city
18 collaborate to acquire these properties?

19 A. (By Mr. McCarthy) In the cases where
20 land became available, Director Hersh and I put in
21 legislation to -- sponsored legislation to find the
22 funds for that. And there was testimony earlier
23 that that was done by the conservation commission.

1 While the conservation commission was
2 consulted on it, and while the source of some of
3 the funds was approved by them, virtually all of
4 those acquisitions started by legislation that was
5 put to the board of aldermen, with the exception
6 that ones that were requested as part of a
7 development that the conservation commission was
8 looking at lands in -- in trade for other lands.

9 So the majority of the acquisition of
10 the large parcels, the 200 acre -- 265 acre piece,
11 that was an initiative of the board of aldermen to
12 fund and to purchase that land using a combination
13 of funds from various sources.

14 A. (By Ms. Hersh) And to add to that,
15 there was additional acquisitions that were also
16 approved, another hundred acres was approved -- not
17 only approved by the board of aldermen partly for
18 the funding that was acquired for the acquisition
19 of that first 250 acres, but a subsequent hundred
20 acres and another 80 acres that was donated to the
21 Audubon Society, not only did they require approval
22 from the board of aldermen for funding, but they
23 also were approved by DES because we were able to

1 use water supply funding from DES as part of that
2 acquisition cost as well as LCHIP funding.

3 So there's a significant number of
4 funding sources and approvals that were -- to
5 acquire that because people recognize the
6 importance of it.

7 Q. You both jumped way ahead of my
8 question, and that was to identify those
9 acquisitions as shown on Exhibit 1016B, page 13, I
10 believe.

11 Just to follow up on this. So the city
12 collaborated with other entities to acquire 483
13 acres of watershed land?

14 A. (By Ms. Hersh) That's correct.

15 Q. And how many acres do you think
16 Pennichuck collaborated to acquire during this
17 time period?

18 A. (By Ms. Hersh) Pennichuck didn't
19 acquire any -- has not acquired any land. There
20 was one small parcel that Pennichuck acquired and
21 then they subdivided it and sold half of it for a
22 house lot, and all of that was within 300 foot
23 buffer of Bowers Pond. Not even Pennichuck Brook

1 or not even a tributary, but of Bowers Pond.

2 Q. I'd like to show you a document that
3 is -- from the deposition of Eileen Pannetier
4 describing Pennichuck's watershed management.

5 MR. RICHARDSON: And if we could turn
6 to -- was it page 44? If we could highlight the
7 -- the question beginning at line 17.

8 MR. CAMERINO: Mr. Chairman, it seems
9 to me that now Mr. Richardson is trying to put
10 into testimony what he could have put in in his
11 reply testimony. Ms. Pannetier filed testimony --
12 I've lost track now -- but it was January or May
13 of -- January of 2006.

14 The city has had ample opportunity to
15 respond to that, and I didn't ask anything at all
16 about Ms. Pannetier's testimony, nor did
17 Ms. Knowlton, and I think this goes way beyond the
18 scope of proper redirect.

19 MR. RICHARDSON: I'll withdraw it and
20 rephrase the question.

21 BY MR. RICHARDSON:

22 Q. If I was to represent to you that
23 Ms. Pannetier stated in his deposition --

1 MR. CAMERINO: Come on, Mr. Chairman.

2 MR. RICHARDSON: I'm going to make this
3 very relevant. Last question.

4 CHAIRMAN GETZ: Let him get it out.
5 I'm still struggling with the relevance.

6 MR. CAMERINO: This is a witness who is
7 coming next week, though.

8 BY MR. RICHARDSON:

9 Q. If I were to represent to you that
10 Pennichuck had done essentially no watershed
11 studies or watershed work outside of the core
12 system, anything that the city were able to do as
13 Mr. Henderson identified in the satellite systems
14 would be a benefit to those systems, wouldn't it?

15 CHAIRMAN GETZ: I think I understand
16 the relevance as a general matter. I'm not sure
17 that I really follow the question. I don't know
18 if the witness followed the question.

19 MR. RICHARDSON: I'll state it more
20 simply.

21 MR. CAMERINO: Mr. Chairman, this is
22 another example of I mentioned the satellite --
23 you know, the duct comes down, I say the word, and

1 now everything that's related to satellites is
2 appropriate for redirect. This is relating to
3 questions on cross.

4 CHAIRMAN GETZ: Mr. Camerino, what I
5 think it is, he's trying to respond to your line
6 of inquiry concerning what -- how -- how decisions
7 regarding the watershed may affect systems outside
8 of the core.

9 MR. RICHARDSON: And it's my
10 understanding from Ms. Pannetier's deposition, she
11 stated Pennichuck has done no watershed planning
12 or studies that she is aware of outside of the
13 core system. So anything that these people do is
14 a benefit.

15 CHAIRMAN GETZ: Well, what -- I think
16 you need to direct your question to what Ms. Hersh
17 knows about the question, not about what she may
18 or may not know about what Ms. Pannetier may or
19 may not have said.

20 MR. CAMERINO: And his question is
21 premised on a characterization of Ms. Pannetier's
22 testimony. She doesn't work for Pennichuck. See
23 the question? It refers to a company. She works

1 for another company. So there's a whole
2 foundation that's missing here.

3 MR. RICHARDSON: Could we have the next
4 page, please.

5 MR. CAMERINO: We're just going down a
6 line that I think is totally inappropriate for
7 direct.

8 CHAIRMAN GETZ: You're wandering far
9 afield from redirect of these witnesses. You're
10 going to have to give me -- draw up a much -- a
11 line for me to allow something.

12 MR. RICHARDSON: The clear answer is
13 they raised the inference that the city of Nashua
14 would do no work outside its core system because
15 they would only be concerned about the city
16 Nashua.

17 I would like to point out to them that
18 if in fact they were able to do anything as
19 Mr. Henderson outlined it would be a benefit to
20 those satellite customers, and it's better than
21 what Pennichuck does now.

22 CHAIRMAN GETZ: Well, if you're going
23 to pursue that line, it's better when you're doing

1 cross-examination of the company's witnesses
2 rather than trying to do it through this witness
3 who has no direct knowledge of what this third
4 party, Ms. Pannetier, has said. Let's move on.

5 MR. RICHARDSON: I'll make that as an
6 offer of proof, then, and I'll move on.

7 I have no further questions. Thank
8 you.

9 CHAIRMAN GETZ: All right, then, we
10 will excuse this panel of witnesses. I think
11 that's all of the direct and cross-examination,
12 redirect. Thank you very much.

13 (Discussion off the record.)

14 CHAIRMAN GETZ: All right, it's 11:30.
15 Under our normal schedule we wouldn't be taking a
16 break until 12:30, but I think what we would do
17 next is hear from Ms. McHugh, but I think a
18 predicate to her testimony is whether we're going
19 to allow in the information in her additional
20 filing of August 27.

21 What I would propose is we hear from
22 Ms. McHugh why she thinks it should be let in,
23 hear any objections to that, then we would take a

1 lunch break, make our decision over lunch whether
2 to allow the additional material into the record,
3 and then begin with her testimony after lunch, and
4 then after that move into the -- trying to finish
5 off the Walker/Sansoucy panel.

6 Does anybody have any concern about
7 that process?

8 MR. UPTON: My only concern is one of
9 time, that we run out of time for the Sansoucy
10 panel.

11 CHAIRMAN GETZ: Well, we're going to
12 have to address that anyway. Are we're going to
13 take a lunch break --

14 MR. UPTON: I just can't imagine that
15 anybody is going to have very many questions of
16 Ms. McHugh, and so that if we can deal with her
17 issue now, it might make sense to get it behind
18 us.

19 CHAIRMAN GETZ: Well, all right, and
20 that's helpful; let's establish that. Is there
21 going to be cross-examination for Ms. McHugh?

22 MS. KNOWLTON: I don't have any
23 cross-examination of Ms. McHugh, so whatever

1 Mr. Upton proposes is fine with me.

2 CHAIRMAN GETZ: Okay, then let's give
3 Ms. McHugh an opportunity to argue why these new
4 materials filed on August 27 should be part of the
5 record.

6 MS. MCHUGH: Your Honor, my view of the
7 first testimony was about the legacy of the people
8 that donated the land and also the legacy from
9 here on, under city ownership.

10 It is consistent with my testimony.
11 It's not as though I introduced a whole new line
12 of thought. I'm supporting what I didn't have the
13 opportunity to do it ahead of time. It's not like
14 I had the information and I was sitting on my
15 hands.

16 I produced the information after to
17 support a statement that I didn't have at the
18 time. I have no staff, I'm just a person in
19 Nashua, who's interested and passionate about this
20 topic, and so I believe it should be part of the
21 record, and I'm asking you to include it.

22 It's more supportive and producing the
23 evidence to support a point that I made, and it's

1 not just one point, it is paragraphs. If you look
2 at page 2, area D, of my original testimony, I am
3 talking about that point.

4 If you look at page 3, I'm
5 addressing -- if you look at the word, legacy. If
6 you look at page 4 under Roman numeral IIB-2, same
7 thing. Page 7 in my conclusion, a whole
8 paragraph.

9 It is the essence of my first
10 testimony, it's just that I didn't support it and
11 didn't have the time to do it then.

12 CHAIRMAN GETZ: Ms. Knowlton, do you
13 have an objection?

14 MS. KNOWLTON: I have no objection, you
15 know, as to the substance of what, you know, she
16 would like to include, it's more a question of the
17 process here. And, you know, I understand that
18 she is a citizen intervenor and she says that she
19 didn't have time, but, you know, this case was
20 stayed for six months, and it wasn't until, I
21 don't know, two weeks ago that that testimony was
22 offered -- less than two weeks ago -- and we've
23 had a procedural schedule in this case for a long

1 time, and it concerns me that if this testimony --
2 this new testimony is allowed in at this late hour
3 in the case, I don't want someone else coming
4 along and trying to supplement their case as time
5 goes by.

6 I think it sets to me a really
7 concerning precedent and makes one wonder what
8 value does a procedural schedule have if not even
9 two weeks before a hearing all of a sudden a party
10 comes in with a new pre-filed written submission.
11 So it's really on that basis that I would object
12 to what Ms. McHugh would like to add to her
13 previously filed testimony.

14 MS. MCHUGH: May I?

15 CHAIRMAN GETZ: Hold on one moment.

16 Ms. Thunberg, do you have something on this issue?

17 MS. THUNBERG: Yes. Staff does not
18 object to the introduction of this new evidence,
19 if it's considered that. Just noting that the
20 commission has in the past given latitude to lay
21 participants in complex proceedings, and in also
22 other complex proceedings the commission has
23 allowed public members to come in and give a --

1 basically a speech in lieu of testimony.

2 And staff sees this as akin to those
3 either public comments -- or to those public
4 comments. And knowing that this new information
5 has not been part of this discovery process, I
6 think the commission can make that -- or
7 acknowledge that and give it the weight -- or less
8 weight than it would other material has been
9 subject to discovery.

10 CHAIRMAN GETZ: Besides Ms. McHugh, is
11 there anyone else that wants to address this
12 issue?

13 MR. RICHARDSON: Mr. Chairman, the city
14 of Nashua has no objection, and I would simply
15 note that there have been other documents that
16 have come in. We received a week before trial
17 2,700 hundred pages of documents that were used by
18 Mr. Conner on cross.

19 Unfortunately it's inevitable during a
20 proceeding such as this that new information will
21 come up. I think Ms. Thunberg properly points out
22 that it can go to the weight as opposed to the
23 admissibility of the underlying documents.

1 (Discussion off the record.)

2 CHAIRMAN GETZ: Okay, the ruling on
3 this matter is that we're going to allow the
4 material and note that as a matter of principle
5 we're not inclined to allow supplemental testimony
6 at this point of the proceeding, but in reviewing
7 this file it does seem more in the nature of
8 argument rather than supplemental testimony.

9 And recognizing that that's really the
10 nature of what's being filed, we don't think
11 there's any harm to any party by allowing it into
12 the record. So I think now why don't we follow
13 Mr. Upton's suggestion, and you can take the stand
14 now, Ms. McHugh.

15 MR. UPTON: And I'll try to assist her
16 in affirming her testimony and try to get that
17 moving along.

18 CHAIRMAN GETZ: That would be great.
19 And then after we hear from Ms. McHugh, then we'll
20 take the lunch recess.

21 MS. MCHUGH: Thank you.

22 (Claire McHugh, sworn)

23 DIRECT EXAMINATION

1 BY MR. UPTON:

2 Q. Would you state your name and position
3 in this matter?

4 A. My name is Claire McHugh. I live in
5 Nashua, and my position, I'm simply an intervenor
6 passionate about this issue.

7 Q. And you filed testimony in this case on
8 April 22, 2005?

9 A. Correct.

10 Q. And that's identified as Exhibit 2005?

11 A. I didn't see the exhibit number.

12 Q. As best you know?

13 A. Yes.

14 Q. And do you affirm that testimony today?

15 A. I do.

16 Q. And did you supplement your testimony
17 with the materials that we've previously
18 discussed?

19 A. I did provide additional documentation.

20 MR. UPTON: It would probably make
21 sense if we could mark that as an exhibit.

22 MS. KNOWLTON: Let me give you a
23 number. It would be 2007.

1 MR. UPTON: It would be 2007.

2 CHAIRMAN GETZ: Okay, we'll mark
3 Ms. McHugh's supplemental filing of August 27 as
4 Exhibit 2007.

5 (Exhibit Intervenor 2007 marked.)

6 COMMISSIONER BELOW: You just referred
7 to Exhibit 2005?

8 MR. UPTON: Yes.

9 COMMISSIONER BELOW: Which I think is
10 Ms. Pressley's testimony.

11 MR. UPTON: My list has 2005, but maybe
12 I have the incorrect list, let me check with them.
13 I think it's Exhibit 2005.

14 CHAIRMAN GETZ: You don't have to put
15 this all on the record.

16 (Discussion off the record.)

17 CHAIRMAN GETZ: Back on the record.

18 And Ms. McHugh then is now available for
19 cross-examination, and Ms. Pressley?

20 MS. PRESSLEY: No, thank you.

21 CHAIRMAN GETZ: I'm going through my
22 cheat sheet here to make sure we're following the
23 right order. Mr. Eckberg?

1 MR. ECKBERG: No questions for this
2 witness. Thank you, Mr. Chairman.

3 CHAIRMAN GETZ: And Ms. Knowlton?

4 MS. KNOWLTON: No questions. Thank
5 you.

6 CHAIRMAN GETZ: And Ms. Thunberg?

7 MS. THUNBERG: The staff have no
8 questions. Thank you.

9 MR. UPTON: The city has no
10 cross-examination. Thank you.

11 CHAIRMAN GETZ: And Ms. Reinemann?

12 MS. REINEMANN: No questions.

13 CHAIRMAN GETZ: And Mr. Alexander?

14 MR. ALEXANDER: No questions.

15 CHAIRMAN GETZ: And there's no inquiry
16 from the bench. I take it there's nothing further
17 for this witness, then you're excused.

18 MS. MCHUGH: Thank you.

19 CHAIRMAN GETZ: Thank you, Ms. McHugh.

20 Anything else we need to discuss, the
21 availability of Mr. Sansoucy?

22 MR. UPTON: They're coming after lunch.
23 They're available after lunch.

1 CHAIRMAN GETZ: It's quarter of twelve,
2 now. Let's resume at one o'clock.

3 (Recess taken.)

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1 CERTIFICATE

2 I, Pamela J. Carle, Certified Court
3 Reporter and Notary Public of the State of
4 New Hampshire, do hereby certify that the foregoing
5 is a true and accurate transcript of my stenographic
6 notes of the hearing Re: DW 04-048, taken at the
7 place and on the date hereinbefore set forth.

8 I further certify that I am neither
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