

January 13,

1997

Regan - Cross (Smart)

1

MORNING PROCEEDINGS

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(The following occurred on  
January 13, 1997, at 9:48 a.m.,  
outside the presence of the  
jury.)

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THE COURT: Counsel, anything we need to do before  
the jury is brought in?

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MR. SMART: Not here, Your Honor.

8

MR. ANDERSON: Not here, Your Honor.

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MR. HAGENS: Not here, Your Honor.

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(The following occurred in the  
presence of the jury.)

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12

THE COURT: Good morning, Ladies and Gentlemen.

13

MR. SMART: Good morning, Your Honor.

14

May we have Mr. Regan resume the stand?

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THE COURT: Sir, take the stand again. Again, as  
is our custom, since there has been a bit of a break, I will  
remind you for the record that you remain under oath.

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RICHARD P. REGAN, called as a witness by the  
plaintiff, being previously  
duly sworn on oath, testified  
further as follows:

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21

CROSS-EXAMINATION

22

BY MR. SMART:

23

Q Mr. Regan, when we left off last Thursday I think that we had  
been discussing the fact that in your computer model you  
determined that there had been no substantial changes in the

24

25

1

topography between the 1990 situation and 1975 condition; is  
that right?

2

3

A Well, you have to refresh me a little more than that. I  
don't quite understand. Topography being the fields and the  
roads and that type of thing?

4

5

6

Q And the dikes.

7

A Can't say that I -- on the dikes. But everything else, I  
would say.

8

9

Q You assumed for the purpose of your computer model that the  
dikes were the same in 1975 as they were in 1990, correct?

10

11 A The reason being because --  
12 Q Isn't that correct, sir?  
13 A That's correct, yes.  
14 Q Thank you.  
15 And in fact, you built that feature specifically into  
16 your computer model, right?  
17 A I have to explain.  
18 Q Isn't it true that you built that feature into your computer  
19 model, sir?  
20 MR. HAGENS: Your Honor, I think the witness should  
21 be allowed to explain his answer.  
22 THE COURT: First of all, I think the question can  
23 be answered in its present form.  
24 A Okay. State it again now.  
25 Q (By Mr Smart) You built the feature of the dikes being the ¶

1 same in 1990 and 1975 into your computer model?  
2 A That's correct.  
3 Q And you actually knew what the heighth of the levees was in  
4 1975 because the army corps surveyed them when you were  
5 there?  
6 A That's correct.  
7 Q And that information is contained in the general design  
8 memorandum, isn't it?  
9 A That's correct.  
10 Q And so the general design memorandum that had the survey in  
11 1975 was the source of the information that you got for  
12 comparing whether the dikes were the same heighth in 1990 as  
13 they were in 1975, correct?  
14 A No.  
15 Q You just assumed it without even comparing; isn't that  
16 correct?  
17 A I would like to explain what we did on the model.  
18 Q Did you assume they were the same in 1990 as they were in  
19 1975 without even comparing?  
20 A We did not assume the dikes to be of any height in the  
21 computer model. Because neither overtopped in '75 or in  
22 '90. There was no significant overtopping of those dikes.  
23 Therefore, the top of the dike had no bearing on what was  
24 going on in the computer model for the dike condition.  
25 Q I take it then that your investigation into the history of ¶

1 the Skagit River and its dikes and its flooding condition you  
2 didn't even investigate whether or not the dikes were the  
3 same height.  
4 A Nothing to do with the computer model.  
5 Q My question, sir, is, I take it then that you didn't even  
6 compare the heighth of the dikes in 1990 versus the heighth  
7 in 1975; is that correct?  
8 MR. HAGENS: Objection as to form. For any  
9 purpose -- I'm not sure.  
10 Q (By Mr. Smart) Is it correct, sir, that you did not compare

11 the height of the dikes in 1990 versus the height of the  
12 dikes in 1975?  
13 MR. HAGENS: But for what purpose, Your Honor? I  
14 object.  
15 THE COURT: That is a fair question as stated.  
16 A No, we didn't resurvey the dikes after 1990.  
17 Q (By Mr Smart) And you did have the information available to  
18 you as to the height in 1975 through the general design  
19 memorandum, correct?  
20 A That's correct.  
21 Q Now, when the dikes are repaired under PL99, the Army Corps  
22 of Engineers does an environmental assessment, do they not?  
23 A I believe they do. I can't -- I believe they do. Yes.  
24 Q Like to show you Exhibit No. 890, sir.  
25 A Which one. ¶

1 Q 890. That would be the last one in the book.  
2 THE COURT: Counsel, I may have still been  
3 processing the end of the question. Restate your question  
4 again. I know he answered it. Just ask the question again.  
5 You are now asking?  
6 MR. SMART: Oh.  
7 Q (By Mr. Smart) Doesn't the Army Corps of Engineers perform  
8 an environmental assessment when it repairs dikes under PL99?  
9 THE COURT: And your answer was?  
10 A I believe they do.  
11 Q (By Mr. Smart) Showing you Exhibit No. 890, isn't that an  
12 environmental assessment dated April 22nd, 1976 performed by  
13 the Army Corps of Engineers with respect to the dikes in  
14 Skagit County that were damaged by the 1975 flood?  
15 A Calls it Environmental Evaluation for Skagit River Basin,  
16 Emergency Levee Repairs Skagit County, Washington.  
17 Q And isn't that the environmental assessment performed by the  
18 Army Corps of Engineers for that repair --  
19 A That's what it says. Environmental evaluation.  
20 (Defendant's Exhibit No. 890  
identified.)  
21  
22 MR. SMART: I'd offer 890, Your Honor.  
23 THE COURT: Counsel?  
24 MR. HAGENS: May I voir dire just a moment?  
25 ¶

1 VOIR DIRE EXAMINATION  
2 BY MR. HAGENS:  
3 Q Have you seen this exhibit before, Mr. Regan?  
4 A I've never seen this one.  
5 Q Were you responsible for preparing it yourself?  
6 A No.  
7 Q In any way?  
8 A No.  
9 Q Was this done by some different division or department out of

10 the Corps of Engineers than the one you worked in?  
11 A I don't recognize all the names on here. The preparer  
12 McClish, I don't recognize that name at all. Down in the  
13 routing list on the bottom left-hand side that I recognize.  
14 The -- it appears it was from the district engineer to the  
15 chief of engineering division. I have no more knowledge of  
16 it than that.  
17 Q And what was the purpose of these reports again?  
18 A Pardon.  
19 Q The purpose of the report?  
20 A This report?  
21 Q Yes.  
22 A It states to be an environmental evaluation.  
23 MR. HAGENS: Your Honor, it's over 20 years old.  
24 We're not going to have an objection. I understand the  
25 witness hasn't seen the exhibit before. We have no ¶

1 objection.

2 MR. ANDERSON: No objection.

3 THE COURT: 890 will enter.

4 (Defendant's Exhibit No. 890  
admitted into evidence.)

5

6

CROSS-EXAMINATION

7 BY MR. SMART:

8 Q All right. Mr. Regan, if you will look at the document in  
9 the upper right hand corner. The date is April 22nd, 1976?  
10 A That's correct.  
11 Q Just about a half a year after the 1975 floods on the Skagit  
12 River; is that correct?  
13 A Approximately.  
14 Q Purpose of this report is to discuss the environmental  
15 impacts of PL99 dike repair that is being performed by the  
16 Army Corps of Engineers on the Skagit dikes; is that right?  
17 A I would have to read it to say that is correct. It appears  
18 to be.  
19 Q And for some reason, during the investigation of the Army  
20 Corps of Engineers documents that you performed for the  
21 plaintiffs in this case, you missed this document; is that  
22 right?  
23 A I never reviewed this document.  
24 Q Did you look for the environmental assessments of the Army  
25 Corps of Engineers concerning PL99 work performed on the ¶

1 dikes?

2 A No.

3 Q Why not?

4 A Didn't feel it was necessary.

5 Q That is something that was out the scope of the assignment  
6 given to you by Mr. Hagens, or that is something you decided  
7 our own?

8 A I believe it was outside the scope.

9 Q Okay.  
10 Well, the purpose of this document is to evaluate  
11 whether or not the dike repairs are necessary when compared  
12 to other environmental considerations; is that right?  
13 A That is the normal procedure for environmental assessment,  
14 yes.  
15 Q And if you look at paragraph number two there, which says  
16 "Statement of Findings," didn't the Army Corps of Engineers  
17 determine, and I quote:  
18 Disaster recovery construction performed  
19 under authority of Public Law 84-99 is  
20 specifically excluded from environmental  
21 impact statement requirements by pertinent  
22 Corps of Engineers regulations.  
23 Is that correct?  
24 A That's what it says.  
25 Q So it doesn't need to have other environmental impact ¶

1 requirement because of the army corps' regulations that apply  
2 to these dikes; is that right?  
3 MR. HAGENS: Objection to the form. Talking about  
4 the repair that is proposed?  
5 MR. SMART: Yeah. Repair.  
6 Q (By Mr. Smart) Isn't that right?  
7 A That's what it says.  
8 Q And then if you go down a little farther, doesn't it say over  
9 the signature of Mr. Raymond J. Eineigl, Colonel of the Army  
10 Corps of Engineers, that in light of these findings, he is  
11 convinced that the action outlined in this document has been  
12 critically evaluated in terms of possible adverse and  
13 long-lasting environmental impacts and that the action is  
14 fully consistent with the national policy, statutes and  
15 administrative directives; and that on balance, the total  
16 public interest is best served by its implementation.  
17 Isn't that correct?  
18 A That's what it says.  
19 Q A fair reading of that paragraph would indicate, would it  
20 not, that the Army Corps of Engineers has evaluated the  
21 environmental work of having these dikes repaired and has  
22 determined that in the public interest they should be  
23 repaired, correct?  
24 A That's what it says.  
25 Q All right. ¶

1 Now, and that is the normal purpose for this type of  
2 evaluation by the army corps when it's evaluating whether  
3 dikes should be repaired?  
4 A I missed the first couple words in your sentence.  
5 Q Isn't that the normal purpose of this kind of environmental  
6 evaluations, is for the army corps to make an independent  
7 determination as to whether or not the dikes should be  
8 repaired, correct?

9 A Usually, yes.  
10 Q All right.  
11 And that is what they did in this case after the 1975  
12 floods, the army corps made the determination that they  
13 should be repaired, correct?  
14 A That's what it says.  
15 Q And you earlier testified, I believe, that the Army Corps of  
16 Engineers, when it performs repair work under PL99, repairs  
17 the dikes to the condition that they existed in before,  
18 correct?  
19 A They don't make them any taller.  
20 Q Right?  
21 A I mean, you might not put it back exactly the same because it  
22 failed exactly the same. Maybe they compacted the earth  
23 better. Put in different earth then material. But they  
24 didn't make them any higher or provide any more protection.  
25 Q Might put in keyways or riprap? ¶

1 A They wouldn't put riprap there unless it was there. They  
2 wouldn't put a keyway back in unless a keyway was there.  
3 Q They put them in the same height?  
4 A Supposed to be the same height.  
5 Q When this document was done in April of 1976, are we agreed  
6 that these dikes which were surveyed by you and your Army  
7 Corps of Engineers' personnel for the general design  
8 memorandum between 1975 and 1979 as you earlier indicated,  
9 are these dikes -- these same dikes that were repaired by the  
10 Army Corps of Engineers approximately a year or so earlier?  
11 A Probably was.  
12 Q So what the army corps did is made an assessment as to  
13 whether or not the dikes should be repaired to a particular  
14 height, rebuilt them under PL99 and then surveyed them for  
15 the general design memorandum?  
16 A Surveyed them sometime later, yes.  
17 Q All right.  
18 Now, the army corps also -- turn to page 2 of the  
19 document -- first sentence, the army corps also made the  
20 determination and I quote:  
21 Emergency rehabilitation of damaged flood  
22 control structures is necessary for  
23 protection against future high-water  
24 conditions.  
25 Did I read that correctly, sir? ¶

1 A That's right.  
2 Q Do you agree with that?  
3 A I believe it was -- I believe that is right, yes.  
4 Q And that is the purpose for the army corps work under PL99,  
5 to provide that kind of protection?  
6 A That is the whole basis -- half the basis of PL99.  
7 Q Turn to page 2551. It's a table. Wouldn't you agree, sir,  
8 that this portion of the document, table one, is again, a

9 republication of the flood information study for previous  
10 floods prior to the time of the table on the Skagit River  
11 that we earlier talked about as being published in the flood  
12 information study that resulted in Exhibit No. 985, the  
13 floodplain map that was published in 1967?  
14 A Agree that the table here is for dates peak discharge Skagit  
15 River at Concrete, which is -- should be similar to the  
16 poster that you have down below there.  
17 Q Okay.  
18 A And the yellow one that we brought in that is hanging over on  
19 the other side of the room.  
20 Q Would you also agree that the army corps in 1976, when it was  
21 performing this document, was relying on the calculations of  
22 the United States Geodetic Survey, the USGS, which is also  
23 the information that you earlier indicated that you relied  
24 on?  
25 A Yes. U.S. Geological Survey. ¶

1 Q Excuse me?  
2 A There is a difference. You're correct.  
3 Q Thank for you correcting me. I appreciate that.  
4 But you would agree that they did rely on the U.S.  
5 Geological Survey, the same as you have done during your  
6 work?  
7 A Yes.  
8 Q That is standard for the an army corps to rely on those data  
9 bases?  
10 A 99 percent of the time, yes.  
11 Q Also during the 1976 report, if you will turn to page 2552,  
12 to where the army corps described the levees that existed at  
13 that point on the Skagit River, did they not?  
14 A Um-hum. I believe they do. Are you talking about the top  
15 paragraph there?  
16 Q Talking about paragraph number two. You see where it starts,  
17 "Continuous levees," on the right-hand side, about a third  
18 of the way through the paragraph?  
19 A Yes.  
20 Q Read that portion of the document for me, please, sir?  
21 A Continuous levees extend up the main Skagit  
22 River channel past Mount Vernon to a point  
23 just above Burlington on the right bank and  
24 about a half a mile above the Great Northern  
25 Railroad between Mount Vernon and Burlington ¶

1 on the left bank. A levee on the right bank  
2 (facing downstream) extends about a mile  
3 downstream from Hamilton. The entire city  
4 of Burlington relies on levees for flood  
5 protection. Conway, West Mount Vernon, the  
6 central business district of Mount Vernon,  
7 and is the residential areas to the south  
8 are protect by levees. In all, the levee

9 system on the Skagit protects about 46,000  
10 acres of valley land or less than 50 percent  
11 of the floodplain.  
12 Q Wouldn't you agree, sir, that that statement is essentially  
13 just describing the condition as it then existed, saying that  
14 there is a levee on the right bank and no levee on the left  
15 bank facing downstream, correct?  
16 MR. HAGENS: Objection to the form.  
17 THE COURT: Counsel, I'm sorry.  
18 A I'm not following you.  
19 MR. HAGENS: It's a misstatement.  
20 THE COURT: Speak one at a time. Rephrase the  
21 question.  
22 MR. HAGENS: Objection. There is no statement in  
23 the exhibit, what that says there is no levee on the left  
24 bank.  
25 Q (By Mr Smart) Wouldn't a fair reading of this document, sir, ¶

1 indicate that there are levees that protect the cities of  
2 Burlington and Mount Vernon and that you knew -- army corps  
3 knew at that point that there was no levee on the other side  
4 of the river in the Nookachamps area, correct?  
5 A There was never a levee over there.  
6 Q Okay.  
7 So wouldn't a fair reading of this paragraph inform the  
8 reader of that condition?  
9 A No.  
10 Q You don't think so?  
11 A No.  
12 Q Turn to page 2558, if you would, please.  
13 A 2558?  
14 Q Yes. Subparagraph 3a. Could you read that for me, please,  
15 sir?  
16 A Sure. Titled "Direct Flooding Impacts."  
17 The flooding itself probably caused the  
18 greatest damage to the natural environment  
19 on the lower Skagit because of a close levee  
20 confinement.  
21 Q Okay.  
22 And how do you interpret that statement, sir?  
23 A I'm not sure how I would interpret it right offhand. I  
24 believe what it says -- take literally, because of the  
25 levees, you got the -- the greatest damage to the natural ¶

1 environment. That's what I would interpret it meaning. That  
2 is my own opinion on that.  
3 Q Was known by the army corps back in 1975, correct?  
4 A That's what it stated, yeah.  
5 Q All right.  
6 Now, if you turn to page 2560, please, for me, sir.  
7 A Okay.  
8 Q Could you read the last paragraph, please?

9 A Okay.  
10 Some of the residents of the floodplain area  
11 are apparently uninformed of the protection  
12 level of the levees. In addition, some  
13 apparently believe that projects like these  
14 are improving the level of protection.  
15 Q Okay.  
16 Now, it was part of the army corps' responsibility and  
17 purpose in the general design memorandum to alert residents  
18 to the condition of the Skagit River, the condition of the  
19 levees and the danger of the flood hazards, was it not?  
20 A That was brought out, yes. It wasn't the purpose of the  
21 design, however, but it was brought out during that period.  
22 Q Okay.  
23 And was part of the Environmental Impact Statement that  
24 went along with the general design memorandum?  
25 A Yes. ¶

1 Q And in fact, you personally went to and led discussion at  
2 meetings where these matters were discussed?  
3 A I never led a discussion. I was at meetings but I never led  
4 a discussion.  
5 Q You participated?  
6 A Yes.  
7 Q And the purpose you were there, so that the army corps could  
8 present a hydraulic engineer to residents who had inquiries  
9 relating to what the effects of the levees would be?  
10 A That's basically right, yes.  
11 Q So that if any question came up from somebody that said, hey,  
12 we want to know what the impact of the levees is, and that  
13 had a hydraulic engineering component to it, you would be  
14 there so you could answer the question, right?  
15 A That was the purpose of being there.  
16 Q Showing you Exhibit No. 907 sir, can you identify that for  
17 me, please?  
18 A Okay. This is a memo for records dated 5 April, 1979,  
19 Subject: Feasibility of Structural and Nonstructural Flood  
20 Control Alternatives for Nookachamps, Clear Lake, Sterling,  
21 Lower Sedro Woolley and West Mount Vernon, Skagit County  
22 Washington.  
23 Q And the date of the document, sir?  
24 A I gave you that. 5 April, '79.  
25 Q And this document was a document that was prepared in ¶

1 conjunction with the studies that were being performed for  
2 the general design memorandum.  
3 A Let me just look at it for a second.  
4 Yes.  
5 Q And it was written by Mr. Yang; is that correct?  
6 A Simon Yang, yes.  
7 Q And copies were sent to Vernon Cook, who was the project  
8 manager?

9 A That's correct.  
10 Q For the 1979 lower levee project, the project that was never  
11 built?  
12 A Right.  
13 Q And also to Mr. Brooks, in charge of the Skagit study?  
14 A That's right.  
15 Q Interestingly enough, it also says it was sent to Mr. Soule.  
16 S-O-U-L-E. In parentheses it says that he was in charge of  
17 hydraulics?  
18 A Doesn't say in charge of hydraulics.  
19 Q Was he somebody that just --  
20 A He worked for me.  
21 Q So Mr. Soule then, who received a copy of this document, was  
22 a person who actually worked in the hydraulic system section  
23 for you?  
24 A That's correct.  
25 Q And you would have reviewed this memorandum then when you ¶

1 were working on it?

2 A I believe I would have, yes.

3 Q And did you then again review it prior to your testimony in  
4 this case?

5 A I don't believe I've read this for this case, no.

6 (Defendant's Exhibit No. 907  
identified.)

7

8 MR. SMART: I'll offer 907.

9 MR. HAGENS: No objection, Your Honor.

10 MR. ANDERSON: No objection, Your Honor.

11 THE COURT: 907 will enter.

12 (Defendant's Exhibit No. 907  
admitted into evidence.)

13

14 Q (By Mr Smart) Let's show the jury the title page here,  
15 which says what it is. Feasibility of Structural and  
16 Nonstructural Flood Control Alternatives for the Nookachamps,  
17 Clear Lake, Sterling, Lower Sedro Woolley, and West Mount  
18 Vernon, Skagit County, Washington?

19 A That's what I just said.

20 Q Turn to page 2, if you would, please. Could you read  
21 paragraph two for the jury, please?

22 A Field inspections revealed that most houses  
23 in the Nookachamps and Clear Lake area were  
24 built or floodproofed to a level above the  
25 '51 flood (about a 15-year event), none had ¶

1 flooding of the first floor in the 1975  
2 flood (an estimated ten-year event). In  
3 fact, many residents who are not recent  
4 arrivals could relate to the '51 flood,  
5 indicating that common sense and  
6 conventional wisdom had dictated a certain

7 degree of protection for houses knowingly  
8 built in the floodplain. There are cases  
9 like that of Judge Ward's house which had  
10 living spaces elevated above the estimated  
11 100-year with project flood level. Most of  
12 the heavily invested, expensive homes in the  
13 Sterling area also are were built on high  
14 ground above the 100-year flood level.  
15 Since many houses have already been  
16 floodproofed or have built-in basements,  
17 further raising of the houses becomes both  
18 structurally and economically impractical,  
19 especially in view of the fact that  
20 surprisingly high-water velocities are  
21 experienced by residents in the Nookachamps  
22 during the '75 flood.

23 Q That is fine. That is the portion I anticipated your  
24 reading.

25 The field inspections that are referred to in that ¶

1 document are field inspections by the Army Corps of Engineers  
2 in 1975, correct?

3 A That's right. The people who are stated in the front of  
4 this.

5 Q And were they the same people who inspected the dikes for  
6 repair under PL99 in 1976?

7 A I wouldn't say that. Judging from the name of the four  
8 people here, I wouldn't expect to see that, but it could have  
9 been.

10 Q So there would have been two different groups that were  
11 inspecting the dikes then or the Nookachamps area in the  
12 1975-'76 time frame? There would be this team outlined in  
13 the Yang memorandum and then there would be the team who  
14 inspected them for PL99 repair work; is that correct?

15 A After flooding, yes.

16 Q Well, this is also after the flood.

17 A This is for a different purpose.

18 Q But it was also after the flood.

19 A Sure. It was after the flood.

20 Q And the purpose of this is to determine whether or not there  
21 were some alternatives that could be used to help people get  
22 out of the floodwaters, correct.

23 A The purpose of this document was to bring information in so  
24 that if something could be done in the Nookachamps area for  
25 flood protection, it would have been incorporated in the '79 ¶

1 general design memo.

2 Q And what these people found out when they investigated the  
3 Nookachamps area in 1975 is that the residents who lived  
4 there over a long time exercising common sense and  
5 conventional wisdom built their house high, correct?

6 A You can see that in the old houses throughout the Skagit

7 valley.  
8 Q And I take it that you also discovered that some people who  
9 moved in recently who were not familiar with the historical  
10 flooding, for instance in the 1951 flood or the 1932 flood or  
11 the 1921 flood, perhaps didn't build their house high enough  
12 to escape the floodwaters.  
13 A I'm not sure if they built the house or not. People moved  
14 in? Afterwards. Moved into houses that weren't high enough.  
15 Q You certainly discovered that some of the people who had  
16 moved in more recently have built their house low enough so  
17 that they got flooded even though the old-timers who knew  
18 about the historical flooding built their houses high.  
19 Correct.  
20 MR. HAGENS: Object to "more recently" without some  
21 definite definition, a time period.  
22 MR. SMART: I'm going to get to that next.  
23 Q (By Mr. Smart) I wanted to know if you discovered that  
24 general proposition.  
25 THE COURT: You may answer. ¶

1 A I have no knowledge of who built the houses, but there are  
2 some houses that are lower and built lower against other  
3 houses that are older houses that I've seen up there that are  
4 built up high.  
5 Q (By Mr Smart) Okay. Are you personally familiar with Judge  
6 Ward's house?  
7 A No, I'm not.  
8 Q In your investigation into the history of the Nookachamps and  
9 in your investigation for this case, you never became  
10 familiar with Judge Ward's house?  
11 A I didn't see where that was necessary.  
12 Q Well, certainly referenced in numerous of these documents, is  
13 it not?  
14 MR. HAGENS: Objection as to the form of the  
15 question without some foundation as to how many documents he  
16 has in mind.  
17 THE COURT: Sustained.  
18 MR. SMART: We've already had several mentions of  
19 it, Your Honor, in the various documents Mr. Hagens put into  
20 evidence.  
21 Q (By Mr Smart) Wouldn't you agree, sir, that one of the  
22 old-time residents in Skagit County who built his house high  
23 was Judge Ward?  
24 A I don't know if he built his house high or not. I don't know  
25 Judge Ward. ¶

1 Q Isn't reflected in the documents that you researched for your  
2 work on this particular project?  
3 A I have read where Judge Ward's house is built high. I read  
4 that.  
5 Q You read it in numerous documents.  
6 A I wouldn't say numerous.

7 Q How many?  
8 A A number. One or two.  
9 Q Only one or two?  
10 A Um-hum.  
11 Q Really?  
12 A I believe that's all. There may have been more. I don't sit  
13 down and jot off "Judge Ward," I read here Judge Ward, I read  
14 there. I have read it, yes.  
15 Q And in 1975 when you went and walked all of these dikes  
16 between '75 and '79, to be fair, when you were working on the  
17 general design memorandum, didn't you take a tour around the  
18 Nookachamps area?  
19 A No, I did not, at that time.  
20 Q Have you done so since?  
21 A Yes.  
22 Q When you went into the Nookachamps area to prepare for your  
23 work in this case, didn't you familiarize yourself with Judge  
24 Ward's house?  
25 A No, I did not. I saw no need to familiarize myself with ¶

1 Judge Ward's house.  
2 Q That is because you thought it was unimportant?  
3 A It was not part of what I was asked to do.  
4 Q Would you turn to page 3 of the document for me, please, sir,  
5 and read the last half of the last paragraph, starting with,  
6 "It has also been noted."  
7 A Okay.  
8 It has also be noted that many residents  
9 share the misconception with Mrs. Don Austin  
10 that the levee project will put two feet of  
11 additional water into Nookachamps in any  
12 flood event, whereas our protection of an  
13 additional one-and-a-half feet of water is  
14 for the 100-year flood. These  
15 misunderstands point out the need for more  
16 lucid explanations for the local residents  
17 as to the purpose and effects of the project  
18 on all the areas affected as well as the  
19 possible consequences of not doing the  
20 project.  
21 Q Okay.  
22 Now, Mrs. Austin was mentioned in your testimony with  
23 respect -- on direct in response to Mr. Hagens' questions,  
24 correct?  
25 A Um-hum. ¶

1 Q And Mrs. Austin was one of the interested residents in the  
2 Nookachamps area that came to the public meetings that you  
3 attended and spoke at, right?  
4 A I believe she was there.  
5 Q And then up above, the top part of that paragraph, there is  
6 reference also to a Mr. Larry Gadbois. Was he also an

7 interested resident who came to the public meetings that you  
8 attended and sought information concerning the proposed 1979  
9 project?  
10 A I believe he was one of them that signed up on the list.  
11 Q All right.  
12 And Mr. Gadbois is identified by Mr. Yang as one of the  
13 more vocal residents in the Nookachamps area?  
14 A That's what it says here.  
15 Q And Mr. Gadbois is a plaintiff in this case, isn't he?  
16 A I believe he is.  
17 Q All right.  
18 Like you to refer to Exhibit 30, please, sir.  
19 MR. SMART: 30 is already in, isn't that correct?  
20 THE COURT: Yes.  
21 Q (By Mr Smart) Showing you Exhibit No. 30, this is a document  
22 that you testified to on direct examination in response to  
23 some of Mr. Hagens' questions, correct?  
24 A That's correct.  
25 Q And the document is from an engineer, although in answer to ¶

1 Mr. Hagens' questions you didn't tell us what engineer or who  
2 he worked for. Do you remember who that is?  
3 A I have no idea -- who he is. It's a letter, I believe --  
4 hold on just a minute. It's a letter to a Mr. A.H. Hogeland,  
5 chief engineer, St. Paul Minnesota, from an Oscar S. Bowen,  
6 assistant chief engineer.  
7 Q And these engineers work for the railroad, don't they?  
8 A I believe they do. Doesn't state that, but you can get that  
9 out of this.  
10 Q And you learned during your investigation that these  
11 engineers in 1922 who were discussing what to do with the  
12 dikes and the river were working for the railroad, correct?  
13 A Definitely.  
14 Q Because they had a bridge and still have a bridge that is now  
15 the Burlington Northern Railroad bridge?  
16 A That is basically where it is, yes.  
17 Q All right. In addition to --  
18 THE COURT: You need to spin it just a bit more  
19 toward the jury. You can have Mr. Regan come down.  
20 Q (By Mr. Smart) If you wouldn't mind coming down here. Let  
21 me give you the pointer, sir.  
22 Can you show us where the Burlington Northern Railroad  
23 bridge is?  
24 A Burlington Northern runs up through the valley along this  
25 way. Cuts across into here and goes across the river right ¶

1 here and through Burlington to the north.  
2 Q Actually takes a right-hand turn and goes over the pass,  
3 does it not?  
4 A That is another part of the railroad. There is an  
5 intersection here. There is a railroad that goes out that  
6 way.

7 Q And in this area here -- First of all, this bridge that is  
8 the Burlington Northern Railroad bridge has thirteen  
9 different piers that are in the river, or on the river banks,  
10 so that they had become part of river when the river floods;  
11 is that correct?  
12 A I believe they are between the levees, yes.  
13 Q And position the railroad sits on top of Dike District 12's  
14 dike for 1600 feet section in this area right here, does it  
15 not?  
16 A Not sure if it sits on Dike District 12 -- not sure if the  
17 railroad sits on the dike -- the railroad becomes part of the  
18 dike. But that is true. The railroad and the dike are one  
19 unit at that point.  
20 Q Okay.  
21 And you would agree then that whether it's the railroad  
22 sitting on the dike or the dike being part of a railroad  
23 embankment that they are jointly controlled and/or owned by  
24 Dike District 12 and Burlington Northern Railroad in this  
25 section right there. ¶

1 MR. HAGENS: Objection as to the form. Lack of  
2 foundation as to the ownership.  
3 MR. SMART: If he doesn't know, he can certainly  
4 say.  
5 THE COURT: You may answer.  
6 A I don't know who owns it. I do know there is -- the  
7 railroad becomes part of the dike at that point.  
8 Q (By Mr. Smart) Okay. I take it that your investigation for  
9 the purpose of this case didn't inquire into who owned or  
10 controlled --  
11 A No need to know that.  
12 Q Well, would you take the stand for a second, please, sir?  
13 A Sure.  
14 Q In referring back to Exhibit No. 30, in paragraph number two,  
15 would you read the portion starting, "You will note," through  
16 about halfway through the paragraph?  
17 A Paragraph two?  
18 Q I guess it's actually -- well, there is a colon there. I  
19 call it paragraph two. "You will note that we have very  
20 serious --"  
21 A That is the start of it? That is the start of the  
22 paragraph.  
23 Q Yes.  
24 A You will note that we have a very serious  
25 condition to contend with, much more serious ¶

1 than I had anticipated, especially as to the  
2 large quantity of water. The breaking of  
3 the dikes during extreme water conditions  
4 has always relieved the situation at our  
5 Bridge No. 36 and I never realized the total  
6 discharge to be as great as it is. The

7 information given in Mr. Herzog's report  
8 indicates that our bridge has a maximum  
9 capacity of only about half the high water  
10 flow of the stream.

11 Q Thank you. Now, Bridge No. 36 that they are referring to is  
12 this bridge that is right here, correct?

13 A I believe it is, yes.

14 Q And what -- wouldn't it be correct that a fair reading of  
15 this letter is that the railroad is concerned that the  
16 high-water flows in the Skagit might take out their bridge,  
17 correct?

18 A I think what they are concerned about -- the way I read this  
19 report, they are concerned that the levees being built  
20 downstream will raise the water surface at the bridge to the  
21 point where it will be washed out or overtopped.

22 Q Now,, the bridge that was put in here was put in during what  
23 year, sir?

24 A Way back, 1918, 1920, someplace. It's an old bridge.

25 Q Okay. ¶

1 But however far back it was, it was put in during the  
2 time that the Army Corps of Engineers had jurisdiction over  
3 the navigable waters of Skagit River, correct? Isn't that  
4 right?

5 A I would believe so, yes. I think the -- federal government  
6 has jurisdiction over the navigable waters for many, many  
7 years, yes.

8 Q And so in order to put this bridge in that location, the  
9 railroad would have to secure permission from the Army Corps  
10 of Engineers to have it there, right?

11 A That's right. That's true, yeah.

12 Q And it did secure that permission and the army corps knew  
13 that the bridge was there and knew about the placement of the  
14 bridge, correct?

15 A I believe so.

16 Q You earlier testified in answer to Mr. Hagens' question that  
17 the problem with the bridge is that it's at choke point in  
18 the system, correct?

19 A That's correct.

20 Q And has been known to the Army Corps of Engineers for -- ever  
21 since the bridge was there, right?

22 A Not sure about that. What came first? The bridge or the  
23 levees? Was it a choke point before? Was it a choke point  
24 before the bridge went in or did it become a choke point  
25 after the bridge came in. I don't know. ¶

1 Q You didn't study that, I take it.

2 A I think it kind of -- the levees were not the levees that you  
3 see today when that bridge was put in. That is what the  
4 whole purpose of this letter is, is saying they are getting  
5 better and we're experiencing more problems, and as they got  
6 better, we'll experience even worse problems.

7 Q So what you have is you have interconnected problem then  
8 between the railroad bridge and the levees, correct?  
9 A Interconnected problem?  
10 Q Well, they both operated to affect, if you will, floodflows  
11 on the Skagit River during times of high water, isn't that  
12 right?  
13 A Anything you put in the water will have some effect, correct.  
14 Q And the army corps knew of this problem stemming back as long  
15 as there were levees and the Burlington Northern bridge?  
16 A I would expect they did.  
17 Q When these documents -- when these documents concerning the  
18 railroad bridge were evaluated by you, you understood that it  
19 wasn't just simply a problem of the railroad bridge in  
20 isolation, but rather it was an interconnected problem  
21 between the railroad bridge and the levees?  
22 A I think you lost me on that question.  
23 Q Let me rephrase that.  
24 A Simplify that.  
25 Q Wouldn't it be correct, sir, that the predecessors at the ¶

1 Army Corps of Engineers also realized that there was an  
2 interconnected problem between the Burlington Northern  
3 Railroad bridge and the levees?  
4 A I'd have to assume that.  
5 Q And you would have known that in 1975 when the army corps was  
6 repairing these dikes, correct, under PL99 work?  
7 A Oh yes.  
8 Q And you also would have known of the interconnected problem  
9 when you were holding public meetings for the residents in  
10 1979?  
11 A That's correct.  
12 Q So there is no secret that there has been this  
13 interconnection between levees and the Burlington Northern  
14 Railroad bridge during the entire history that they've  
15 existed, correct?  
16 A For quite some time, right. I don't know about the entire  
17 history. For quite some time, yes.  
18 Q All right.  
19 All right. And if you will turn to page two of the  
20 letter, sir.  
21 A Sure.  
22 Q It says in the last sentence of the first paragraph, says,  
23 "Sooner or later a very radical improvement must be made to  
24 take care of the floodwaters of the Skagit River, to relieve  
25 the farmers and the towns from the present hazard." Isn't ¶

1 that correct?  
2 A That's correct.  
3 Q And isn't that really what the Army Corps of Engineers has  
4 been trying do since the very early days, to provide some  
5 mechanism that will protect farmers and towns from the flood  
6 hazard on the Skagit?

7 A The corps has been doing it and the farmers and the diking  
8 districts and the county. They've all been working on it.  
9 The corps has never really made any radical improvements --  
10 never made any radical improvements. They've been studying  
11 it, yes.  
12 Q The corps has suggested and studied a number of improvements,  
13 including the Avon Bypass project and the 1979 lower levee  
14 project that was never built?  
15 A That's correct.  
16 Q And now, the corps is engaged in an -- consequence study?  
17 A That's correct.  
18 Q So really, the corps has been the -- the organization that  
19 has been studying the various possible projects that could be  
20 employed in this area in order to provide relief for the  
21 farmers and the towns from the present hazards, correct?  
22 A That's right.  
23 Q And that has been the reason why the corps exists. I think a  
24 mission earlier was flood control and navigation.  
25 A That's right. ¶

1 Q And would you agree then, sir, that the corps has a great  
2 repository of records and a greater history in terms of  
3 generating ideas as to what might be done than any other  
4 agency?  
5 A Oh, than any other agency, correct, yes.  
6 Q Would you turn to Exhibit No. 1, please, sir. If you will  
7 turn to page 17. I think No. 1 has already been admitted.  
8 THE COURT: Yes.  
9 A You say 17?  
10 Q (By Mr Smart) Page 17. Yes, please.  
11 A Okay.  
12 Q All right.  
13 Now, this portion of the document was referred to by Mr.  
14 Hagens, correct? At the bottom it says the Nookachamps  
15 District in its present condition acts as storage reservoir  
16 and therefore reduces the flood height in the surrounding and  
17 lower districts. You see that?  
18 A Yes.  
19 Q Now, that idea -- First of all, the date of this document is  
20 what, sir?  
21 A 1922 or '23.  
22 Q The same year as the letter that we just referred to, Exhibit  
23 No. 30?  
24 A They were within one year of each other.  
25 Q So the initial concern, I take it, came from the railroads in ¶

1 order to protect their railroad bridge. And they are the  
2 ones that started this indication of, well, we have to save  
3 the Nookachamps as a reservoir in order to protect the  
4 railroad bridge, correct?

5 MR. HAGENS: Object. Lack of foundation Your  
6 Honor. Object to the form of the question.

7 THE COURT: Sustained. We need to lay some  
8 groundwork.  
9 Q (By Mr. Smart) Isn't it true, sir, that the reference to Mr.  
10 Herzog in this document, number one, is a reference to the  
11 engineering discussion that we talked about in reference to  
12 Exhibit No. 30?  
13 A Yes.  
14 Q And what happened is that the army corps picked up this  
15 concern about the Burlington Northern bridge from the  
16 railroads because they are the only ones at that time who had  
17 engineers who are studying this problem?  
18 MR. HAGENS: Objection as to form. Lack of  
19 foundation.  
20 Q (By Mr. Smart) Isn't that what you learned from the  
21 document?  
22 THE COURT: Overruled. You may answer.  
23 A Okay.  
24 THE COURT: If you can.  
25 A Herzog's report was never part of any of the document ¶

1 development in the 1979 work. I had never seen that in  
2 1979. I don't -- I had seen the 1923 Stewart report at that  
3 time and read it in detail. And a number of other reports,  
4 but Herzog report is something -- that was not part of the  
5 '79 -- was not used as a basis in '79.  
6 Q (By Mr. Smart) I'm not suggesting that it was used in 1979.  
7 I'm saying in your review of the history you went back and  
8 reviewed all these documents, correct?  
9 A Now, yes.  
10 Q So this Stewart report, Exhibit No. 1, specifically refers to  
11 the concern by Mr. Herzog about the railroad bridges?  
12 A Yes.  
13 Q And so wouldn't it be your understanding that the Stewart  
14 report picks up this concern by the railroad about what would  
15 become of the railroad bridge, correct?  
16 A Well, that is hard to say. The Stewart picked it up from --  
17 I believe he probably did. I can't say.  
18 Q That is the --  
19 A It was his opinion, I believe. He used Mr. Herzog's report  
20 factually or went out and look at it, I don't know.  
21 Q It's a fair implication from the document?  
22 A About the same.  
23 Q So the concern about the Nookachamps acting as a storage  
24 reservoir initially was a result of the railroad engineers  
25 who were concerned about what might become of their bridge ¶

1 and their tracks in the event that they didn't have this  
2 storage capability here in the Nookachamps for times of high  
3 water?

4 MR. HAGENS: Objection. Lack of foundation. How  
5 would he know what is going through the railroad engineers  
6 mind? Also a mischaracterization of the testimony.

7 THE COURT: I'll overrule. I think he is asking  
8 whether or not that conclusion is a fair characterization or  
9 an assessment, the evaluation, if you will, of the terms he  
10 has read. That is not -- a conclusion he has arrived at.  
11 That is fine. He can say no, it isn't, he can say yes.

12 A Yes.

13 Q (By Mr. Smart) Okay. Because what the railroad didn't want  
14 to have to do is they didn't want to have to relocate their  
15 bridge from the choke point to some other place because that  
16 would be an expensive proposition for them.

17 A Or raise it or do anything.

18 Q All right.

19 Okay. But that is one of the solutions to this  
20 particular choke point; that is, you could remove the bridge,  
21 raise it, do something so that it doesn't have 13 piers in  
22 the river impeding the flow of water downstream. All those  
23 are potential things that could be done by the railroad to  
24 alleviate the situation where it impedes the downstream flow  
25 of water, correct? ¶

1 A No.

2 Q You don't --

3 A Because you have to take out -- the dikes would have to come  
4 out also.

5 Q You are right. Since it is --

6 A Go ahead.

7 Q Since it is part and parcel of Dike District No. 12's dikes,  
8 as you just testified, in order to use that as a solution you  
9 would have to change Dike District 12's dike, correct?

10 A Change it, take it out or something, right, yes.

11 Q So you would have to get permission from Dike District 12 and  
12 the railroad in order to do that, right?

13 A Well, I think the railroad probably could take their railroad  
14 out of there without having any permission from Dike District  
15 12. But whether Dike District 12 requested to take their  
16 levee out without permission from the railroad is a different  
17 story.

18 Q I wasn't asking about either one separately. All I was  
19 suggesting is that in order to take the railroad bridge and  
20 the dike out of there, you would have to get the permission  
21 of both of them in order to do it, correct?

22 A Yeah.

23 Q So if that were to be a solution, since they each have the  
24 right to have their railroad and dike in those locations,  
25 then in order to change that condition you would have to ¶

1 convince both the railroad and the dike district to remove  
2 their structures, correct?

3 A I believe so. Someone wanted them taken out, yes.

4 Q And when the army corps studied the various solutions to the  
5 flood problem in Skagit County and in the Nookachamps in  
6 particular, did it ever evaluate whether or not the dike

7 districts or the railroads were willing to take their  
8 railroad and dike out of there?  
9 A I don't think it was an issue.  
10 Q That is because you assumed that they had a legal right to  
11 keep them there?  
12 A I can't say that. I don't know. I didn't make that  
13 assumption. I was -- way out of my area of work.  
14 Q When you were studying the lower levee project in 1979 and  
15 attending meetings with various residents, did you ever have  
16 any discussion with anybody about the possibility of the  
17 railroad and Dike District 12 taking their structures out of  
18 there?  
19 A Not my recollection.  
20 Q That is because it just wasn't a realistic consideration at  
21 the time?  
22 A That is probably true.  
23 Q Now, let me see if I can get 893, please.  
24 Showing you 893, sir, can you identify what that is,  
25 please? ¶

1 A (No response).  
2 Q The question was, could you identify. I don't know if you  
3 remember there is that question pending before you, sir.  
4 A I thought we had gone on to this. I didn't know you had a  
5 question.  
6 Q The question is, can you identify the document.  
7 A I didn't hear you. I'm awfully sorry. The cover page is  
8 unreadable. The first page is "Report of Public Hearing."  
9 Q It's a public hearing that was conducted by the Army Corps of  
10 Engineers in 1937 regarding public debate about what should  
11 be done about flood control in the Skagit, is it not?  
12 A That's what it is, yes.  
13 (Defendant's Exhibit No. 893  
identified.)  
14  
15 Q (By Mr. Smart) And this is one of the many public hearings  
16 that the army corps has led concerning what should be done  
17 about the potential flooding in the Skagit over time, is it  
18 not?  
19 A Right. That's the way the Corps of Engineers operates.  
20 Bring in as much public opinion and public discussion as  
21 possible. And by doing it through public hearings and public  
22 workshops.  
23 Q Okay.  
24 And when the public hearings are conducted, does the  
25 Army Corps of Engineers invite members of the public? ¶

1 A Normally, it's -- everyone that I've been associated with,  
2 invite top leaders. I don't know it went out -- public,  
3 going through everybody in the phone book or something like  
4 that. But it was well publicized. Newspapers, local  
5 government people were invited to attend. People who were --

6 who the corps knew were interested would be invited to  
7 attend.  
8 Q Okay.  
9 And that was done in this case, correct?  
10 A I don't know.  
11 Q Look at the back page of the document, sir. And can you see  
12 the list of the people who attended and the newspapers that  
13 the notice was published in, can you not?  
14 A Last page I've got says resolution.  
15 MR. SMART: I'll offer the document.  
16 A Here to say.  
17 MR. SMART: I'll offer the document.  
18 THE COURT: 893 has been offered.  
19 A There is a whole list of people.  
20 THE COURT: Excuse me. Just a second.  
21 MR. HAGENS: Your Honor, because of its age, we  
22 don't have an objection, Your Honor, in light of the Court's  
23 prior rulings.  
24 MR. HAGENS: No objection, Your Honor.  
25 THE COURT: 893 will enter. ¶

1 (Defendant's Exhibit No. 893  
2 admitted into evidence.)

3 Q (By Mr. Smart) The hearing was conducted, was it not, by  
4 Colonel H.J. Wild of the Corps of Engineers?  
5 A That's what it says.  
6 Q And the purpose of the hearing was to consider the  
7 advisability of the federal government engaging in flood  
8 control work on the Skagit River?  
9 A That's correct.  
10 Q And he went on to indicate that to enable those present to  
11 more intelligently consider the matter it was important to  
12 consider the background of the government in such projects.  
13 Is that correct?  
14 A I would have to read it.  
15 Q That's what paragraph number three says, page 1, does it not?  
16 A Yeah.  
17 Q Then he went on to discuss the expertise of the army corps in  
18 controlling floods on the Mississippi and all the other big  
19 rivers where the army corps works; is that right?  
20 A That's right.  
21 Q Now, on page two of the document. We are willing to admit in  
22 this hearing that floods have occurred on the Skagit and so  
23 when you speak it will not be necessary for to you try to  
24 establish that fact. They -- meaning the floods -- are a  
25 matter of record. Correct? ¶

1 A I can't see. Where are you reading?  
2 Q Right in the middle of the big paragraph in the center.  
3 A Yeah. That's true.  
4 Q And then the army corps went on to invite anybody present at

5 the hearing to record if they wished information concerning  
6 damages by sending in writing damages that they had incurred  
7 as a result of the big floods on the Skagit, correct?  
8 A That's right.  
9 Q And the hearing took place in 1937; is that right?  
10 A March 2nd, 1937.  
11 Q All right.  
12 Now, if you turn to page 10 of the document. During the  
13 portion involving testimony from those who came, looking at  
14 the bottom a Mr. Abbott is speaking.  
15 A Halfway down?  
16 Q All the way down.  
17 A Okay.  
18 Q And Mr. Abbott was a dike district commissioner for Diking  
19 District No. 12; is that correct?  
20 A That's what he says, yes.  
21 Q And he made a specific proposal at the time in favor of  
22 dredging the river?  
23 A He says that all the people I talked to was to dredge the  
24 river.  
25 Q So he indicated that he talked to a number of residents about ¶

1 what to do; is that right?  
2 A Right. He talks about a spillway at Ferry, another -- he  
3 talks about a spillway at Ferry. Another at Sterling,  
4 another at Sedro Woolley, no spillway at Avon, but every man  
5 was in favor of dredging the river.  
6 Q Okay.  
7 And turning the page to page 11, Mr. John Wylie is a  
8 diking district -- from diking district number -- appears to  
9 be 18 in Mount Vernon appears; is that correct?  
10 A That's right.  
11 Q And he testified at the end of his comments, quote:  
12 There is one thing about these floods, we  
13 are going to have floods despite anything  
14 said about getting rid of them at the lower  
15 end of the salt water dikes. There should  
16 be some spillways. Regardless of what you  
17 do, there is going to be a flood.  
18 Is that correct?  
19 A He says, One thing about these floods, we're going to have  
20 floods despite anything. Right. Then he goes on to talk  
21 about the spillways. That's correct.  
22 Q In addition, on page 16, if you will turn there, please, sir,  
23 Mr. Lars Langloe gives some comments; is that correct?  
24 A That's right.  
25 Q Mr. Lars Langloe was the supervisor of hydraulics for the ¶

1 State of Washington in 1937, was he not?  
2 A I don't know.  
3 Q That is because you didn't investigate whether he was?  
4 A First time I've ever heard of him. Didn't know they had a

5 supervisor of hydraulics in the State of Washington.  
6 Q That is because you didn't investigate whether or not there  
7 was such an office?  
8 A I don't believe I needed to do that. I never heard of it.  
9 In my 30 years of engineering, I've never heard of a  
10 supervisor of hydraulics.  
11 Q Fair enough. But in any event, Mr. Langloe was speaking on  
12 page 16, and he said, and I quote:  
13 The maximum record flood discharge of the  
14 Skagit is 220,000 second-feet.  
15 A That's right.  
16 Q That is the old term for cubic feet per second?  
17 A That's correct.  
18 Q And:  
19 According to the studies made by the U.S.  
20 Geological Survey, they have unearthed  
21 absolute evidence to the effect that on  
22 different indications many years ago,  
23 probably about the year 1815, and also some  
24 time in the 1850s -- great floods occurred  
25 in this particular valley. ¶

1 A That's true. Came from the Stewart report, basically.  
2 Q And those are the two floods we have earlier referred to on  
3 Exhibit No. 978 as being the 400,000 and 300,000  
4 cubic-foot-per-second floods?  
5 A That's right.  
6 Q That was a matter of public knowledge?  
7 MR. HAGENS: Objection. As to form. As to the  
8 public knowledge. It may be public record, but whether it's  
9 a fact known and understood by everybody -- to the detail  
10 counsel implies. I object to the form.  
11 MR. SMART: I will rephrase the question.  
12 Q (By Mr. Smart) That was a subject that knowledge about those  
13 early floods was discussed at the public hearing in 1937?  
14 A It's obvious.  
15 Q Now, if you turn to the back page, please, sir. Not the back  
16 page. Page 1517 there is a list of who was mailed notice of  
17 this public hearing.  
18 A That's true. Including a bunch of newspapers.  
19 Q Right. Exactly.  
20 A Diking district commissioners and --  
21 Q And the newspapers are the Mercury, a daily newspaper, the  
22 American, the Puget Sound Mail, the Mount Vernon Daily, the  
23 Argus, the Journal, the Courier Times, the Post  
24 Intelligencer, and the Seattle Times?  
25 A That's correct. ¶

1 Q And then all the diking district commissioners were  
2 specifically invited; is that correct?  
3 A That's correct. I believe they were all there. Some of them  
4 twice.

5 Q Thank you. You can put that document away, sir.  
6 Now, if you will turn to the next document, 394,  
7 please.  
8 A I don't have it in this.  
9 Q I'm sorry. It's 894.  
10 MR. SMART: Again, I will offer 894, Your Honor.  
11 It's -- a 1947 public hearing similar to the one that we just  
12 referred to, which was 1937.  
13 MR. HAGENS: No objection, Your Honor, in light of  
14 the prior court rule.  
15 MR. ANDERSON: No objection.  
16 THE COURT: 894 will enter.  
17 (Defendant's Exhibit No. 894  
18 identified and admitted into  
19 evidence.)  
20 Q (By Mr Smart) Showing you Exhibit No. 894, is it correct,  
21 sir, that this is a report of a public hearing conducted by  
22 the Army Corps of Engineers in May of 1947?  
23 A It's a report conducted by Colonel L.H. Hewitt, district  
24 engineer, Corps of Engineers, 13 May, 1947, correct.  
25 Q Okay.  
And I'm sorry. It's actually March 9, 1949, in that ¶

1 reference to '47. Resolution.  
2 A Okay. Let me read it closer.  
3 Q I mislead you.  
4 A The hearing was 12-18-49, yes.  
5 Q So we have a public hearing held in 1937 by the army corps  
6 with notice TO various residents, the newspaper, dike  
7 district commissioners, anybody who was interested in flood  
8 control in the lower Skagit.  
9 And now, would you agree that this is another public  
10 hearing approximately twelve years later in 1949 to discuss  
11 similar subjects?  
12 A Right.  
13 Q And the purpose of this hearing is to hear the views of local  
14 people as to the necessity and desirability of modifying the  
15 project at the present time. And the project would be flood  
16 control projects on the Skagit, right?  
17 A That's correct.  
18 Q If you will flip to page 0161, which is the mailing list at  
19 the back.  
20 Did you find it?  
21 A Getting there. Okay.  
22 Q Would you agree that, again, as with the other public  
23 hearing, the army corps invited all of the federal  
24 representatives and invited the local -- the State of  
25 Washington representatives, it invited the local dike ¶

1 district commissioners, it invited the ports, the cities, the  
2 yacht clubs. Invited -- in a published notice in newspapers  
3 so that anybody who was interested in these projects would be

4 able to have notice of the meeting and attend?  
5 A They invited everybody but the president. It goes on for  
6 pages.  
7 Q That may be right. That may be right. And then starting at  
8 page 169, that is a list of people who came, correct?  
9 A Right. Which doesn't appear to be as long as the list of  
10 invitees.  
11 Q Often a party you throw, not everybody comes. What is  
12 important is that a variety of people did come, did they  
13 not? Farmers came, the attorney for the diking districts  
14 came, Mr. J.G. Smith, farmers who were dike commissioners  
15 came. In fact, many farmers who are also dike commissioners  
16 came. A number of farmers from Sedro Woolley and Mount  
17 Vernon. Harold P. Johnson came, did he not?  
18 A You would have to point it out.  
19 Q Look a page 171, if you would, please.  
20 A Okay. Right.  
21 Q And Mr. Harold P. Johnson is the father of one of the  
22 original plaintiffs in this case, whose farm is located right  
23 there, correct?  
24 A I believe -- I think you're pointing in the general area.  
25 Q Okay. ¶

1 So would you agree that the army corps sought to and did  
2 reach the residents who lived in the Nookachamps area with  
3 its notices of these public hearings as to what to do with  
4 the Skagit back in 1937 and 1949?  
5 A They tried very hard to reach everybody.  
6 Q And that people, including people who lived in the  
7 Nookachamps, showed up and attended these meetings. Correct?  
8 MR. HAGENS: I'll object to the form of the  
9 question. Lack of foundation, Your Honor.  
10 MR. SMART: Well, at least Mr. Johnson showed up.  
11 MR. HAGENS: Are you representing he is an owner  
12 then at that time?  
13 MR. SMART: Harold P. Johnson is the father of your  
14 former client, isn't he, Mr. Hagens?  
15 MR. HAGENS: Objection to the form. Lack of  
16 foundation as to whether or not all the people showed up.  
17 Said nothing about the amount of flooding caused plaintiffs  
18 by the levees.  
19 MR. SMART: The question, Your Honor, wasn't  
20 whether or not all the residents showed up. The question was  
21 whether or not the army corps did try to reach them and did  
22 in fact reach them. That was the question.  
23 Q (By Mr. Smart) And some of them showed up.  
24 A I thought I answered that, yes.  
25 THE COURT: Counsel, we'll take our morning break. ¶

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(Recess occurred on 11:02 a.m.)

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