PASSAIC VALLEY WATER COMMISSION MEETING OF MAY 22, 2013

(CLOSED SESSION)

COMMISSIONERS PRESENT:

RIGO SANCHEZ, President (Absent)

JEFFREY LEVINE, Vice-President

MENACHEM BAZIAN, Treasurer

GLORIA KOLODZIEJ, Secretary

THOMAS P. DeVITA

ROBERT VANNOY

CHRYSTAL A. CLEAVES (Absent)

ALSO PRESENT:

JOSEPH A. BELLA, Executive Director

GEORGE T. HANLEY, Counsel

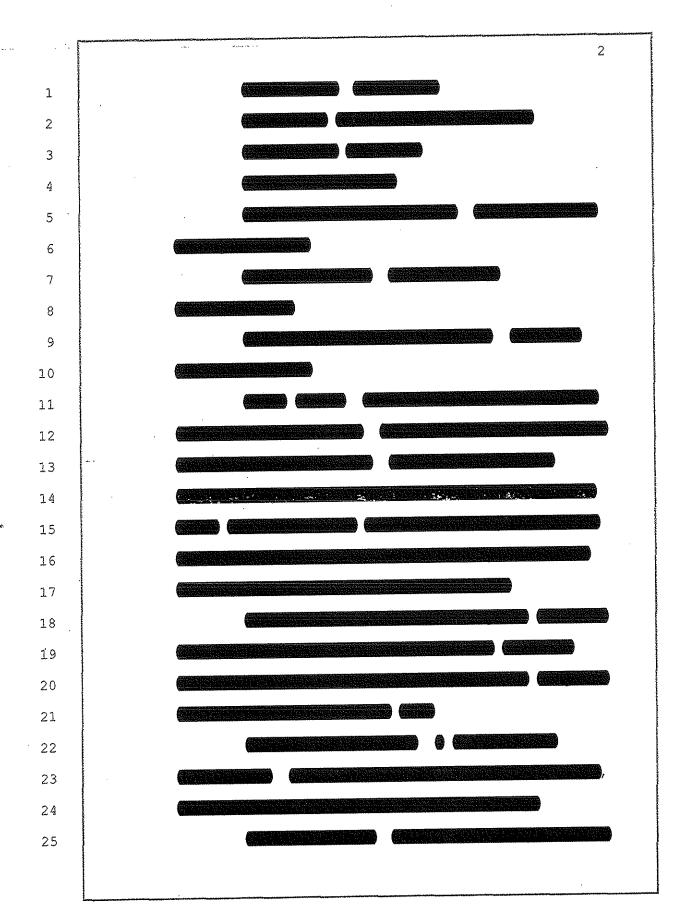
JAMES G. DUPREY, Director of Engineering

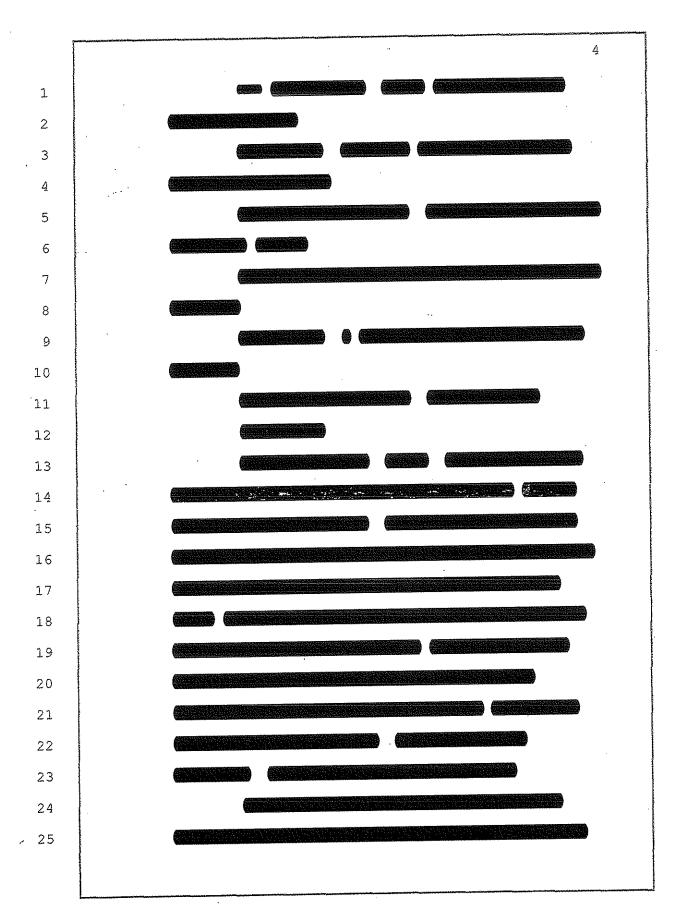
JAMES J. GALLAGHER, Personnel Director

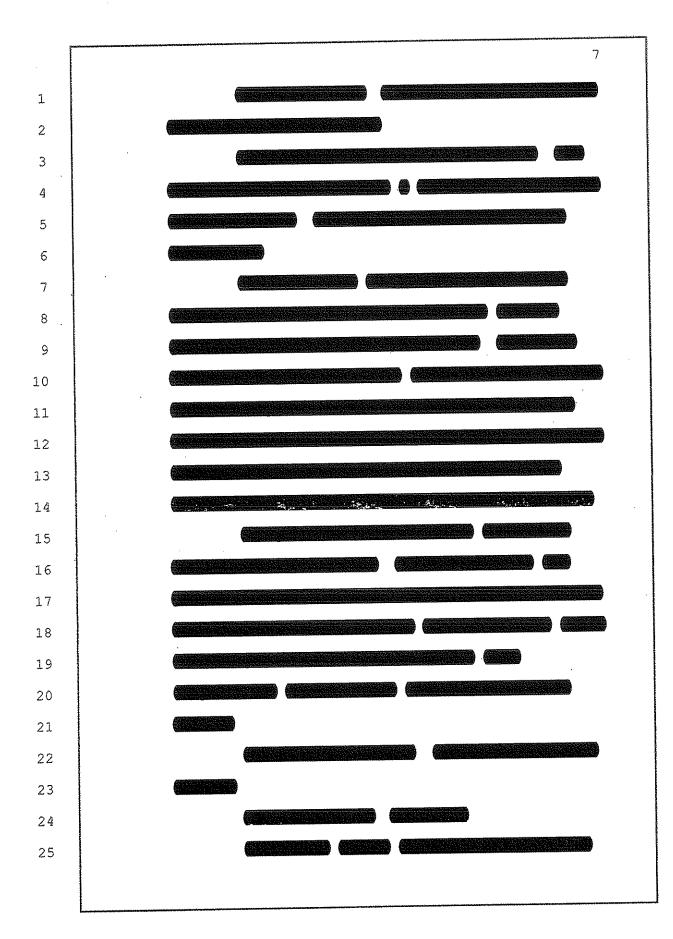
YITZ WEISS, Comptroller

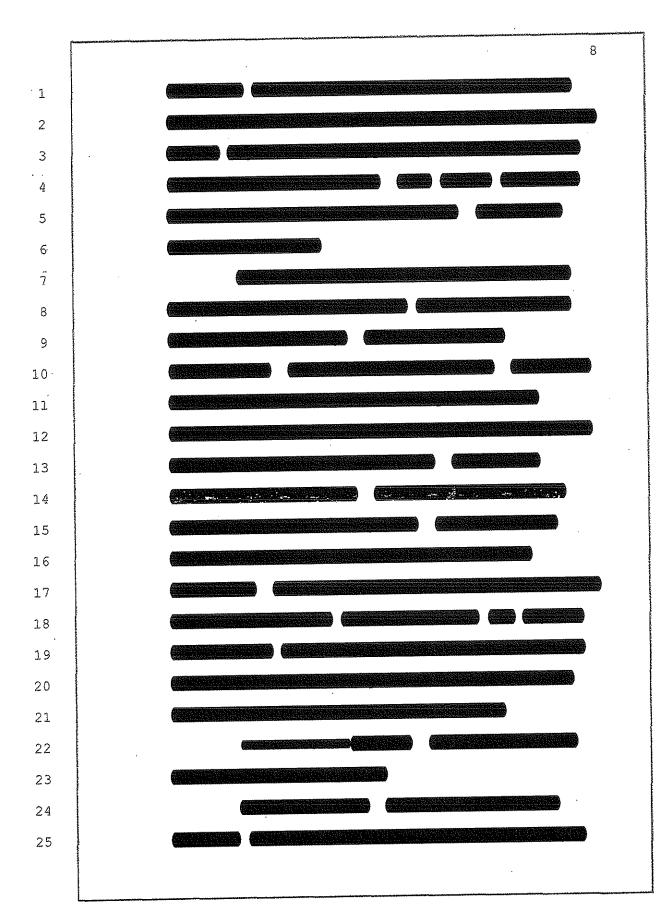
LOUIS AMODIO, Administrative Secretary

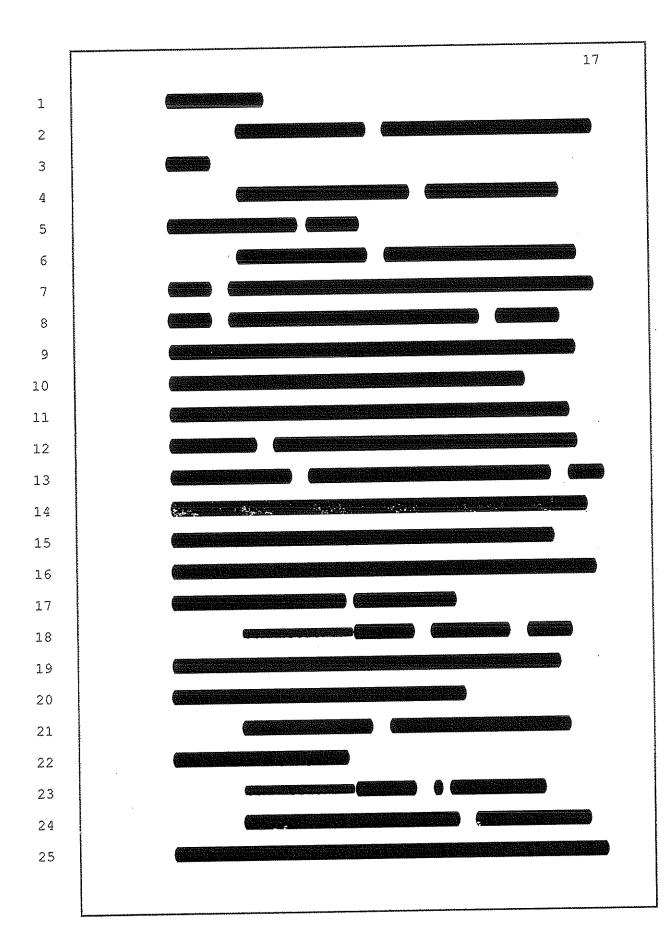
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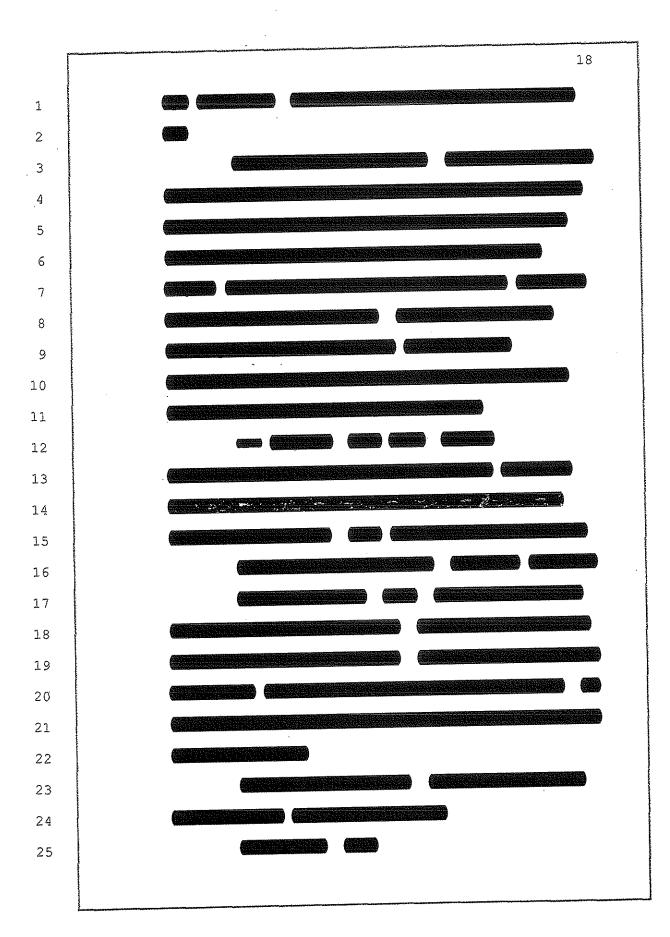


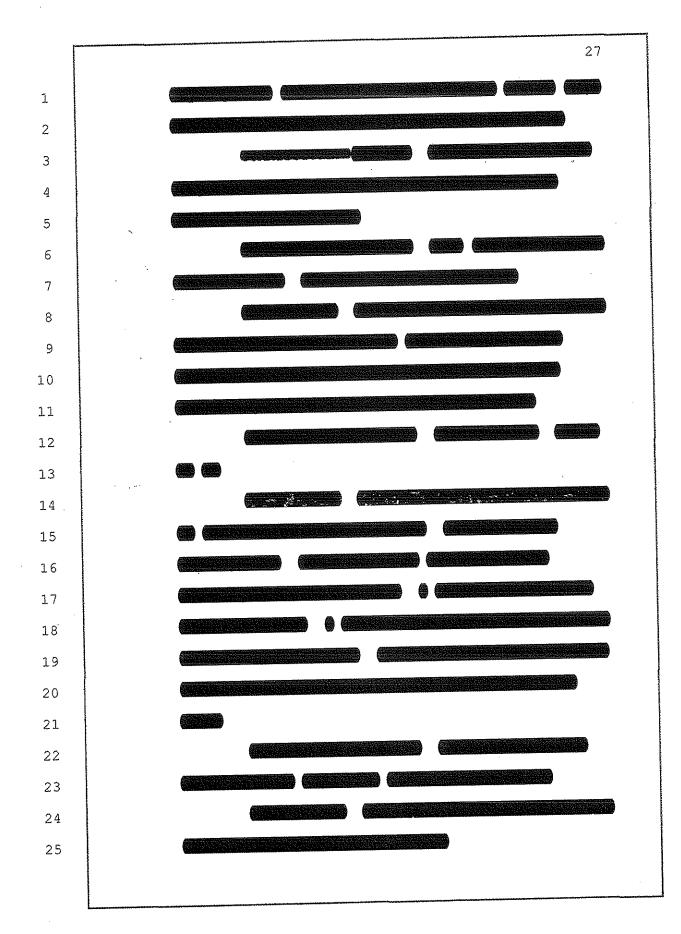


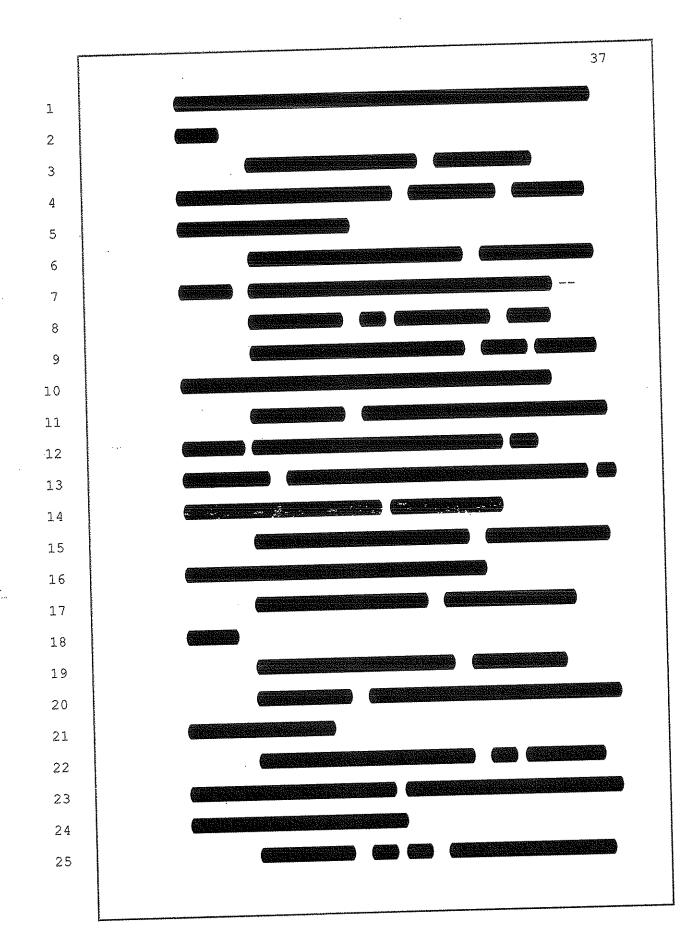


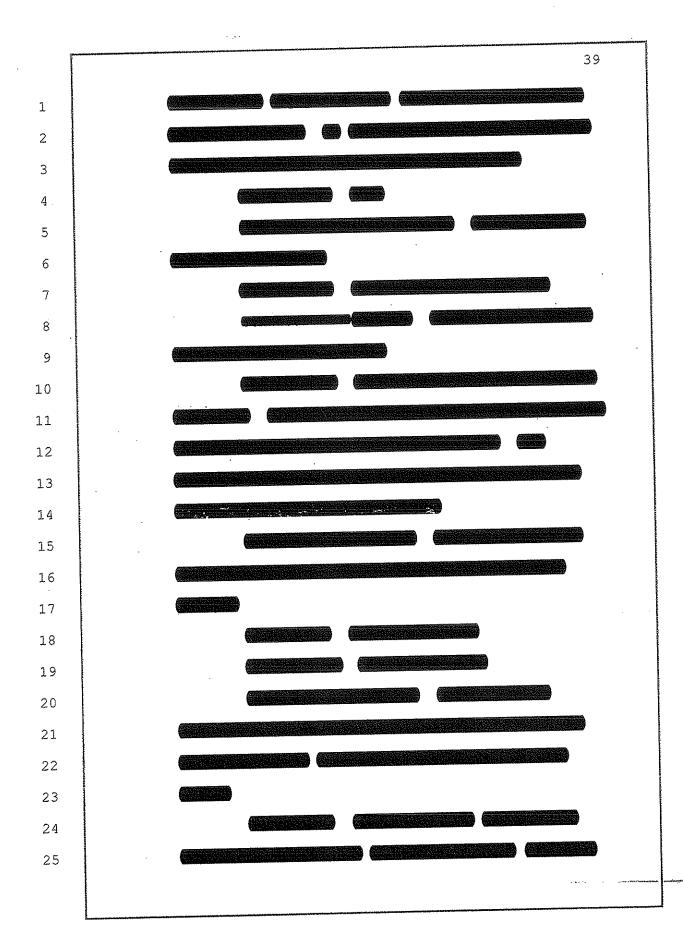


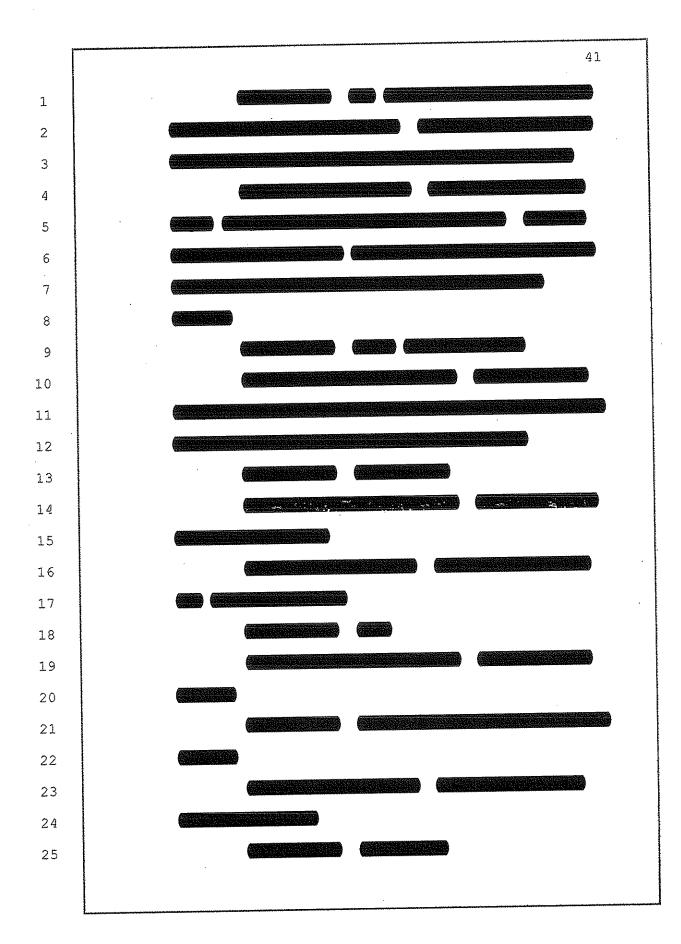
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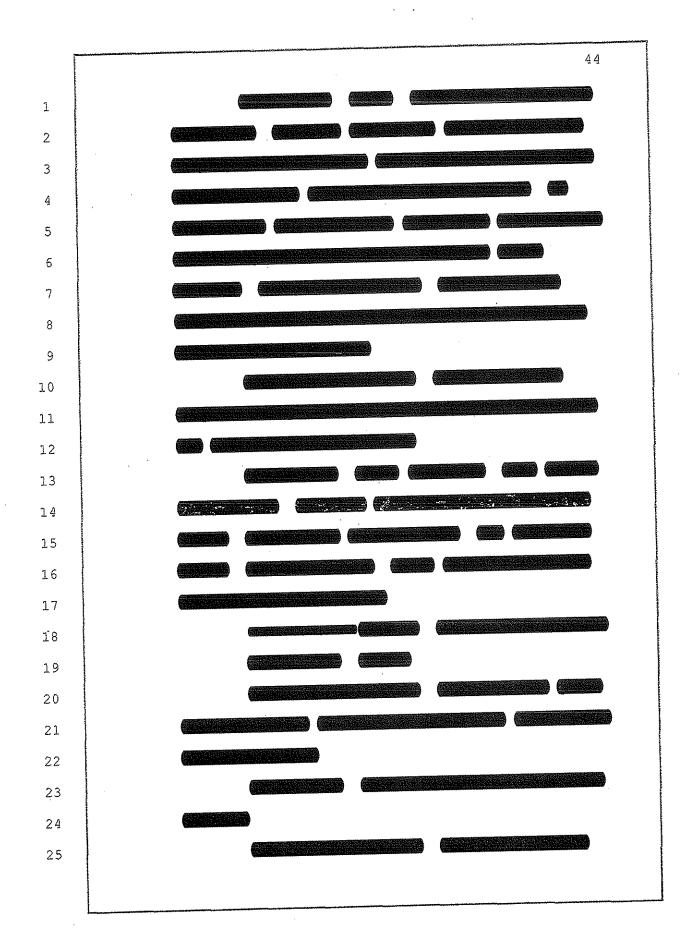


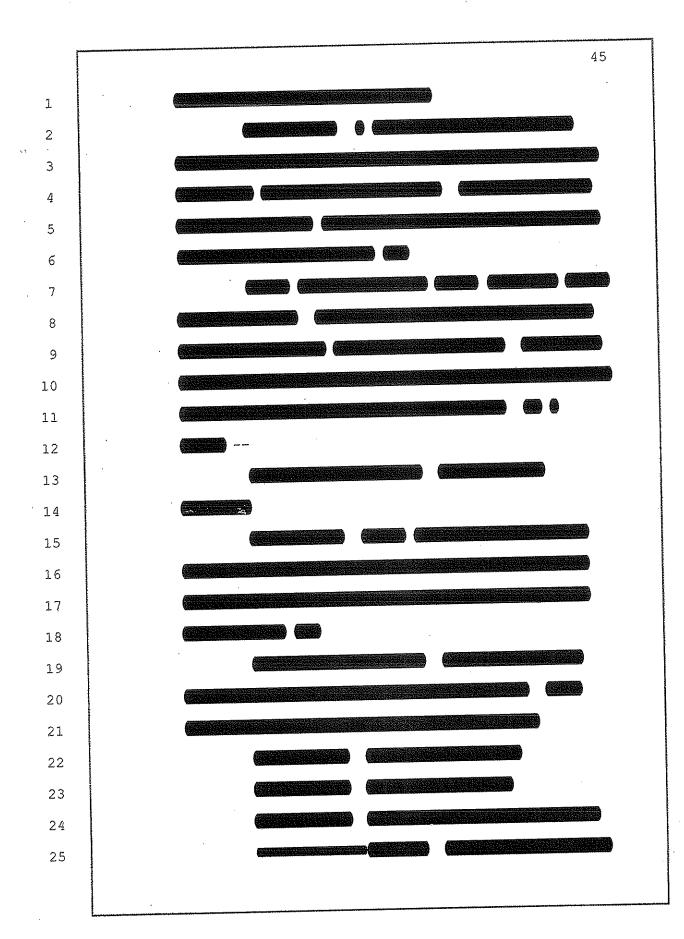


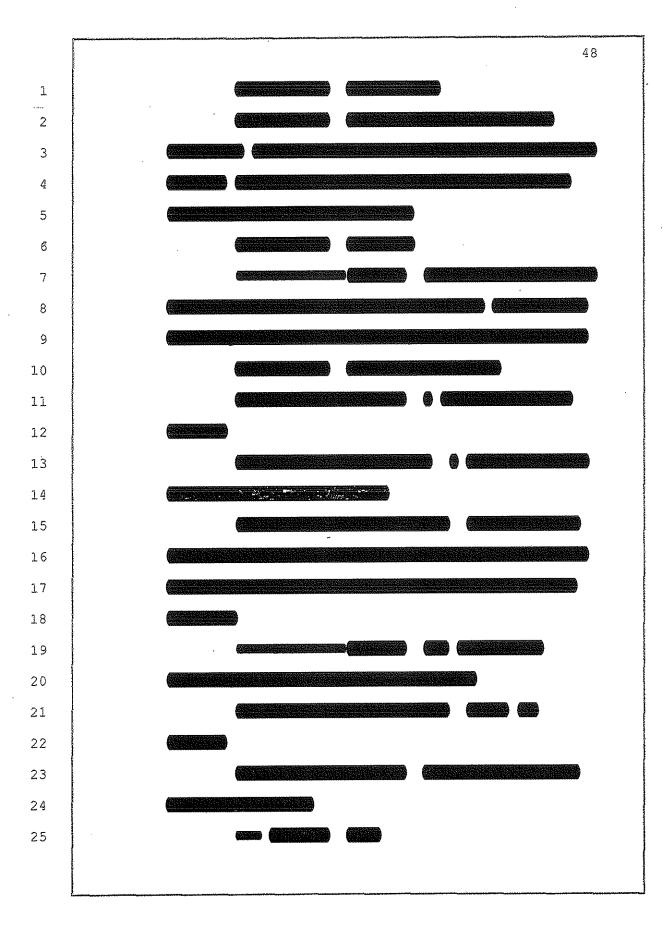












MR. AMODIO: 1 Joe, if you'd like to go 2 into the Administrative Consent Order. 3 MR. BELLA: There it is. 4 COMMISSIONER DeVITA: I don't know if 5 anybody reviewed this, I did. I'm reading it and 6 reading it and trying to understand. 7 COMMISSIONER VANNOY: You're a lawyer. COMMISSIONER DeVITA: Well, trying to 9 understand what it says and, you know, I think I 10 understood it until I got to the end where it's 11 713 days for this, and 292 days for this. It's, 12 like, crazy. 13 COMMISSIONER KOLODZIEJ: Welcome to the 14 world of the DEP. 15 MR. HANLEY: Am I correct in saying that 16 the extension of time is well beyond the 17 anticipated use of life for anybody sitting here 18 at this table? 19 MR. BELLA: That's pretty much. 20 COMMISSIONER DeVITA: What I found 21 interesting, I don't know if this was all public 22 education. That was all in it. 23 MR. BELLA: Yes. 24 COMMISSIONER KOLODZIEJ: And requirement. 25

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with that for a second. Working backwards, what 1 2 kind of a schedule does that impose upon the Commission in terms of what we need to do in order 3 to make that happen? Does that provide us with 5 sufficient time, we're in the middle of 2013, to hire our experts? Have them do their analysis? 6 Go through an appropriate period of public comment and question? Possibly make changes on the basis 8 of those public comments and questions? Get 9 designs? Contract? And begin construction by 10 2014? Given how lack of quickly this organization 11 12 runs, 18 months to get that done seems a little 13 aggressive. COMMISSIONER DeVITA: We don't have to 14 commence construction till 2014. 15 COMMISSIONER BAZIAN: He said that --16 17 COMMISSIONER KOLODZIEJ: Can he answer. 18 please. 19 MR. BELLA: We have to have the bid documents ready by 2014. And then by mid 2015, we 20 21 start construction. That goes till 2017, mid 2017. That's for the first phase. We should have 22 23 no problem whatsoever getting that done. figure in shorter amounts of time. 24 For instance, the plant, we were under the 25

ACO for the plant, and that was a more complex project.

COMMISSIONER BAZIAN: The only problem is,

I don't know if there was opposition to the plant.

I wasn't around at that point in time. But we do know that there is opposition to this, potential legal challenges which may happen. I don't know.

MR. BELLA: Well, that's all part of the, you know, part of our ability -- if there's something a Court rules against us, well, then, that's the way it is, you know. But other than that, we should be moving forward no problem. I don't see that this is a problem internally to get this done.

The other important aspect about this is the Phase 2 shift is they've given us more time there. That was the one I was more concerned about, because that's where I would, you know, I would believe that you have more — first off, it's a more complicated issue in terms of the operational, you know, our abilities to deal with operational and that kind of thing. The construction and all the kind of ancillary construction that goes with it would impact us more. So that's what I'm more concerned about.

MR. HANLEY: Phase 2 is what? 1 MR. BELLA: Just the New Street Reservoir. 2 Even though it's just the tanks, it's more 3 complicated in terms of the operations. The 4 important thing about this is that the Phase 3 is 5 not set. MR. HANLEY: Phase 3 is? 7 MR. BELLA: The Great Notch Reservoir. 8 It's not cast in stone where that's going to be. 9 They've given us a lot of time. They want us to 10 negotiate with Newark to bring Newark into maybe 11 doing a joint project. So that has given us and 12 given the Commission a lot of leeway. And in 13 fact, there are no real deadlines set in that. 14 That would be the subject of a future ACO. 15 COMMISSIONER BAZIAN: Now, our role with 16 the current ACO is what? 17 MR. BELLA: Just approve it. 18 COMMISSIONER BAZIAN: What if we didn't 19 approve, just out of curiosity, assuming we have a 20 choice, I'm wondering if there really is a choice. 21 MR. HANLEY: Realistic, just so -- you may 22 not recall this, the idea that we should sue the 23 EPA or DEP, it's been done, they've lost. 24 COMMISSIONER BAZIAN: I'm not suggesting 25

that. I'm saying I'm being asked to vote on something, being asked to vote on something indicates to me I have a choice. If I'm being told I don't have a choice, then I'm wondering what I'm voting on.

MR. HANLEY: Well, unfortunately, in the context of this regulatory scheme, the DEP is the entity that has been delegated this responsibility by the EPA. The EPA adopted a rule a long time ago and it said: Everybody's got to have this done by 2009. That didn't happen because of a completely stupid deadline. But the fact of the matter is, we don't have a choice to do something. We can argue about the details, which is what we've done and I think we've won a lot of points on the details, but can we argue that we don't have to do this; no.

COMMISSIONER DeVITA: It's going to happen.

COMMISSIONER KOLODZIEJ: Correct.

MR. HANLEY: You're obligated to do it under the law. It's no different than all the other things.

COMMISSIONER BAZIAN: I wasn't suggesting that we don't comply with the requirements of the

I think we all understand there are many 1 ways to skim that particular cat. The issue that 2 I am asking is: I have an ACO here. It seems to 3 me this ACO that was issued by the DEP says this 4 is the way you're going to get this done. This is 5 how long you have; period, end of discussion. 6 MR. HANLEY: That's not really true. 7 COMMISSIONER BAZIAN: But that's what I'm 8 being told. I'm being told --9 MR. HANLEY: If you thought you were being 10 told that, I don't think you were. What you're 11 being told is that the rules are in place, the DEP 12 came to us and said: You all got to do this. For 13 the past -- and we have negotiated constantly for 1.4 how many years now; four, five years? 15 MR. BELLA: A long time. 16 MR. HANLEY: With them about getting it 17 shaped to our favor. And there are many, many 18 changes. This is what, the third? 19 COMMISSIONER DeVITA: So the document we 20 have in front of us has been the subject of 21 negotiation? 22 MR. HANLEY: Lengthy, lengthy detail. 23 COMMISSIONER DeVITA: There's been give 24 and take? 25

MR. HANLEY: And the Commission had approved the first already.

COMMISSIONER DeVITA: But this has been negotiated and this is what we've basically negotiated?

MR. BELLA: Yeah.

COMMISSIONER VANNOY: And we're happy.

COMMISSIONER KOLODZIEJ: And it's more favorable.

COMMISSIONER DeVITA: I had a concern with the time frames like you did until I started getting into this, I found it confusing, but when I look six months from this, two years from this, three years from this, so, I mean, we do seem to have a fair amount of time. One thing is 910 days. So it's getting up there.

COMMISSIONER BAZIAN: I understand that.

But my concern with the whole process all along
has been that the ACO is mandating tanks and I'm
still not satisfied that I understand properly if
we're still going to be going to the residents and
talking to the residents and have public comments
and when tanks are only one solution, but the ACO
mandates tanks. I don't know what the benefit of
the open meetings is going to be when it's tanks

because that's what we're dealing with the DEP on as opposed to some other method.

MR. BELLA: First off, we've been through this for, like, an unbelievable amount of time.

COMMISSIONER BAZIAN: I know.

MR. BELLA: We've done studies, which we've done inhouse. In the first two phases, the tanks are the only real good option. There are other options, granted, however, it is in these first two phases. In the last phase, the Great Notch phase, that's a little different issue. We have a little more flexibility there, the way we do it. The other thing is, also, we have a lot of flexibility in terms of what they look like and how they look and, you know, how they're going to be placed and that kind of thing going forward. That will come out of these public hearings and that kind of thing. So we have that kind of flexibility.

MR. HANLEY: Is it fair to say for the Great Notch tanks are not yet mandated?

MR. BELLA: That's correct.

COMMISSIONER KOLODZIEJ: There you go.

MR. BELLA: We're not sure. We're not even sure what will happen up there.

COMMISSIONER BAZIAN: Forgive me if I look at my Patersonian colleagues and say Paterson is cool with our putting tanks with Levine?

COMMISSIONER VANNOY: I'm not speaking for my fellow colleague, but I am.

COMMISSIONER BAZIAN: I mean, have you heard complaints from the residents?

COMMISSIONER LEVINE: Everyone is complaining; the neighbors, the people that live up there.

COMMISSIONER VANNOY: Which is why I tried to set up appointments for people to come in and be more knowledgeable about it.

with that. My point is that if we have done an aggressive outreach, if we had been talking to people, maybe through public means, some other method, and the information was out there, I would feel more comfortable. The information is not out there and we don't know. I certainly don't know if at some point when we are talking to people somebody might come back and say: Well, you know, what about X. And if X seems like a viable idea, then what? We are now agreeing in blood to tanks.

COMMISSIONER VANNOY: I think we've done

our inhouse studies, like Joe said, which is our best option. 2 COMMISSIONER BAZIAN: I hear. 3 COMMISSIONER VANNOY: We have to do what's 4 right for us. 5 MR. BELLA: Those studies were done and 6 presented. They accepted our studies. 7 COMMISSIONER KOLODZIEJ: We have to defend 8 our choice at this point and we can work with the 9 public. 10 COMMISSIONER VANNOY: My only negative 11 feedback has been really from the people of West 12 . Paterson, not the people of Paterson. And I 13 believe that's because that's where they feel they 14 have to look at it. 15 COMMISSIONER KOLODZIEJ: They have to look 16 out their windows, aesthetics. 17 MR. BELLA: That's the most --18 COMMISSIONER BAZIAN: Forgive me if I do 19 say that, while they have -- it is their homes. 20 It's their homes. It's their property values. 21 Granted, our primary concern, and I've been 22 consistent with this, is always safety number one, 23 safety number two, safety number three. I don't 24 disagree with that. And if somebody's going to

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tell me the only way we can properly and safely do 1 this, if this is the only option we have, we're 2 not having this discussion. 3 PRESIDENT PRO TEM LEVINE: Let me ask you this question. 5 COMMISSIONER VANNOY: Let him finish. 6 PRESIDENT PRO TEM LEVINE: I want to -- I agree with you, Menachem, in everything. I mean, I'm hearing -- what's your proposal to how to get this done so the Commission can respond to it and 10 hear -- what do you want us to do? That's the 11 question. 12 COMMISSIONER BAZIAN: I have been told 13 there is no option so then we have to move word. 14 PRESIDENT PRO TEM LEVINE: So what's the 15 point? 16 COMMISSIONER BAZIAN: The point in this is 17 we're at a point right now and I'm expressing my 18 discomfort where we're at. 19 PRESIDENT PRO TEM LEVINE: I am, too. 20 What I wanted to do is have -- it's been blown 21 I want to have a public outreach in the 22 auditorium where we invite the people from 23 Passaic, Paterson, and Clifton. We invite the DEP 24 and the people to just ask questions for what we 25

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know right now and we move forward from that, you know. That's what I wanted to do. And I know Commissioner Sanchez wanted it too, but we haven't moved on it and done.

COMMISSIONER BAZIAN: I have advocated that. It hasn't been done. We have the ACO in front of us --

PRESIDENT PRO TEM LEVINE: Let me ask you, as the Chair, am I allowed to put you in charge of getting this done and setting something up with Joe Bella and getting that done? I mean...

COMMISSIONER KOLODZIEJ: Can we just move this along for consensus? George has made a very valid point. We already approved two previous ACOs. This is an Amended ACO, which has been negotiated by our team to get a better position than we had before.

All of these things that you're saying you'd like to have done, it doesn't preclude us from doing that. It just moves the process along. And in my opinion, you don't want to pick off the DEP. It wasn't my first word. You don't want to pick off the DEP because our big issue is going to be water allocation when we're going to be back before these people fighting against some very

heavy hitters. So I just want to get this project moving.

I appreciate the flexibility that we got on Phase 3, so Woodland Park should be happy.

Clifton already had their presentation,
Commissioner. And our municipal council, it was
publicly televised, not anybody on that council,
when it was a matter of the public health, which
was the issue of why we have to cover, versus
aesthetics, I'm telling you right now, seven
council people had no problem saying: Go forward,
do what you have to do. So I'm sure you'll get
the same result and you can still do it.

PRESIDENT PRO TEM LEVINE: The reasons we're getting the complaints is one of the reservoirs is in our city.

COMMISSIONER KOLODZIEJ: Well, the Mayors Association has been putting a lot pressure on our mayor and the bottom line, he certainly saw the light. He said: Aesthetics versus public health, there's no fight here. Public health comes first. That was his comment, for the record.

MR. BELLA: The other thing, even though there's tanks, you have flexibility, but tanks are your best option. They're your best option. In

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addition to being the best option in those particular locations, they're also you're least cost option. We have flexibility how they're going to look, how high they're going to be. We have flexibility. Those are the kind of things we're going to be presenting.

And I've talked to people in Paterson.

I've talked to the Paterson, the New Street and that kind of thing, and now we can move on. And the next step will be awarding the contract, getting our contract, getting our designers on board and that's when we have the big push in terms of public interaction.

COMMISSIONER KOLODZIEJ: Right. It's mandated in the ACO.

MR. HANLEY: Mr. Chairman. Mr. Chairman. PRESIDENT PRO TEM LEVINE: George.

MR. HANLEY: I just want to point out, someone said it doesn't preclude you. The real controversy, correct me if I'm wrong, is Great Notch, right? So that decision, again, has not yet been made. And I don't see any reason why you can't have a public hearing about Phase 3, you know, at the appropriate time, depending on when you want it; any time.

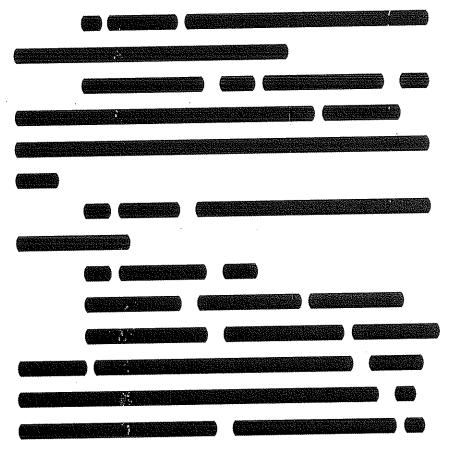
COMMISSIONER KOLODZIEJ: But my concern is we will vote on this today in regular session. So you have an opportunity to vote whichever way you want, both Commissioners. But we need to get this piece done today, correct?

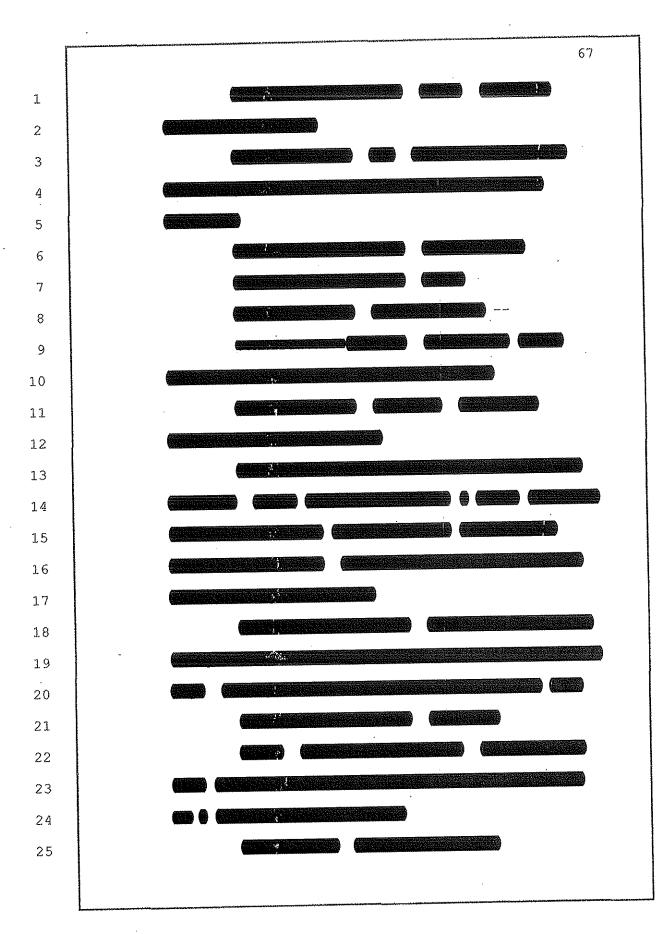
MR. BELLA: Yes.

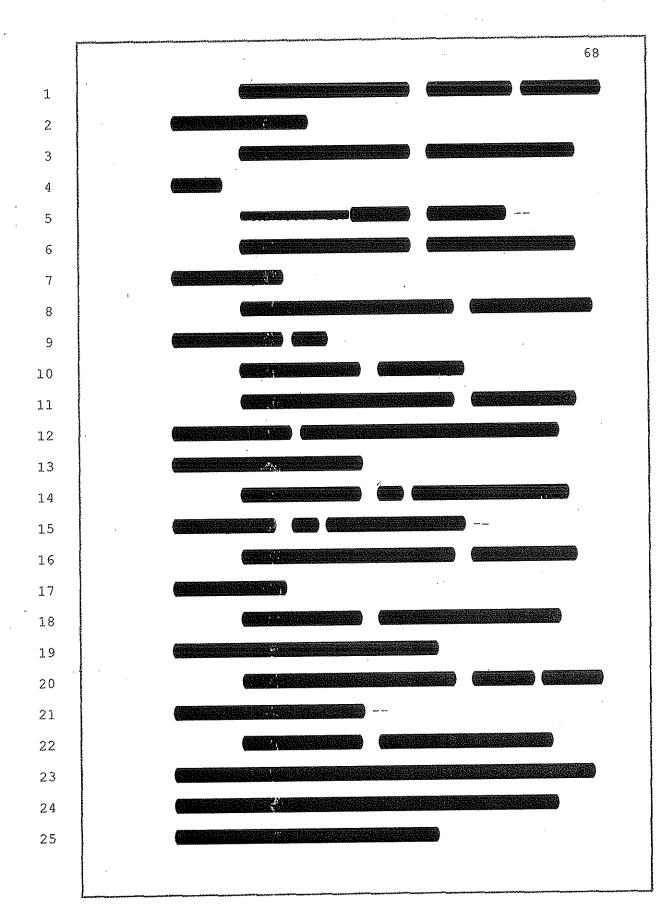
COMMISSIONER KOLODZIEJ: One way or the other.

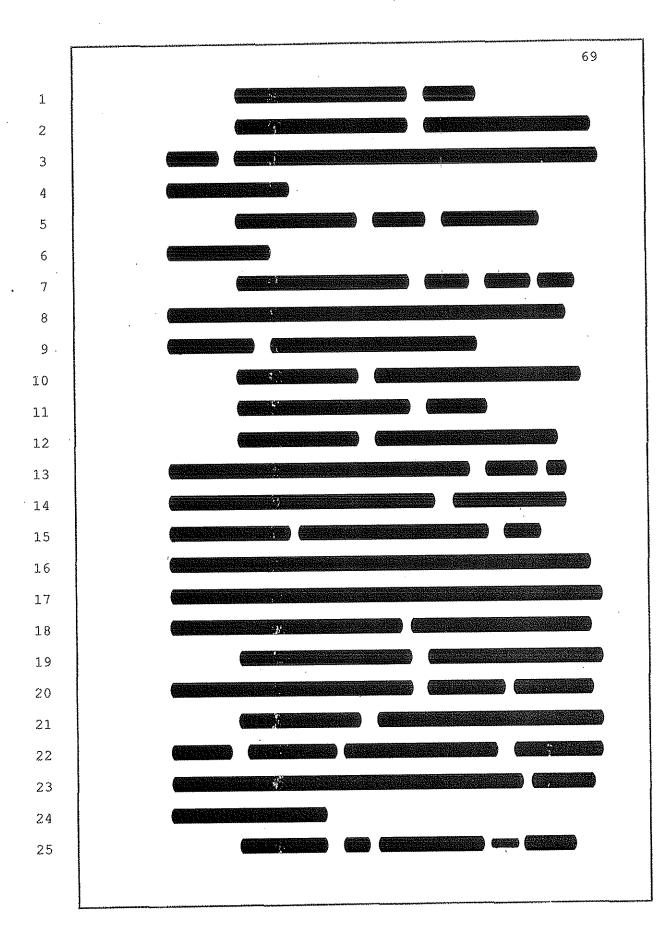
PRESIDENT PRO TEM LEVINE: We'll vote in open session then.

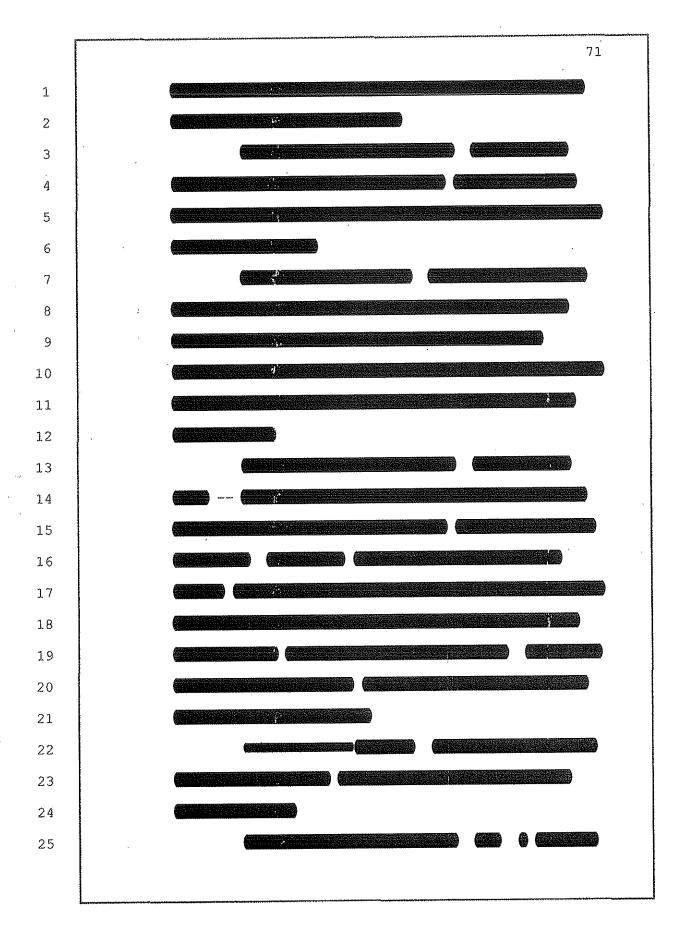
MR. AMODIO: Move it to open session.

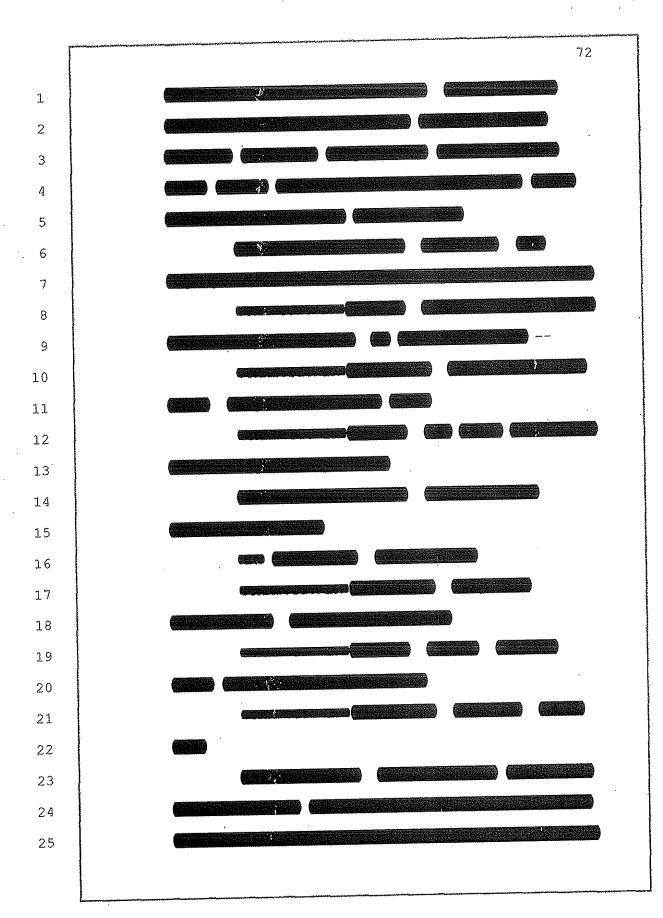


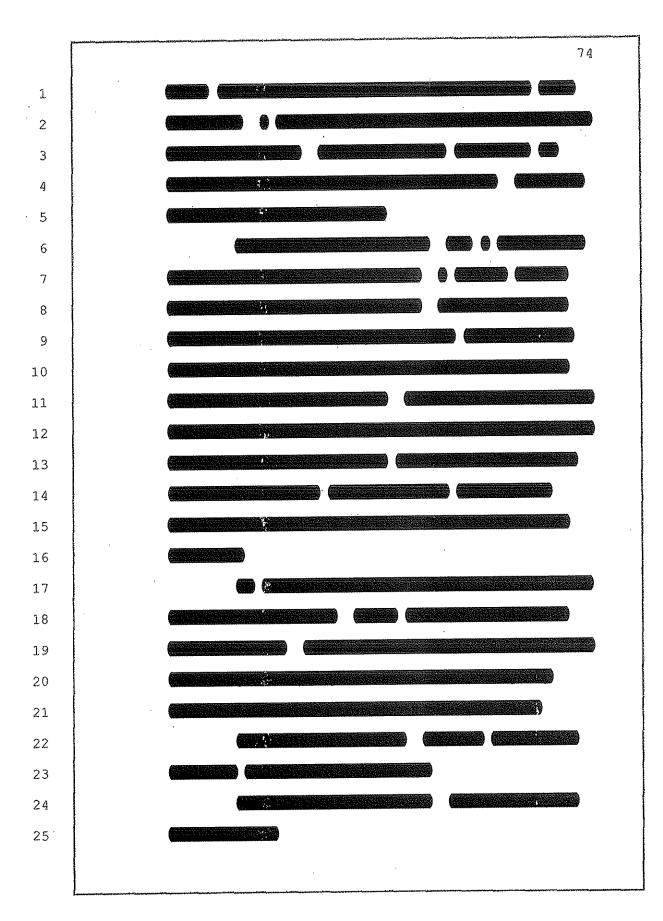


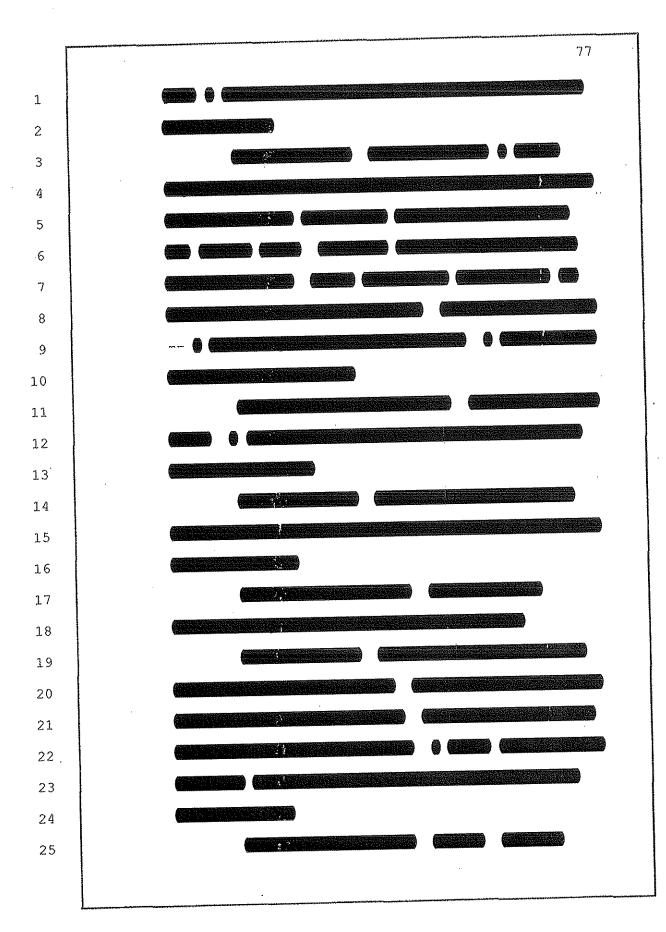


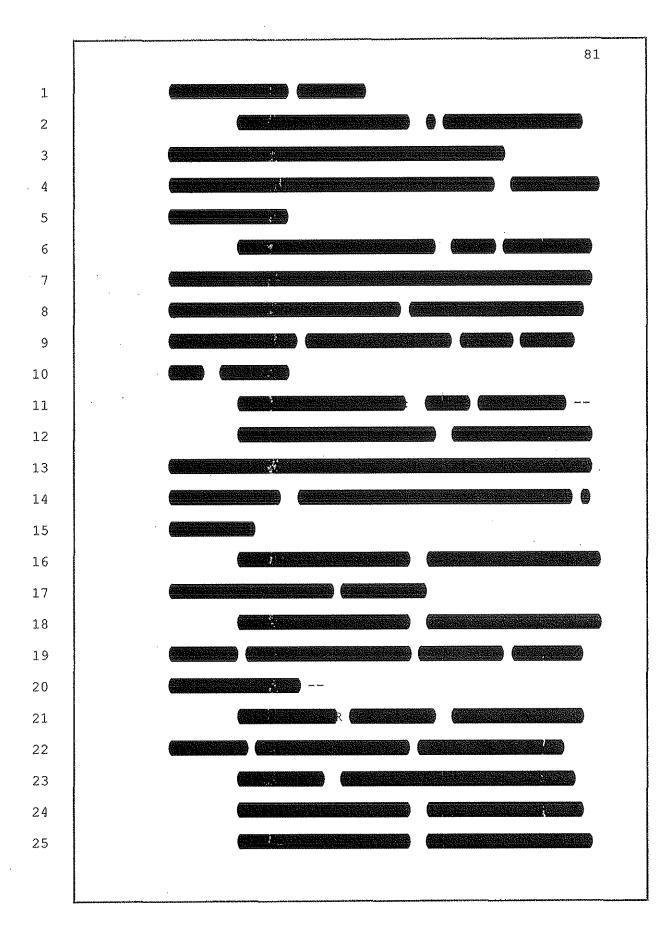


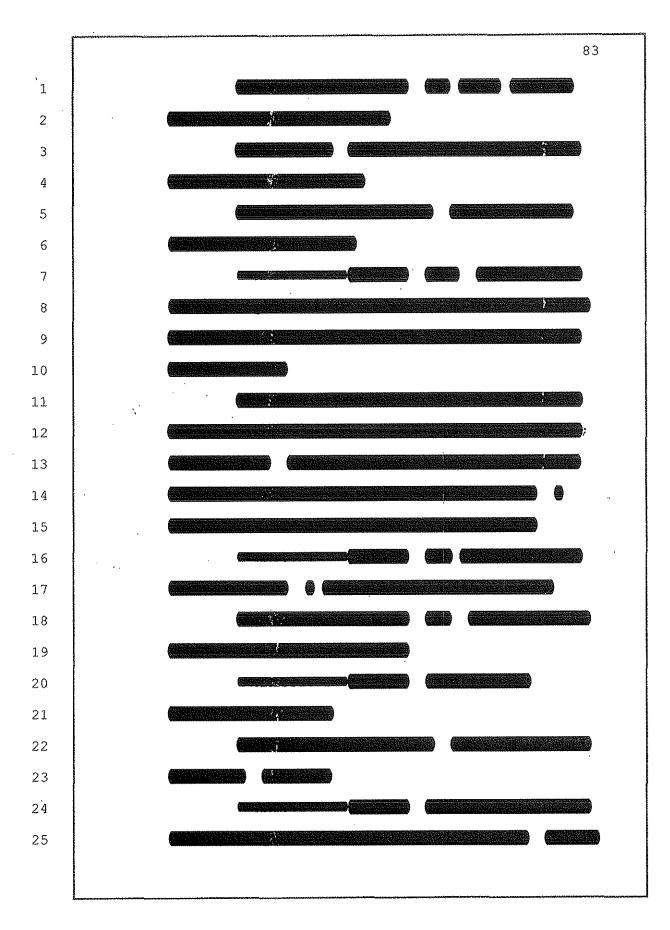


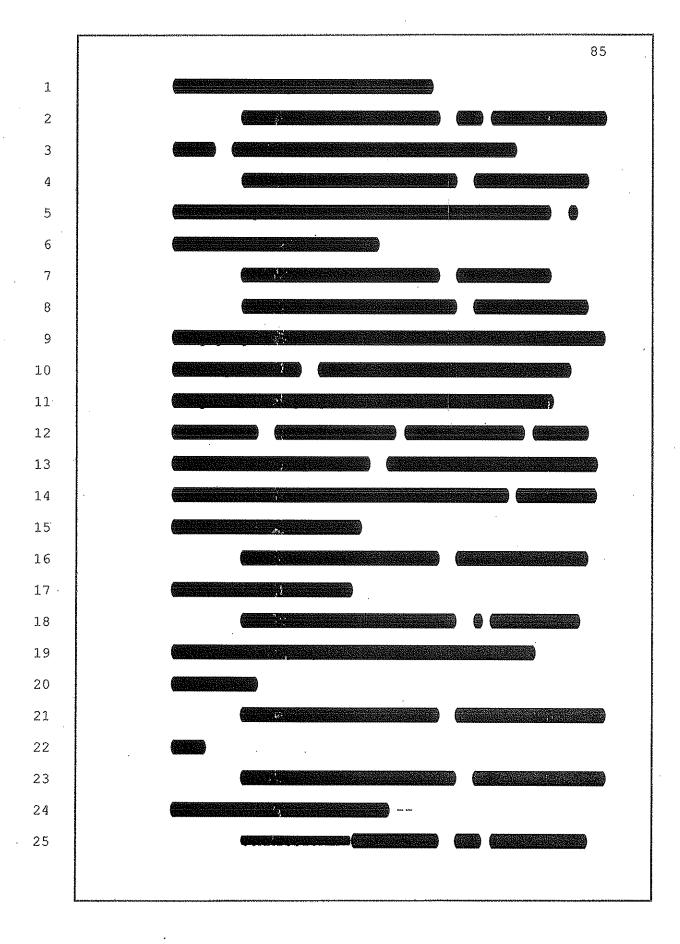












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I, LYNANN DRAGONE, License No. XIO1388, a
Certified Court Reporter and Notary Public of the State
of New Jersey, certify that the foregoing is a true and
accurate transcript of the meeting at the time and the
date hereinbefore set forth.

I further certify that I am neither attorney nor Counsel for, nor related to or employed by any of the parties to the action in which this meeting was taken.

I further certify that I am not a relative or employee of anyone employed in this case, nor am I financially interested in this action.

LYNANN DRAGONE, CCR Certified Court Reporter