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BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER )  
RIGHT CHANGE PETITION )  
HEARING )

JOE SERNA, JR. BUILDING  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
BYRON SHER AUDITORIUM  
1001 I STREET  
SECOND FLOOR  
SACRAMENTO CALIFORNIA

PART 1A

Friday, August 12, 2016  
9:00 A.M.

VOLUME 10

Pages 1 - 243

Reported By: Deborah Fuqua, CSR No. 1248

Computerized Transcription by ProCAT

1 APPEARANCES:  
2 CALIFORNIA WATER RESOURCES BOARD  
3 Division of Water Rights  
4 Board Members Present  
5 Tam Doduc, Co-Hearing Officer:  
6 Felicia Marcus, Chair and Co-Hearing Officer:  
7 Dorene D'Adamo, Board Member  
8 Staff Present  
9 Diane Riddle, Environmental Program Manager  
10 Dana Heinrich, Senior Staff Attorney  
11 Kyle Ochenduzsko, Senior Water Resources Control Engr.  
12  
13 For California Department of Water Resources  
14 Mark Cowin, Director  
15 James (Tripp) Mizell, Senior Attorney  
16 Cathy Crothers, Assistant Chief Counsel  
17 Ken Bogdan, Senior Attorney  
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19 By: Thomas Martin Berliner, Attorney at Law  
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21 U.S. Department of the Interior, Bureau Reclamation,  
22 and Fish and Wildlife Service  
23 Amy Aufdemberge, Assistant Regional Solicitor  
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25 State Water Contractors  
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27 Stefanie Morris  
28 Adam Kear  
29 Becky Sheehan  
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31  
32  
33  
34  
35 (Continued)

1	APPEARANCES (continued)
2	
3	San Luis and Delta-Mendota Water Authority Daniel O'Hanlon
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5	Westlands Water District Philip Williams
6	
7	Bogle Vineyards, Diablo Vineyards, Stillwater Orchards, and Delta Watershed Landowner Coalition
8	Osha Meserve
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10	South Delta Water Authority John Herrick
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12	North San Joaquin Water Conservation District Jennifer Spaletta
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14	County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority
15	Thomas Keeling
16	
17	Save the California Delta Alliance, et al. Michael Brodsky
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19	City of Antioch Matthew Emrick
20	County of Solano Peter Miljanich
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PANEL: MICHAEL ANDERSON, RON MILLIGAN,  
JOHN LEAHIGH and MARK HOLDERMAN

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1 Friday, August 12, 2016 9:00 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: Good morning,  
5 everyone. Would you take your seat. It's 9:00  
6 o'clock.

7 Welcome back to California WaterFix Water  
8 Rights hearing.

9 I am Tam Doduc, Board Member and Hearing  
10 Officer for this matter. Board Chair Felicia Marcus  
11 and Co-Hearing Officer will be joining us shortly. To  
12 my far right is Board Member DeeDee D'Adamo. To my  
13 left are Dana Heinrich, Diane Riddle, and Kyle  
14 Ochenduszkowski. We also have Mr. Baker and Mr. Long  
15 assisting us today.

16 The usual announcements: Please take a moment  
17 and identify the exits closest to you. In the event of  
18 an emergency, an alarm will sound and we will evacuate  
19 this room. We will take the stairs down to the first  
20 floor, exit, and cross the street to the park. If you  
21 are not able to use the stairs, you will be directed  
22 into a protective vestibule. As you know by now, this  
23 hearing is being recorded and webcast, so please  
24 provide all comments into the microphone and begin by  
25 stating your name and affiliation.

1           Our court reporter is here with us again  
2 today, and the transcript will be made available on our  
3 website upon completion of Part 1A. If you need to  
4 have it sooner, please make arrangements with the Court  
5 reporting services.

6           Please take a moment and put all noise-making  
7 devices on vibration, silent, off, or "do not disturb"  
8 features -- as I will do, since I was guilty of making  
9 a noise yesterday.

10           With that, are there any procedural matters,  
11 questions that we need to address before we resume  
12 cross-examination?

13           Okay. Not seeing any, Ms. Meserve, we will  
14 continue with your cross-examination.

15           MICHAEL ANDERSON, RON MILLIGAN,  
16           JOHN LEAHIGH and MARK HOLDERMAN,  
17           called as witnesses on behalf of the  
18           Petitioner, having been previously duly  
19           sworn, were examined and testified  
20           further as hereinafter set forth:

21           CROSS-EXAMINATION BY MS. MESERVE (resumed)

22           MS. MESERVE: Good morning. It's Osha Meserve  
23 doing cross-examination.

24           MS. MESERVE: I was informed by staff that we  
25 were able to locate the slide that I was looking for



1 yesterday regarding the flows across the -- in the --  
2 the changes and flows in the South Delta, so if we  
3 could go to that. I had called it Slide 9 from DWR-1,  
4 but I think that's wrong.

5 Okay.

6 MR. LONG: This is Page 8 of DWR-1E corrected.

7 MS. MESERVE: 1E, okay. Thank you. I'm going  
8 to find my page in my notes. I'm sorry. I wasn't  
9 expecting that we could ask about that.

10 Well, I think -- oh, I see. The numbers were  
11 taken away. Yeah, I don't think it's worth asking  
12 about at this point. The question I had was there  
13 was -- it used to say that there would be a reduction  
14 in reverse flows in the South Delta, and there was a  
15 specific range given. And I had a question about how  
16 that was derived.

17 But with the change in the slide, I'm not sure  
18 I can ask this question. I'll get to the issue of  
19 reverse flows in the North Delta later. Let's see.

20 So instead -- thank you for finding that. I  
21 really appreciate it.

22 So I want to follow up briefly on the issue of  
23 low-level pumping, which we spoke about yesterday, of  
24 being apparently 900 cfs, or three times Freeport, just  
25 to see if Mr. Milligan or Mr. Leahigh had anything to

1 add to their testimony with respect to how, if ever the  
2 low-level pumping would be ceased. So I just wanted to  
3 give an opportunity to clarify the answers from  
4 yesterday, if that would be all right, in case there  
5 was anything additional. Is there?

6 WITNESS LEAHIGH: Well -- so this is John  
7 Leahigh.

8 I think that Mr. Milligan made a good  
9 clarification that low-level pumping was up to 300 cfs  
10 per intake. I think that, if you look at the example  
11 that I had put together, there were many periods of  
12 time where there was zero pumping occurring at the --  
13 or zero diversion occurring at the proposed intakes.

14 MS. MESERVE: Okay. And would that be  
15 reflected -- would that be something that we could  
16 discuss with the modeling panel in terms of how often  
17 that occurred under the models' offered scenarios?

18 WITNESS LEAHIGH: Perhaps it would have that  
19 information.

20 MS. MESERVE: Am I correct in saying that  
21 today you still don't have that information right now  
22 as we sit here?

23 WITNESS LEAHIGH: I don't have the information  
24 over the long-term what the -- as far as zero pumping  
25 or zero intake at the new diversion, no, I don't have

1 that on a long-term, only for the exhibit that was a  
2 part of my testimony.

3 MS. MESERVE: Okay. You know, I'm looking at  
4 the time, and I just have a question for the Chair. I  
5 sort of think I was -- was I 30 minutes in when we left  
6 off? I thought it was more like 15. But maybe I'm  
7 wrong.

8 CO-HEARING OFFICER DODUC: Just continue as long  
9 as your line of question is relevant, effective, and  
10 efficient, we'll be accommodating.

11 MS. MESERVE: Thank you.

12 Okay. So back on the slide that's been put up  
13 now, which is from DWR-1E -- is that correct?

14 Can anyone on the panel explain why the words  
15 were removed from the more natural flow patterns, that  
16 part was removed from this slide?

17 MR. MIZELL: If it's informative to the Board,  
18 I can explain what was in our letter that accompanied  
19 the errata slides when we submitted them.

20 CO-HEARING OFFICER DODUC: Please do.

21 MS. MESERVE: Thank you.

22 MR. MIZELL: The errata that -- we removed the  
23 captions from this particular graphic because they were  
24 representative of past materials, and they were not  
25 representative of what was being presented in the

1 testimony itself.

2 CO-HEARING OFFICER DODUC: But why would that  
3 particular part change?

4 MR. MIZELL: I don't have the reasoning behind  
5 these materials, but when we were presenting  
6 Ms. Pierre's testimony, we were not presenting the  
7 numbers that appeared in the caption.

8 MS. MESERVE: Just for the record, the caption  
9 on the left next to the fish used to say "Reinstate a  
10 more natural direction of flows in the South Delta by  
11 46 to 160 percent."

12 CO-HEARING OFFICER DODUC: So Ms. Meserve, are  
13 you questioning whether the conclusion or at least the  
14 statements of improvement have been altered regardless  
15 of what number goes there?

16 MS. MESERVE: That's really my line of -- yes.  
17 That's what I'm curious about and trying to understand  
18 is that one of the -- and I did find -- because I  
19 looked elsewhere in the testimony, so I found that in  
20 Ms. Pierre's testimony, DWR-51, Page 8, it says,  
21 "Reducing South Delta pumping would provide more  
22 natural east-west flow patterns." So that's similar to  
23 what's provided -- used to be provided under the little  
24 fish figure below -- I mean, to the left rather.

25 So I was just trying to follow up if there has

1 been a change in the project proponent's representation  
2 of what was going to occur if this petition's granted.

3 MR. MIZELL: We did not want to mislead the  
4 public by putting out numbers in the Power Point  
5 presentation that were not representative of the  
6 written testimony because it was our understanding the  
7 Power Points were to be a summary of the written  
8 testimony.

9 CO-HEARING OFFICER DODUC: Okay. Regardless  
10 of the number, what about the aspect of improving  
11 natural flow I think is where Ms. Meserve was trying to  
12 lead.

13 MS. MESERVE: Yes. Can anyone on the panel  
14 speak to the improving natural flows and whether that's  
15 still part of the project proponent's representations?

16 WITNESS LEAHIGH: Yes. So I wasn't familiar  
17 with the specific numbers that may have appeared on  
18 here or not. But the basic concept is still valid,  
19 which is, with the new North Delta diversion, much of  
20 the diversions that currently take place in the south  
21 diversion location would be shifted to that North Delta  
22 diversion. And the result of that would be a decrease  
23 in the amount of net negative flow along Old and Middle  
24 River generally.

25 MS. MESERVE: Okay. Would these reductions in

1 reserves flow in the South Delta occur in every water  
2 year under operations?

3 WITNESS LEAHIGH: I think that's probably the  
4 case. The modelers would be the better source to --  
5 they're the ones that have evaluated all year types.  
6 But I would imagine there will be some reduction in  
7 reverse flows in every year.

8 MS. MESERVE: And can you speak to whether  
9 there are predicted increased reduced flows -- I mean,  
10 sorry -- flow reversals at the North Delta diversion  
11 locations under the proposal?

12 I can ask a more specific question. With  
13 respect to looking first at the Sacramento River, would  
14 there be an increase in reverse flows in the Sacramento  
15 River in the vicinity of the North Delta diversions?

16 WITNESS LEAHIGH: That part of it I don't have  
17 as good an understanding. That would be a better  
18 question for the modelers.

19 MS. MESERVE: Do you know what the increase in  
20 reverse flows over current conditions would be at Miner  
21 Slough?

22 WITNESS LEAHIGH: I do not. Perhaps the  
23 modelers would have that information.

24 MS. MESERVE: And Georgiana Slough?

25 WITNESS LEAHIGH: Same response.

1 MS. MESERVE: Is it fair to say that the flow  
2 reversals in the North Delta would increase when the  
3 North Delta diversions were being used?

4 WITNESS LEAHIGH: No, I don't have the  
5 information.

6 MS. MESERVE: Do you know what will be done  
7 operationally to minimize flow reversals in the  
8 Sacramento and the other sloughs I mentioned?

9 WITNESS LEAHIGH: No, I don't have that  
10 information. Again, I'd refer you to the modeling  
11 panel.

12 MS. MESERVE: Are there any conditions or  
13 limits that DWR or the Bureau has proposed to limit  
14 flow reversals in the North Delta as a result of the  
15 diversions?

16 WITNESS LEAHIGH: I'm not aware of the  
17 specifics on that point.

18 MS. MESERVE: Okay. I'm going to move on to a  
19 discussion about how under operations we would -- this  
20 project proposes to prevent injury to legal users of  
21 water.

22 I recall that, during the engineering panel,  
23 we heard how the mitigation measures AG1, GW1,  
24 Groundwater 1 and Groundwater 5 and Water Quality 11  
25 would prevent injury to agricultural and domestic water

1 users. Would those same measures reduce injury to  
2 water users during operation?

3 WITNESS LEAHIGH: I'm not familiar with the  
4 measures you're referring to.

5 MS. MESERVE: Okay. I do have -- just to  
6 assist the witness in this, in my folder that I just  
7 provided, I have SWRCB Chapter ES, which is Executive  
8 Summary of the Draft R-DEIR. If you could pull that  
9 out? I'm sorry. It's under one that's called  
10 "Operations," not this -- not this folder.

11 There we go. The Chapter Zero, "Executive  
12 Summary." And then if we scroll to -- sorry I wasn't  
13 able to excerpt this -- 82. So we have AG1 at the  
14 bottom, "Development and Ag Land Stewardship," and keep  
15 scrolling down to the next page.

16 And then also for construction and operation,  
17 we have an Ag Stewardship Plan, which is a several-page  
18 menu options of things that DWR might do and the Bureau  
19 might do. And Groundwater 1, maintaining water  
20 supplies and then minimizing seepage and then  
21 attempting to reduce water quality.

22 So my question is, are you aware for  
23 operations of how these types of things would reduce  
24 impacts to legal users of water? Is that part of the  
25 plan?



1           WITNESS LEAHIGH: I was not involved in the  
2 development of these provisions. So I have no  
3 knowledge.

4           MS. MESERVE: Yesterday we spoke about how you  
5 or someone like you might operate the project if built,  
6 correct?

7           WITNESS LEAHIGH: Our office would be making  
8 kind of the macro water management decisions for the  
9 new infrastructure, that's correct.

10          MS. MESERVE: Who would be responsible for  
11 preventing injury and impacts to water users during  
12 operation of the project?

13          WITNESS LEAHIGH: Well, it depends on what  
14 aspect you're talking about. We have a number of  
15 different offices within the Department that have  
16 various responsibilities.

17          MS. MESERVE: Is any of that reflected here in  
18 the mitigation measures that we were referred to last  
19 week for how these injuries would get weighted in  
20 construction?

21          WITNESS LEAHIGH: Again, I don't know offhand.  
22 I -- I am not familiar with these measures. I wasn't  
23 involved in any of the development of the EIR/EIS.

24          MS. MESERVE: Do you agree with the testimony  
25 that you heard about construction that also, during

1 operations, all injuries to legal users of water could  
2 be avoided through these types of measures?

3 WITNESS LEAHIGH: I have no opinion on that,  
4 not being familiar with this.

5 MS. MESERVE: Okay. How would you explain or  
6 if you have any comment it or someone else on the  
7 panel, you will see in the -- it's the significant and  
8 unavoidable here, under the "Operation of a proposed  
9 water conveyance facility." And there's other impacts  
10 like that as well, but I'll just stick with that.

11 Can you explain how the effects, from a CEQA  
12 and NEPA perspective, would be significant and  
13 unavoidable or adverse, in the last column, and then at  
14 the same time not be expected to injure any legal users  
15 water?

16 WITNESS LEAHIGH: Again, I have no opinion on  
17 this. I was not involved on any of the development of  
18 the EIR/EIS.

19 MS. MESERVE: We're being asked to look at  
20 these measures as ways that the injury would be  
21 prevented, however, correct?

22 The witness is non-responsive. I'll move on.

23 WITNESS LEAHIGH: Could you repeat the  
24 question?

25 MS. MESERVE: Would you agree we're being told

1 that these are the types of measures that would avoid  
2 injury to legal users of water during operations,  
3 correct?

4 WITNESS LEAHIGH: I don't know.

5 MS. MESERVE: We also heard during the  
6 engineering panel that, under the environmental  
7 commitments, there would be a contact at DWR or the  
8 design -- whoever was undertaking the construction  
9 during construction in order to have someone for water  
10 users and property owners to contact if there was a  
11 problem.

12 Do you know if there would be a similar  
13 contact or program for during operation of the project?

14 The witness is non-responsive.

15 CO-HEARING OFFICER DODUC: Give him a few  
16 seconds there.

17 MS. MESERVE: Sure. I can clarify if there's  
18 a problem with the question.

19 WITNESS LEAHIGH: I imagine there would be  
20 somebody with the Department that could respond to  
21 concerns that were project related, yes.

22 CO-HEARING OFFICER DODUC: And who would that  
23 be?

24 WITNESS LEAHIGH: I don't know offhand.  
25 Depends on what the issue is and where, what type of

1 issue. I don't have -- very vague question.

2 MS. MESERVE: Okay. I can give you an  
3 example. For instance, what if a nearby water user,  
4 like one of the users I represent that has an intake  
5 just across from the third southerly intake, and they  
6 are experiencing difficulty getting their pumps to work  
7 because of the change in water levels. Who would they  
8 contact?

9 WITNESS LEAHIGH: Well, these sorts of issues  
10 that are -- if they're project-related issues, we do  
11 have within our Bay-Delta office several branches that  
12 will deal with these sorts of -- work with local  
13 districts. So, for example, the South Delta, we have  
14 Mr. Holderman here --

15 CO-HEARING OFFICER DODUC: Mr. Leahigh, let me  
16 interrupt here.

17 I think it's unrealistic at this point,  
18 Ms. Meserve, to ask Mr. Leahigh or anybody to actually  
19 name somebody who would be available to address these  
20 questions or concerns. But you make an important  
21 point, that these things need to be addressed, and  
22 there has to be some accountability by the project  
23 proponents to address these concerns.

24 So, Mr. Leahigh, without trying to name names  
25 that you cannot just pick out of the hat right now, I

1 would suggest you provide responses to Ms. Meserve, to  
2 the extent you know, in terms of the Department's  
3 commitment to address her concerns.

4 WITNESS LEAHIGH: Yes. I think, as I was  
5 saying, the Department would be committed to deal with  
6 any project-related issues regarding inability or  
7 effect on other users to divert as they had without --  
8 prior -- without the project in place.

9 MS. MESERVE: But as of today -- and I'm not  
10 looking for a name, just to clarify. I was more  
11 thinking of a program or some just proposed approach.  
12 As of today, Mr. Leahigh, you do not have that  
13 information, correct?

14 WITNESS LEAHIGH: I don't have the specific  
15 information, no.

16 MS. MESERVE: Are you familiar, Mr. Leahigh,  
17 with the prior BDCP Chapter 7 government structure? Is  
18 that something you were involved in at all?

19 WITNESS LEAHIGH: No, I was not involved in  
20 that.

21 MS. MESERVE: Is anyone on the panel familiar  
22 with that prior version of the project, Chapter 7  
23 government structure?

24 It's okay.

25 WITNESS MILLIGAN: I will say that I've seen

1 it, but that is quite a few versions ago, and I  
2 couldn't begin to tell you which may have been --  
3 which, the exact governing structure under a Bay-Delta  
4 conservation plan. This is not the proposed project  
5 we're speaking to today.

6 MS. MESERVE: Thank you. I only bring it up  
7 to ask that -- or to point out that that had --  
8 although many of us weren't fully satisfied with it, it  
9 did have a stakeholder committee that had some kind of  
10 input, potentially, into the operation of the project  
11 and also construction in order to address these kind of  
12 concerns.

13 Is anyone on the panel aware if there's  
14 anything like that planned for the current proposal?

15 WITNESS MILLIGAN: I'm not aware.

16 MS. MESERVE: Are you aware -- is anyone on  
17 the panel aware of whether there would be funding in  
18 place or assigned for this type of endeavor, to address  
19 complaints and issues as they arise to prevent injury  
20 to water users?

21 WITNESS LEAHIGH: I'm not aware. Not to say  
22 there isn't but I'm not personally aware.

23 MS. MESERVE: Is -- I guess it would be  
24 Mr. Leahigh. Are you familiar with the Tort Claims  
25 Act, which is the method by which individuals can try

1 to seek damages from the State government?

2 MS. MORRIS: Objection, calls -- Stefanie  
3 Morris.

4 CO-HEARING OFFICER DODUC: Yes, Ms. Morris?

5 MS. MORRIS: Calls for a legal conclusion.

6 MS. MESERVE: I asked if he was aware of it.

7 CO-HEARING OFFICER DODUC: He can answer that  
8 question.

9 WITNESS LEAHIGH: Not particularly, no.

10 MS. MESERVE: Do you know whether affected and  
11 injured individuals would have to rely on the Tort  
12 Claims Act rather than some other procedures we've been  
13 discussing previously?

14 MR. BERLINER: Objection.

15 CO-HEARING OFFICER DODUC: You need to  
16 rephrase that, Ms. Meserve.

17 MS. MESERVE: Since he's not aware of the Tort  
18 Claims Act, then it's probably best to move on.

19 CO-HEARING OFFICER DODUC: I agree. Thank  
20 you.

21 MS. MESERVE: Okay. I have a question about  
22 real-time operations which has been discussed on this  
23 panel. Does that include any tract for affected  
24 property owners and water rights holders, to have input  
25 into the operations of the North Delta diversions to

1 prevent injury?

2 WITNESS LEAHIGH: The real-time operations as  
3 I was discussing it, which would be -- no there would  
4 not be that involvement. I wouldn't see that there  
5 would be that involvement.

6 MS. MESERVE: Do you anticipate any  
7 involvement of the thousands of affected diverters in  
8 the Delta in the operation of the project?

9 MR. BERLINER: Objection, assumes facts not in  
10 evidence.

11 CO-HEARING OFFICER DODUC: Ms. Meserve, would  
12 you like to rephrase that?

13 MS. MESERVE: Is it your position,  
14 Mr. Leahigh, as far as you know, that there would be no  
15 input of the affected diverters in operation of the  
16 project?

17 WITNESS LEAHIGH: I can't say for sure one way  
18 or the other.

19 MS. MESERVE: Okay. Now I'm going to give you  
20 something to do. Mr. Holderman, I know you've been  
21 wanting something. Let's see.

22 So, according to your testimony, DWR-62,  
23 you're an expert on the drought barriers, right?

24 WITNESS HOLDERMAN: Our office was involved in  
25 installing last years' drought barrier at West False



1 River, yes.

2 MS. MESERVE: Was your office also involved in  
3 the planning of the northern two barriers that weren't  
4 actually put in place in 2014 and 2015 but were  
5 considered?

6 WITNESS HOLDERMAN: Yes.

7 MS. MESERVE: Could you please put up -- I  
8 have in my folder -- it's called "DWR Barriers  
9 PowerPoint." And the second page.

10 This is the Power Point presentation from 2015  
11 on the drought barriers. Are any barriers in the North  
12 Delta proposed as part of the WaterFix?

13 WITNESS HOLDERMAN: No.

14 MS. MESERVE: This -- is part of the reason  
15 that you were asked to be on this panel that the  
16 barriers were found to cause similar salinity and water  
17 level impacts as the WaterFix would because they  
18 removed fresh water flow out of the channels?

19 WITNESS HOLDERMAN: I can answer that.

20 CO-HEARING OFFICER DODUC: Okay.

21 WITNESS HOLDERMAN: My purpose for being here  
22 is to answer questions on the South Delta barriers and  
23 the Head of Old River barrier in South Delta, nothing  
24 in the North Delta.

25 MS. MESERVE: Just looking at this picture,

1 this is from -- this is showing the change in elevation  
2 from the northern Delta. And I'll get to the point, I  
3 promise.

4 The little star, it's tiny, but that's showing  
5 the elevational changes during project operations.

6 Does anybody on the panel actually know if there's any  
7 visual representation of expected water level changes?

8 I know we have testimony about point 5 to 1.25 --  
9 1.2 feet. But is there anything similar to this kind  
10 of representation in the DWR's exhibits, that you know  
11 of?

12 WITNESS LEAHIGH: As it relates to the --

13 MS. MESERVE: WaterFix?

14 WITNESS LEAHIGH: -- the proposed North Delta  
15 diversions?

16 MS. MESERVE: Yes.

17 WITNESS LEAHIGH: Then that would be a  
18 question for the modelers. I'm not aware that anything  
19 of this type exists.

20 MS. MESERVE: Okay. If DWR finds that  
21 information later, I would be appreciative to be  
22 pointed to it.

23 CO-HEARING OFFICER DODUC: Ms. Meserve, before  
24 you move on, do you want to mark this for  
25 identification? I didn't hear your reference of it.

1 MS. MESERVE: Sure. I'm not sure what I'm  
2 going to do with it. We can mark it as Land 1. I  
3 don't know if I have another one already.

4 (Watershed Landowners Exhibit LAND-1  
5 marked for identification)

6 MS. MESERVE: Now, Mr. Holderman, for the  
7 impact from the barriers, there were impacts to  
8 numerous diversions that required DWR to take action to  
9 prevent injury in both the one you actually installed  
10 and in the north that was planned, correct?

11 WITNESS HOLDERMAN: There were plans being,  
12 made to address the water levels for the barriers in  
13 the North Delta, yes, if we installed them.

14 MS. MESERVE: Do you know under what  
15 conditions the DWR would propose those same barriers  
16 again in the North Delta?

17 WITNESS HOLDERMAN: They would have to be more  
18 critically dry conditions than we experienced last year  
19 when we put in just the West False River barrier. That  
20 was extreme condition; however, it didn't warrant  
21 installing barriers in the north. So it would have to  
22 be something worse than that, in my view.

23 MS. MESERVE: Do you, Mr. Holderman or  
24 Mr. Leahigh, know how the combination of any barriers  
25 that could be installed and the new points of

1 diversion, how they would interact if they were both in  
2 place?

3 WITNESS HOLDERMAN: I don't believe that DWR's  
4 modeled that. The chances of putting in North Delta  
5 drought barriers would be -- would be a rare event. So  
6 it isn't something that we've modeled with the new  
7 intakes, which won't be online for another 13 years or  
8 so at best.

9 MS. MESERVE: And this -- this pertains back  
10 to DWR's program for addressing injury. Mr. Holderman,  
11 do you recall discussions with DWR during the barriers  
12 that occurred -- that were proposed in the north about  
13 replacement water supplies and modifications to  
14 diversion intakes that were required or would have been  
15 required to protect water users?

16 WITNESS HOLDERMAN: Yes.

17 MS. MESERVE: And was your team able to survey  
18 all the effective diversions on the Sutter and  
19 Steamboat sloughs?

20 WITNESS HOLDERMAN: Yes, we did.

21 MS. MESERVE: Were you ever able to survey  
22 from the land?

23 WITNESS HOLDERMAN: I wasn't -- we had  
24 surveyors go out and do those surveys. Most of them  
25 are from the water side. I don't know if they needed

1 to access the land to do that. There might have been  
2 some cases where they did.

3 If they needed to, they would need to get  
4 permission from the land owners and possibly from the  
5 reclamation districts.

6 MS. MESERVE: Yes. Well, to my knowledge,  
7 that never occurred because that was not able to be --  
8 I'll just correct the record. That was not able to be  
9 accomplished.

10 Let's see. How long were you working on the  
11 barriers project leading up to the 2015 work in -- I'm  
12 sorry. DWR was considering barriers in both 2014 and  
13 then again in 2015, correct?

14 WITNESS HOLDERMAN: Correct.

15 MS. MESERVE: And by 2015, did you -- you  
16 mentioned you had a survey, but was that a detailed  
17 enough survey that you could actually provide  
18 replacement water supplies if the barrier went in in  
19 2015?

20 WITNESS HOLDERMAN: The plans were similar to  
21 what plans were in place during the late '70s, when the  
22 North Delta salinity barrier did go in. And what was  
23 anticipated is that the diverters that would be  
24 immediately downstream of the barriers, one or two  
25 barriers that would be installed, would be the most

1 affected on the low low tides, as you see in this  
2 display.

3           Those that are downstream of the barriers that  
4 have diversions that are such that that foot, foot and  
5 a half decrease in the low low water levels would have  
6 an effect on their diversions, we would address either  
7 -- then there's a number of ways to address that,  
8 either with extending their diversion, providing  
9 supplemental pumping with temporary pumps. There are a  
10 lot of different things that can be done.

11           We've done such things in the South Delta for  
12 farmers that were downstream of the rock barriers there  
13 that were experiencing lower water levels in a low low  
14 tide when the barriers were in place. And we addressed  
15 those farmers, and they've been satisfied, since we  
16 haven't heard anything back in about 15 years. So I  
17 think we took care of them.

18           And the same sort of thing would be done for  
19 those diverters that are immediately downstream of any  
20 North Delta salinity barrier that might be installed.

21           MS. MESERVE: Do you recall that it was in I  
22 think March of 2015 and no -- did DWR have in place or  
23 order replacement pumps or any of the things that would  
24 be needed if the barriers were going in the next month  
25 or the month after? Were you ready?

1           WITNESS HOLDERMAN: There was -- the  
2 conditions at that time in March were such that we were  
3 looking at just the West False River barrier. It  
4 didn't appear that we would be needing to install North  
5 Delta barriers. So, no, it wasn't any urgency to go  
6 out and rent temporary pumps or do any of that sort of  
7 thing.

8           But I might add that, in '78, there were  
9 temporary pumps that were acquired by the Department  
10 and staged at local -- in local areas in North Delta in  
11 case any of the diverters had trouble, and they could  
12 go retrieve those pumps and utilize them until  
13 something more permanent could be done or until the  
14 problem, you know, went away.

15           MS. MESERVE: Would you say that your  
16 readiness in 2015 was similar to what DWR did in 1978?

17           WITNESS HOLDERMAN: I -- I wasn't around in  
18 '78, so I don't know how ready they were. But I know  
19 that's what was accomplished by virtue of reading  
20 reports on those activities that were done back then.

21           We, again, did not go beyond the planning  
22 stage in looking at providing temporary pumps. And  
23 that's something we've done in the South Delta, so it's  
24 not a real big deal for us to go out and acquire  
25 temporary pumps.

1 MS. MESERVE: I'm going to move on to DWR-218,  
2 which is in the main testimony. I want to touch on the  
3 cut-off walls that were discussed during the  
4 engineering panel. Were those cut-off walls also --  
5 are those permanent? This is probably for Mr. Leahigh.

6 WITNESS LEAHIGH: I do not know. That would  
7 have been a question for the engineering panel.

8 MS. MESERVE: Okay. Well, I will represent to  
9 you that, once constructed, I believe they were  
10 permanent.

11 Do you know how deep the cut-off walls that  
12 are discussed in this memo, DWR-218, how deep down they  
13 would go for the -- around the forebay, the  
14 intermediate forebay in the North Delta, for instance?

15 MR. BERLINER: Objection, asked and answered.  
16 This was all discussed in the engineering panel.

17 CO-HEARING OFFICER DODUC: What is it that you  
18 specifically want to address to Mr. Leahigh,  
19 Ms. Meserve, regarding operations?

20 MS. MESERVE: I understand that the cut-off --  
21 I'm trying to confirm whether the cut-off walls would  
22 be in place also during the operation of the project  
23 not just construction.

24 CO-HEARING OFFICER DODUC: Do you know that,  
25 Mr. Leahigh?



1           WITNESS LEAHIGH: No, I don't know the answer  
2 to that.

3           MS. MESERVE: So just a quick follow-up then.  
4 So -- so you have -- would it be fair to say that you  
5 have not considered the interference cut-off walls  
6 would cause to bidirectional groundwater flows in the  
7 permanent state?

8           WITNESS LEAHIGH: I personally have not.

9           MS. MESERVE: Is it possible that cut-off  
10 walls would interfere with domestic and agricultural  
11 water supplies during the operation of the project?

12           CO-HEARING OFFICER DODUC: I can hear the  
13 objections now.

14           Mr. Leahigh, I'm assuming you don't have the  
15 answer to that question.

16           WITNESS LEAHIGH: I do not have the expertise  
17 to answer that question.

18           CO-HEARING OFFICER DODUC: Since you have not  
19 considered it. Okay.

20           MS. MESERVE: Okay. I will move on to DWR-402  
21 exhibit. This has to do with the compliance with the  
22 standards and the record of compliance of the project  
23 which Mr. Leahigh has testified to.

24           Looking at Page 2 of that exhibit, and  
25 Footnote 1 which states -- I'll just -- "This analysis

1 only considers standards for which both projects...are  
2 responsible. It does not include those for which only  
3 one is operationally responsible, example, Vernalis."

4 Do you know, Mr. Leahigh, what other standards  
5 besides Vernalis were excluded for this exceedance  
6 analysis?

7 WITNESS LEAHIGH: Yes. As far as I know, from  
8 D1641, from Tables 1, 2, and 3, the only standard --  
9 standards that the projects are not jointly responsible  
10 would be both the water quality and the flow standards  
11 at Vernalis on the San Joaquin River.

12 MS. MESERVE: On Footnote 6 [sic], it states  
13 that the TUCPs in 2015 allowed EC compliance point to  
14 be moved from Emmaton to Three Mile. Would this have  
15 allowed salinity intrusion to move further upstream  
16 than normally allowed in D1641?

17 WITNESS LEAHIGH: Yes.

18 MS. MESERVE: Then on Page 1, the metrics, the  
19 chart shows that the Ag Water Quality EC Standard was  
20 exceeded for 35 days in 2013 and 15 days in 2015 at  
21 Emmaton. Footnote 8 explains -- which I guess is back  
22 on the second page; I'm sorry -- that on the 15 days in  
23 2015, the CUP was approved allowing the EC compliance  
24 to move from Emmaton to Three Mile. Were these  
25 exceedances in these two years on consecutive days, do

1 you know?

2 WITNESS LEAHIGH: Yes, I believe the  
3 exceedances during these extreme drought years were --  
4 my recollection is they were on consecutive days, yes.

5 MS. MESERVE: Do you know if these occurred  
6 during the irrigation season in the summer, generally?

7 WITNESS LEAHIGH: Yeah, the Emmaton standard  
8 generally is in place during the irrigation season, so  
9 yes, the exceedances would have occurred during the  
10 irrigation season.

11 MS. MESERVE: Do you know what was the  
12 percentage of exceedance for just the existing EC  
13 objective at Emmaton over the 21-year period?

14 WITNESS LEAHIGH: Yes, I believe that was part  
15 of my testimony. I'd have to look at the exhibit  
16 that's -- that I had a separate exhibit that looks  
17 specifically at Emmaton. If you bear with me a second,  
18 I can see if I can find that.

19 MS. MESERVE: Yes, I'm trying to focus in on  
20 the Emmaton compliance regardless of whether there was  
21 a TUCP because that's what protects the water quality  
22 for ag users.

23 WITNESS LEAHIGH: Right. So there is a  
24 separate exhibit that focused on the Western Delta Ag  
25 Standards for which Emmaton is one. And I think that

1 was DWR -- let's see -- probably 402, perhaps.

2 MS. MESERVE: I think that's what we're  
3 looking at.

4 WITNESS LEAHIGH: I'm sorry. It's DWR-403.

5 MS. MESERVE: And I can look at that. I'll  
6 keep moving. I'm sorry.

7 Do you know -- do you know how many days in  
8 2015 were above the point 7 EC level established in  
9 2005 for Emmaton to protect South Delta ag water users?

10 WITNESS LEAHIGH: I'm sorry. I didn't quite  
11 catch all of your question. For 2015?

12 MS. MESERVE: Yes. Do you know how many days  
13 in 2015 were above the Emmaton standard established in  
14 2005?

15 WITNESS LEAHIGH: So it would be on this chart  
16 or this table. Well, I'm looking at the other exhibit,  
17 and it looks like it was 15 days of exceedance in 2015.

18 MS. MESERVE: Okay. Do you know how high --  
19 how high they went? I guess we could look at 403 if we  
20 want -- but how high the EC level at Emmaton got in the  
21 2015 irrigation season?

22 WITNESS LEAHIGH: I don't know offhand sitting  
23 here.

24 MS. MESERVE: Okay.

25 CO-HEARING OFFICER DODUC: Ms. Meserve, how

1 much additional time do you need, and what are your  
2 lines of questioning?

3 MS. MESERVE: Yes. I have a couple of  
4 questions about the initial operating criteria for  
5 Mr. Leahigh, and then I have a couple of questions for  
6 Mr. Milligan. And I think I could finish in an  
7 additional 20 minutes.

8 CO-HEARING OFFICER DODUC: And your questions  
9 for Mr. Milligan are on?

10 MS. MESERVE: Joint point of diversion and  
11 some operations financing.

12 CO-HEARING OFFICER DODUC: All right. We'll  
13 give you the 20 minutes.

14 MS. MESERVE: Thank you.

15 Can you define the initial operating criteria  
16 referred to on Page 19 of your testimony?

17 WITNESS LEAHIGH: Okay. If you can give me a  
18 second so I can find that.

19 MS. MESERVE: Yes.

20 WITNESS LEAHIGH: Do you know which line on  
21 Page 19 offhand?

22 MS. MESERVE: Sorry, I have it marked in  
23 another thing, I believe.

24 CO-HEARING OFFICER DODUC: So I'm confused. I  
25 had assumed that when talking about initial operation

1 criteria as proposed, it's between this H3 and H4.

2 WITNESS LEAHIGH: Yes, that's correct. I was  
3 trying to see exactly what the context was when I made  
4 reference to it in my testimony.

5 CO-HEARING OFFICER DODUC: Because if it's not  
6 H3 and H4, then you need to correct me.

7 WITNESS LEAHIGH: No, that is correct. The  
8 initial operating criteria is assumed to be somewhere  
9 between H3 and H4.

10 MS. MESERVE: Okay. Thank you. Sorry. I  
11 didn't have that marked.

12 Let's see. So you talk about H4A H3 criteria  
13 providing conceptual estimates of potential impacts on  
14 water users. Did the conceptual estimate include the  
15 diversion of an additional 6,000 cfs from the  
16 Sacramento River at Fremont Weir?

17 WITNESS LEAHIGH: No. Well, there's nothing  
18 related to the Fremont Weir that's part of the proposed  
19 project.

20 MS. MESERVE: Is the Fremont Weir project one  
21 of the existing biological opinion requirements,  
22 however?

23 WITNESS LEAHIGH: I don't know the exact  
24 details as they relate to Fremont Weir in the  
25 biological opinion.

1 MS. MESERVE: And I'm speaking of the  
2 2008-2009 biological opinion, too.

3 WITNESS LEAHIGH: Yeah. Offhand, I don't  
4 recall the details on that.

5 MS. MESERVE: So as far as you know, would it  
6 be fair to say that the conceptual estimate does not  
7 include those additional diversions that are likely to  
8 occur in the future under the biological opinion?

9 MR. BERLINER: I'll object. The witness has  
10 already indicated he doesn't know.

11 CO-HEARING OFFICER DODUC: There was an  
12 objection. Did you get that?

13 The court reporter -- I'm sorry. Mr. Berliner  
14 was not speaking into the microphone. I was just  
15 making sure the court reporter got it.

16 MS. MESERVE: Okay. So, he does not.

17 So to confirm, you do not know whether the  
18 conceptual estimate includes the Fremont Weir  
19 diversions of 6,000 cfs?

20 WITNESS LEAHIGH: I'm not aware of any 6,000  
21 cfs Fremont diversion that you're referring to.

22 MS. MESERVE: Are you aware, however, of the  
23 Yolo bypass RPA under the biological opinion?

24 WITNESS LEAHIGH: Again, I don't recall any  
25 details related to that aspect of the BiOp.

1 MS. MESERVE: Okay. I should skip over the  
2 next several questions.

3 Does anyone on the panel know where analysis  
4 regarding the effect on operations of the  
5 implementation of this RPA would be in the case in  
6 chief?

7 WITNESS MILLIGAN: No. But maybe the RPAs are  
8 embedded in the no-action alternative.

9 MS. MESERVE: Okay. Is it your understanding,  
10 Mr. Milligan, that these RPAs would be required also  
11 under the WaterFix, if that was to be approved?

12 WITNESS MILLIGAN: It's uncertain.

13 MS. MESERVE: Let's see, when -- I think this  
14 is a question for Mr. Leahigh, but perhaps Milligan.

15 Do you know whether the new boundary analysis,  
16 model runs and results will accompany the new BO when  
17 it is released next winter, if it is?

18 WITNESS MILLIGAN: I'm not aware.

19 MS. MESERVE: Do the operations of the State  
20 Water Project, Mr. Leahigh, pursuant to the 4AH3 or H4  
21 depend on the purchase of water from upstream sellers  
22 to meet to outflow assumptions in these scenarios?

23 WITNESS LEAHIGH: No, I don't believe it  
24 depends on that, no.

25 MS. MESERVE: So the simulation didn't assume



1 any purchase of water from sellers upstream?

2 WITNESS LEAHIGH: That would be a question for  
3 the modelers to confirm, but I don't believe that was  
4 the case.

5 MS. MESERVE: Okay. Can the project comply  
6 with the existing D1641 and biological opinion  
7 standards under the initial operating criteria you  
8 discussed if -- actually, strike that, since you didn't  
9 know the other one. Sorry.

10 And okay. I'll move on to a different area.

11 Mr. Milligan, I heard on cross-examination on  
12 Thursday that the Joint Point of Diversion will apply  
13 to the North Delta diversions; is that correct, the  
14 D1641 Joint Point of Diversion.

15 WITNESS MILLIGAN: I'm not sure in our  
16 discussions that that was exactly what was mentioned.  
17 I think what they said is Joint Point of Diversion may  
18 continue with the project in place.

19 MS. MESERVE: All right. Can you describe how  
20 under the Joint Point of Diversion accounting is  
21 handled whether there would be -- do you know whether  
22 there would be any changes to that accounting with the  
23 WaterFix in operation?

24 MR. BERLINER: I don't believe there would be,  
25 other than to -- basically, it's still a tracking of if

1 there is CVP water conveyed through and diverted by the  
2 State Water Project for use later by the Central Valley  
3 Project.

4 Obviously, the accounting and reporting may  
5 differ. This is probably years and years from now, so  
6 the criteria and response planning that would go around  
7 any use of Joint Point would probably evolve by that  
8 time.

9 MS. MESERVE: Do you think that the North  
10 Delta diversions would make possible a greater use of  
11 the Joint Point of Diversion at the South Delta  
12 facilities?

13 WITNESS MILLIGAN: It's hard to say. I don't  
14 know.

15 MS. MESERVE: The documents we have describe  
16 the new North Delta intakes as State Water Project  
17 facilities with use shared by CVP. Can you describe  
18 how you'll calculate the daily basis whether the  
19 diversions are for SWP or CVP?

20 WITNESS MILLIGAN: I think that still needs to  
21 be worked out.

22 MS. MESERVE: So there is no written agreement  
23 in place regarding how this would occur?

24 WITNESS MILLIGAN: Not that I'm aware of.

25 CO-HEARING OFFICER DODUC: Ms. Meserve since

1 you weren't here yesterday morning, you should be aware  
2 that Mr. Milligan answered many of these questions in  
3 terms of the joint operations of the facilities and  
4 that they have not worked out the specifics and there  
5 is nothing he could add at this point.

6 MS. MESERVE: Thank you.

7 Do you know, Mr. Milligan, how much the  
8 operation of the North Delta diversion, intermediate  
9 forebay, and reconstructed South Delta facilities will  
10 cost to operate once the project -- if the project is  
11 built?

12 WITNESS MILLIGAN: I think there have been  
13 some estimates, but I'm -- I don't have that  
14 information in front of me, and I haven't committed it  
15 to memory.

16 MS. MESERVE: We heard from Mr. Bednarski that  
17 there's no finance plan for completion of the design or  
18 construction. Does the Bureau have any finance plans  
19 for construction?

20 WITNESS MILLIGAN: Not that I'm aware of.

21 MS. MESERVE: Or for operation?

22 WITNESS MILLIGAN: Again, not that I'm aware  
23 of.

24 MS. MESERVE: Or maintenance?

25 WITNESS MILLIGAN: Same answer.

1 MS. MESERVE: For mitigation?

2 WITNESS MILLIGAN: Same.

3 MS. MESERVE: So under mitigation, that would  
4 include -- is it correct that there's no finance plan  
5 for relocating agricultural water supply intakes that  
6 maybe affected by change in point of diversion?

7 WITNESS MILLIGAN: No, not aware.

8 MS. MESERVE: Would that also be true for  
9 relocating reclamation district and drainage district  
10 water supply ditches and drains?

11 WITNESS MILLIGAN: No, not aware.

12 MS. MESERVE: What is your estimate,  
13 Mr. Milligan of when the project could potentially  
14 begin to be constructed?

15 WITNESS MILLIGAN: I have no estimate on that.

16 MS. MESERVE: Given the news of the  
17 legislature's authorization of an audit of the finance  
18 plan, do you think that will delay that out further  
19 than it might otherwise?

20 MS. MORRIS: Objection, relevance.

21 CO-HEARING OFFICER DODUC: Thank you,  
22 Ms. Morris.

23 Actually, I'm wondering, too, Ms. Meserve.  
24 I've allowed you to delve into the financial issue, and  
25 I appreciate that there's some relevance between the

1 mitigation measures and the financing related to  
2 provide those mitigation measures. But I'm not sure to  
3 what detail we need to get into it.

4           What is your current thinking, and how far are  
5 you planning on exploring this line of questioning?

6           MS. MESERVE: My concern is what you've  
7 mentioned, is that there have been many discussions  
8 about how all these things which are listed on a menu  
9 of options -- in a menu-of-options style in unfinalized  
10 mitigation measures will remove all possibility of  
11 injury to legal users of water.

12           And I'm trying to explore, whether it's for  
13 construction or for operation, whether it's possible  
14 that this project could do all those things which have  
15 been promised here before your Board. And I won't go  
16 very far with it, also.

17           CO-HEARING OFFICER DODUC: All right. I  
18 will --

19           MS. MESERVE: I'm almost done.

20           CO-HEARING OFFICER DODUC: I will allow a  
21 little leeway, but I will say a cautionary note to you  
22 and other potential cross-examiners that in deep  
23 drilling into the financial aspect is not something  
24 that is before us, and I would encourage you to not go  
25 too much further.

1 MS. MESERVE: Understood.

2 I guess to Mr. Milligan, are there any  
3 committed sources of funding for this project yet?

4 WITNESS MILLIGAN: Not that I'm aware.

5 MS. MESERVE: Do you believe that there could  
6 be additional Fish and Wildlife Coordination Act  
7 funding to plan for this project?

8 WITNESS MILLIGAN: I'm not aware of that.

9 MS. MESERVE: Are you aware of any additional  
10 CVP IA funding to go for project planning or  
11 implementation?

12 WITNESS MILLIGAN: No, I'm not aware of that.

13 MS. MESERVE: Has the Bureau ever received the  
14 benefit analysis for the Fish and Wildlife Coordination  
15 Act funds that were already provided to DWR?

16 WITNESS MILLIGAN: I'm not aware if we have.

17 MS. MESERVE: And that concludes my questions.  
18 Thank you.

19 CO-HEARING OFFICER DODUC: Thank you,  
20 Ms. Meserve.

21 Next up will be Group No. 21. I believe  
22 Mr. Herrick is here. We'll take a break sometime  
23 within the next hour or so for the court reporter.

24 So, Mr. Herrick, I will ask to you perhaps  
25 point out a good time break between your lines of

1 questioning because I don't want to interrupt at a bad  
2 time for you. But keep in mind that within the next  
3 half an hour we will need to take a 15-minute break.

4 MR. HERRICK: Half an hour.

5 CO-HEARING OFFICER DODUC: Thanks. Of course,  
6 I am assuming that your cross-examination will take  
7 longer than a half an hour. And you could always make  
8 me happy by saying it won't.

9 MR. HERRICK: That hurts me to think that you  
10 don't want to hear me talk for that long.

11 CROSS-EXAMINATION BY MR. HERRICK

12 MR. HERRICK: Madam Chair, Board Members, John  
13 Herrick and Dean Ruiz on behalf of the Central Delta  
14 parties, even though I'm specifically South Delta  
15 normally.

16 I know most of the panel members. I don't  
17 believe I have any questions for Mr. Anderson, but  
18 they're currently smirking or sneering at me right now,  
19 so we'll get right to it.

20 Could we pull up the -- Mr. Leahigh, help me  
21 on this, the chart from -- I think it was from your  
22 PowerPoint, showing the opportunities to get additional  
23 water in 2016 if the new North Delta intakes weren't  
24 constructed?

25 WITNESS LEAHIGH: Yes, that should be DWR-411.

1 Is that the one you were looking for?

2 MR. HERRICK: Yes, thank you. Now, this chart  
3 shows times when you may have been able to take  
4 additional exports during 2016 if those North Delta  
5 intakes were installed; is that correct?

6 WITNESS LEAHIGH: Yes. And under that  
7 specific scenario, H3.

8 MR. HERRICK: Yes, thank you. And 2016  
9 follows the -- as you described it, I believe, the  
10 three worst drought years in a row; is that correct?

11 WITNESS LEAHIGH: That's correct.

12 MR. HERRICK: 2013, '14, and '15 in  
13 combination, you say, are the lowest natural flow years  
14 on record; is that correct?

15 WITNESS LEAHIGH: Right. I believe it was and  
16 '12 through '15, in terms of water year, was the lowest  
17 run off on record. And '13, '14, '15 the lowest  
18 April-through-July runoff on record.

19 MR. HERRICK: And during those years, we had a  
20 number of TUCPs that have been mentioned which relaxed  
21 some standards; is that correct?

22 WITNESS LEAHIGH: That's correct.

23 MR. HERRICK: So in the year following that  
24 historic drought year when many standards were relaxed,  
25 do you have an understanding of whether or not this



1 extra flow that might be available for export would, in  
2 the absence of the exports, provide some benefit in the  
3 Delta?

4 WITNESS LEAHIGH: No, I'm not aware that it  
5 would. There was -- I would say that -- and it's part  
6 of my testimony, the first higher flows that we saw in  
7 December, there certainly was a benefit. And that was  
8 essentially to freshen up the Delta prior to additional  
9 diversions taking place later in January.

10 MR. HERRICK: So at least the first, I'll say,  
11 pulse of water coming through provided benefits in the  
12 Delta; is that correct?

13 WITNESS LEAHIGH: As it relates to meeting the  
14 objectives, yes.

15 MR. HERRICK: So are you limiting your answer  
16 to benefits -- when I say "benefits," you're limited to  
17 compliance of standards or something else?

18 WITNESS LEAHIGH: Yes, I'm talking about in  
19 terms of helping meet Water Quality Control Plan  
20 objectives.

21 MR. HERRICK: Are there any benefits that  
22 result from flows in excess of water quality control  
23 standards?

24 MR. BERLINER: Objection, vague and ambiguous,  
25 that's an awfully broad question.

1 CO-HEARING OFFICER DODUC: Yes, it is broad,  
2 but I believe Mr. Leahigh is informed enough to answer  
3 that question.

4 WITNESS LEAHIGH: Actually, I would agree that  
5 it's too vague.

6 CO-HEARING OFFICER DODUC: We're not going to  
7 run down a list of every single objective, are you  
8 Mr. Herrick?

9 MR. HERRICK: No, no. I think I can dial it a  
10 little bit so I can clear up the question.

11 CO-HEARING OFFICER DODUC: Nice coaching,  
12 Mr. Berliner.

13 MR. HERRICK: Yeah, that was very -- very  
14 nice.

15 Mr. Leahigh -- because I'll be calling you  
16 "Leahigh" by mistake. I bet everybody does.

17 WITNESS LEAHIGH: Happens all the time.

18 MR. HERRICK: Flow above that necessary to  
19 meet a standard, that would help flush out additional  
20 constituents in the Delta that would not be flushed out  
21 if those flows weren't there, correct?

22 WITNESS LEAHIGH: I don't know what  
23 constituents you're referring to.

24 MR. HERRICK: Let's try salt.

25 WITNESS LEAHIGH: It -- at what locations, I

1 guess?

2 MR. HERRICK: Would it provide fresher water  
3 for a diverter to apply to his lands if he's downstream  
4 of the flow?

5 WITNESS LEAHIGH: I think the DWR-412 was  
6 probably getting at that question. It showed the  
7 difference in water quality between the two scenarios  
8 which were represented on this chart.

9 And although there was -- it did show an  
10 incremental difference in water quality benefits that  
11 were significantly fresher than what the water quality  
12 objectives were. If we want to bring that up, that  
13 would be DWR-412, I believe.

14 MR. HERRICK: If a diverter is applying  
15 fresher water because of these additional flows, do you  
16 have any understanding of whether or not that might  
17 help him flush salts out of his soils?

18 WITNESS LEAHIGH: The exhibit that I referred  
19 to -- looked like it was starting to be brought up, but  
20 perhaps not.

21 The -- if you look at the difference, a very  
22 minute difference in water quality. So I can't imagine  
23 it would have that much difference to the diverters in  
24 terms of the activity that you're referring to.

25 MR. HERRICK: I appreciate that. Your

1 imagination on what might happen is not the standard  
2 here.

3 Has any analysis been done on the, let's say,  
4 the different leaching effects of having the higher  
5 flows or not having those higher flows?

6 WITNESS LEAHIGH: I'm not an expert in this  
7 area, but my opinion would be that this level of  
8 degradation effect would be fairly insignificant.

9 MR. HERRICK: And that's based upon what?

10 WITNESS LEAHIGH: Based on the percent  
11 degradation that's shown here on this graph.

12 MR. HERRICK: Have you done any analysis to  
13 see whether or not those additional flows might move,  
14 say, something like ethyl mercury out of the system  
15 more than it would without those flows?

16 WITNESS LEAHIGH: I haven't done any analysis  
17 on that.

18 MR. HERRICK: Have you done an analysis  
19 whether or not those additional flows might benefit  
20 fisheries?

21 WITNESS LEAHIGH: No, I have not.

22 MR. HERRICK: And I guess the line of my  
23 question deals with, if we've had three years where  
24 many fishery standards have been relaxed, would you  
25 expect that use of higher flows the following year

1 would provide a benefit to fish, higher flows than the  
2 standard would require?

3 WITNESS LEAHIGH: I don't think it's my place  
4 to -- I don't have -- that's not my area of expertise.  
5 I would not have an opinion on that.

6 MR. HERRICK: I believe you are familiar with  
7 the operations of the State and the -- and the impacts  
8 of those operations. Is it not true that fishery  
9 returns, as in salmon, are higher -- what is it --  
10 three years after a high-flow year; is that correct, as  
11 a general rule?

12 MR. BERLINER: Objection, the witness has  
13 already indicated this is outside of his area  
14 expertise.

15 MR. HERRICK: He did say that, Madam Chair,  
16 but I think he knows the answer to this because I think  
17 it's common knowledge, especially to the operators of  
18 the projects, that the fisheries in season love those  
19 high flow years because of the returns later on. But  
20 if he doesn't know that, he can say so. I'm just  
21 trying to find out.

22 WITNESS LEAHIGH: I know that we have a number  
23 of regulations for fish and wildlife purposes contained  
24 in the Water Quality Control Plan which include the  
25 spring X2 requirement. We have requirements under our

1 biological opinions. And we meet all those  
2 requirements with the exceptions that I've discussed in  
3 my testimony for items that are outside of our  
4 reasonable control.

5 But I would assume all of the regulations  
6 reflect the biological opinion needs of the system, as  
7 far as I'm concerned in my capacity as a water  
8 operator.

9 MR. HERRICK: So to your knowledge, there's no  
10 additional benefit to fisheries for flows above the  
11 standards? Is that your position?

12 MR. BERLINER: Objection, misstates his  
13 testimony.

14 CO-HEARING OFFICER DODUC: I believe  
15 Mr. Leahigh has proven himself a quite capable witness  
16 in answering questions, and he would, I believe,  
17 correct any misinterpretations by Mr. Herrick.

18 Mr. Herrick, did you mean to imply what you  
19 did?

20 MR. HERRICK: Yes.

21 CO-HEARING OFFICER DODUC: Mr. Leahigh, you  
22 may address that if you are able to and correct any  
23 misassumption.

24 WITNESS LEAHIGH: He's going to have to repeat  
25 the question. I'm sorry. Sounds like I have to listen

1 very carefully to this question, so I'd like you to  
2 repeat it.

3 MR. HERRICK: Is it your understanding that  
4 there are no benefits to fish for -- when flows occur  
5 which are above standards?

6 WITNESS LEAHIGH: Again, I'm not an expert in  
7 that area, so I have no opinion.

8 MR. HERRICK: Mr. Leahigh, has DWR or the  
9 Bureau, to your knowledge, done any analysis of the  
10 things I've just gone over, which is a quantification  
11 of the benefits beyond meeting the standards that  
12 result from these flows that we've talked about?

13 WITNESS LEAHIGH: There may be some  
14 preliminary analysis, but I am not aware of what that  
15 is.

16 MR. HERRICK: So then I would conclude that,  
17 if there's no analysis -- there may be a preliminary  
18 you said. If there's no analysis, then there's no  
19 comparison with the beneficial uses to see whether or  
20 not there's an injury; is that correct?

21 WITNESS LEAHIGH: And are we talking about  
22 biological --

23 MR. HERRICK: I meant all of the things I've  
24 talk about, whether it's flushing or leaching or fish.  
25 If you want to narrow that down, please do.

1           WITNESS LEAHIGH: I'm sorry. Can you repeat  
2 the question?

3           MR. HERRICK: Since there's no analysis of the  
4 benefits resulting from flows higher than the  
5 standards, then is it true to say that there is no  
6 comparison against how that would affect legal users?  
7 I don't know if I said that well.

8           CO-HEARING OFFICER DODUC: Okay. Now I didn't  
9 follow that. Let's try it again, Mr. Herrick.

10          MR. HERRICK: Mr. Leahigh, I think you just  
11 said that, although there may be a preliminary  
12 analysis --

13          CO-HEARING OFFICER DODUC: No analysis.

14          MR. HERRICK: -- there's no analysis of any  
15 benefits of flows above the standards.

16          So my next question was trying to connect that  
17 to the standard here, which is injury to legal users.  
18 Is it correct then to say, if there's no analysis of  
19 the effects, then there isn't anything to compare or  
20 judge as whether or not the change will affect legal  
21 users?

22          WITNESS LEAHIGH: I'm sorry. I am not  
23 following this question.

24          MR. HERRICK: That's all right.

25          WITNESS LEAHIGH: Yeah.



1           MR. HERRICK: Do these additional flows -- do  
2 these additional flows delay the onset of balanced  
3 conditions later in the year?

4           Could we go back to that previous chart again?

5           WITNESS LEAHIGH: Yeah, I don't believe they  
6 do. So we -- that was one of the things we were  
7 looking at at the very end of this example in late  
8 April is that we took a fairly conservative approach in  
9 terms of what additional diversion would occur.

10           You can see at the very end of April, that the  
11 dotted red line really reduces significantly there  
12 towards the end of April. And we took a quite  
13 conservative approach in terms of we knew the system  
14 was beginning to dry out and that we would be into  
15 balanced conditions by the time we got into May.

16           I think there are actually -- we did, if I'm  
17 not mistaken, check out the -- well, we did do analysis  
18 with DSM2, as we showed in the previous graphic. And  
19 we were conservative in terms of the amount of extra  
20 diversion occurring in the late part of April in order  
21 not to change the timing on which balanced conditions  
22 would occur in May. So we did -- we did try to correct  
23 for that factor.

24           MR. HERRICK: Now I'm confused. I didn't  
25 understand that. Let's take the March high flows.

1 They go above 140,000 cfs on the Sacramento; is that  
2 correct? Or is that outflow?

3 WITNESS LEAHIGH: Yes, the actual Delta  
4 outflow did peak over 140,000.

5 MR. HERRICK: So is it your testimony that, if  
6 all of that water reaches into the Delta and eventually  
7 exits the system, that doesn't delay the onset of  
8 balanced conditions beyond that if you use the North  
9 Delta diversions to take some of that outflow?

10 WITNESS LEAHIGH: The degree of outflow that  
11 we saw caused conditions to freshen to such a degree  
12 that there's really very little difference between the  
13 two salinity traces between the two scenarios. So in  
14 that respect, the system would generally have degraded  
15 at about the same rate once we got into the drier  
16 period there in the late spring.

17 So I don't think it would have been  
18 substantial whatsoever as far as changing and timing.

19 MR. HERRICK: Well, you couched your answer in  
20 "substantial." I'm just trying to understand, as a  
21 general purpose, the higher outflow provides a farther  
22 west location of fresh water, or however you like to  
23 define that. Doesn't that then delay the onset of  
24 balanced conditions? You haven't given us a time frame  
25 or difference. But how do you come up with this "it's

1 not substantially different"?

2 WITNESS LEAHIGH: Well, I hate to do this, but  
3 if we went back to DWR-412, that might help get at the  
4 differences at the far end of this scenario.

5 You can see there is a slight difference in  
6 the salinity trace there in late April.

7 So -- and I don't -- we don't have that  
8 information in front of us here. But as we would go  
9 into the month of May and as the flows will reduce in  
10 the system, salinity would start increasing. I don't  
11 believe there would be a substantial change in when the  
12 system would have gone into balance. If anything,  
13 maybe a day, I would think, just based on my  
14 experience.

15 So these are -- these two marks, the  
16 differences in salinity between the two scenarios is  
17 extremely close. So I wouldn't -- that's the basis for  
18 which I am making the statement that there wouldn't be  
19 a substantial difference.

20 MR. HERRICK: All right. Mr. Milligan, I  
21 believe the earlier questions were to Mr. Leahigh about  
22 who makes the operational decisions and how that  
23 feedback gets into the modeling.

24 I just want to explore that real briefly to  
25 make sure I understand. Who actually makes the

1 day-to-day operational decisions for the Bureau?

2 WITNESS MILLIGAN: For the Central Valley  
3 Project?

4 MR. HERRICK: Yes.

5 WITNESS MILLIGAN: Predominantly that is done  
6 within the Central Valley operations office of which  
7 I'm the manager of.

8 MR. HERRICK: So that would be you or people  
9 under you?

10 WITNESS MILLIGAN: Yes, under my supervision.

11 MR. HERRICK: Any parties or interests calling  
12 you up asking you to make changes or -- I don't know  
13 how that works. Is it just you, or are there other  
14 inputs?

15 WITNESS MILLIGAN: There's certainly inputs in  
16 coordination with the Statewide Project. We are  
17 co-located at the joint operations center.

18 Depending on what operational decisions may be  
19 in play, we may be coordinating with other system  
20 operators or dam operators in the basin. We may be  
21 reaching out to land owners or various water districts,  
22 including in the Delta, about concerns of -- whether  
23 it's salinity or water levels. And we try to take all  
24 that into account when we plan out a particular day's  
25 operational changes and then forecasting forward.

1           There's certainly also a lot of coordination  
2 with the various state and federal fishery agencies.

3           MR. HERRICK: And you or Mr. Leahigh testified  
4 earlier that there are day-to-day decisions that are  
5 not reflected in the models, just because the models  
6 have assumptions about longer terms than maybe one day;  
7 is that generally correct?

8           WITNESS MILLIGAN: Let's say in terms of Cal  
9 Sim, as an example.

10          MR. HERRICK: Oh, yeah. Sorry.

11          WITNESS MILLIGAN: That would be -- it's a  
12 monthly time step model. So it's doing monthly  
13 averages as it goes from month to month. And that has  
14 a lot of utility, but it's too coarse a resolution to  
15 capture weekly or daily operational adjustments.

16          MR. HERRICK: What's the -- I'll designate it  
17 "feedback mechanism" so that the modelers are confident  
18 that they're reflecting actual operations as best as  
19 possible? Is there some sort of ongoing communications  
20 or certification, or how does that work?

21          WITNESS MILLIGAN: If I can ask a  
22 clarification, is that, in regard to the modeling, the  
23 support or some more on the day-to-day operations of  
24 the project?

25          MR. HERRICK: Well, maybe both. So let's go

1 for just the modeling supporting the petition.

2 I'm just trying to find out your comfort level  
3 with the models reflecting as best as possible the  
4 actual operations.

5 WITNESS MILLIGAN: As it would relate to  
6 models that would into a planning study or to support  
7 something like the petition here, in essence, we'd have  
8 some discussions with the modelers. And through the  
9 course of -- I'm picking Cal Sim 2 as an example. Over  
10 the course of time that that's been developed,  
11 operation staff have provided some input into kind of  
12 the general mechanics or framework that the projects  
13 operate.

14 In case of a specific planning study, the  
15 results would -- you know, the operators would review  
16 the results and with the back of their minds say, what  
17 kind of questions are we trying to answer with these  
18 model results to see if the -- although the model has  
19 its shortcoming in terms of time step, as we've  
20 discussed, depending on the specific type of question  
21 that may be in play, does it seem like the results  
22 represent the incremental change of the action being  
23 discussed?

24 There are going to be some other times where  
25 the question at hand may be better suited to do some

1 DSM2 analysis of, and a lot of the Delta hydrodynamics  
2 and salinity and questions about reverse flows may be  
3 more suited to that type of a model.

4 MR. HERRICK: Mr. Leahigh, would your answer  
5 to that same question be similar, or do you have any  
6 differences with Mr. Milligan?

7 WITNESS LEAHIGH: No, I think I would  
8 essentially agree with Mr. Milligan's answer. We also  
9 give input to -- feedback to the modelers on, you know,  
10 continuously trying to improve their representation of  
11 actual operations.

12 MR. HERRICK: I'd like to hand out what is  
13 listed on my stick as -- it's the excerpts from the  
14 January biological assessment, draft biological  
15 assessment. And of course, there have been discussions  
16 and objections because there's a newer one apparently.  
17 But my questions are dealing with this one. I think  
18 copies have been handed out.

19 And if you could please pull up No. 3 on my  
20 list.

21 (South Delta Water Authority Exhibit SDWA-3  
22 marked for identification)

23 MR. HERRICK: Thank you. And you and if you  
24 go to the second page of what I have there, beginning  
25 with 3.7.2.

1           And I'll just read a couple -- you guys could  
2 follow along with me. I'm starting with A. And it  
3 discusses if, on October 1st, if the prior water year  
4 was dry or critical, then Reclamation-DWR would convene  
5 a multi-agency drought -- drought task force, so to  
6 speak. And then by B it says if by December 1st  
7 something happens. Then C says, if the February 1st  
8 hydrologic forecast indicates the potential for a dry  
9 or critical water year, then Reclamation and DWR would  
10 do other things.

11           And one of those other things, possible other  
12 things is on the final page there. And it talks about  
13 -- you see the "H" on the final page? It says  
14 "Reclamation DWR will prepare TUCPs as needed for  
15 submittal to the SWR/CVP." Do you see where it says  
16 that, both Mr. Milligan and Mr. Leahigh?

17           WITNESS MILLIGAN: Yes, I see.

18           WITNESS LEAHIGH: Yes, I see it.

19           MR. HERRICK: Now, are you aware of number of  
20 times that a dry or critical year followed by four  
21 months of dry or critical year have occurred over the  
22 historic record?

23           WITNESS MILLIGAN: No.

24           MR. HERRICK: Okay. Mr. Ruiz will be handing  
25 out my No. 2, if you could put it up on the screen



1 please.

2 I'll just start with Mr. Milligan because  
3 you're such a nice guy.

4 MR. BAKER: Excuse me. Could you identify  
5 this for the record?

6 MR. HERRICK: A printout from CDEC which shows  
7 the water year classifications for the Sacramento  
8 Valley and the San Joaquin Valley starting -- the date  
9 starts at 1901. And then the next page it goes through  
10 2015. And this is just off of CDEC. So I guess that's  
11 a representation that it's not made up by me.

12 MR. BERLINER: Are we going to mark these for  
13 identification?

14 MR. HERRICK: Yes, this will be South Delta  
15 No. 2, please.

16 (South Delta Water Authority Exhibit SDWA-2  
17 marked for identification)

18 CO-HEARING OFFICER DODUC: Thank you,  
19 Mr. Herrick.

20 MR. HERRICK: And the previous one was 3 and  
21 the one before that -- I think we're on track. I'll  
22 clarify that later.

23 Mr. Milligan, if you could just go down where  
24 I've highlighted. And what I've done is I've  
25 highlighted any dry or critical year that followed a

1 dry or critical year.

2 Now, let me caveat that. Of course, the  
3 particular circumstances of any year may not mean that  
4 the first four months of any year that's dry or  
5 critical were actually dry or critical. But we  
6 understand that. But just for purposes of this, I've  
7 marked that.

8 So if you could count my marks for the  
9 Sacramento Valley which go from 1906 through 2015,  
10 please. I think I come up with 19, if you'd count  
11 those.

12 WITNESS MILLIGAN: For the Sacramento Valley?

13 MR. HERRICK: Yes, I'm doing the Sacramento --

14 WITNESS MILLIGAN: Sacramento Valley, I also  
15 count 19 marks.

16 MR. HERRICK: 19 marks. Thank you. So from  
17 1906, which is from the data from the Sacramento --  
18 1906 to 2015 is 109 years. Would you agree with that?  
19 I'm not trying to trick you on math.

20 WITNESS MILLIGAN: Yes.

21 MR. HERRICK: So 19 years out of 109 years is  
22 17 percent of the time; is that correct?

23 WITNESS MILLIGAN: That's probably a little  
24 more challenge, but that sounds right.

25 MR. HERRICK: That's what my calculator said.

1 Whether I'm an idiot or not is for other people to  
2 judge.

3 Now, in our historical analyses, don't we use  
4 water year 1922 or something instead of back to 1906?  
5 Isn't the analysis from 1922 through something?

6 WITNESS MILLIGAN: The Cal Sim simulations,  
7 because of all the types of inputs that go in, start  
8 around 1920, '21.

9 MR. HERRICK: Okay. So if we go from 1921,  
10 then we've only got 94 years. And 19 out of 94 is 20  
11 percent; is that true?

12 WITNESS MILLIGAN: That's true.

13 MR. HERRICK: So do you think that any  
14 analysis that the Bureau or DWR's done that includes  
15 19 years where the standards might have to be changed  
16 is a valid analysis of the impacts to third parties?

17 MR. BERLINER: Objection, assumes facts not in  
18 evidence.

19 CO-HEARING OFFICER DODUC: Mr. Herrick? I'm  
20 sorry. Which facts are you --

21 MR. HERRICK: Which facts are in evidence.

22 CO-HEARING OFFICER DODUC: Yes.

23 MR. BERLINER: Referring to, in the middle of  
24 the question, the -- my real-time feed isn't working,  
25 so I can't quote it exactly. But the characterization

1 that essentially the TUCPs would have been necessary  
2 historically.

3 MR. HERRICK: Well, the initial assumption for  
4 this was that, if the water years that I've marked fall  
5 into the category of the times when TUCPs might be  
6 used, then the answers follow from that.

7 Of course, those conditions might not be true.  
8 But I'm asking for his opinion on those in that  
9 circumstance.

10 So, of course, this may not occur,  
11 Mr. Milligan, but if the water years that we've  
12 highlighted occurred again and, you know, TUCPs were  
13 requested, would you believe that an analysis that has  
14 20 percent of the years not reflecting what's going to  
15 happen, you think that's a valid analysis?

16 WITNESS MILLIGAN: I'm not sure that that  
17 tracks with what's necessarily been proposed. I would  
18 say that an analysis -- well, let's say that this list  
19 of facts that talked about the potential that there'd  
20 be TUCPs 20 percent of the time and in the analysis  
21 doesn't include TUCPs to that extent may have a  
22 disconnect.

23 I think I read this text which was a draft as  
24 being as needed. And I'm not sure what that exactly  
25 means. Again, this was draft text, and I think we had

1 some testimony that said this section no longer exists  
2 in the current biological assessment.

3 So -- but I think the question was do I -- I  
4 also don't know that I would foresee temporary change  
5 petitions 20 percent of the time in the future.

6 MR. HERRICK: That's very nice and, if I may  
7 say, not responsive.

8 WITNESS MILLIGAN: Could you repeat the  
9 question? I'm trying to get --

10 MR. HERRICK: In the analysis we do over an  
11 80-year period, 82-year period, whatever it is, if it  
12 doesn't have 20 percent of the operations correct  
13 because the operations might be changed to TUCPs, I'm  
14 asking you if that analysis would be a valid method of  
15 determining injury to third parties?

16 WITNESS MILLIGAN: It depends on the types of  
17 analysis, what the issues involved in the analysis  
18 would tend towards. If the question "and" was  
19 certainly geared towards the critical or dry year  
20 periods, then I think some additional analysis would  
21 probably be warranted.

22 CO-HEARING OFFICER DODUC: Mr. Herrick, I'll  
23 ask you to conclude this line of questioning. We do  
24 need to take a break.

25 MR. HERRICK: We can take the break now.

1 CO-HEARING OFFICER DODUC: Let's take a  
2 15-minute break, and we'll resume at 10:45.

3 (Recess taken)

4 CO-HEARING OFFICER DODUC: Mr. Herrick, please  
5 continue your cross-examination.

6 MR. HERRICK: Thank you.

7 Just a final question for the last line of  
8 questioning, Mr. Milligan. In any particular year  
9 where a TUCP might be approved, that would result in  
10 different, say, carryover storage than in a year when  
11 the TUCP wasn't used; in general, is that a correct  
12 statement?

13 WITNESS MILLIGAN: It would depend on the  
14 objectives that were modified.

15 So it's possible but not necessarily always  
16 the case.

17 MR. HERRICK: Now, along those lines in  
18 this -- the drought and the TUCPs, is there a reason we  
19 can't model or plan for multi-year droughts?

20 WITNESS MILLIGAN: Mr. Herrick, was that to  
21 me?

22 MR. HERRICK: Yes.

23 WITNESS MILLIGAN: Thank you. Sorry.

24 I think that we can. I think the question  
25 becomes how to represent that. And obviously, through

1 every drought sequence we go through, we do learn from  
2 that and think about how we would operate with, you  
3 know, the current infrastructure, the current demands  
4 in the system, current limitations, current objectives  
5 in play, how to manage through extended drought  
6 periods.

7 MR. HERRICK: Now that we've gone through,  
8 I'll say two significant droughts in however many years  
9 that is -- 88, we have data on, you know, storage  
10 inflow in bad years, is there a reason why we don't  
11 have a plan for what we would do in those two or three  
12 years of drought rather than planning on, well, we'll  
13 examine it at the time and make changes pursuant to  
14 TUCPs? Is there some planning rule that I don't know  
15 about that would prevent us from figuring that out?

16 WITNESS MILLIGAN: No rules that I'd be aware  
17 of.

18 MR. HERRICK: Now, next, if we could pull up  
19 No. 4, please, and we'll mark that SDWA-4.

20 (South Delta Water Authority Exhibit SDWA-4  
21 marked for identification)

22 MR. HERRICK: Now, I think everybody has a  
23 copy, and just so you know, this is the document where  
24 I got the information. So the document itself is  
25 almost meaningless, but if you'll turn to the next

1 page, it has a "Cal Sim Table of Priorities." That's  
2 what I want to talk about if I may. And I'll just stay  
3 with Mr. Milligan, if no one minds.

4 Now, is this still the correct prioritization  
5 used in Cal Sim II, if you know?

6 WITNESS MILLIGAN: Could you give me a moment  
7 to review the table?

8 MR. HERRICK: Certainly. I'm sorry.  
9 Table 4.12, and it's titled "Cal Sim II Water Use  
10 Prioritization." And then afterwards we'll read that  
11 paragraph after the table. I'm not trying to confuse  
12 or blind-side you.

13 WITNESS MILLIGAN: My general understanding is  
14 from Cal Sim, being that -- maybe this is also  
15 something could be referred to the modeling group, but  
16 this is generally the priorities. Although, the second  
17 and third priority I had a little question. But just  
18 -- they may be very close.

19 MR. HERRICK: Yeah, and the next paragraph --  
20 I won't read the whole thing. I think you just read  
21 through it. But it talks about how there's a balance  
22 struck between the second and third priority during the  
23 year, and then you operate according to whatever  
24 decisions were made under that, correct?

25 WITNESS MILLIGAN: At least that's the Cal Sim



1 construct of logic.

2 MR. HERRICK: And is that generally the way  
3 you operate, the same set of priorities?

4 WITNESS MILLIGAN: In general. I can't speak  
5 to the Article 21 deliveries. It's a State project.  
6 But this flow is similar to, let's say, the logic  
7 stream that the operators may use.

8 MR. HERRICK: So the questions I'm going to  
9 ask deal with, you know, this tension between choices.  
10 So the question, I guess, is each year you're making  
11 decisions that determine how much is released for  
12 export and how much is maintained for storage for  
13 future years; is that correct?

14 WITNESS MILLIGAN: That's one set of thinking,  
15 but there's obviously others.

16 MR. HERRICK: Certainly. And is there any --  
17 is there any rule book or requirements on the  
18 reservoirs that you're in charge of that says, you  
19 know, "Thou shalt maintain X amount for future years"?

20 WITNESS MILLIGAN: No, there's not.

21 MR. HERRICK: So -- and again, I'm not trying  
22 to be argumentative, but in any particular year, if you  
23 decide not to release water for export from storage,  
24 that would necessarily mean then that that water  
25 remains for the next year or is carried over for the

1 next year; is that correct, absent it being released  
2 for other issues, other mandates?

3 WITNESS MILLIGAN: Yeah, I would say obviously  
4 with consideration to things like balance conditions,  
5 you know, probably where we are in the cycling of  
6 hydrologic cycles from drought to -- from winter to  
7 drier conditions, if the -- again, looking at the  
8 overall picture and anticipating where we'd be in the  
9 year ahead may influence some of the operational  
10 decisions.

11 MR. HERRICK: And I didn't mean to disregard  
12 other mandatory releases or other obligations that may  
13 use that water instead. I'm just drawing the  
14 distinction between the decisions made how much to  
15 release of stored water for export and that necessarily  
16 helps calculate how much is carried over for the next  
17 year, correct?

18 WITNESS MILLIGAN: Well, yes, and the carry  
19 over for the subsequent year may be more of an after  
20 effect of those decisions. For the CVP, also, there's  
21 a lot of consideration with regard to temperature  
22 management and maintaining --

23 MR. HERRICK: Absolutely.

24 WITNESS MILLIGAN: -- flow stability on the  
25 river. So it's not -- those come into play as well.

1           MR. HERRICK: Since we just went through this  
2 horrible drought period is there any discussion among  
3 the Bureau and/or DWR that you know of to err on the  
4 other side and export less and keep more in storage, or  
5 carryover storage?

6           WITNESS MILLIGAN: Nothing formal or specific.

7           MR. HERRICK: Do you think that would be  
8 prudent to consider that, given the -- again, I don't  
9 mean to be pejorative -- given the inability to meet  
10 many water quality standards over the drought period  
11 absent the TUCPs?

12          WITNESS MILLIGAN: I think that, although it  
13 may not be formalized, it is something that comes into  
14 the thinking of seasonal planning that goes on between  
15 the two projects and within each one specifically.

16          MR. HERRICK: And whether or not we can plan  
17 for a five-year drought or something, we might be able  
18 to cushion the second year of the drought if we decide  
19 to export less. Would that be a correct statement?

20          WITNESS MILLIGAN: I guess that depends on the  
21 specifics of the scenario, but -- and that would be  
22 hard to say. Depends on where you start in that  
23 sequence.

24          MR. HERRICK: Now, this is going to sound  
25 nasty, so there might be an objection, but I don't mean

1 it that way.

2 CO-HEARING OFFICER DODUC: You know,  
3 Mr. Herrick, I'm really enjoying this gentler John  
4 Herrick.

5 MR. HERRICK: I can be nasty.

6 MR. BERLINER: I'm ready to object.

7 CO-HEARING OFFICER DODUC: All right. And  
8 that concludes that moment of levity.

9 MR. HERRICK: Sorry.

10 CO-HEARING OFFICER DODUC: Mr. Herrick, please  
11 continue.

12 MR. HERRICK: So would you agree that it's --  
13 the incentive for the project is to err on the side of  
14 exports, not on the side of carry over storage?

15 WITNESS MILLIGAN: I guess I don't quite see  
16 it that way. I think it's to err on the side of  
17 meeting all our obligation on this. I'll speak for the  
18 CVP. We have a significant number that are north of  
19 the Delta, these obligations. So being able to be good  
20 stewards and meet our pretty significant contractual  
21 obligations for the Delta, we're always and have always  
22 looked at the proper balance of a particular season's  
23 Delta diversions and exports versus what's the right  
24 place to land upstream in weaving this all together.

25 MR. HERRICK: But your answer was kind of

1 dealing with sort of in-basin requirements, in other  
2 words, people in the Sacramento Valley and obligations  
3 for water quality standards.

4 I'm referring to exports. So let's just put  
5 it this way. Have you exported stored water? Has the  
6 Bureau exported stored water during the last three  
7 years of drought?

8 WITNESS MILLIGAN: Yes.

9 MR. HERRICK: And any water that was exported  
10 may have been retained behind a reservoir for other  
11 purposes for future years, correct?

12 WITNESS MILLIGAN: As with many things, it's  
13 kind of multiple use. We certainly strive to make  
14 multiple uses with the same acre foot of water,  
15 obviously.

16 MR. HERRICK: But you're not putting -- is it  
17 correct -- let me start over.

18 Are you putting exports behind all other  
19 considerations? Or are you trying to balance various  
20 considerations to maximize exports?

21 MS. MORRIS: I'm going to object -- Stefanie  
22 Morris, State Water Contractors -- to this line of  
23 questioning. I didn't think that we were here to put  
24 the current project operations on trial. I thought we  
25 were here to talk about Cal WaterFix and the impacts to

1 other legal users of water and those operations.

2 So I'm slightly confused about the relevance  
3 of this line of questioning.

4 CO-HEARING OFFICER DODUC: Mr. Herrick, I  
5 believe you can make the case for relevance, but I will  
6 allow you to do so.

7 MR. HERRICK: The current operations are  
8 important for two reasons. The first is they're the  
9 basis for the analysis. And the analysis is what we  
10 are relying on to determine whether or not there's  
11 injury to legal users. So I believe exploring it is  
12 perfectly appropriate.

13 But more important than that, I think as we  
14 move forward in this proceeding, the exact operations  
15 become relevant in that the conditions on those  
16 operations may be part of any future approval by this  
17 Board.

18 And I think the drought is a perfect example  
19 of that, is somebody may be allowed to do something if  
20 they change their operations for storage later because  
21 that might help meet future water quality standards.  
22 And of course the position that's been espoused by  
23 numerous witnesses is they promised to meet D1641 and  
24 future imposed water quality obligations. So I think  
25 it's perfectly relevant.

1 CO-HEARING OFFICER DODUC: Thank you,  
2 Mr. Herrick. You may continue.

3 MR. HERRICK: Mr. Milligan, I'll ask this of  
4 Mr. Leahigh after you, just to check. But I described  
5 it as a -- as you erring on the side of maximizing  
6 exports. In the past three years we've not met  
7 numerous standards, we've had TUCPs to address that,  
8 correct?

9 WITNESS MILLIGAN: We've had TUCPs and  
10 temporary orders to address drought circumstances, yes.

11 MR. HERRICK: And the State Board has never  
12 sanctioned you or fined you or penalized you or yelled  
13 at you for not meeting the standards but instead asking  
14 for TUCPs, correct?

15 WITNESS MILLIGAN: I'm not sure about the  
16 yelling part. But the -- the orders have -- our  
17 requests have been responded with you know the orders  
18 that included some change.

19 MR. HERRICK: So would it be fair to say that,  
20 if there's no threat by the Bureau for not meeting the  
21 standards, then it's easier for you to err on the side  
22 of exports when deciding between exports and carryover?

23 WITNESS MILLIGAN: I don't think I would agree  
24 with that characterization. I think -- and this is the  
25 difficulty with the Table 412 that you provided. It is

1 a little bit centric to the State Water Project.

2 One of the things that was a key component of  
3 our temporary urgent change petitions has been to try  
4 to prioritize storage up in our CVP reservoirs,  
5 particularly Shasta, as an example, which has been used  
6 to try to keep and avoid the very low reservoir  
7 storages that would come into play if we were, let's  
8 say, making outflows consistent with D1641.

9 So the result here is what might be, in  
10 characterizing this table as third priority, which is a  
11 carryover storage or say storage through the season  
12 actually has been elevated to closer to the first  
13 priority because of its fishery benefit. That has  
14 ancillary benefits for carryover, which hedges against  
15 future drought, which has -- one of the beneficiaries  
16 of that is, let's say, upstream water users in Sac  
17 Valley as well as potential carryover storage to  
18 operate cold water pool going into the next season.

19 I would -- the other part of the table that  
20 complicates the CVP as opposed to maybe helps the  
21 construct for the State Water Project is a component of  
22 exports trying to meet the Exchange Contract  
23 obligations, which is somewhat muddled here in terms of  
24 the prior water right commitment.

25 For the last two years, exports for the



1 purposes of water service contracts, at least the  
2 agricultural, have been zero with significant water  
3 having to come from the Friant system to be able to  
4 meet the obligations of the Exchange Contract as well.

5 MR. HERRICK: My question dealt with the  
6 tension between exports and carryover. There are lots  
7 of other things going on. I understand that. But  
8 there is a tension between how much you might release  
9 of stored water for export purposes and carry over  
10 storage for future use, correct?

11 WITNESS MILLIGAN: There would be. And I  
12 think also -- and what's in the carryover part has a  
13 lot of drivers to it. But that is part of the decision  
14 making process is what's the right balance with that.

15 And over the last two years, for example,  
16 exports to drive ag water service contracts have been  
17 pretty minimal. And even NI CVP supply itself has been  
18 -- particularly last year as an example, have met  
19 health and safety needs of some pretty key districts.

20 MR. HERRICK: If I could turn now to  
21 Mr. Leahigh, I would like to briefly go over your  
22 statements about the success rate of the projects in  
23 meeting water quality standards. And you gave us a  
24 couple of numbers. I think they were 98 percent or  
25 above in compliance, is that correct, for the term that

1 was discussed, the term of years?

2 WITNESS LEAHIGH: Yes.

3 MR. HERRICK: And that term of years was,  
4 what, since D1485? Or can you tell me what that was?

5 WITNESS LEAHIGH: Well, it would have applied  
6 to whatever the years that were applicable for any  
7 particular standard that's in existence today. So many  
8 of those go all the way back to D1485. So that's 1978.

9 Others went back to the Water Quality Control  
10 Plan -- the '95 Water Quality Control Plan.

11 MR. HERRICK: Mr. Leahigh, the way you  
12 described it, aren't you taking credit for years in  
13 which you didn't do anything to meet water quality  
14 standards?

15 WITNESS LEAHIGH: I don't know if "taking  
16 credit." The table merely describes the exceedance  
17 rate for objectives. It doesn't differentiate between  
18 which periods the projects had to actively, you know,  
19 take actions in order to achieve the objectives.

20 MR. HERRICK: But you gave us a percentage,  
21 and the percentage was the violations were the  
22 numerator and the total days was the denominator,  
23 correct? That's how you calculate the percentage?

24 WITNESS LEAHIGH: The exceedances.

25 MR. HERRICK: They're not violations?

1           WITNESS LEAHIGH: Over the total number of  
2 days in which a standard would be operative.

3           MR. HERRICK: So when you have 365 days out of  
4 the year, like 2006, when we had more water than  
5 anybody could do with, that sort of artificially  
6 inflates the denominator, doesn't it, because there was  
7 no actions taken by the Bureau or the DWR to meet those  
8 standards?

9           WITNESS LEAHIGH: I wouldn't use the word  
10 "artificial." The table is what the table is, which is  
11 a record of exceedances of objectives.

12          MR. HERRICK: Is there a reason why you didn't  
13 produce a table that showed success rate or compliance  
14 rate during times when actions needed to be taken?

15          WITNESS LEAHIGH: That would probably be very  
16 difficult if not impossible to produce such a table. I  
17 don't -- I don't know that we would have all the  
18 information necessary to prepare such a table.

19          MR. HERRICK: Well, we've got 2006 and '97 and  
20 excess conditions in most years and rainfall below the  
21 dams and all those things that contribute to your  
22 success rate were things that you had no control over;  
23 isn't that correct?

24          WITNESS LEAHIGH: There would certainly be  
25 periods of time where that was the case, yes.

1           MR. HERRICK: Wouldn't it be more helpful to  
2 the Board -- given that you're, I guess, promising to  
3 continue to meet D1641, wouldn't you think it would be  
4 more helpful to present the evidence that shows how  
5 your actions, when needed, resulted in compliance?

6           WITNESS LEAHIGH: Well, we presented all the  
7 information that we thought would be helpful in that  
8 we're showing the entire period on which standards have  
9 been in play.

10           But we also have breakdowns per year so you  
11 can look at individual years and see what compliance  
12 rates would be in shorter periods of time. So all that  
13 information is -- is part of the exhibit.

14           MR. HERRICK: Is anybody going to testify with  
15 regard to that, that other information?

16           WITNESS LEAHIGH: Well, it's part of my  
17 written testimony.

18           MR. HERRICK: Your -- I thought you said it  
19 was difficult to gather, that's why you didn't do it?

20           WITNESS LEAHIGH: Oh, I'm sorry. I was  
21 referring to the individual breakdown, individual years  
22 of compliance with individual standards.

23           So I'm sorry. What was your --

24           MR. HERRICK: Let me start over.

25           In any particular year when there's exceedance

1 and you list that exceedance as a lack of compliance,  
2 that doesn't tell us the degree of the exceedance, does  
3 it?

4 WITNESS LEAHIGH: No. The exceedances are  
5 listed in terms of number of days where the objective  
6 is not met. It doesn't get into the degree.

7 MR. HERRICK: So if I may use an unreasonable  
8 example, you know, when you say something's exceeded,  
9 you know 2 percent of the time, if during that 2  
10 percent of the time the exceedance was 500 times the  
11 standard, that would be very important information,  
12 wouldn't it?

13 WITNESS LEAHIGH: It would be additional  
14 information. I would find it hard to believe that  
15 there would be that magnitude of exceedance, but that  
16 would be additional information.

17 MR. HERRICK: It's sort of like saying, "I  
18 only killed the guy once in the last ten years. On  
19 average, he's in good shape," right?

20 Nobody's going to object to that? I'll  
21 object. I'll withdraw the question

22 CO-HEARING OFFICER DODUC: I was just trying  
23 to enjoy the new and improved John Herrick for as long  
24 as possible.

25 MR. HERRICK: I'm starting to feel very

1 uncomfortable here.

2 All right. Let's move on.

3 If we can pull up SDWA No. 5, mark it as that.

4 (South Delta Water Authority Exhibit SDWA-5  
5 marked for identification)

6 MR. HERRICK: And I'll represent to you it's a  
7 few pages out of the California Water Code, including  
8 Water Code Sections 12200 et. seq.

9 And once everybody gets their written copy or  
10 handwritten or hard copy, you'll see that the  
11 individual statutes or some of them are separately done  
12 on the preceding pages of each, just for clarity  
13 because the code book is kind of -- I don't have a lot  
14 of staff.

15 Anyway, Mr. Milligan, you and Mr. Leahigh  
16 testified that you intend on and do operate the  
17 projects in conformity with certain legal obligations.  
18 Do you recall that, in general?

19 WITNESS MILLIGAN: Yes.

20 WITNESS LEAHIGH: Yes.

21 MR. HERRICK: And those obligations include,  
22 as you said, I believe D1641 and BiOps and some other  
23 things you had mentioned; is that correct?

24 WITNESS LEAHIGH: That's correct.

25 MR. HERRICK: Is one of the obligations under

1 which you operate the provisions of Water Code Sections  
2 12200 et. seq?

3 WITNESS MILLIGAN: I would say to the degree  
4 these are outlined in our permit terms and conditions.

5 MR. HERRICK: You have not done -- personally  
6 you have not done a separate analysis to determine  
7 whether you believe -- not whether it's legally  
8 required but whether you believe terms and conditions  
9 of these statutes are mandatory on you?

10 WITNESS MILLIGAN: I have not.

11 MR. HERRICK: So if I may, Section 12201, I'll  
12 read from that. I apologize for it not being  
13 highlighted. I don't know what happened. I did that  
14 originally.

15 "The legislature finds that the maintenance of  
16 an adequate water supply in the Delta sufficient to  
17 maintain and expand agriculture, industry, urban, and  
18 recreational development in the Delta as set forth  
19 above and to provide a common source of fresh water for  
20 the export to areas of water deficiency is necessary to  
21 the peace, health, safety and welfare of the People of  
22 the State of California." Do you see where that says  
23 that under 12201? I just read the first -- this.

24 And following on with 12202, it says, "Among  
25 the functions to be provided by the State Water

1 Resources Development System in coordination with the  
2 activities of the United States in providing salinity  
3 control for the Delta through operation of the Federal  
4 Central Valley Project shall be the provision of  
5 salinity control and an adequate water supply for the  
6 users of water in the Sacramento-San Joaquin Delta."

7 Do you see where it says that?

8 WITNESS MILLIGAN: Yes, I do. May have  
9 skipped over some of the section here -- some of the  
10 text.

11 MR. HERRICK: There's more text. I'm just  
12 reading the first half of 12202.

13 WITNESS MILLIGAN: I see -- I see that  
14 pull-out.

15 MR. HERRICK: Now, earlier we had testimony  
16 about Delta operations including reservoir releases  
17 exports and Delta island consumptive use in order to  
18 I'll say operate the Delta and maintain outflow as  
19 necessary. Do you recall that, your testimony?

20 WITNESS MILLIGAN: Yes, yes.

21 MR. HERRICK: And one of those provisions is  
22 that Delta island consumptive use; is that correct?

23 WITNESS MILLIGAN: I'm not sure if it was  
24 Mr. Leahigh's testimony or mine, but yes I do recall.

25 MR. HERRICK: And that is correct, in



1 operations in the Delta, when necessary, releases are  
2 made from State and Federal reservoirs in order to  
3 provide for that amount of water lost in the Delta; is  
4 that correct?

5 WITNESS MILLIGAN: To the degree that that  
6 particular criteria might be controlling operations and  
7 they link back to that, that's kind of how we look at  
8 it and make the adjustments as appropriate.

9 MR. HERRICK: Yeah, I meant to say, as  
10 necessary, that that's what's done.

11 WITNESS MILLIGAN: Yes, correct.

12 MR. HERRICK: And so if this statute says --  
13 and I'm just asking for your understanding because  
14 there are obviously the legal arguments perhaps either  
15 way. So, in fact, the projects are actually making  
16 releases to provide salinity control and provide the  
17 supply; is that correct? In other words, the projects  
18 cover the water loss to the Delta?

19 WITNESS MILLIGAN: That we're making releases  
20 to control salinity and make adequate water available  
21 for beneficial uses in the Delta.

22 MR. HERRICK: Yes. So in fact, you're -- it  
23 looks like you may be in compliance with that, correct?

24 WITNESS MILLIGAN: It would be. There's no  
25 numerics associated with this text. And I don't want

1 to get into assignments of responsibility, but we are a  
2 part of this solution.

3 MR. HERRICK: Of course, us attorneys can  
4 argue over those specifics. But generally speaking,  
5 the operation of the Delta includes some provision  
6 for -- as necessary, what's lost in the Delta due to  
7 use. And that use is both ag or evaporation, stuff  
8 like that, correct?

9 WITNESS MILLIGAN: Yes. There are some  
10 metrics that try to account for the total use of water  
11 within the Delta.

12 MR. HERRICK: Now, if I can direct your  
13 attention to Section 12205. And it's actually a  
14 separate page, if you want to just go to the last page  
15 of the exhibit, if that's easier to read. Thank you.

16 Let me read 12205 to you. It says, "It is the  
17 policy of the State that the operation and management  
18 of releases from storage into the Sacramento-San  
19 Joaquin Delta of water for use outside the area in  
20 which such water originates shall be integrated to the  
21 maximum extent possible in order to permit the  
22 fulfillment of the objectives of this part." Do you  
23 see that?

24 WITNESS MILLIGAN: Yes, I do.

25 MR. HERRICK: And without asking for legal

1 opinion, would you agree that the objectives of this  
2 part include, as we said earlier, the maintenance and  
3 expansion of ag and industry and urban use, salinity  
4 control, and a supply for in-Delta, correct? Or would  
5 you agree with that?

6 WITNESS MILLIGAN: Yes, I would, on a layman's  
7 level, agree that that's consistent.

8 MR. HERRICK: And I'm not holding you to a  
9 legal opinion. I'm just trying to explore the  
10 obligations that you believe under which you're  
11 operating when you manage the system, when you operate  
12 the system.

13 Now, do you have any opinion as to whether or  
14 not a new intake would limit --

15 MR. O'HANLON: Daniel O'Hanlon, appearing on  
16 behalf of San Luis and Delta-Mendota Water Authority.  
17 I'm going to object to this line of questions.

18 Although Mr. Herrick is framing it in terms of  
19 not asking for a legal opinion, in fact, he is asking  
20 for a legal opinion, specifically with reference to the  
21 statutes he's included as part of his question.

22 CO-HEARING OFFICER DODUC: Mr. Herrick?

23 MR. HERRICK: Well, I'm trying to explore the  
24 obligations under which the operators think they are  
25 bound. And anytime you deal with a statute, whether

1 it's CVP IA or D1641, then somebody is reading that and  
2 deciding what to do. Now, of course, there maybe legal  
3 implications of that, and they may be getting different  
4 legal opinions. But I'm trying to explore what they  
5 understand as their obligations under certain things.  
6 I think it is appropriate.

7 CO-HEARING OFFICER DODUC: Thank you for that  
8 clarification, Mr. Herrick.

9 Your objection is noted and will be considered  
10 as part of weighing the evidence before us.

11 MR. HERRICK: Now, Mr. Milligan, doesn't a new  
12 intake on the Sacramento River near Hood, the new North  
13 Delta intakes, isn't that the opposite of what  
14 Section 12205 seems to be directing the projects to do?  
15 In other words, not letting the water flow through the  
16 Delta to provide for all these other goals?

17 MS. AUFDEMBERGE: I'm going to object to this  
18 question. There has not been any foundation for  
19 whether this applies to the CVP.

20 CO-HEARING OFFICER DODUC: I'm sorry. I  
21 didn't understand your objection.

22 MS. AUFDEMBERGE: It's basically a  
23 continuation of the legal conclusion that he's asking  
24 how this statute applies to the CVP.

25 MR. HERRICK: Well, we read in 12202 that,

1 "among the functions of the State in coordination with  
2 the Federal project." So Mr. Milligan is free to say,  
3 "I don't think I'm bound by that." That's fine. And  
4 then I'm going to ask Mr. Leahigh the same question.

5 CO-HEARING OFFICER DODUC: All right.

6 So I understand the objection, but I'm not  
7 trying to trick him into committing on behalf of the --

8 MS. AUFDEMBERGE: How and whether State law  
9 applies to the CVP is --

10 CO-HEARING OFFICER DODUC: And Mr. Milligan is  
11 free to answer that in a way that defers back to Mr.  
12 Leahigh.

13 Ms. Morris?

14 MS. MORRIS: Objection, the question also  
15 calls for -- assumes facts not in evidence.

16 CO-HEARING OFFICER DODUC: Which facts are you  
17 asserting he's assuming?

18 MS. MORRIS: Well, I should -- he said he  
19 assumed that all -- he said that the question was  
20 whether the new diversion point would basically take  
21 all the water. He assumes that it's going to take all  
22 the water and that it's not operated jointly with the  
23 South Delta diversion, so that that water then would  
24 not be flowing through the Delta.

25 So perhaps a clarification of what he's

1 talking about or what operational scenario would solve  
2 my objection.

3 CO-HEARING OFFICER DODUC: All right. Thank  
4 you. Mr. Herrick will clarify the question.

5 Just to ease things going forward, given the  
6 fact that the Department of Interior and the Department  
7 of Water Resources have decided to combine their  
8 direct, and I appreciate that for efficiency purposes,  
9 it means that both your witness will be up there. And  
10 I believe, given their professional expertise as well  
11 as their senior position in the organization, they are  
12 very capable of answering questions that they feel  
13 comfortable with answering and deferring to the other  
14 partner when that question is more appropriate for  
15 them.

16 So in that light, Mr. Herrick, go ahead and  
17 ask your questions. Mr. Milligan will answer to the  
18 extent that he can. And if he needs to defer to  
19 Mr. Leahigh, I trust that he would do so as well.

20 MR. HERRICK: I'll rephrase that. Thank you,  
21 Madam Chair.

22 Mr. Milligan, does a new North Delta intake  
23 make it easier for you to maximize the release of  
24 storage water for exports to go through the Delta or  
25 make it less easy for you to do that?

1           WITNESS MILLIGAN: I believe I've testified  
2 that the existence of a North Delta diversion would  
3 provide some flexibility that's currently not there for  
4 project operations to allow us to meet a number of  
5 beneficial uses, one of which is export but also to  
6 better manage the various components of in-basin and  
7 in-Delta parameters as well.

8           MR. HERRICK: I was going to explore that  
9 later, but let's get into that now.

10           Both you and Mr. Leahigh have described new  
11 flexibility if the project goes forward; is that  
12 correct?

13           WITNESS MILLIGAN: Yes.

14           MR. HERRICK: But the flexibility is only for  
15 exports, isn't it? It's not easier to meet Chipps  
16 Island when you have a North Delta intake, is it?

17           WITNESS MILLIGAN: Again, that's probably got  
18 two parts to it. I think the first part is it does  
19 provide something beyond exports. So let's say  
20 management oh reverse flows in the central Delta  
21 channels, so, say, Old and Middle River, which helps  
22 manage entrainment risk at the South Delta diversion.  
23 So I think that there are benefits within the -- which  
24 we can better deal with the internal Delta  
25 hydrodynamics in a way that we can't at the moment.

1           When we get to outflow for Chipps Island, for  
2     example, then it probably is a lot more neutral in that  
3     regard.

4           MR. HERRICK:  Okay.  One of the -- I'll go on  
5     from there.

6           Mr. Leahigh, I'd ask you the same question  
7     about Section 12205.  You've had a chance to read that  
8     while we were up here asking questions.  Is that in  
9     front of you?

10          WITNESS LEAHIGH:  Yes, I've read it.  This is  
11     the first time I've read it.

12          MR. HERRICK:  So you were not aware of this  
13     before?

14          WITNESS LEAHIGH:  Not specifically, no.

15          MR. HERRICK:  Mr. Leahigh, is the Department  
16     of Water Resources agreeable to conditions that would  
17     limit the operation under the project you propose to  
18     the provisions that we've covered here in 12200 et.  
19     seq?

20          WITNESS LEAHIGH:  Well, I'm not familiar  
21     enough with this code to really offer an opinion on  
22     that.

23          MR. HERRICK:  Mr. Milligan, is the Bureau  
24     willing to agree to conditions on the project that  
25     would relate to the provisions of these sections we've



1 covered?

2 WITNESS MILLIGAN: This is outside my area of  
3 expertise. My operating assumption, if I can use that  
4 term, is that our permit terms and conditions would  
5 satisfy these as they would relate to the operation of  
6 the CVP my assumption going forward is, with the new  
7 project, that any modifications of those terms and  
8 conditions would be in compliance with the Water Code.

9 MR. HERRICK: Well, is it your position that  
10 the permit terms and conditions on the State  
11 Board-issued permits include all of your other  
12 statutory obligations?

13 MR. BERLINER: Objection, calls for a legal  
14 conclusion.

15 MR. HERRICK: Well, it was just a follow-on  
16 from his statement that he assumed that the State Board  
17 permit terms would incorporate as required in the legal  
18 obligation.

19 CO-HEARING OFFICER DODUC: Answer to the best  
20 of your ability, Mr. Milligan.

21 WITNESS MILLIGAN: Yeah, I think maybe for  
22 clarity of my previous answer, I said "would be  
23 consistent," that would address the obligations of the  
24 Water Code. Our permit terms don't cover, let's say,  
25 all of our legal obligations. And those are handled,

1 let's say, outside of that.

2 MR. HERRICK: Are there any -- you may not be  
3 able to answer this. Are there any Bureau or DWR  
4 witnesses who will be appearing who can make  
5 commitments on terms and conditions that are suggested  
6 by parties?

7 WITNESS MILLIGAN: I'm not aware, no.

8 MR. HERRICK: So we won't be able to find out  
9 through this evidentiary hearing what is acceptable to  
10 the projects as conditions to approval of the petition;  
11 is that correct?

12 MR. BERLINER: This line of questioning is  
13 inappropriate. These are operations witnesses.  
14 Mr. Herrick's directing himself to far more to policy  
15 questions, which will be answered in due time through  
16 this proceeding.

17 CO-HEARING OFFICER DODUC: Well, actually, let  
18 me rephrase his question.

19 Whether or not there are terms that the  
20 petitioners would find acceptable is actually not  
21 important to me. But what is important to me is -- and  
22 the Board has asked several times for petitioners to  
23 propose permit terms and conditions.

24 So if I might rephrase Mr. Herrick's question  
25 or reframe your question in terms of not asking for

1 terms that might be acceptable to the Department but  
2 asking instead for you, if you can, to point to what  
3 sections in your testimony where petitioners have  
4 outlined some proposed terms and conditions for the  
5 this project.

6           And I think that's just a matter of -- well,  
7 an attempt, anyway, to clarify what is being proposed  
8 as part of the project for Mr. Herrick and other  
9 parties to consider the aspect of harm to users.

10           Are there relevant portions, sections in your  
11 testimony and exhibits that you could direct  
12 Mr. Herrick and other parties to for a clear  
13 understanding of any proposed terms and conditions?

14           WITNESS LEAHIGH: I think we'd have to defer  
15 to the project description testimony from the DWR  
16 consultant. That's as far as we have at this point.

17           CO-HEARING OFFICER DODUC: And that would be  
18 the extent of what is currently being proposed?

19           WITNESS LEAHIGH: Again, I'd have to defer to  
20 that testimony.

21           CO-HEARING OFFICER DODUC: Mr. Brodsky, are  
22 you just stretching your legs or -- because I do stand  
23 up, so I recognize sometimes there's a need for that.

24           MR. BRODSKY: If I dare, Madam Chair, the  
25 witness doesn't want to answer what will be acceptable,

1 but I think this witness is qualified to answer what  
2 would be feasible to implement and why something  
3 wouldn't be feasible or problematic to implement.

4 CO-HEARING OFFICER DODUC: And if these  
5 witnesses are -- well, let me ask a different question.  
6 If, through the course of -- and I'm making a guess  
7 here, Mr. Herrick.

8 Through the course of Part 1B, or even Part 2  
9 for that matter, if some of the parties were to propose  
10 various terms and conditions -- in fact, many of the  
11 cross examiners have already raised some suggestions  
12 around that avenue -- will there be witnesses provided  
13 by petitioners to respond to those proposals?

14 Because I'm a bit concerned that questions are  
15 being deferred back and forth, left and right, and it  
16 is going to be very important for the record as well as  
17 for the Board's consideration that we be as responsive  
18 as possible to the questions that are being asked.

19 MR. MIZELL: I believe, at this point in time,  
20 our project description contains additional criteria on  
21 the projects over and above D1641. That's what we're  
22 presenting.

23 Now, we recognize that the scope of this  
24 hearing is somewhat open ended in that we have human  
25 uses to consider and we have other concerns that

1 traditionally don't fall within the water rights  
2 paradigm. And we have taken it to heart that we are to  
3 listen to the questions -- excuse me -- presented to us  
4 through the course of Part 1A and the testimony that  
5 the other parties will provide during Part 1B. And we  
6 can provide rebuttal evidence to address things that  
7 aren't clearly laid out specifically in the notice at  
8 that time.

9 We have held off on presenting specific terms  
10 because they would necessarily be incomplete until we  
11 hear that evidence.

12 CO-HEARING OFFICER DODUC: All right. Thank  
13 you Mr. Mizell.

14 Mr. Herrick, I think that's the best you're  
15 going to get.

16 MR. HERRICK: If we could pull up No. 25 on my  
17 list. Sorry for going out of order. We'll just mark  
18 it South Delta 25.

19 (South Delta Water Authority Exhibit SDWA-25  
20 marked for identification)

21 CO-HEARING OFFICER DODUC: And as staff is  
22 doing that, Mr. Herrick, your first hour is up. I did  
23 say first; that implies you'll get a second hour. But  
24 how much additional time will you need, and what are  
25 your lines of questioning?

1 MR. HERRICK: First of all, the additional  
2 time is always difficult, but given how this is going,  
3 I have at least another hour. I apologize.

4 CO-HEARING OFFICER DODUC: And what are the  
5 topics that you'll be exploring?

6 MR. HERRICK: The topics are I have five or  
7 six other statutory obligations for operations which go  
8 to what we've already explained. I have three things  
9 from D1641 which are obligations which haven't been  
10 talked about. And then I have instances of operations  
11 that are contrary to the previous assertions, if I may.  
12 And that's sort of a good summary, but I have  
13 substantially more left. I apologize.

14 CO-HEARING OFFICER DODUC: All right. Let's  
15 go ahead and give you 30 minutes to start with. That  
16 will take us to the noon hour, and we'll revisit it  
17 then.

18 MR. BAKER: Mr. Herrick, can you give us the  
19 file number, please.

20 MR. HERRICK: 25.

21 MR. BAKER: You gave us 1 through 20.

22 MR. HERRICK: I added that yesterday. There's  
23 a -- the Coordinated Operations Agreement, a law,  
24 PL 99-546.

25 I guess that's what happens when you do it by

1 yourself. We'll have to use the hard copies. I  
2 apologize to everybody. I don't see it there.

3 I object to the implications of my efficiency  
4 here. Anyway, I believe the Board members have a hard  
5 copy, and I believe the witnesses have one too.

6 Mr. Milligan, do you recognize this SDWA-25,  
7 which is PL 99-546? Have you seen this before?

8 WITNESS MILLIGAN: Not quite in this format  
9 for printing, but I am familiar with this particular  
10 piece of public law.

11 MR. HERRICK: Do you see the first portion  
12 I've highlighted, which is Section 101,  
13 Subdivision (b)1? Do you see that?

14 WITNESS MILLIGAN: Yes, I do.

15 MR. HERRICK: And let me briefly or quickly  
16 read that. It says, "Unless the Secretary of the  
17 Interior determines that the operation of the Central  
18 Valley Project in conformity with the State Water  
19 quality standards..." and then I skip a bit, "...is not  
20 consistent with the Congressional directives applicable  
21 to the project, he's authorized and directed to operate  
22 the project in conjunction with the State of California  
23 Water Project in conformity with such standards." I  
24 didn't read that very well, but do you see that part?

25 WITNESS MILLIGAN: Yes, I do.

1           MR. HERRICK: So that is -- that's the federal  
2 law approving the COA agreement and directing the  
3 Bureau to do something, right?

4           WITNESS MILLIGAN: Yes, amongst other things  
5 within the subsequent sections as well. The entire Act  
6 is longer than one page.

7           MR. HERRICK: Absolutely.

8           WITNESS MILLIGAN: Okay.

9           MR. HERRICK: I'm sorry. I'm not trying to --

10          WITNESS MILLIGAN: This is an excerpt from  
11 there.

12          MR. HERRICK: This is only the first page,  
13 yes.

14                 So according to this, it appears there is a  
15 process by which the Secretary of Interior could decide  
16 that compliance with State-mandated water quality  
17 objectives is not within the project purposes and then  
18 object to it somehow; is that correct?

19          CO-HEARING OFFICER DODUC: Hold on a second.

20          Mr. Berliner, go ahead.

21          MR. BERLINER: I suspect we have a similar  
22 objection. Delving into these statutes calls for legal  
23 conclusions. The question that Mr. Herrick asked was a  
24 direct legal question. I object on that basis.

25          MR. O'HANLON: And I join in that objection.



1 He's essentially reading statutes and asking two  
2 engineers whether they agree with the reading of the  
3 statute. In addition to calling for a legal  
4 conclusion, I question what relevance that has.

5 CO-HEARING OFFICER DODUC: Well, as an  
6 engineer, I tend to have opinions on legal matters  
7 myself. So I don't know to what extent I'm going to  
8 rule out the questioning based on that.

9 But recognizing that these witnesses are not  
10 attorneys, we'll note the objections, and we'll  
11 consider that in weighing the evidence before us.

12 Mr. Herrick?

13 MR. HERRICK: And I will try to not make it  
14 sound --

15 CO-HEARING OFFICER DODUC: I understand where  
16 you're going, but let's be careful how you frame your  
17 questions.

18 MR. HERRICK: Thank you.

19 Mr. Milligan, do you understand this federal  
20 law to be directing the Bureau to operate the project  
21 in conformity to standards directed by the State of  
22 California?

23 WITNESS MILLIGAN: Give me just a minute to  
24 reread the paragraph given your question.

25 In the -- I would read this that the

1 operations of the CVP in conjunction with the State  
2 Water Project to conform to the standards is what we've  
3 been directed, the Secretary directed to do. And if  
4 the Secretary determined that such an operation would  
5 be inconsistent with the Constitutional direction on  
6 how the CVP should be operated, then there's a  
7 direction as to the process that should be undertaken.

8 MR. HERRICK: And are you in fact operating  
9 the Central Valley Project in conformance with the  
10 standards, the current standards that the Board has  
11 mandated?

12 WITNESS MILLIGAN: We're operating in  
13 conformance with our permit terms and conditions.

14 MR. HERRICK: Does that include the South  
15 Delta salinity standards?

16 WITNESS MILLIGAN: We believe we're within our  
17 permit terms and conditions.

18 MR. HERRICK: Okay. And I'll get to that  
19 later --

20 WITNESS MILLIGAN: Okay.

21 MR. HERRICK: -- more specifically.

22 But you would agree that the South Delta  
23 salinity standards at the three interior South Delta  
24 locations are currently being violated?

25 WITNESS MILLIGAN: We'll say that they're

1 currently being exceeded.

2 MR. HERRICK: They're currently being  
3 exceeded. Okay. Thank you.

4 Next is No. 6. That would be South Delta  
5 No. 6, and it's on the stick. And South Delta No. 6 is  
6 Title 34, Public Law 102-575. And that is the Central  
7 Valley Project Improvement Act.

8 (South Delta Water Authority Exhibit SDWA-6  
9 marked for identification)

10 MR. HERRICK: Now, Mr. Milligan as this moves  
11 forward, again, I'll be asking the question that  
12 previously you and Mr. Leahigh were not able to answer,  
13 but I need to make the record clear.

14 Is the Bureau willing to stipulate to any  
15 terms and conditions that would relate to that COA  
16 agreement mandate?

17 WITNESS MILLIGAN: I think that would --  
18 that's certainly a policy question, but I cannot commit  
19 to.

20 MR. HERRICK: Mr. Leahigh, same question to  
21 you for the State?

22 WITNESS LEAHIGH: Same answer. That's a  
23 policy question.

24 MR. HERRICK: Thank you. Now, the second page  
25 of the SDWA No. 6, which is actually Page 12 of CVP IA,

1 you see that there? Subpart (b), the caption is "Fish  
2 and Wildlife Restoration Activities," is that correct?

3 WITNESS MILLIGAN: Yes. What's not clear is  
4 this -- is this Section 3406B?

5 MR. HERRICK: Yes, if you look at the very  
6 bottom of the page --

7 WITNESS MILLIGAN: Okay.

8 MR. HERRICK: I appreciate that, since I've  
9 only provided excerpts. I'm not trying to mislead you  
10 there.

11 But the part I've highlighted says, "The  
12 Secretary, immediately upon enactment of this title,  
13 shall operate the Central Valley Project to meet all  
14 obligations under State and Federal law, including but  
15 not limited to," and then one of them is, "All  
16 decisions of the California State Water Resources  
17 Control Board establishing conditions on applicable  
18 licenses and permits for the project." Do you see  
19 where it says that?

20 WITNESS MILLIGAN: Yes, I do.

21 MR. HERRICK: Now, again, the previous  
22 question dealt with the COA statute. I'm dealing with  
23 CVP IA now. In your opinion, is the Bureau operating  
24 to meet all conditions in their applicable licenses and  
25 permits?

1 WITNESS MILLIGAN: Yes, we're trying. Yes.

2 MR. HERRICK: And does that include the South  
3 Delta standards?

4 MR. HERRICK: They are part of our permit  
5 terms and conditions. But again, I think we're --  
6 we're consistent with those permits.

7 MR. HERRICK: And that's fine to caveat that.  
8 I'm going to drill down on that later.

9 WITNESS MILLIGAN: Yes.

10 MR. HERRICK: Mr. Leahigh, do you have the  
11 same answer as Mr. Milligan in regards to complying  
12 with permit conditions? I'm sorry. Let me strike that  
13 because this is CVP IA.

14 Mr. Milligan, the next paragraph under  
15 (b) is 1. And I've highlighted a portion of that. And  
16 rather than reading it, do you understand this is the  
17 provision of the CVP IA that deals with the fish  
18 doubling mandate?

19 WITNESS MILLIGAN: Yes. It's a common  
20 reference, yes.

21 MR. HERRICK: And correct me if I use the  
22 wrong shorthand or something, but basically this  
23 mandated a fish doubling program which resulted in  
24 the -- an adverse fish restoration program; is that  
25 correct?

1           WITNESS MILLIGAN: Yeah, the fish restoration  
2 program kind of emanates from this particular section.

3           MR. HERRICK: And of course, CVP IA is much,  
4 much, more thorough, right?

5           WITNESS MILLIGAN: Yeah, quite a bit more.

6           MR. HERRICK: So the next I have -- the  
7 aforementioned fish restoration program which is being  
8 passed out, that's South Delta No. 7 please.

9           (South Delta Water Authority Exhibit SDWA-7  
10 marked for identification)

11          MR. HERRICK: And I apologize. Can we pull up  
12 Exhibit 6 one last time?

13          Mr. Milligan, as the final restoration plan is  
14 being passed out, that fish doubling program was  
15 supposed to ensure that by the year 2000 the natural  
16 fish population as defined would be accomplished; is  
17 that correct?

18          WITNESS MILLIGAN: Well, it kind of states  
19 that all reasonable efforts would be made to ensure  
20 that by the year 2002.

21          MR. HERRICK: Yes. I'm not trying to  
22 overstate that, but that was -- whether there was a  
23 hard or soft deadline, that was the time frame,  
24 correct?

25          WITNESS MILLIGAN: Yes.

1 MR. HERRICK: And to your knowledge, have we  
2 doubled those fish populations that were described in  
3 the bill?

4 WITNESS MILLIGAN: Not to my knowledge.

5 MR. HERRICK: Now, the next one that I just  
6 passed out is that final anadromous fish restoration  
7 program. I'm going fast again. I'm sorry.

8 Now, Mr. Milligan, I'm not trying to test your  
9 knowledge of this. I'm just going to flip through the  
10 pages of the exhibit. And just to get your impression,  
11 I want to make sure I'm on the right track, but the  
12 fish restoration program has certain actions for  
13 various waterways, is that a correct statement, in  
14 order to move forwards doubling of fish, correct?

15 MR. BERLINER: Objection as to relevance in  
16 general as well as to this part of the proceeding since  
17 we have a part devoted to fish and wildlife.

18 CO-HEARING OFFICER DODUC: Mr. Herrick?

19 MR. HERRICK: I understand. That's a good  
20 objection. The purpose of this is to test whether or  
21 not a federal mandate to do things has been complied  
22 with, and if not, then the no-action alternative should  
23 include operational changes to meet this, and thus we  
24 don't have any appropriate analysis of the impacts to  
25 third parties.

1           MR. WILLIAMS: Phillip Williams, appearing for  
2 Westland.

3           To the extent that we're asking an operations  
4 member -- panel member to interpret a Federal mandate,  
5 I would suggest that we are straying pretty quickly  
6 into a legal conclusion. And while you're correct,  
7 Madam, about Mr. Leahigh and Mr. Milligan may have been  
8 opinions certainly that may be of value, I would stress  
9 that your task is to weigh the probative value of the  
10 opinions you are being provided.

11          CO-HEARING OFFICER DODUC: Thank you for that  
12 reminder.

13           Actually, before all the objections are  
14 voiced, Mr. Herrick, I was going to ask you to clarify  
15 for me because Mr. Milligan has already, in an answer  
16 to your previous question, indicated that the goals  
17 have not been met. So what is, then, the purpose in  
18 going through the specific actions to achieve the goal  
19 that he has already acknowledged has not been met?

20          MR. HERRICK: It was not my intent to go  
21 through all of the actions but just do go through some  
22 of them to indicate that compliance with those goals  
23 would necessitate operational changes which then later  
24 people will legally argue that should be part of the  
25 no-action alternative.



1 CO-HEARING OFFICER DODUC: All right. I'll allow  
2 you that question.

3 MR. HERRICK: I'm not going to harp on the  
4 many specifics.

5 CO-HEARING OFFICER DODUC: Thank you,  
6 Mr. Herrick.

7 MR. HERRICK: Mr. Milligan, there -- I'm going  
8 to do this quickly.

9 CO-HEARING OFFICER DODUC: I'm sorry. Before  
10 you continue, all the other objection will be noted  
11 and, obviously, again, will go into weighing of the  
12 evidence.

13 MR. HERRICK: Thank you.

14 Mr. Milligan, the FRP has various actions  
15 recommended for various rivers or streams, correct?

16 WITNESS MILLIGAN: Yes, I refer to those as  
17 CVP control streams.

18 MR. HERRICK: Sorry. Now, those actions  
19 include things such as supplementing existing flows  
20 through releases or purchases of water for additional  
21 flows; is that correct?

22 WITNESS MILLIGAN: That's two categories, yes.

23 MR. HERRICK: And, again, if they're separate,  
24 go ahead and tell me.

25 Is the Bureau operating to provide the

1 supplemental flows listed for the streams on  
2 CVP-controlled waterways?

3 WITNESS MILLIGAN: On -- there are probably  
4 some places where we are short of those, but there are  
5 other places where we probably have flows in excess of  
6 those.

7 MR. HERRICK: And I'm not trying to delve into  
8 convenience, possibility, or feasibility. I'm just  
9 indicating that the goals -- sorry -- the actions in  
10 the FRP are not fully implemented. Would that be a  
11 correct statement?

12 WITNESS MILLIGAN: Some of them may not be  
13 consistent. This is a document from -- that predates  
14 the current biological opinion. And there may be some  
15 inconsistencies from what's identified in these tables  
16 to what's currently in our biological opinions. And as  
17 I said, some places we're providing flows in excess of  
18 what's identified in some of these streams, and in some  
19 places we fall short.

20 MR. HERRICK: In those places where you fall  
21 short, would there be operational changes associated  
22 with meeting those additional flow suggestions,  
23 requirements, whatever you want to call them?

24 WITNESS MILLIGAN: Given most of the flows  
25 probably in terms of particularly the timing, there are

1 probably periods where, in essence, we are in balanced  
2 conditions, if you will, or not certainly in flood  
3 control operations. So that would require re-operation  
4 of the reservoir and, you know, withdrawals for a  
5 while, most likely.

6 MR. HERRICK: And such re-operations are not  
7 part of the analysis done for this petition, correct?

8 WITNESS MILLIGAN: Any changes -- and I'll  
9 just refer -- have to go back to, let's say, the Cal  
10 Sim set of assumptions. Some of these particular  
11 elements are embedded in the Cal Sim set of  
12 assumptions. And if we were to operate in -- to  
13 additional releases beyond what's already within Cal  
14 Sim, then that would mean additional release of stored  
15 water, most likely.

16 MR. HERRICK: When you say "some of these are  
17 embedded in the Cal Sim," that means some aren't; is  
18 that correct?

19 WITNESS MILLIGAN: I think some are not, but I  
20 would have to review each one of these, depending on  
21 which ones were of your interest, to see if there's a  
22 placeholder within Cal Sim.

23 MR. HERRICK: I don't mean to be rude and not  
24 look at you when I'm grabbing other stuff, but thank  
25 you.

1           Next I'd like to pass out Public Law 108-361.

2   And that is South Delta 8.

3           (South Delta Water Authority Exhibit SDWA-8

4           marked for identification)

5           MR. HERRICK: I'd like to say, for

6   convenience, there's the web address. But that's

7   impossible for anybody to copy down, so I guess that

8   makes it useless.

9           Mr. Milligan, do you have a copy of that,

10   South Delta 8, Public Law 108-361?

11           WITNESS MILLIGAN: Yes, I do.

12           MR. HERRICK: And this was previous -- I'll

13   represent to you this was previously designated

14   HR-2828, which is the bill number when it was moving

15   through Congress. Are you familiar with that?

16           WITNESS MILLIGAN: Yes.

17           MR. HERRICK: And the third page of the

18   exhibit has some highlighting. Do you see that?

19           WITNESS MILLIGAN: Yes, I do.

20           MR. HERRICK: And I can't represent to you the

21   section it's under, but you can see there's a capital C

22   regarding the intertie. And then after C, there's a D

23   where the highlighting is; is that correct?

24           WITNESS MILLIGAN: Under D, "Programmed to

25   meet standards"?

1 MR. HERRICK: Correct. I'm just trying to  
2 make sure that somebody later looking at this is  
3 looking at the same thing we look at.

4 Now, you said you're familiar with the  
5 statute?

6 WITNESS MILLIGAN: Well, the -- to make sure  
7 I'm -- this is the Calfed Bay-Delta Authorization Act  
8 is my familiarity with it. Yes, I've seen this before.

9 MR. HERRICK: And that was enacted in 2004?

10 WITNESS MILLIGAN: I believe that's correct.

11 MR. HERRICK: Now let me read you a portion of  
12 the highlighted. It says under small i, "In general,  
13 prior to increasing export limits to the Delta for the  
14 purpose of conveying water to the south of Delta  
15 Central Valley Project contractors or increasing  
16 deliveries through an intertie, the Secretary shall,  
17 not later than one year after the date of enactment of  
18 this Act, in consultation with the Governor develop and  
19 initiate" -- "develop and initiate implementation of a  
20 program to meet all existing water quality standards  
21 and objectives for which the Central Valley Project has  
22 responsibility."

23 Do you see that?

24 WITNESS MILLIGAN: I do.

25 MR. HERRICK: Now, one year from October 2005

1 would be sometime in -- excuse me -- one year from  
2 October 2004 would be sometime in 2005; is that  
3 correct?

4 WITNESS MILLIGAN: Yes.

5 MR. HERRICK: Now, has the Bureau implemented  
6 a plan to meet all of its existing water quality  
7 standards and objectives?

8 WITNESS MILLIGAN: There have been a number of  
9 efforts to compile a plan per se in terms of  
10 implementing a program as it's described here. And I'm  
11 sorry, I'm not as up to speed with those various  
12 documents. This is something that's been in the works  
13 for, I'm afraid, longer than the one-year Congressional  
14 mandate.

15 I am aware that there have been some reports  
16 to the Congress on the plan to meet standards. But I  
17 haven't followed that directly.

18 MR. HERRICK: And without being too nasty  
19 here, Mr. Milligan, the statute says not just develop  
20 but initiate implementation; is that correct?

21 WITNESS MILLIGAN: That's correct.

22 MR. HERRICK: Now, the plan also talks  
23 about -- you see there "(iii) Recirculation Program"?

24 WITNESS MILLIGAN: Yes, I do.

25 MR. HERRICK: And it says, "The Secretary

1 shall incorporate into the program," and by that I  
2 think they're referring to the program to meet  
3 standards, "a recirculation program to provide flow,  
4 reduce salinity concentrations in the San Joaquin River  
5 and reduce the reliance on New Melones Reservoir for  
6 meeting water quality and fishery flow objectives." Do  
7 you see that?

8 WITNESS MILLIGAN: Yes, I do.

9 MR. HERRICK: Now, has the Bureau initiated a  
10 recirculation program in order to meet standards?

11 WITNESS MILLIGAN: No, we have not.

12 MR. HERRICK: Now, there are always legal  
13 arguments, and there could be laws that change things.  
14 But I'm just asking for your view of this.

15 Do you view this as a mandate on you as the  
16 operator of the Central Valley Project to have done a  
17 couple of things that haven't been done?

18 WITNESS MILLIGAN: As the operator, no. I  
19 would say this is a -- this is direction to the  
20 Secretary. And I believe that we have communicated to  
21 the Congress as it relates to a number of these types  
22 of things in the Act.

23 MR. HERRICK: And the next page of the  
24 document, South Delta 8, you see where there's a  
25 section small v, and it's called "Acquisition of

1 Water"?

2 WITNESS MILLIGAN: Yes, I do.

3 MR. HERRICK: You can re-read that here, but  
4 I'll just summarize real fast to save time.

5 The Secretary is also directed to incorporate  
6 into the program to meet standards the purchases of  
7 water from willing sellers in order to meet standards;  
8 is that correct, as a general statement?

9 WITNESS MILLIGAN: I think it's to meet the  
10 dilution discharges of salt and other constituents, so  
11 those types of standards.

12 MR. HERRICK: That's an appropriate nuance.

13 Then all of this deals -- within the final  
14 paragraph and before, it talks about one of the  
15 purposes is to reduce the reliance on New Melones for  
16 meeting the various San Joaquin River related  
17 obligations; is that correct?

18 WITNESS MILLIGAN: This was the intent of this  
19 -- a lot of this particular section of the Act.

20 MR. HERRICK: Has the Bureau reduced its  
21 reliance on New Melones for meeting such things as the  
22 Vernalis salinity standard?

23 WITNESS MILLIGAN: That's a somewhat general  
24 question. I will say that the implementation of the  
25 Salt and Boron TMDL certainly has -- there appears to



1 have had the effect of reducing the reliance on the  
2 dilution flows from New Melones.

3 We seem to be making lower releases for  
4 dilution flows than we may have had in the past.  
5 That's just an observation. It seems to have  
6 correlated with the Salt and Boron TMDL.

7 Has there been a particular set of objectives  
8 or other planning actions to do that? No, there has  
9 not.

10 MR. HERRICK: That was an excellent answer, by  
11 the way.

12 WITNESS MILLIGAN: Thank you.

13 MR. HERRICK: Mr. Milligan, has the Bureau  
14 reduced its reliance on New Melones for meeting  
15 fishery flows measured at Vernalis?

16 MS. AUFDEMBERGE: I'm going to object. This  
17 whole line of questioning, I'm losing the connection of  
18 relevance to the impacts of Cal WaterFix.

19 CO-HEARING OFFICER DODUC: Seriously? Okay.  
20 Mr. Herrick.

21 MR. HERRICK: Madam Chair, I will do this once  
22 again. That I'm trying to establish that there are  
23 other mandates rather than D1641, which arguably  
24 require the Bureau to do -- Bureau and the State to do  
25 other things. And if those other things were done,

1 that would change the no-action alternative, which  
2 would change the analysis of injury.

3 So I think that's my same explanation as  
4 before.

5 CO-HEARING OFFICER DODUC: Thank you.

6 Overruled.

7 Please continue, Mr. Herrick.

8 MR. HERRICK: Thank you. Okay.

9 Now, Mr. Milligan, just to upset you even  
10 further, I have the "Plan to Meet Standards."

11 And so that's South Delta No. 9. And as that  
12 being passed out --

13 CO-HEARING OFFICER DODUC: As that's being  
14 passed out, Mr. Herrick, do you think we might be able  
15 to wrap up your cross-exam by 12:30?

16 MR. HERRICK: No.

17 CO-HEARING OFFICER DODUC: How much further do  
18 you have?

19 MR. HERRICK: I have to assume I have at least  
20 45 minutes. But if I may, I'm not trying to -- other  
21 people have different things, but I don't think it --

22 CO-HEARING OFFICER DODUC: I understand. My  
23 suggestion will be, if this is a new line of  
24 questioning -- is it? Is now a good time for our lunch  
25 break?

1 MR. HERRICK: How about if we do it after this  
2 exhibit?

3 CO-HEARING OFFICER DODUC: Okay.

4 MR. HERRICK: This won't take more than a  
5 couple of minutes.

6 CO-HEARING OFFICER DODUC: All right. We'll  
7 do that then.

8 MR. HERRICK: Thank you very much.

9 (South Delta Water Authority Exhibit SDWA-9  
10 marked for identification)

11 MR. HERRICK: Mr. Milligan, you have South  
12 Delta No. 9 in front of you, which is the Reclamation's  
13 "Program to Meet Standards"?

14 WITNESS MILLIGAN: I have what appears to be  
15 an excerpt of that, maybe. I don't even know if it's  
16 the entire executive summary or not.

17 MR. HERRICK: Let me rephrase that because you  
18 are absolutely correct. In front of you is South  
19 Delta's exhibit which is excerpts from the plan,  
20 certainly not the whole plan.

21 WITNESS MILLIGAN: Okay. Yes, I do have that.

22 MR. HERRICK: You see on the cover page,  
23 second, third, there's a map, and then the page after  
24 that's labeled ES-3; there's some highlighting on  
25 there?

1 WITNESS MILLIGAN: Yes.

2 MR. HERRICK: Just generally, that's a portion  
3 of the plan recognizing that the D1641 standards  
4 include the three interior South Delta standards for  
5 salinity, correct?

6 WITNESS MILLIGAN: Yes, that's what it says.

7 MR. HERRICK: And the only purpose for asking  
8 that is the plan doesn't ignore the South Delta  
9 standards; it recognizes that those are some of the  
10 obligations that they're supposed to meet under the  
11 plan of -- what do they call them?

12 WITNESS MILLIGAN: Or at least the sentence  
13 acknowledges that these three stations are part of  
14 D1641.

15 MR. HERRICK: Now, on the next page, which is  
16 ES-4, you see where I've highlighted "Program  
17 Objectives"?

18 WITNESS MILLIGAN: Yes.

19 MR. HERRICK: And there are two of them there  
20 that I've highlighted. The first one says, "Reduce  
21 reliance on releases from New Melones Reservoir for  
22 meeting water quality and fishery flow requirements  
23 near Vernalis so as to increase water deliveries to CVP  
24 Contractors." Do you see that?

25 WITNESS MILLIGAN: I do see that.

1 MR. HERRICK: Is it your understanding that  
2 the plan to meet standards in PL 108-361 required  
3 meeting standards near Vernalis or all water quality  
4 obligations? I didn't say that very well.

5 MR. BERLINER: Same objection as before,  
6 calling for a legal conclusion.

7 MR. HERRICK: Let me phrase that, because --

8 CO-HEARING OFFICER DODUC: Mr. Herrick, go  
9 ahead.

10 MR. HERRICK: Mr. Milligan, I apologize. You  
11 see where it says, "Flow requirements near Vernalis" in  
12 that section I just read?

13 WITNESS MILLIGAN: I do see that.

14 MR. HERRICK: Do you know why it says "near  
15 Vernalis" rather than referencing the same language  
16 that was in the statute, which is "meeting all water  
17 quality objectives"?

18 WITNESS MILLIGAN: I do not know why the  
19 objectives as stated -- program objectives as stated  
20 here are focused specifically to the Vernalis  
21 objectives or objectives near Vernalis anyway.

22 MR. HERRICK: So that first highlighted part  
23 talks about reducing reliance on New Melones for  
24 meeting certain things, correct?

25 WITNESS MILLIGAN: Yes, specifically water

1 quality and fishery flow requirements.

2 MR. HERRICK: Right. And then the next bullet  
3 says, "Improve water quality conditions in the San  
4 Joaquin River above Vernalis," correct?

5 WITNESS MILLIGAN: Yes.

6 MR. HERRICK: Now, do you have any opinion on  
7 whether -- or why the program objectives do not include  
8 meeting the water quality standards?

9 WITNESS MILLIGAN: I do not.

10 MR. HERRICK: Okay. That's a good time to  
11 break. Thank you, Madam Chair.

12 CO-HEARING OFFICER DODUC: Thank you,  
13 Mr. Herrick.

14 We will continue at 1:00 p.m.

15 (Whereupon, the luncheon recess was taken  
16 at 11:59 a.m.)

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1 AFTERNOON SESSION

2 ---oOo---

3 (Whereupon, all parties having been  
4 duly noted for the record, the  
5 proceedings resumed at 1:00 p.m.)

6 CO-HEARING OFFICER DODUC: All right.

7 Everyone, take your seats. It's 1:00 o'clock. We will  
8 begin.

9 But before Mr. Herrick gets started, I want to  
10 do just a quick check-in with the parties that are  
11 coming up regarding cross-examination so we can sort of  
12 have some sort of a planning timeline for the rest of  
13 today.

14 Mr. Herrick will anticipate about another half  
15 an hour.

16 MR. HERRICK: Or more.

17 CO-HEARING OFFICER DODUC: Well, we'll see,  
18 Mr. Herrick.

19 Group No. 22, do you expect to conduct  
20 cross-examination, City of Stockton?

21 (No response)

22 CO-HEARING OFFICER DODUC: 23, Stockton East  
23 Water District?

24 (No response)

25 CO-HEARING OFFICER DODUC: 24 -- Ms. Spaletta?

1 MS. SPALETTA: Yes.

2 CO-HEARING OFFICER DODUC: Actually, if you  
3 wouldn't mind coming up just so that we can hear you.

4 Recognizing that this is only an  
5 approximation, how much time do you think you might  
6 need?

7 MS. SPALETTA: This is Jennifer Spaletta for  
8 North San Joaquin. We have actually coordinated with  
9 both Stockton East and with the County.

10 CO-HEARING OFFICER DODUC: Okay.

11 MS. SPALETTA: So I anticipate that, between  
12 Mr. Keeling and I, we will take no more than two hours.

13 Correct?

14 MR. KEELING: That's correct.

15 CO-HEARING OFFICER DODUC: So that might  
16 actually get us to today. But in case we are even more  
17 efficient than that, how about Group No. 26?

18 MR. MILJANICH: I believe you skipped  
19 through 25.

20 CO-HEARING OFFICER DODUC: I'm sorry; did I?

21 MR. MILJANICH: County of Solano.

22 CO-HEARING OFFICER DODUC: 25, yes.

23 MR. MILJANICH: Peter Miljanich for County of  
24 Solano.

25 My cross-examination can take anywhere from



1 probably 20 to 40 minutes.

2 CO-HEARING OFFICER DODUC: Okay.

3 MR. MILJANICH: But for purely selfish  
4 reasons, I'm happy to wait until Thursday.

5 CO-HEARING OFFICER DODUC: All right. So we  
6 may or may not get to you today. You should know,  
7 though, on Thursday I would like to -- I'll probably  
8 continue any remaining cross-examination from today.  
9 But I would first like to start with Mr. O'Laughlin,  
10 Group 18, if he still would like to conduct  
11 cross-examination because we deferred him from  
12 yesterday.

13 All right. Any other questions?

14 MR. EMRICK: It doesn't look like you're going  
15 to me today, but I'm Matthew Emrick, City of Antioch.  
16 And I've coordinated with Ms. Nikki Suard to take my  
17 cross-examination if you get to us.

18 CO-HEARING OFFICER DODUC: Okay. So in  
19 essence, we're combining, or are you switching?

20 MR. EMRICK: We'll be switching, 27 and, I  
21 think, 42, but only for today's purposes.

22 MR. OCHENDUSZKO: 41.

23 CO-HEARING OFFICER DODUC: 41? All right.  
24 And that will hold if we get to you on Thursday as  
25 well?

1 MR. EMRICK: Yes, I would go -- well, if you  
2 don't get to us, to 27, today, we'll be 27 on Thursday.

3 CO-HEARING OFFICER DODUC: We will not get to  
4 you today is my estimation. So then the switch will  
5 not happen on Thursday.

6 MR. EMRICK: Okay. Great.

7 CO-HEARING OFFICER DODUC: I mean, that is  
8 your request, right?

9 MR. EMRICK: That would happen today only if  
10 you got to us.

11 CO-HEARING OFFICER DODUC: Got it.

12 MR. EMRICK: All right. Thank you.

13 CO-HEARING OFFICER DODUC: Mr. Brodsky, are  
14 you stretching your legs? Or do you have a question --  
15 which is perfectly fine to stretch your legs.

16 MR. BRODSKY: So I'm going to have one hour?  
17 I'm No. 31, I believe.

18 You're saying we're not going to get to me  
19 today?

20 CO-HEARING OFFICER DODUC: I am doubtful that  
21 we'll get to 31 today, given the estimates that have  
22 just been given by Mr. Herrick and Ms. Spaletta and  
23 also Group No. 25.

24 MR. BRODSKY: And then Mr. O'Laughlin is going  
25 to go first on Thursday?

1 CO-HEARING OFFICER DODUC: Correct.

2 MR. BRODSKY: Do we have a time estimate for  
3 him?

4 MR. HERRICK: He has previously estimated at  
5 least two hours, but that's not a commitment from him.

6 CO-HEARING OFFICER DODUC: Nor a commitment  
7 from me.

8 MR. BRODSKY: Okay. So he'll go out of order?  
9 He'll go first, and then we'll resume the order? Is  
10 what will happen on Thursday?

11 CO-HEARING OFFICER DODUC: Correct.

12 MR. BRODSKY: Thank you.

13 CO-HEARING OFFICER DODUC: All right. Thank  
14 you.

15 With that, Mr. Herrick, please.

16 MR. HERRICK: Thank you. As I call you "Madam  
17 Chair" -- I notice that I keep referring to you as  
18 "Madam Chair," but we have a Madam Chair and a Hearing  
19 Officer. And so I don't know how to address you  
20 ladies, but I will do my best.

21 CO-HEARING OFFICER DODUC: Thank you. I don't  
22 believe that's a critical issue at the moment before  
23 us.

24 MR. HERRICK: Thank you. Just once in a  
25 while, I realize that I'm not thinking.

1 CROSS-EXAMINATION BY MR. HERRICK (resumed)

2 MR. HERRICK: Okay. Mr. Milligan, just as a  
3 follow-up to the final discussions from last time, are  
4 you -- is the Bureau prepared to agree to any  
5 conditions that would require recirculation or  
6 acquisitions of water on the San Joaquin River or to  
7 help meet standards as part of your petition here?

8 WITNESS MILLIGAN: I think that would be a  
9 policy question, but I'm no not aware of any kind of  
10 proposal at this time.

11 MR. HERRICK: Next is South Delta No. 10.

12 (South Delta Water Authority Exhibit SDWA-10  
13 marked for identification)

14 MR. HERRICK: And Dean previously laid piles  
15 of the documents out for people to grab. So that's it  
16 [indicating], and it just has some excerpts from D1641.

17 Before I label this an actual South Delta  
18 exhibit, I believe it's a State Board exhibit. So  
19 however that should be designated, whether it's South  
20 Delta or something else, the whole document is already,  
21 I think, on the Web or something.

22 So I'll clear that up with your staff when  
23 they're yelling at me later.

24 Mr. Milligan, do you have a copy of D1641  
25 excerpts that I've provided in front of you?

1 WITNESS MILLIGAN: Yes, I do.

2 MR. HERRICK: And, Mr. Leahigh, you have  
3 access to that same copy or your own copy?

4 WITNESS LEAHIGH: Yes, I do as well.

5 MR. HERRICK: And these questions are for both  
6 of you, so I'll just start with Mr. Milligan.

7 Mr. Milligan, on Page 150 of D1641 -- so it's  
8 the third page in -- I've begun to highlight a few  
9 things. And to save time, I will go quickly, but  
10 please feel free to say "stop going quickly," or "give  
11 me a minute."

12 But D1641 included conditions on the projects  
13 for joint point of diversion operations, correct?

14 WITNESS MILLIGAN: Yes.

15 MR. HERRICK: And on Page 150 is a list of --  
16 it contains some of those provisions. You see that, or  
17 you agree with that?

18 WITNESS MILLIGAN: Yes, I believe these are  
19 the conditions related to joint point as we've been  
20 calling them.

21 MR. HERRICK: Yes. And the No. 3 under "a.,"  
22 I've highlighted that. And it talks about there has to  
23 be a response plan for water levels in order for joint  
24 point to move forward; is that correct?

25 WITNESS MILLIGAN: That would be consistent

1 with a.3 here, which you've highlighted.

2 MR. HERRICK: Yes. And do you know if we do  
3 have -- I'm not trying to trick you, I'll be presenting  
4 it to you. It's your understanding we have a response  
5 plan for water levels with the projects?

6 WITNESS MILLIGAN: Yes. That's my  
7 understanding.

8 MR. HERRICK: Thank you. And then No. 4 is  
9 another condition of joint point is that all other  
10 provisions of the above permits are met; do you see  
11 that?

12 WITNESS MILLIGAN: Yes, I do.

13 MR. HERRICK: Then No. 5 is developing a  
14 response plan for water quality, would you agree with  
15 that?

16 WITNESS MILLIGAN: Then it continues on to the  
17 next page?

18 MR. HERRICK: Yes.

19 WITNESS MILLIGAN: Yes.

20 MR. HERRICK: And, again, I'm not trying to  
21 blindside you, but there is a response plan for  
22 quality, which I'll present here in a minute; we can go  
23 over it. But I just want to go through, lay the  
24 groundwork for what some of the other D1641 conditions  
25 are on the projects. So these -- are you aware of

1 these conditions?

2 WITNESS MILLIGAN: Yes.

3 MR. HERRICK: And then, I don't know if I have  
4 this backwards, Mr. Leahigh, the same thing. If you go  
5 to the end of my hand-out there starting on Page 152 --  
6 maybe I have those backwards.

7 But anyway, there's one section that deals  
8 with the Bureau and one section that deals with the  
9 State. And they both have similar conditions on JPOD  
10 that I just mentioned; is that correct?

11 WITNESS LEAHIGH: This is the section on  
12 Stage 2 JPOD? Is that on Page 152?

13 MR. HERRICK: Yeah, Page 150- -- I believe  
14 that if you go to the previous page, that deals with  
15 the Federal permits. And then we were reading from  
16 "All stages." On Page 150, talks about "All stages."

17 And then if you flip forward to what's labeled  
18 Page 155, I think that's the beginning of the DWR  
19 permits, and it talks about the same three provisions.  
20 I apologize for rushing. I'm just trying to get  
21 through it. I'm just trying to lay the groundwork.

22 WITNESS LEAHIGH: Yes, I see it. That appears  
23 to be the terms and conditions associated with DWR's.

24 MR. HERRICK: To your knowledge, is DWR  
25 operating pursuant to the water level response plan?

1 WITNESS LEAHIGH: Yes.

2 MR. HERRICK: And to your knowledge, is DWR  
3 operating pursuant to the water quality response plan?

4 WITNESS LEAHIGH: To my knowledge, yes.

5 MR. HERRICK: And the same questions for you,  
6 Mr. Milligan. Do you believe that the Bureau is  
7 operating according to those two plans?

8 WITNESS MILLIGAN: When we've been operating  
9 joint point, yes, we have.

10 MR. HERRICK: And for clarity, those are  
11 conditions on joint point, not general conditions for  
12 the permit?

13 WITNESS MILLIGAN: That's my understanding,  
14 yes.

15 MR. HERRICK: Okay. So the next exhibit is  
16 South Delta 11, which is -- it's there for people to  
17 grab and pass out, sorry.

18 (South Delta Water Authority Exhibit SDWA-11  
19 marked for identification)

20 MR. HERRICK: And if everybody has this in  
21 front of them, South Delta Exhibit 11 is the response  
22 plan for water levels under D1641. And on the third  
23 page of that hand-out, Mr. Milligan, do you see where  
24 I've highlighted some text?

25 CO-HEARING OFFICER DODUC: Let's go ahead and



1 give Mr. Herrick another 30 minutes.

2 MR. HERRICK: Thank you. I apologize.

3 WITNESS MILLIGAN: It's kind of highlighted,  
4 what looks to be previously highlighted text?

5 MR. HERRICK: Yeah. Is it not clear on your  
6 copy? I apologize. Can you see on the overhead?

7 WITNESS MILLIGAN: Yes. Yes, I see that here.

8 MR. HERRICK: I'll read it real fast here. It  
9 says, "Water levels are considered adequate if they are  
10 forecasted to be 0.0 feet mean sea level or greater at  
11 Old River near Tracy Road Bridge and Doughty Cut above  
12 Grant Line Canal Barrier and 0.3 feet mean sea level or  
13 greater at Middle River near Howard Road Bridge." Do  
14 you see that.

15 WITNESS MILLIGAN: Yes, I do.

16 MR. HERRICK: Is that your understanding those  
17 are the criteria for adequate water levels in South  
18 Delta when JPOD is occurring.

19 WITNESS MILLIGAN: That's my understanding.

20 MR. HERRICK: Then next page that is another  
21 section that's highlighted. And I'll read that  
22 quickly. It's call "Updated modeling."

23 "During the existence of this plan, DWR,  
24 Reclamation, and SDWA shall work together to improve  
25 the reliability of the modeling used to predict the

1 effects of export pumping on South Delta water levels.  
2 The parties shall also work together to refine the  
3 definition of water levels in the South Delta below  
4 which local diversions become impaired. If additional  
5 or replacement definitions of said water levels are  
6 identified through this plan, they shall be  
7 incorporated into this plan."

8           You understand that's part of the water level  
9 response plan?

10           WITNESS MILLIGAN: Yeah, as it relates to the  
11 updates of new modeling or new criteria.

12           MR. HERRICK: If I may ask, Mr. Holderman, you  
13 have some level of familiarity with this plan, do you  
14 not?

15           MR. HOLDERMAN: Yes, I do.

16           MR. HERRICK: I believe you were involved in  
17 working through the details and agreements on it?

18           MR. HOLDERMAN: Right.

19           MR. HERRICK: To avoid time -- not "avoid  
20 time." To avoid excessive time, I apologize if I sound  
21 like a testimony, but see if you can agree with what  
22 I'm going to say. We've had various issues involved  
23 with the water level plan; is that correct?

24           MR. HOLDERMAN: I'm sorry. Say it again.

25           MR. HERRICK: We had instances when people

1 have complained about low water levels during joint  
2 point?

3 MR. HOLDERMAN: Yes.

4 MR. HERRICK: And have we had discussions --  
5 we've had discussions, haven't we, about whether or not  
6 the 0.3 or 0.0 should be altered or not, correct?

7 MR. HOLDERMAN: Yes.

8 MR. HERRICK: And we have not resolved that;  
9 is that correct?

10 MR. HOLDERMAN: Since this plan, there's also  
11 been a change in data, so we've got to be careful with  
12 that because the 0.0 and 0.3 were under a different  
13 datum. I think it was NAVD or NGVD. And now the  
14 levels of concern are 2.5 under NAVD datum.

15 And in fact, we've raised the level at two of  
16 the three stations where we monitor the levels and --  
17 to determine whether -- where we'll have concerns  
18 from -- to match the Middle River water level, which  
19 used to be 0.3 while the others were 0.0. Now they're  
20 all 2.5 in the new datum. So they've all been raised  
21 to match the Middle River level of concern.

22 MR. HERRICK: Okay. To your knowledge, have  
23 there been times when there have been complaints about  
24 the ability to divert water due to low water levels  
25 when JPOD was occurring?

1           MR. HOLDERMAN: I can't think of the specific  
2 times, but I do recall there's been complaints. And  
3 our staff has generally investigated that, those  
4 complaints in cooperation with South Delta Water  
5 Agency.

6           MR. HERRICK: And those complaints have been  
7 raised during times when the water levels are above the  
8 agreed-to minimum level of concern pursuant to this  
9 response plan, correct?

10          MR. HOLDERMAN: Sometimes, yes.

11          MR. HERRICK: And I'm not trying to confuse  
12 the change in datum. It's just that, whatever the  
13 level is, that there's been complaints during that  
14 time?

15          MR. HOLDERMAN: There has been.

16          MR. HERRICK: All right. Mr. Milligan, would  
17 the Bureau be agreeable to conditions to the permit in  
18 order to alter or change the minimum agreeable water  
19 levels in the South Delta as a condition of certain  
20 operations?

21          MR. BERLINER: Objection. We already had  
22 discussion this morning about the permit terms. I  
23 think the same logic applies here.

24          CO-HEARING OFFICER DODUC: Yes, Mr. Herrick, I  
25 recall Mr. Milligan answering several times such things

1 are policy calls and he does not have an answer to the  
2 question.

3 So in light of that, where are you trying to  
4 go with these additional questions to which I assume he  
5 will have the same answer?

6 MR. HERRICK: I don't mean to be repetitive,  
7 but I just thought the record should be clear that DWR  
8 or the Bureau isn't at this time, whether it's willing  
9 or able to agree. But I wanted to, you know, on each  
10 one of these issues that I've raised, to ask the  
11 question about, "Is your entity willing to enter into  
12 stipulations about those conditions?"

13 I understand the objection. I just don't want  
14 to waste time. But I think it's necessary for the  
15 record to tie it all together.

16 CO-HEARING OFFICER DODUC: All right. Thank you.

17 I'll note the objections, but I'll request  
18 that the witness answer.

19 MR. BERLINER: And if I could just have a  
20 standing objection?

21 CO-HEARING OFFICER DODUC: Thank you, yes,  
22 Mr. Berliner.

23 WITNESS MILLIGAN: So, John, could you repeat  
24 your question?

25 MR. HERRICK: Is the Bureau willing to agree

1 to conditions to this petition that would include a  
2 resolution of water levels of concern?

3 WITNESS MILLIGAN: That's going to be a policy  
4 call. And I think it would be viewed in -- in light of  
5 the whole package of conditions.

6 WITNESS MILLIGAN: Mr. Milligan, do you  
7 believe that we should resolve any issue about water  
8 levels of concern prior to analyzing the impacts of the  
9 project on legal users?

10 WITNESS MILLIGAN: I think we should assess if  
11 there's a change and -- in the water levels. And I  
12 think as an independent parallel process, we should be  
13 working in conjunction with the South Delta interests  
14 about any future operations and response to low levels.

15 But they may be separate tasks, and I think we  
16 can kind of do those in parallel.

17 MR. HERRICK: Mr. Leahigh, you know, to save  
18 time, would you have the same answers as Mr. Milligan  
19 just had with regard to the State project?

20 WITNESS LEAHIGH: Yes, I think I generally  
21 agree with Mr. Milligan's response and that, as far as  
22 adding any permit conditions, that would be a policy  
23 call as far as DWR is concerned as well.

24 MR. HERRICK: Thank you.

25 The next exhibit I have is South Delta 13. I

1 skipped No. 12.

2 (South Delta Water Authority Exhibit SDWA-13  
3 marked for identification)

4 MR. HERRICK: 13 is the Water Quality Response  
5 Plan. As we get that up, let me just preface my  
6 questions by saying I'm not trying to trick you.  
7 There's a series of actions leading to some final  
8 document. This is the initial plan. Next, I'll be  
9 showing you the Board's approval of the plan, et  
10 cetera. So this was the initial plan submitted by the  
11 Bureau and DWR. I'm representing that. You can  
12 disagree with that.

13 Mr. Milligan, do you recognize this as the  
14 Water Quality Response Plan or excerpts from the Water  
15 Quality Response Plan produced by the Bureau and DWR  
16 under D1641?

17 MR. MILLIGAN: It does appear to be.

18 MR. HERRICK: And the second page of my  
19 document has some highlighted parts. And the part I'm  
20 going to read is just the highlight, so I'm not trying  
21 to avoid the unhighlighted language. You can look at  
22 that. But the first part of highlighted says,  
23 "However, if water quality standards at Vernalis or any  
24 of the three Southern Delta interior stations are not  
25 being met," then I've skipped some, comma, "then the

1 incremental export program effects to the South Delta  
2 water quality would be deemed unacceptable, and the  
3 incremental export program cannot occur without other  
4 mitigation measure for South Delta salinity effects."

5 Do you see that?

6 WITNESS MILLIGAN: Yes, I do.

7 MR. HERRICK: And that was a term or condition  
8 that the Bureau was willing to abide by when they  
9 developed this plan?

10 WITNESS MILLIGAN: It's part of the plan that  
11 we submitted, yes.

12 MR. HERRICK: Then the next highlighted  
13 section is down near the bottom of that page under the  
14 heading of, "Transfers By Third Parties." I'm going to  
15 read that real fast.

16 "In addition to operating JPOD for the CVP and  
17 the SWP consistent with this plan, Reclamation and the  
18 Department will also follow this Water Quality Response  
19 Plan when operating the Delta pumping facilities to  
20 facilitate potential water transfers of their own and  
21 water transfers of third parties." Do you see that  
22 language?

23 WITNESS MILLIGAN: Yes, I do.

24 MR. HERRICK: Mr. Milligan, is your  
25 understanding of that language that JPOD applies to not



1 just the technical joint point of diversion but also to  
2 all transfers through the export pumps?

3 WITNESS MILLIGAN: That the plan -- this plan  
4 on water quality would apply to joint point of  
5 diversion and transfer to third party.

6 MR. HERRICK: Mr. Milligan, is it your  
7 understanding that the Bureau is operating in  
8 compliance with the Water Quality Response Plan?

9 WITNESS MILLIGAN: Well, yes, Mr. Leahigh, is  
10 it your opinion or is it your understanding that the  
11 State is operating according to the Water Quality  
12 Response Plan that we just reviewed?

13 WITNESS LEAHIGH: Yes, that is my  
14 understanding.

15 MR. HERRICK: The next exhibit is  
16 South Delta 14.

17 (South Delta Water Authority Exhibit SDWA-14  
18 marked for identification)

19 MR. HERRICK: Which is a letter from the State  
20 Board to Mr. Milligan and, I believe, your predecessor,  
21 Mr. Leahigh, Carl Torgerson; is that correct? Do you  
22 have that in front of you?

23 WITNESS LEAHIGH: Yes, this is a predecessor  
24 to chief of the operations office to through which I've  
25 worked.

1           MR. HERRICK: And the second page of the  
2 document, I've highlighted some text. And, again, I  
3 apologize. I'll read the first part to you under  
4 No. 1. It says, "The DWR and USBR shall meet the  
5 requirements included in the WQRP dated April 25th,  
6 2005 and shall meet the further conditions in this  
7 approval. JPOD diversions are authorized pursuant to  
8 this WQRP if DWR and USBR are in compliance with the  
9 time schedule established in the draft cease and desist  
10 orders," and it lists the numbers of them, "or any  
11 subsequent final order of the State Water Board."

12           Mr. Milligan, do you see that language?

13           WITNESS MILLIGAN: I do see the language.

14           MR. HERRICK: And under that, there are two  
15 time frames. And, again, I'm just trying to save time,  
16 so I apologize for rushing. But according this  
17 approval, would you agree that the State Board approved  
18 the Water Quality Response Plan if, prior to January  
19 1st, 2009 you were in compliance with the draft cease  
20 and desist orders and after January 9th, if you're in  
21 compliance with all permit conditions, correct?

22           WITNESS MILLIGAN: Give me a moment to read  
23 through that.

24           MR. HERRICK: And just to bother you, there's  
25 further action on this to the cease and desist orders.

1 I'm just moving through this as we go.

2 WITNESS MILLIGAN: So could you repeat your  
3 question?

4 MR. HERRICK: Yes. Is it correct to say that  
5 this approval in the July 1st, 2005 letter for the  
6 Water Quality -- Water Quality Response Plan says  
7 generally, if the Bureau and DWR are in compliance with  
8 the terms of this cease and desist order, the draft  
9 cease and desist order, they can pump water up through  
10 January 1st, as long as the 1.0 EC level of salinity is  
11 met at the relevant stations, and that after January  
12 1st 2009, then they have to be in compliance with the  
13 point 7 during the appropriate times. Is that how you  
14 read that?

15 WITNESS MILLIGAN: It is, but my quick read is  
16 this would apply to the joint point diversions. And  
17 it's unclear about the point you were making on  
18 transfers.

19 MR. HERRICK: Okay. Without tricking you, do  
20 you have any knowledge that the limitations on joint  
21 point were removed from transfers at any time?

22 WITNESS MILLIGAN: I just see them as  
23 distinctly different. And I think, you know, this text  
24 seems to speak to joint point, but it's silent on the  
25 transfer question.

1 MR. HERRICK: That's fine. Next exhibit is  
2 South Delta 15.

3 (South Delta Water Authority Exhibit SDWA-15  
4 marked for identification)

5 MR. HERRICK: And that's the cease and desist  
6 order, WR 2006-0006.

7 WITNESS MILLIGAN: We only seem to have one,  
8 John. We need to share.

9 MR. HERRICK: Look at all these questions I  
10 forgot to ask.

11 You have that in front of you, Mr. Milligan?

12 WITNESS MILLIGAN: I do.

13 MR. HERRICK: Again, this is excerpts from  
14 that plan. I have the whole plan, if anybody needs it.  
15 And the second page has some highlighting on it. Do  
16 you see that?

17 WITNESS MILLIGAN: I see it.

18 MR. HERRICK: And, again, without -- I'm  
19 trying to speed things up here. On Page 28, which is  
20 that second page I've highlighted for us. But anyway,  
21 basically, this cease and desist order -- there's a  
22 further change later in time. But this one says, the  
23 Department and the Bureau are supposed to implement  
24 measures to obviate threatened noncompliance with  
25 certain water quality requirements, correct? That's

1 the bottom of Page 28.

2 WITNESS MILLIGAN: Yes, whatever Condition 5  
3 was back on Page 159 of --

4 MR. HERRICK: To refresh your recollection,  
5 maybe, this cease and desist order dealt with meeting  
6 the Southern Delta objectives, correct?

7 WITNESS MILLIGAN: Correct. So these are the  
8 same pages we were looking at earlier.

9 MR. HERRICK: And then on the next page, under  
10 B1, there's some more language I've highlighted.  
11 Again, I'm sorry to rush you. You can look at that.  
12 My question's going to be the cease and desist order  
13 then somewhat altered the previous approval of the  
14 Joint Point Water Quality Control Plan, correct?

15 MR. BERLINER: I'm going to object. We have  
16 lengthy documents here that have been highlighted in  
17 part. And the witnesses are being asked to give -- to  
18 essentially agree with Mr. Herrick and his  
19 interpretation without being afforded the opportunity  
20 either in time or to view the document in its full  
21 context.

22 I have no objection that the documents speak  
23 for themselves, and I don't think they need to be read  
24 into the record.

25 CO-HEARING OFFICER DODUC: Thank you,

1 Mr. Berliner. And I know that Mr. Herrick is rushing  
2 to try to accommodate my request. But let's go ahead  
3 and allow Mr. Milligan the time he needs to read this  
4 and answer as appropriately.

5 MR. HERRICK: Yes, I apologize for trying to  
6 rush the witnesses.

7 WITNESS MILLIGAN: I've read the sections in  
8 whole here.

9 MR. HERRICK: So when you read them in whole,  
10 including the first page we reviewed, Page 28, the new  
11 deadline is 2009 for accomplishing certain things,  
12 correct?

13 WITNESS MILLIGAN: That is.

14 MR. HERRICK: We're almost through with this.  
15 Sorry.

16 Next is South Delta 16, which is the amended  
17 cease and desist order, or WR 2010-0002.

18 (South Delta Water Authority Exhibit SDWA-16  
19 marked for identification)

20 MR. HERRICK: Now, Mr. Milligan, as you review  
21 this document or look at it really quickly again trying  
22 to save time, and this may not be a good idea, but  
23 there was the original cease and desist order, and then  
24 this one is an amendment to that, shall we say, or  
25 change to it to extend the time frame by which certain

1 things needed to be done, correct?

2 WITNESS MILLIGAN: That is my recollection of  
3 what the amended order was meant to achieve.

4 MR. HERRICK: So the new order, then -- let me  
5 start over. Sorry.

6 If you'd turn to what's Page 20 of the order  
7 in the exhibit there, beginning of the order itself,  
8 there's a highlighted sentence, partial sentence.

9 Again, you can disagree or qualify your  
10 answers. So the order restates that the Bureau and DWR  
11 are supposed to obviate the threat of noncompliance.  
12 And then the next page is by a certain time frame, is  
13 that correct, or until something happens?

14 WITNESS MILLIGAN: It's not jumping out to me  
15 what the new time frame is.

16 MR. HERRICK: And that's my next question.

17 On Page 21, on the next page, I've highlighted  
18 some stuff. And I will read this. I apologize.

19 The order says, "Within 180 days from the  
20 completion of the State Water Board's pending  
21 proceeding to consider changes to the Interior Southern  
22 Delta salinity objectives and the associated program of  
23 implementation," and then I've -- I'll skip some there.  
24 It says, "DWR and USBR shall submit a revised detailed  
25 plan and schedule to the Executive Director for

1 compliance with the conditions set forth in Paragraph 1  
2 above." Do you see that?

3 WITNESS MILLIGAN: I do see that.

4 MR. HERRICK: And Paragraph 1 above referred  
5 to the obviating -- measures to obviate the threat of  
6 noncompliance at the Southern Delta stations, correct?

7 WITNESS MILLIGAN: That seems to be the  
8 reference.

9 MR. HERRICK: Now, at the bottom of this page  
10 and continuing on to the next page, I'll read that. It  
11 says, "For purposes of this paragraph, the pending  
12 proceeding to consider changes to the Interior Southern  
13 Delta salinity objectives and the associated program of  
14 implementation in any subsequent water right proceeding  
15 shall be deemed to have been completed if the State  
16 Board has not issued a final order in the water right  
17 proceeding by January 1, 2013, unless the water right  
18 proceeding has been initiated, is proceeding as  
19 expeditiously as reasonably possible, and will be  
20 completed no later than October 1, 2014." Do you see  
21 that language?

22 WITNESS MILLIGAN: I do.

23 MR. HERRICK: Now, Mr. Milligan, is your  
24 understanding of that language that the Bureau and DWR  
25 were supposed to have a plan to meet the standards



1 delivered to the State Board by January 1, 2013?

2 WITNESS MILLIGAN: No, that's not how I  
3 probably would have read this text.

4 It assumed 180 days from completion of a  
5 process which I would have assumed was underway,  
6 that -- unless it was not completed by October 1st,  
7 2014. But maybe because of the short time here to  
8 review this, maybe I'm missing my timing here.

9 MR. HERRICK: I'm not trying to stump you. I  
10 just want to make sure the record's clear and see if  
11 your understanding will eventually comport with mine.

12 So going back to the Page 21, it talks about  
13 within 180 days of the completion of something, a new  
14 plan has to be submitted, correct?

15 WITNESS MILLIGAN: That's -- that's what  
16 the --

17 MR. HERRICK: First part.

18 WITNESS MILLIGAN: -- first lines of the  
19 section here.

20 MR. HERRICK: And then the last part says, for  
21 the purposes of this, that proceeding shall be  
22 considered completed if the State Board hasn't actually  
23 completed it; is that a fair summary? And that new  
24 date is 2013.

25 WITNESS MILLIGAN: Then there's an "unless"

1 component.

2 MR. HERRICK: And do you believe that the  
3 "unless" component has occurred? In other words, has  
4 the water right proceeding been initiated and going  
5 forward and will be completed by October 1st of 2014?

6 MR. BERLINER: I'm going to renew my  
7 objection. This is something that Mr. Herrick knows  
8 like the back of his hand. He has not established this  
9 witness is on the same level that he's at regarding  
10 this document. So there's a lack of foundation for  
11 this testimony.

12 You can tell by the back and forth that has  
13 occurred here. This is very complicated, and the  
14 witness is being asked to agree to certain premises in  
15 the document that he's clearly not familiar with. So I  
16 think this questioning is improper.

17 CO-HEARING OFFICER DODUC: Your objection is  
18 noted.

19 Mr. Herrick --

20 MR. HERRICK: I'll just --

21 CO-HEARING OFFICER DODUC: I'm not going to  
22 overrule -- I'm not going to grant the objection, but I  
23 will request you to be more careful in your phrasing of  
24 your questions and, if necessary, we'll take the time  
25 for Mr. Milligan to fully comprehend or at least

1 comprehend enough to answer your questions.

2 MR. HERRICK: Yes, thank you.

3 Mr. Milligan, I'm not trying to make you say  
4 something that you're not comfortable with. So if the  
5 answer is "I'm not sure at this point," that's fine.

6 But what these questions are leading to is  
7 whether or not, to your understanding, you're in  
8 compliance with the CDO. I think that's an important  
9 issue. So if you're not sure, you don't think you can  
10 answer, that's fine. But that's what I'm trying to  
11 explore. So let me ask that ultimate question.

12 Is it your understanding that you're in  
13 compliance with the terms and conditions in  
14 WR 2010-0002?

15 WITNESS MILLIGAN: I think as a matter of  
16 totality, I believe we are. As relates to these  
17 specifics, I probably need to spend some more time with  
18 some of our water rights experts to build the chain  
19 here as to what maybe some of these terms mean and in  
20 terms of timing of submitting some additional  
21 information to the Board.

22 MR. HERRICK: And do you have an understanding  
23 of whether or not the Bureau has submitted a new plan  
24 to obviate violations of the South Delta standards by  
25 January 1st, 2013?

1           WITNESS MILLIGAN: I don't. I'm not sure if  
2 we have or not.

3           MR. HERRICK: Mr. Leahigh, the same question.  
4 Do you believe that the Department of Water Resources  
5 operating the State Water Project is doing so in  
6 compliance with WR 2010-0002?

7           WITNESS LEAHIGH: Yes. I believe  
8 Mr. Holderman could help answer this for the  
9 Department.

10          MR. HOLDERMAN: Yes. Every quarter, we submit  
11 a report for the terms of the CDO to the Water Board,  
12 State Board, indicating our progress and the status of  
13 the various terms and conditions of a CDO. And we've  
14 been doing that for many years.

15          What Mr. Herrick's not showing is there are --  
16 there is text in the CDO, not in this particular  
17 paragraph that is showing, that makes clear that the --  
18 at least from our interpretation in the Bay-Delta  
19 office that the Board intended for that 180 days to  
20 start upon completion of a Water Quality Control Plan  
21 process, which we all know has been taking a long time.

22          So there is some contrary language in the CDO  
23 that can be interpreted different ways. And I know  
24 you're looking at this paragraph. We've looked at it  
25 as well and tried to interpret what that really means,

1 Where, you know -- deeming something complete that  
2 obviously is not completed, and then other paragraphs  
3 in the CDO that say very, very clearly that the Board  
4 intended for this to happen after the Water Quality  
5 Control Plan process and the water rights process has  
6 played out.

7 MR. HERRICK: Well, Mr. Holderman, if you're  
8 going to answer the question, let me ask you this  
9 follow-on. And that is, if the language of the order  
10 starting on Page 21 and continues through 22, tells the  
11 Bureau and DWR when completion of the process is deemed  
12 to be done, isn't that a direction as to the final  
13 date?

14 You seem to suggest that there's other  
15 language that supercedes that somehow. Where would  
16 that other language be?

17 MR. HOLDERMAN: For instance, it's near the  
18 beginning of the CDO. I haven't look at it recently --  
19 I mean, I looked at it recently in terms of this  
20 proceeding, but I recall that language being in there  
21 because this has come up before. And we found language  
22 that was somewhat contrary to this language.

23 And even if you interpret this the way you  
24 appear to be interpreting it, there would -- the new  
25 plan wouldn't be any different than the plan we

1 submitted in 2006 because nothing's changed. The whole  
2 intent was to prepare a new plan based on new Water  
3 Quality Control Plan, potentially Water Quality Control  
4 Plan objectives and our water rights proceeding. So it  
5 wouldn't make sense to submit a plan that was no  
6 different than the plan we submitted in 2006 under the  
7 original CDO.

8 MR. HERRICK: Mr. Holderman, when it says "the  
9 process will be deemed completed by January 13th if it  
10 hasn't been done," then on what basis would you say  
11 they don't want you to submit a new plan?

12 MR. HOLDERMAN: What I'm saying is it's deemed  
13 completed and there is no new Water Quality Control  
14 Plan yet, it basically defaults to the existing one.  
15 And we've already submitted a plan in 2006 based on  
16 that. There's no new plan to prepare.

17 MR. HERRICK: Isn't that the purpose of the  
18 CDO is to get a new plan by a certain deadline?

19 MR. HOLDERMAN: Yes, based on new potentially  
20 revised Water Quality Control Plan objectives. And  
21 there is language in the CDO that you're not displaying  
22 that reflects that thinking.

23 CO-HEARING OFFICER DODUC: Would it be helpful  
24 if we pause for a moment for you to find that passage?

25 MR. HOLDERMAN: These are just excerpts. I

1 don't have a copy.

2 MR. HERRICK: I have the whole order. I would  
3 say that's fine, if you want to do that.

4 CO-HEARING OFFICER DODUC: It's your line of  
5 questioning Mr. Herrick.

6 MR. HERRICK: Mr. Holderman is referring to, I  
7 believe, language in the text of the CDO. But I'm  
8 referring to language in the order part.

9 So I'm not sure of the point of saying  
10 something might be contrary in the language of the CDO  
11 rather than in the order of the CDO. The CDO has  
12 history and stuff like that.

13 If the Board would like to do that, I will  
14 give Mr. Holderman the entire text. He can do that.

15 CO-HEARING OFFICER DODUC: Where are you going  
16 with this line of questioning?

17 MR. HERRICK: Well, I'm trying to show that  
18 the operations of the projects are not in compliance  
19 with the terms of D1641, especially the CDO. And until  
20 they figure out how they can be in compliance, we can't  
21 do an analysis of the no-action alternative unless we  
22 can analyze impacts to third parties.

23 The Board, if I may, this is argument -- if  
24 it's argument, please stop me.

25 But if there's an existing mandatory

1 requirement on the projects that they're not doing,  
2 then they're not describing what they're doing now, and  
3 they can't compare that to what they want to do in the  
4 future.

5 CO-HEARING OFFICER DODUC: I understand that.  
6 In the interest of time to get through this gridlock,  
7 what I'm confused about is Mr. Holderman gave what I  
8 thought was a reasonable answer in terms of the Water  
9 Quality Control Plan has not been updated, therefore,  
10 the plan that was previously submitted by the  
11 Department would still hold under current conditions.  
12 And now I'm trying to understand, based on that answer,  
13 where are you going next?

14 MR. HERRICK: Well, my questions are in  
15 response to a position that's contrary to the plain  
16 language of the CDO. The CDO language we read deals  
17 with when a new plan is due if we don't determine new  
18 standards.

19 So if DWR's position is, "Although we were  
20 directed to do it by a certain final date we didn't.  
21 And we're not going to do anything but do the same plan  
22 again," I think that's relevant. So that's the status  
23 of DWR, that's fine.

24 MR. HOLDERMAN: May I add one other thing?

25 CO-HEARING OFFICER DODUC: Please,



1 Mr. Holderman.

2 MR. HOLDERMAN: The date January 2013 was  
3 equate a while ago, and we've been submitting these  
4 quarterly reports quarterly. And the Water Board, your  
5 staff, has not indicated that we were out of compliance  
6 or we haven't provided a plan that we were supposed to  
7 provide three years ago.

8 And I guess you might insinuate that that  
9 might be a concurrence in our interpretation of the  
10 CDO.

11 MR. HERRICK: That's a valid point except, I  
12 don't get to cross-examine staff.

13 CO-HEARING OFFICER DODUC: Which is probably  
14 why he made that point. Mr. Herrick, I somehow doubt  
15 that you're going to get these witnesses to agree to  
16 your point of view with respect to compliance with --  
17 well, with the current requirements.

18 And I don't know how much further you want to  
19 spend on this particular issue where I don't see  
20 there's hope of them agreeing to the points that you're  
21 trying to make. In other words, this may not be the  
22 most fruitful line of questioning for you to pursue,  
23 although it is within your discretion. But I feel that  
24 you have adequately made your arguments for the record.

25 MR. HERRICK: I appreciate that. I won't go

1 any further. I think the documents speak for  
2 themselves, and we'll use this in argument later.

3 CO-HEARING OFFICER DODUC: Thank you,  
4 Mr. Herrick.

5 MR. HERRICK: Thank you.

6 So let me see what's next given that. If  
7 you'll give me one moment, please.

8 Let me ask Mr. Milligan a question because he  
9 was the one I talked about JPOD with on this final line  
10 of questioning.

11 Is it your understanding that transfers of  
12 water can occur -- excuse me. Let me start over.  
13 That's not going to get me there.

14 You've testified that you weren't sure that  
15 transfers were still limited by the terms of JPOD  
16 restrictions; is that correct?

17 WITNESS MILLIGAN: I think what I was  
18 referring to is that transfers, the sections we were  
19 discussing, seem to have been in specific to joint  
20 point of diversion and was silent on transfers. So we  
21 probably need to spend more time as it relates to the  
22 question of transfers.

23 MR. HERRICK: Okay. I'll go back to  
24 Mr. Holderman on the CDO excerpts that I provided.

25 Is it your understanding that you've -- "you"

1 as in DWR -- have complied with the other terms and  
2 conditions set forth in the CDO order? And by that I  
3 mean those subsequent to the ones we've covered.

4 WITNESS HOLDERMAN: Yes.

5 MR. HERRICK: And has DWR or the Bureau given  
6 notices each time they predicted an exceedance of the  
7 South Delta standard?

8 MR. HOLDERMAN: I'd have to defer that to the  
9 operators.

10 WITNESS LEAHIGH: Yes, that portion of the CDO  
11 would have come from our operations office. And, yes,  
12 I feel that we've complied with that aspect of the CDO.

13 MR. HERRICK: Without arguing too much, isn't  
14 it correct that, once in a while, there's a notice of a  
15 potential exceedance but that there have been notices  
16 once the exceedance occurs?

17 WITNESS LEAHIGH: Yeah, I think the CDO  
18 requires both of those elements. It requires a  
19 notification of a potential exceedance and also  
20 requires notification once an exceedance has occurred.  
21 And to my knowledge, we've met all of those conditions.

22 MR. HERRICK: Next is -- for the record, for  
23 follow-up arguments, but, Mr. Milligan, we are  
24 currently -- "we," the Department and the Bureau -- are  
25 currently pumping transfer water this summer, correct?

1 WITNESS MILLIGAN: Reclamation is not.

2 MR. HERRICK: I'm sorry. Mr. Leahigh, the  
3 Department is pumping transfer water this summer? I  
4 think it's at 400 cfs today or something; is that  
5 correct?

6 WITNESS LEAHIGH: Yes, this summer generally  
7 there is some water from the long-term Yuba Court that  
8 we're picking up, yes.

9 MR. HERRICK: And that pumping has occurred  
10 during times when the -- one or more of the South Delta  
11 salinity standards is being exceeded; is that correct?

12 WITNESS LEAHIGH: I don't know -- I don't know  
13 if that is correct.

14 MR. HERRICK: Mr. Holderman? Are you familiar  
15 with the exceedances this summer for South Delta  
16 salinity standards?

17 MR. HOLDERMAN: I've seen documents. I'm cc'd  
18 on documents that operations sends out regarding that.

19 MR. HERRICK: Would it refresh your  
20 recollection if I said that the transfer of up to  
21 500 cfs started on July 1? Does that sound right?

22 MR. HOLDERMAN: I don't know.

23 WITNESS LEAHIGH: Yes, I would agree with --  
24 with the fact that the transfers started as early as  
25 July 1st.

1 MR. HERRICK: Mr. Holderman, do you know if  
2 South Delta salinity standards have been violated as of  
3 and post July 1st, 2016.

4 MR. HOLDERMAN: I can't give you any dates,  
5 but that time of year, it could happen. I don't know  
6 dates.

7 WITNESS LEAHIGH: I do have knowledge of that.  
8 The -- some of the standards have been exceeded. I  
9 don't have the timing exactly of when each standard has  
10 been exceeded this summer, but they have occurred.

11 As far as terms of violation, I don't know if  
12 I'd agree with that assessment.

13 MR. HERRICK: I think I said "exceedance."

14 Well, we'll just rely on the CDEC record. I  
15 won't waste everybody's time.

16 CO-HEARING OFFICER DODUC: How much more do  
17 you have, Mr. Herrick?

18 MR. HERRICK: I have one major topic left. So  
19 that's probably 15 minutes. And then if I could have a  
20 couple minutes to go through stuff and -- you know, a  
21 couple catch-up questions that I missed so. So half an  
22 hour at the most.

23 CO-HEARING OFFICER DODUC: Twenty minutes.

24 MR. HERRICK: Twenty minutes at the most.

25 Thank you.

1                   The next exhibit is No. South Delta 21.  
2   It's another excerpt from D1641. And it's a different  
3   excerpt, sorry. And, again, it's 21 on mine, but D1641  
4   is --

5                   MR. BAKER: Mr. Herrick, we don't have 21. We  
6   can pull up D1641.

7                   MR. HERRICK: I didn't understand that. It  
8   won't come up?

9                   MR. BAKER: Exhibit 21 is not on your flash  
10   drive that you provided. But we can pull up D1641.

11                   MR. HERRICK: Yes. I don't think we need to.  
12   It's just a very quick, basic question.

13                   (South Delta Water Authority Exhibit SWDA-21  
14                   identified for the record)

15                   MR. HERRICK: Mr. Milligan, Mr. Leahigh, these  
16   questions are based upon your early representations  
17   that day-to-day operations are able to meet water  
18   quality standards better than maybe indicated by  
19   modeling of the impacts. Do you recall those  
20   statements of your general statements? That's kind of  
21   a horrible question.

22                   WITNESS LEAHIGH: I'm sorry. Was that  
23   question for myself?

24                   MR. HERRICK: Yeah, let's start with you,  
25   Mr. Leahigh. My recollection is in your testimony,

1 both verbal and written, you talked about how actual  
2 day-to-day operations allowed you to better meet water  
3 quality standards than may be reflected in modeling of  
4 compliance. Do you recall that?

5 WITNESS LEAHIGH: Yes, than reflected in the  
6 modeling submitted as part of this petition.

7 MR. HERRICK: Yes. Okay. So the excerpt from  
8 D1641 is simply a -- a Table 3, which is the water  
9 quality objectives for fish and wildlife beneficial  
10 uses. I assume you see that in front of you now.

11 And I've highlighted the Delta outflow  
12 requirement. And the part I highlighted, the water  
13 year type, it says "All." The time period says  
14 "February through June," and the value is Footnote 10.  
15 Do you see that, Mr. Milligan, Mr. Leahigh?

16 WITNESS MILLIGAN: Yes.

17 MR. HERRICK: And I will not strain anybody's  
18 ability to describe or understand X2, but Footnote 10  
19 deals with that X2 issue, right? It tells the  
20 different conditions under which different obligations  
21 kick in; is that right, as a general statement?

22 WITNESS MILLIGAN: Yes.

23 MR. HERRICK: So next is South Delta 22.

24 Is that not on the stick too? What the heck?

25 MR. LONG: It is not.

1 MR. BAKER: We only have 1 through 20.

2 (South Delta Water Authority Exhibit SDWA-22  
3 marked for identification)

4 MR. HERRICK: Next one is this, which is  
5 2009-0013 Exec, and it is an order by the State Water  
6 Resources Control Board dealing with a TUCP request  
7 back in 2009. And I believe -- I hope everybody has  
8 their copy. Sorry for the lack of -- I won't blame  
9 anybody else. It's my ultimate responsibility.

10 Anyway, you have that in front of you  
11 Mr. Milligan, Mr. Leahigh?

12 WITNESS MILLIGAN: Yes.

13 MR. HERRICK: Do you recall participating in  
14 the hearing on this, on the TUPC that was filed on  
15 February 10th, 2009 dealing with X2, the outflow  
16 standard we just referenced in D1641?

17 WITNESS MILLIGAN: I don't -- I vaguely  
18 remember the hearing itself. It was a little while  
19 ago.

20 MR. HERRICK: I'm not trying to tax your  
21 memory on the exact details particular to the hearing.

22 But you do recall that a TUPC was filed in  
23 2009, and then a hearing was scheduled, everybody  
24 showed up, and then that year it rained? Remember  
25 that? So the X2 was satisfied eventually, but this is



1 the final order from that hearing. Do you recall that?

2 And if you don't, that's okay.

3 WITNESS MILLIGAN: I do recall the events of  
4 that particular January and the February, when we were  
5 having the discussion while it was pouring outside and  
6 the X2 requirement was being met.

7 MR. HERRICK: The good Lord has a sense of  
8 irony. Anyway, on Page 2 and 3 of the order, document  
9 in front of you, I've highlighted certain portions. On  
10 Page 2, I just highlighted the part that says, "The  
11 Petitioner requests," and then No. 1 is a waiver of the  
12 starting gate requirement. Do you see that? I'm not  
13 going to test you on that. I'm just laying the  
14 foundation for the next questions.

15 WITNESS MILLIGAN: Yes.

16 MR. HERRICK: And then on the next page,  
17 Page 3, No. 2, has the second relief requested which is  
18 a change to the minimum -- the daily 14-day running  
19 average or something like that, correct? One of the  
20 averages? Sorry.

21 WITNESS MILLIGAN: Yes, I see that.

22 MR. HERRICK: And then lower down on that same  
23 Page 3, there's an excerpt from the actual petition.  
24 And it's put in the order here. And you see where it  
25 says, "Without a modification of the above X2 [Delta

1 outflow] standards, the projects could be forced to  
2 reduce exports even further than the severe  
3 restrictions currently projected and increase releases  
4 from upstream reservoirs in February to increase the  
5 NDOI from 7100 cfs to 11,400 cfs." Do you see where it  
6 says that?

7 WITNESS MILLIGAN: Yes.

8 MR. HERRICK: Does that jog your memory that  
9 that was the relief for the justification being sought  
10 was that, because of the conditions, they might -- the  
11 Bureau and DWR would like to get a relaxation of that  
12 X2 standard; is that correct?

13 WITNESS MILLIGAN: Not saying the actual  
14 petition, but the order part, I would have to assume  
15 that this excerpt was lifted properly by the Board.

16 MR. HERRICK: That's correct. And I'm also  
17 assuming that the excerpt is, now, correct.

18 Okay. Now, if I may have one moment, please,  
19 Madam Hearing Officer?

20 If I may approach the witnesses.

21 Then this will be South Delta 23.

22 (South Delta Water Authority Exhibit SDWA-23  
23 marked for identification)

24 MR. HERRICK: Mr. Milligan, Mr. Leahigh, you  
25 have in front of you a printout that's captioned the

1 "Delta Hydrology Conditions." Whether or not it's true  
2 or not, you have the exhibit in front of you?

3 WITNESS MILLIGAN: Yes.

4 MR. HERRICK: Mr. Leahigh, do you recognize  
5 this as apparently a printout from the DWR Delta Ops  
6 website that shows monthly data and is available to the  
7 public?

8 WITNESS LEAHIGH: Yes, this is a report that's  
9 produced from my office.

10 MR. HERRICK: Yes. And, again, I'm not being  
11 facetious, but assuming this is accurate -- I'm using  
12 this, you don't have to say it's necessarily accurate.  
13 But I'd like to note that -- I'd like to direct you to  
14 the parts I've highlighted. On February 1st in the far  
15 left column, if you go over to the right it shows  
16 diversions from Clifton Court Forebay and Tracy Pumping  
17 Plant. Do you see that?

18 WITNESS LEAHIGH: Yes.

19 MR. HERRICK: And those are the numbers that  
20 are being reported that are occurring on the date  
21 that's listed, correct?

22 WITNESS LEAHIGH: Yes.

23 MR. HERRICK: So those would be the total  
24 exports for any particular day of those two pumping  
25 plants/Clifton Court Forebay, correct?

1           WITNESS LEAHIGH: Yes, those would be  
2 historical data for that.

3           MR. HERRICK: I'm just --

4           WITNESS LEAHIGH: Correct.

5           MR. HERRICK: So everybody understands what  
6 this shows, the chart shows various flows, various  
7 rivers. And then it shows exports pumping -- not just  
8 the exports from the projects, but it also has Contra  
9 Costa Pumping Plant and -- so I just want to be  
10 complete.

11           You would agree with that?

12           WITNESS LEAHIGH: Yes.

13           MR. HERRICK: Now if we move down to the 10th,  
14 February 10th, which is the date of the petition  
15 referenced in the prior order, 2009-0013, the days of  
16 petition exports are -- what's that, 998 and 1002? Do  
17 you see that?

18           WITNESS LEAHIGH: Yes, I see that.

19           MR. HERRICK: Without being -- sounding stupid  
20 that totals 2,000 cfs, correct?

21           WITNESS LEAHIGH: Yes, that's correct.

22           MR. HERRICK: And then the day after the  
23 petition was filed, exports go to 1990 cfs and 1,719;  
24 is that correct?

25           WITNESS LEAHIGH: I'm sorry. You referenced

1 the date that the petition was filed?

2 MR. HERRICK: Yes. One of the portions of the  
3 prior exhibit I looked at is the date it was filed.  
4 That's on the first page. It's the actual first words  
5 in the introduction.

6 WITNESS LEAHIGH: Okay. Yes, I see it.

7 MR. HERRICK: So then on the 12th, exports go  
8 to 1990 and 2018, correct?

9 WITNESS LEAHIGH: That's correct.

10 MR. HERRICK: And so exports from between the  
11 February 10th and February 12th went from 2,000 to  
12 4,000 cfs, correct, total?

13 WITNESS LEAHIGH: That's what this shows,  
14 correct.

15 MR. HERRICK: So on the next page, it has  
16 additional data from the DWR printout. And besides  
17 showing some pumping, it has the categories at the top,  
18 it has "Delta Gross Channel Depletions." And one of  
19 the categories there to the right-ish it says, "Net  
20 delta Outflow Index," correct?

21 WITNESS LEAHIGH: That's correct.

22 MR. HERRICK: So if we go down to the 10th,  
23 February 10th, the outflow is -- the net Delta outflow  
24 index is 10,854 cfs, correct?

25 WITNESS LEAHIGH: Correct.

1 MR. HERRICK: The next day it drops to 9,516  
2 correct?

3 WITNESS LEAHIGH: Correct.

4 MR. HERRICK: Now, this may be a complicated  
5 question. If it's too complicated, please say so, and  
6 I'll try to rephrase it.

7 Does this data not show that, when DWR and the  
8 Bureau petitioned for relief from the net Delta outflow  
9 index, they then immediately increased exports, and the  
10 net Delta outflow index decreased; is that what  
11 happened?

12 WITNESS LEAHIGH: Well, and I think your  
13 set-up to this whole line of questioning is pretty  
14 relevant as far as the precipitation that was  
15 occurring -- started to occur in that month of  
16 February, which actually shows up on this report as  
17 well, on the -- if you look at the first page,  
18 Column 6, which is rainfall in inches in the Delta, we  
19 started to see some precipitation occurring.

20 I think that the timing is -- as you said, was  
21 rather awkward. I think that the point of when we  
22 started to develop the actual petition was early on in  
23 the month. It was much earlier than the point at which  
24 we actually submitted it. So the conditions that  
25 existed when we were developing the petition were much

1 different than when the petition actually got  
2 submitted.

3           And I think that, as you indicated, by the  
4 time the hearing had been scheduled and everybody was  
5 sitting down to begin, conditions had changed  
6 significantly at that point, and it was all became a  
7 moot point. So I think that timing was very awkward in  
8 this entire process.

9           MR. HERRICK: Mr. Leahigh, is it your  
10 recollection that the rain events started on the day of  
11 the petition or the day after the petition?

12           WITNESS LEAHIGH: Well, the report shows that  
13 there was rain that started, looks like, on the 4th or  
14 5th of February so prior to -- prior to the petition  
15 but during the development of the petition.

16           MR. HERRICK: So how do I put this.  
17 Mr. Leahigh, is the fact that exports doubled while net  
18 Delta outflow index went down relevant to the Board's  
19 decision in this petition, given that, at the time that  
20 occurred, you were petitioning for relief from the  
21 Delta net outflow index?

22           WITNESS LEAHIGH: Well, what this tells me,  
23 just based on what we're looking at here, is that the  
24 petition -- it was becoming obvious that the petition  
25 was becoming a moot point in the fact that the outflow

1 was started stating to increase significantly and there  
2 were opportunities to start increasing the pumping.

3 MR. HERRICK: Okay. Let me switch gears here  
4 really quickly.

5 Mr. Holderman, is it your understanding that  
6 one of the provisions of the petition includes the  
7 installation of the permanent Head of Old River  
8 barrier?

9 MR. HOLDERMAN: Yes.

10 MR. HERRICK: And you're familiar with the  
11 long history of the barrier program in the South Delta?

12 MR. HOLDERMAN: Yes.

13 MR. HERRICK: And are you familiar with the  
14 fact that some parties allege that Southern Delta water  
15 rights are dependant upon the flow of the San Joaquin  
16 River and no other waters?

17 MR. HOLDERMAN: Yes.

18 MR. HERRICK: And what is the time period  
19 during which the permanent Head of Old River barrier  
20 would be operated under the petition -- or may be  
21 operated under the petition?

22 MR. HOLDERMAN: The period that's being  
23 proposed for Head of Old River barrier gate would begin  
24 as early as January, and it would extend to the end of  
25 November.



1           Now, it wouldn't be closed that entire time;  
2 there are different criteria during that time -- but  
3 potentially from January through end of November.

4           MR. HERRICK: Does the petition anticipate  
5 permanent tidal barriers, the other three barriers  
6 being permanent also?

7           MR. HOLDERMAN: Not as part of this project.

8           MR. HERRICK: Are there any concerns that you  
9 might have might by having a permanent fish barrier and  
10 the other two -- three barriers not being permanent?  
11 Remember, you're under oath, Mr. Holderman.

12           MR. BERLINGER: Objection --

13           CO-HEARING OFFICER DODUC: Mr. Herrick, let's  
14 not revert back to the old Mr. Herrick.

15           MR. HOLDERMAN: John and I have a history  
16 here, so we banter back and forth like that.

17           CO-HEARING OFFICER DODUC: Not here, you  
18 don't.

19           MR. HOLDERMAN: I understand.

20           The Head of Old River barrier that's being  
21 proposed has longer operational period than the rock  
22 Head of Old River barrier that we typically install  
23 every year.

24           When we install that Head of Old River  
25 barrier, rock barrier, we also install rock barriers --

1 three rock barriers downstream to basically ensure that  
2 water levels are kept reasonable while the Head of Old  
3 River barrier is in place. That's something we've been  
4 doing for many, many years.

5 The fact that this is going to be a permanent  
6 gate gives a lot more flexibility than a rock barrier  
7 at the head and allows us to operate it on real time,  
8 unlike rock barriers.

9 We will be installing rock barriers -- at  
10 least I anticipate we will be installing rock barriers  
11 during this time as well. And that's described in the  
12 proposal, that those rock barriers will still be in  
13 place until some future time, I guess, when barriers  
14 might be considered and installed under a separate  
15 program.

16 I guess my only -- my only concern is because  
17 there will be some operations in the January and  
18 February, March timeframe potentially with some gate  
19 closures at the Head of Old River barrier and without  
20 having rock barriers downstream that they'd have to  
21 operate it in a way that will be protective of the  
22 South Delta water levels and circulation.

23 I don't -- I understand that's going to be  
24 done in real time, but I don't have any details other  
25 than that. They will have the flexibility with

1 multiple gates to allow water downstream similar to the  
2 rock barriers. So I anticipate that they would be  
3 monitoring water levels and salinity downstream and  
4 making operational changes as needed during that  
5 January-through-March timeframe.

6 MR. HERRICK: Mr. Holderman, do the fishery  
7 agencies' approvals for the operation of the temporary  
8 rock barriers, I'll say, ever coincide with the needs  
9 for water levels in the South Delta?

10 MR. HOLDERMAN: The rock barriers in the South  
11 Delta used to have a narrow window when we installed  
12 them. Now we've been able to install them a little  
13 earlier than we used to.

14 One of the reasons is in order to protect  
15 water levels earlier in the year, in the March  
16 timeframes. Right now we do start installing barriers  
17 in March at the Head of Old River barrier, if that's  
18 requested -- and the rock barriers as well. I lost  
19 track of the rest of that question.

20 MR. HERRICK: Well, let me cut to the chase.  
21 The fishery agencies' approval of the temporary  
22 barriers, the rock barriers, the operation of those  
23 barriers is dependant upon fishery agency  
24 determinations, correct, not upon South Delta water  
25 level needs?

1           MR. HOLDERMAN: It's both. We install  
2 barriers in the spring for water levels -- for South  
3 Delta Water Agency commitment. And sometimes we have  
4 to leave culverts open or not finish those barriers  
5 until the Delta smelt concerns are passed. So that  
6 would be a fishery issue.

7           But we also have conditions in our permit  
8 that, if things go south, basically, in the South Delta  
9 in terms of water quality and it's staged, then we can  
10 come back and request an earlier closure or closure of  
11 the culverts so that we can respond to that and protect  
12 those levels and circulation. So there is some leeway  
13 there. And that's kind of part of the real-time  
14 operations.

15           MR. HERRICK: But that leeway currently is the  
16 Grant Line barrier can't be closed, whether there are  
17 problems in the South Delta or not, until after  
18 June 1st if some need is shown; is that correct?

19           MR. HOLDERMAN: That's -- normally, right. If  
20 there's smelt in the area and -- they generally don't  
21 want us to close the Grant Line. But if we see  
22 problems -- and generally during that same time,  
23 exports are at very low levels, usually at 1500 cfs or  
24 so. So there's not a huge impact on water levels due  
25 to project operations.

1           However, we still monitor all of that. And if  
2 we see problems, like the trigger points of those water  
3 levels being approached, we go back to the fishery  
4 agencies and ask if we can close the Grant Line  
5 barrier.

6           So we haven't had -- really had a lot of that  
7 occur, the problems during that time frame. But we do  
8 have that mechanism where can, you know, basically go  
9 back to fish agencies and try to get some permission to  
10 respond.

11           MR. HERRICK: Well, I'm not sure that's an  
12 answer.

13           Don't we regularly have problems with water  
14 levels and the inability to fully install and fully  
15 operate the barriers every year?

16           MR. HOLDERMAN: No, not every year.

17           MR. HERRICK: Most years?

18           MR. HOLDERMAN: Some. Depends on the  
19 hydrology, how much water is coming down the  
20 San Joaquin, how much rainfall, runoff, all that.  
21 Obviously we've had some pretty wet years where we  
22 didn't even install the rock barriers because water  
23 levels were so high. In fact, we were at certain --  
24 almost flood stage. But not recently, obviously.  
25 During the drought years, it's been more of an issue.

1           MR. HERRICK: We have two agreements dealing  
2 with the installation and operation and removal of the  
3 Head of Old River barrier; is that correct? By "we," I  
4 mean South Delta projects.

5           MR. HOLDERMAN: Yes, yes.

6           MR. HERRICK: Does the petition itself have  
7 any provision for working out those installation and  
8 operation criteria?

9           MR. HOLDERMAN: Well, those agreements are the  
10 emergency response plan at -- the Old River barrier and  
11 the operations plan were based on a rock barrier with  
12 culverts. So they were very specific to that kind of  
13 structure, particularly the emergency response, because  
14 we have a limit on when we can install the barrier  
15 and -- in terms of maximum flow.

16           And then if flows become too high, we have to  
17 remove that barrier, otherwise it could potentially  
18 cause flooding problems. So that's -- because a rock  
19 barrier can't respond in real time.

20           With the permanent gate, you wouldn't have  
21 that emergency response plan, not the same kind,  
22 because they can obviously open the gates up if flood  
23 flows are coming downstream. And the operation plan  
24 is, again, how to operate the culverts in order to  
25 alleviate stage problems or water quality problems

1 downstream.

2           There are -- from my read of the Recirculated  
3 Draft EIR, the EIS is that that similar type of  
4 operation will occur with the -- a permanent gate, that  
5 all those things will be monitored same as we do now,  
6 and that gates will be opened to alleviate problems  
7 downstream if necessary.

8           MR. HERRICK: Wouldn't it be --

9           CO-HEARING OFFICER DODUC: Mr. Herrick, please  
10 wrap up.

11          MR. HERRICK: I will.

12          Wouldn't it be prudent to have those agreeable  
13 operating conditions for the permanent Old River  
14 barrier before the petition is adopted?

15          MR. HOLDERMAN: I don't -- I think you would  
16 want to have some agreements in place perhaps before  
17 the barrier was constructed or completed, certainly.  
18 But that's a long, long ways away from now.

19          So I don't think that would be something that  
20 would have to be worked out prior to this proceeding  
21 coming to a close.

22          MR. HERRICK: We started this line of  
23 questioning -- I'll finish right here.

24          We started this line of questioning with me  
25 asking whether or not some parties believed that the

1 water rights in the South Delta were dependant upon  
2 San Joaquin River flow. Do you recall that?

3 MR. HOLDERMAN: Yes.

4 MR. HERRICK: So if the fishery agencies order  
5 the closure of the Head of Old River barrier, might  
6 that not affect the available water under a water  
7 rights issue for South Delta people?

8 MR. BERLINER: I'm going to object. That  
9 calls for a legal conclusion.

10 CO-HEARING OFFICER DODUC: To the best your  
11 ability, Mr. Holderman.

12 MR. HOLDERMAN: I think I can respond to that.

13 MR. BERLINER: I appreciate that, but that  
14 calls for a legal conclusion. And it's a highly  
15 complex question, the interplay between water rights.

16 CO-HEARING OFFICER DODUC: Mr. Berliner, your  
17 objection is noted. And we will use that in weighing  
18 the testimony.

19 But Mr. Holderman, please answer.

20 MR. HOLDERMAN: Obviously, there's a need for  
21 water to flow down Old River under certain  
22 circumstances. A lot of the water volume that's  
23 available in the South Delta is due to tidal action.  
24 So there's -- you know, right now, there's very little  
25 water coming down the San Joaquin, but there's still



1 lots of water in the South Delta. That's because it's  
2 a tidal estuary and ebbs and flows twice a day. So  
3 there's a lot of filling and emptying.

4 So if, in the springtime -- usually in the  
5 springtime there's a lot more flow than what we're  
6 experiencing right now. And the flow naturally splits  
7 down Old River and San Joaquin at the Head of Old  
8 River.

9 With the rock barrier in place in the  
10 springtime, we have eight culverts that are wide open.  
11 That's default position. And so far, that's what we've  
12 always done. That's to allow water into the South  
13 Delta, which is more than adequate to take care of any  
14 water supply downstream during that time of the year.

15 I would imagine that -- and this is just me  
16 thinking about the operation at Old River gate, is that  
17 the fishery agencies would also allow us to do -- open  
18 the gates similarly because, right now, they have not  
19 demanded that we close those culverts just because fish  
20 might be coming downstream at that moment.

21 So I don't believe that they would require us  
22 to protect fish and in -- at the -- at the expense of  
23 South Delta water supply or water quality.

24 MR. HERRICK: But you don't think we should  
25 resolve that before we move forward on the project?

1 MR. BERLINER: Objection, asked and answered.

2 MR. HOLDERMAN: I think that will get resolved  
3 eventually. But I don't know if it's necessary to do  
4 it right now.

5 CO-HEARING OFFICER DODUC: Thank you,  
6 Mr. Holderman. And thank you Mr. Herrick.

7 With that, we will take a 15-minute break, and  
8 we will resume at 2:37 -- we'll make it 2:40.

9 (Recess taken)

10 CO-HEARING OFFICER DODUC: It is 2:40, so  
11 welcome back. Let me confirm at this point, Group 22,  
12 City of Stockton, are you here?

13 (No response)

14 CO-HEARING OFFICER DODUC: All right.  
15 23, Stockton East?

16 (No response)

17 CO-HEARING OFFICER DODUC: All right.

18 We are on to Group No. 24.

19 And 25, County of Solano, I don't expect we'll  
20 get to you today.

21 Ms. Morris?

22 MS. MORRIS: Yes. For the record, I'd like to  
23 make clarification. The original exhibits that  
24 Mr. Herrick marked as -- he starts marking with the  
25 SDWA dash whatever number. And then throughout the

1 cross-examination, he changed to calling everything  
2 "South Delta" whatever number. So for purposes of the  
3 record, I think it needs to be clear that, when he said  
4 "South Delta," it really is the naming mechanism that  
5 you assigned him, SDWA.

6 CO-HEARING OFFICER DODUC: Yes, my oversight  
7 in not clarifying that before I excused Mr. Herrick.

8 Mr. Ochenduszko I think has addressed that or  
9 will be addressing it.

10 MR. OCHENDUSZKO: Sure. So there have been a  
11 number of handouts that were provided as part of the  
12 last cross-examination. And we asked Mr. Herrick to  
13 provide all of those in electronic format to the  
14 service list. As soon as those are received by Board  
15 staff, we will then post them on the website for  
16 identification purposes only. That will happen next  
17 week.

18 MR. BERLINER: And those will include the 21  
19 through 25 numbers?

20 MR. OCHENDUSZKO: That's correct. We ask that  
21 all the handouts that he provided and everything that  
22 he referenced in his cross-examination be submitted to  
23 the entire service list and us.

24 MR. BERLINER: Great.

25 CO-HEARING OFFICER DODUC: All right. With

1 that, then, Ms. Spaletta and Mr. Keeling -- who is not  
2 wearing my favor colors today.

3 MR. KEELING: I realized once again it's  
4 casual Friday, so I dressed accordingly.

5 CO-HEARING OFFICER DODUC: You may begin.  
6 Thank you.

7 CROSS-EXAMINATION BY MS. SPALETTA

8 MS. SPALETTA: Thank you.

9 Good afternoon. My name is Jennifer Spaletta.  
10 I'll be asking questions today on behalf of North  
11 fourth. It is late in the week and late in the day,  
12 and so I appreciate your patience and your endurance.

13 If my questions are bad, please tell me, and I  
14 will rephrase them. Or if you feel that you need to  
15 take a break because you're tired, please say so so  
16 that we can have a nice, clean record today.

17 The first thing I would like to do is start  
18 with some basic concepts that I think everyone may  
19 think they understand but they're not actually in the  
20 record yet.

21 So let's look at DWR Exhibit 331, which is a  
22 map.

23 And while we're pulling that up, if Mr.  
24 Leahigh could just generally describe for me the path  
25 that the State Water Project and Central Valley Project

1 water from north of the Delta takes to get from the  
2 Sacramento River to the existing export facilities at  
3 the South Delta.

4 WITNESS LEAHIGH: I assume this is under  
5 current operations?

6 MS. SPALETTA: Correct.

7 WITNESS LEAHIGH: Yes?

8 MS. SPALETTA: Correct.

9 WITNESS LEAHIGH: So I take it by your  
10 question -- are you talking about when we're moving  
11 stored water or any water in particular?

12 MS. SPALETTA: Any water of the State or  
13 Federal projects that originates north of the Delta,  
14 how does it currently get to the export pumps at the  
15 south of the Delta?

16 WITNESS LEAHIGH: Okay. So that will somewhat  
17 depend on what time of year and the source of that  
18 water from north of Delta. So I think as part of my  
19 written testimony I talk about, generally, in the  
20 winter and spring period, we're picking up excess  
21 flows, unregulated flows, non-stored project flows.  
22 And during that period, typically, the Cross Channel  
23 gate is closed. So -- and inflows are coming in from  
24 various locations into the Delta during that period,  
25 including the eastside tributaries, San Joaquin system.

1           So during that period, you know, there's a  
2 multitude of different inflow locations for that -- for  
3 that flow.

4           Some of the Sacramento flow, often through  
5 the -- well, through the tidal action, will make its  
6 way through when the Cross Channel gate is closed --  
7 also when it's open -- but Georgiana Slough is one of  
8 the paths to the central part of the Delta and Three  
9 Mile Slough further downstream. So those are -- so  
10 those are some of the primary pathways to the south.

11           When the we're in the summertime in an average  
12 to drier year, when we're releasing stored water for  
13 diversion in the South Delta, an additional path would  
14 be the Cross Channel, when the Cross Channel gate is  
15 open typically. So some of that fresher water is  
16 mixing, again, through the tidal flux, and is  
17 influencing the general water quality in the Central  
18 Delta as well.

19           And so that Cross Channel feeds into the  
20 Mokelumne River which feeds into the Lower San Joaquin  
21 River to the central part of the Delta. And then that  
22 fresher water -- again, this is through the sloshing  
23 action of the tides. But generally there's a net  
24 negative flow towards the pumping facilities in the  
25 South Delta. And so that fresher water will be brought

1 down through that corridor towards the pumps.

2 So that's a general characterization.

3 MS. SPALETTA: Thank you. I'm going to ask  
4 you two clarifying questions. One is, based on what  
5 you just described, isn't it true then that water from  
6 the Sacramento River can move through any of the Delta  
7 channels that are essentially south of Freeport on its  
8 way down to the export pumps?

9 WITNESS LEAHIGH: So any -- I think your  
10 question is "any channel." Well, certainly the  
11 channels that I described and perhaps others. And  
12 again, as far as the Cross Channel is concerned, it's  
13 whether or not the gate it opened or closed.

14 MS. SPALETTA: And then my second clarifying  
15 question is you said that, during times of excess flow,  
16 there are contributions from the eastside streams. I  
17 just want to clarify that that means contributions from  
18 the Cosumnes, from the Mokelumne, from the Calaveras,  
19 from the Stanislaus, from the San Joaquin -- all of  
20 which enter the Delta south of the location of the  
21 proposed new intakes; is that correct?

22 WITNESS LEAHIGH: Yes. So when I was -- when  
23 I mentioned the eastside tributaries, I was talking  
24 about the Calaveras, Mokelumne, and the Cosumnes. And  
25 so the Stanislaus feeds into the San Joaquin River

1 upstream of Vernalis and then -- yes, that would flow  
2 into the Delta as well.

3 MS. SPALETTA: Okay. Now, for comparative  
4 purposes, using the map that you have provided as  
5 Exhibit 331, please explain when -- where -- or the  
6 path, I should say, that the water will take from your  
7 new proposed North Delta intakes to the export pumps.

8 WITNESS LEAHIGH: So I take it, at times when  
9 the North Delta diversion -- when we're diverting water  
10 from the proposed new intakes -- so there would be --  
11 so a portion of the diversions would come immediately  
12 from those intakes and isolated conveyance directly to  
13 Clifton Court.

14 There would still be the other pathway,  
15 though, as far as -- again, depending on whether the  
16 Cross Channel gate was open or not -- the Cross Channel  
17 down Sacramento River, Georgiana Slough, Three Mile  
18 Slough again. Depending on the rate of pumping in the  
19 South Delta, some of the flow could actually come  
20 around Sherman Island.

21 But that would be the case even without the  
22 view WaterFix. So any of the supplies going to the  
23 South Delta diversion point as is currently the case,  
24 there would still be those pathways as well.

25 MS. SPALETTA: So if I understand your



1 testimony correctly, to the extent that any water is  
2 diverted at the new North Delta facilities, the pathway  
3 for that water would go through the isolated facility  
4 to the export pumps, and it would not include movement  
5 of that water through the Delta channels, correct?

6 WITNESS LEAHIGH: Yes, that's correct. So the  
7 portion of the diversion that comes from the proposed  
8 North Delta diversions would only flow to that point on  
9 the Sacramento River and then be isolated, not flow  
10 through the Delta channels, go directly to Clifton  
11 Court.

12 MS. SPALETTA: Okay. So overall, to the  
13 extent that the proposed petition for change includes  
14 diversion of Sacramento River water at the North Delta  
15 intakes, that diversion will reduce the amount of  
16 Sacramento River flow that would otherwise flow through  
17 the channels at the Delta located south of the  
18 diversion points?

19 WITNESS LEAHIGH: Yeah. Generally, that may  
20 be a little bit too simplistic of a description. So  
21 when I was describing -- when I first started to  
22 describe the route of flow through the Delta, I talked  
23 about the tidal mixing. So this is -- you know,  
24 generally, there's a mixing of -- the fresher water  
25 from the Sacramento gets blended with some of the

1 other -- from some of the flow in the other channels,  
2 Delta channels, if you will. But generally, yes,  
3 that's the case.

4 MS. SPALETTA: And I just want take make sure  
5 I'm clear on what you just said. The Sacramento River  
6 water is considered the fresher water source of the  
7 sources of water to the Delta, correct?

8 WITNESS LEAHIGH: Yeah, generally, and by  
9 volume, certainly would be the fresher water. Some of  
10 the tributaries could be -- depending on the hydrology,  
11 could be fairly fresh as well but would be smaller  
12 volumes generally than the Sacramento River.

13 Ms. SPALETTA: So overall, the effect of the  
14 petition for change, to the extent any Sacramento River  
15 water is diverted at the North Delta intakes, it is to  
16 reduce the amount of the fresher water that is flowing  
17 through the remainder of the Delta, correct?

18 WITNESS LEAHIGH: Well, the time periods when  
19 the new Delta diversion -- proposed North Delta  
20 diversion intakes would be used would be during those  
21 periods as I just showed in my example, when we have  
22 very high flows coming down the Sacramento River.

23 So much of that flow would bypass the intakes  
24 as well, and they would also be providing fresher water  
25 to the rest of the Delta as well. And that shows up in

1 the modeling results, that -- the water quality results  
2 of the scenario that -- that we ran the water quality  
3 comparison on.

4 MS. SPALETTA: I'd I like to move to strike  
5 the last answer as non-responsive to the question. The  
6 question was a yes-or-no question.

7 CO-HEARING OFFICER DODUC: Yes. And since  
8 it's the third time she's asked it, just answer,  
9 Mr. Leahigh.

10 WITNESS LEAHIGH: Well, I wasn't sure that it  
11 was a yes-or-no response. It's -- it's a more  
12 complicated question, if you will, than yes or no.

13 CO-HEARING OFFICER DODUC: If you have a flow  
14 coming down and you, through the proposed new intake,  
15 remove some of that flow, unless there's an additional  
16 source somewhere after that -- what Ms. Spaletta is  
17 asking is, you have a flow, you have an export. What  
18 remains is less than what you would have without that  
19 export.

20 MS. SPALETTA: That was my question.

21 CO-HEARING OFFICER DODUC: Seems like a  
22 logical question.

23 MS. SPALETTA: I think the answer is simply  
24 yes, but it was never stated anywhere in the testimony  
25 for the operations panel. So I just wanted to confirm

1 it.

2 MS. MORRIS: This is Ms. Morris for the State  
3 Water Contractors. Because I'm now not sure what the  
4 question is, could the court reporter read the question  
5 back, or Ms. Spaletta ask the question?

6 CO-HEARING OFFICER DODUC: Ms. Spaletta,  
7 please ask, for the fourth time, your question, and  
8 make it as simple as possible.

9 MS. SPALETTA: My question is, comparing  
10 current operations without the North Delta diversions  
11 to the proposed operations with the North Delta  
12 diversions, isn't it true that the proposed operations  
13 to divert more Sacramento River water from the new  
14 North Delta intakes will reduce the amount of fresher  
15 Sacramento River water that would otherwise flow  
16 through the Delta channels than without the project?

17 CO-HEARING OFFICER DODUC: During the time of  
18 export.

19 MS. SPALETTA: Correct.

20 WITNESS LEAHIGH: Yes, that's generally true.

21 CO-HEARING OFFICER DODUC: Thank you.

22 Let's move on, Ms. Spaletta.

23 MS. SPALETTA: Now, I'd like to look at  
24 DWR Exhibit 515, please. And this -- even though this  
25 is a complicated exhibit, I'm trying to ask, actually,

1 a rather simple question. I'm going to preface it with  
2 this explanation.

3 When I reviewed the testimony of the  
4 operations panel, I was expecting to find a chart  
5 showing how much water would be diverted from the North  
6 Delta intakes and how much would be diverted from the  
7 existing export pumps, different period of time in  
8 different year types. And I did not find that chart.

9 So my question -- and this can be answered  
10 from anyone on the panel -- is is there an explanation  
11 some where in the Petitioner's case, either in  
12 Exhibit 515 or elsewhere, that states how much water  
13 the petitioners are proposing to export from the new  
14 North Delta intakes in different periods of time in  
15 different year types?

16 WITNESS LEAHIGH: Yeah, that type of  
17 information is going to be provided by the modeling  
18 panel.

19 MS. SPALETTA: So as the operations panel, as  
20 you sit here today, are you able to identify any chart  
21 or a list that contains the information that I just  
22 described?

23 WITNESS LEAHIGH: I'm trying to think of  
24 the -- I'm not aware that it's part of the exhibits  
25 that I've seen, but the modeling panel may be able to

1 add more clarity.

2 MS. SPALETTA: So my next question is then  
3 kind of a chicken-and-egg question. Who developed the  
4 potential operational scenarios for the North Delta  
5 diversions? Were they developed by the modeling panel  
6 and provided to the operators of the project, or did  
7 the operators of the project develop the potential  
8 operations scenarios and then ask the modelers to model  
9 them?

10 WITNESS LEAHIGH: Well, all I can say is, as  
11 an operator, I did not develop the proposed criteria  
12 here as part of these.

13 MS. SPALETTA: Mr. Milligan?

14 MR. MILLIGAN: I don't think it's necessarily  
15 either of those two choices. I think the criteria for  
16 the operations in the North Delta diversions,  
17 specifically things as we talked about in some earlier  
18 testimony about low flow periods and criteria about  
19 bypass flows of the screens were actually developed  
20 through subgroups that were interested screen dynamics  
21 and being protective of the fisheries. So a number of  
22 criteria were developed.

23 Basically, we try to deal with what would be  
24 the right criteria to be protective for fish, help  
25 reduce entrainment. And then that material was then

1 input to the model with some input then from the  
2 operators about how that may be reasonably constructed.  
3 And then some results were then developed from that  
4 point.

5 MS. SPALETTA: Thank you. That's helpful.

6 So in the Petitioner's petition for change,  
7 which is State Water Resources Control Board Exhibits 1  
8 and 2, the description of the project was  
9 Alternative 4A in the Draft EIR.

10 So now I have up on the screen for you what  
11 has been identified as the modeling assumptions. And  
12 there are various columns with different labels.

13 Can you please tell me which one of these  
14 labeled columns matches the modeling assumptions most  
15 closely to the Petition's description of  
16 Alternative 4A?

17 WITNESS LEAHIGH: Alternative 4A includes both  
18 H3 and H4 as boundary.

19 MS. SPALETTA: Okay. So having reviewed  
20 Exhibit 515, it describes different things about each  
21 alternative. And there are North Delta diversion  
22 operations criteria; there's South Delta export  
23 restrictions; and there are the North Delta bypass  
24 close; and then the Old and Middle River flows.

25 My general understanding, after reviewing your

1 testimony and this exhibit, was that your proposed  
2 operation was to divert or export as much water as  
3 possible from either the North Delta intakes or the  
4 existing South Delta diversion points after you had  
5 complied with the criteria set forth in these modeling  
6 assumptions and Decision 1641 and the applicable BiOps.

7 Is that an accurate description of what you  
8 are proposing?

9 WITNESS LEAHIGH: Yes, I think that's  
10 accurate.

11 MS. SPALETTA: And as you sit here today, do  
12 you know what those quantities of water are or would  
13 you be able to identify an exhibit that contains them?

14 WITNESS LEAHIGH: Yes, I believe there is an  
15 exhibit, one of the modeling panel's exhibits. If I  
16 could see the list of exhibits, I could tell you which  
17 one.

18 MS. SPALETTA: Maybe when we take a break,  
19 we'll do that. I don't want to waste time because we  
20 are trying to get out of here today.

21 Maybe if counsel for DWR would simply agree to  
22 provide the exhibit number, that would be sufficient  
23 for my purposes.

24 CO-HEARING OFFICER DODUC: Thank you.

25 Please do so.



1 MR. HOLDERMAN: We will.

2 MS. SPALETTA: My next question is who put  
3 together the modeling assumptions that are described on  
4 DWR-515?

5 WITNESS LEAHIGH: I don't know all the folks  
6 that were involved in putting this together.

7 MS. SPALETTA: Was it limited to folks at DWR,  
8 or were there others involved?

9 WITNESS LEAHIGH: Well, I think part of the  
10 criteria was developed by CH2M Hill that was contracted  
11 by DWR. But I think there was also interaction with  
12 fisher agencies in order to develop these criteria.

13 MS. SPALETTA: Was there interaction with any  
14 of the contractors of the State or Federal project?

15 WITNESS LEAHIGH: That, I'm not sure.

16 MS. SPALETTA: Did you personally participate  
17 in the development of the criteria?

18 WITNESS LEAHIGH: I was involved in reviewing  
19 some of the modeling results from the criteria, in  
20 checking the feasibility of operating to some of the  
21 criteria. There may have been some feedback to the  
22 modelers on the feasibility aspect and maybe some back  
23 and forth with regard to that aspect of the criteria.

24 MS. SPALETTA: So if you look at Page 2 of  
25 DWR-515 -- I'm looking at the first row under "South

1 Delta Export Revisions." Under H3, there is a  
2 description of a July-through-September total pumping  
3 of 3,000 cfs. And then it says, "No specific intake  
4 preference is assumed beyond 3,000 cfs."

5 Does that mean that after that quantity of  
6 diversion, you could be utilizing either the existing  
7 South Delta diversion point and/or the North Delta  
8 intakes for any diversion amounts over 3,000?

9 WITNESS LEAHIGH: Yeah, I think that's what  
10 that means. I think these are the modeling assumptions  
11 in this -- in this table, if I'm not mistaken.

12 MS. SPALETTA: Let's make a distinction  
13 because we're here to talk about how you would actually  
14 operate the proposed project.

15 So is that the rule you would use for actual  
16 operations, assuming the project is approved and built?

17 WITNESS LEAHIGH: I generally agree with the  
18 characterization that there would need to be some  
19 amount of South Delta pumping necessary in order to  
20 meet the objectives, the D1641 objectives.

21 So I do agree generally that there needs to  
22 be, and we would operate that way. We would have to in  
23 order to meet the objectives -- a certain amount of  
24 South Delta diversion.

25 MS. SPALETTA: In order to meet which

1 objectives?

2 WITNESS LEAHIGH: The MNI objectives in the  
3 Delta. Those would be the primary ones that would  
4 require, I think, this amount of flow that's assumed in  
5 this H3.

6 MS. SPALETTA: Is that because that amount of  
7 pumping will potentially pull the fresher Sacramento  
8 River water down into that area of the Delta to assist  
9 in meeting the objective?

10 WITNESS LEAHIGH: Yes, that's essentially the  
11 reason.

12 MS. SPALETTA: Looking at Page 3 of  
13 Exhibit 515, this is in the column labeled H4,  
14 discussing the Delta outflow requirement. There's a  
15 comment that says, "This additional spring outflow is  
16 not considered an in-basin use for coordinating  
17 operations."

18 Why is that not considered an in-basin use,  
19 and what would be the effect of considering it one?

20 MR. BERLINER: Objection, asked and answered.  
21 We went through this at great length the other day.

22 CO-HEARING OFFICER DODUC: Hold on.

23 Ms. Spaletta, repeat your question for me.

24 MS. SPALETTA: Why is the additional spring  
25 outflow not considered an in-basin use? And I

1 apologize that this may have been covered when I was  
2 not here. If I could get just a cursory answer, that  
3 would be sufficient.

4 CO-HEARING OFFICER DODUC: Please answer.

5 WITNESS LEAHIGH: Again, this is modeling  
6 assumptions. And quite frankly, I see this as an  
7 artifact of the modeling that, if they did not make  
8 this assumption, the model would -- would have split  
9 the -- the release requirements from upstream according  
10 to the existing COA as it treats other outflow  
11 requirements. And so it was trying -- so this was a  
12 way to change that modeling assumption so that the  
13 releases would come from Oroville Reservoir rather than  
14 the typical split for an outflow requirement, which  
15 is -- the model would typically split that sharing  
16 from -- some from the Central Valley Project reservoirs  
17 and some from the State Water Project reservoirs.

18 MS. SPALETTA: Thank you. And then I just  
19 have a follow-up clarification. In the same paragraph,  
20 it says at the end, "The additional flow needed to meet  
21 the outflow target is released from the Oroville  
22 Reservoir as long as its projected end-of-May storage  
23 is at or above 2 million acre feet."

24 My question is where is the additional flow  
25 released from if Oroville storage is not above

1 2 million feet for projected end-of-May storage?

2 WITNESS LEAHIGH: My understanding is, if the  
3 upstream criteria is not met at Oroville, then  
4 additional releases are not made from anywhere else.

5 MS. SPALETTA: So then is the outflow standard  
6 not met?

7 WITNESS LEAHIGH: The outflow standard is  
8 essentially being defined by these assumptions in this  
9 box. So to the extent that releases are not made from  
10 Lake Oroville because of being below the 2 million  
11 end-of-May, then in effect that would be the -- the  
12 resulting outflow would be the targeted outflow as part  
13 of this H4 scenario.

14 MS. SPALETTA: Okay. So the H4 scenario,  
15 then, is proposing to adjust the current outflow  
16 objective of D1641 to something less based on this  
17 operative assumption?

18 WITNESS LEAHIGH: No, no, it wouldn't. It  
19 would actually increase the outflow requirement as  
20 compared to D1641, but there would be a limit on that  
21 increase in outflow based on the criteria.

22 MS. SPALETTA: So for the limited time period,  
23 what would be outflow be?

24 WITNESS LEAHIGH: You know, it depends on  
25 if -- the outflow would not be the same in every year.

1 MS. SPALETTA: So who would know the answer to  
2 the question as to what it would be in the each year  
3 type? Is that you or is that the modeling panel? I  
4 don't want to waste your time.

5 WITNESS MILLIGAN: I would just say the  
6 modeling results would indicate when the off ramp to  
7 this criteria would come into play. It's not strictly  
8 by year type. It will depend on projected end-of-May  
9 storage at 2 million acre feet. And the modelers are  
10 pretty well versed and would be able to tease that out  
11 of the output results.

12 MS. SPALETTA: Okay. Different line of  
13 questioning. This line of questioning is actually for  
14 each of you, but I'll start with Mr. Leahigh.

15 Did you analyze whether the proposed change  
16 would injure any other legal user of water?

17 WITNESS LEAHIGH: I didn't look at that  
18 specifically. I was looking to see if the Water  
19 Quality Control Plan standards were met.

20 MS. SPALETTA: Mr. Milligan, did you analyze  
21 whether the proposed change would injure any other  
22 legal user of water?

23 WITNESS MILLIGAN: That's a pretty broad  
24 analysis as it relates to the operations. I've  
25 reviewed the outputs, and it does not appear that the

1 operations would.

2 MS. SPALETTA: When you say you've reviewed  
3 the outputs, what are you referring to?

4 WITNESS MILLIGAN: The model outputs, as well  
5 as my understanding of the operation of the project.

6 MS. SPALETTA: What is that understanding  
7 based on? What is it in the outputs that you saw that  
8 led you to reach that conclusion?

9 WITNESS MILLIGAN: Different salinity  
10 projections, flow rates, releases from the upstream  
11 reservoirs -- quite a number of the outputs from the  
12 modeling because the various types of legal users of  
13 water is pretty widespread geographically.

14 MS. SPALETTA: So is there someone else  
15 associated with either DWR or the Bureau of Reclamation  
16 who did conduct analysis of whether the proposed change  
17 would injure any other legal user of water?

18 If either of you know? You can say "I don't  
19 know" if you don't know.

20 WITNESS LEAHIGH: Yeah, I don't know.

21 WITNESS MILLIGAN: I don't know specifically  
22 or if there's one of the documents that -- whether it's  
23 in the context of this material or the EIS/EIR has  
24 specific information about the facts of the project.  
25 Obviously, the EIS/EIR have that and can be used as the

1 basis for such a -- bringing that kind of analysis  
2 together.

3 MS. SPALETTA: But that was not the purpose of  
4 your testimony, Mr. Milligan?

5 WITNESS MILLIGAN: No. Ours has been to talk  
6 about the operation of the project.

7 MS. SPALETTA: Okay. Mr. Leahigh, in your  
8 testimony, which was DWR Exhibit 61, Page 2, Line 25,  
9 it stated, "My testimony will focus on the effects of  
10 the CWF on other legal users of water." What portion  
11 of that testimony did that?

12 WITNESS LEAHIGH: Yeah, so that was -- I was  
13 trying to distinguish between the Water Quality Control  
14 Plan objectives that are for fish and wildlife  
15 purposes, which my understanding is that's going to be  
16 taken up as part of Part 2 of this hearing.

17 So what I was trying to do is distinguish that  
18 I was looking at the agricultural and municipal and  
19 industrial standards only as part of this particular  
20 portion of -- phase of the hearing.

21 MS. SPALETTA: And when you used the term  
22 "effects of the CWF," what does "CWF" stand for, which  
23 operational scenario?

24 WITNESS LEAHIGH: It was and in my testimony I  
25 say it's California WaterFix H3 scenario.



1 MS. SPALETTA: So is it fair to say that, for  
2 purposes of your testimony, you were assuming that, as  
3 long as the projects substantially complied with the  
4 D1641 agricultural or MNI water quality standards that  
5 there was no injury to legal users of water?

6 WITNESS LEAHIGH: Well, that could be one  
7 interpretation, yes. I was looking at -- well, we had  
8 the graph that showed the effects to water quality with  
9 and without the project in operations and also showed  
10 that incremental effect in relation to the actual  
11 objectives.

12 MS. SPALETTA: So is it also true, then, that  
13 you are assuming that a degradation of water quality  
14 short of an exceedance of a water quality objective was  
15 not injury?

16 WITNESS LEAHIGH: Well, that could be one  
17 conclusion. I think that asks for a legal conclusion,  
18 but that's open to interpretation.

19 MS. SPALETTA: So let's look at the graph that  
20 you're talking about, which was DWR Exhibit 412. This  
21 was the daily average EC at Bacon Island for the time  
22 period December 1st through April 30th, December 1st,  
23 2015 through April 30th, 2016, correct?

24 MR. MIZELL: Yes, that's correct.

25 MS. SPALETTA: Is this the one you were just

1 referring to in your testimony?

2 WITNESS LEAHIGH: Yes, it is.

3 MS. SPALETTA: Where is this EC station in  
4 relation to the closest water quality objective  
5 location?

6 WITNESS LEAHIGH: So this is Bacon Island  
7 station on Old River. So this is fairly close to where  
8 Rock Slough comes off of Old River. So it's closest to  
9 that -- the Pumping Plant No. 1 at Contra Costa Canal.

10 MS. SPALETTA: Now, your testimony did not  
11 include a similar graph showing an entire year,  
12 correct?

13 WITNESS LEAHIGH: Right. The analysis we  
14 looked at was only for this time period shown.

15 MS. SPALETTA: And for this time period shown,  
16 it was a time period of above average precipitation,  
17 correct?

18 WITNESS LEAHIGH: That's correct.

19 MS. SPALETTA: And your testimony did not  
20 include --

21 WITNESS LEAHIGH: Well, for the most part.  
22 Early on -- yeah. No, that would be correct for the  
23 entire period, including December. We didn't get the  
24 response right away from the precipitation, but it was  
25 above average precipitation.

1 MS. SPALETTA: Your testimony does not include  
2 any kind of a similar graphic analysis for a below  
3 normal or critical year type, correct?

4 MR. BERLINER: Yes, we were only looking for  
5 the -- the actual hydrology that occurred earlier this  
6 year. We were really testing the opportunity for use  
7 of the new facility in the opportunistic way of  
8 capturing excess outflows that are unavailable to the  
9 projects now.

10 MS. SPALETTA: But if I understand your prior  
11 testimony correctly, the proposed project does not  
12 limit use of the North Delta intakes to only  
13 excess-flow-type periods, correct?

14 WITNESS LEAHIGH: That's correct, it would not  
15 be limited to excess flows at that -- direct excess  
16 flows. But that is the -- that would be the primary  
17 new source of water for the -- for use with the new  
18 North Delta intakes.

19 MS. SPALETTA: As you sit here today, you are  
20 not able to distinguish between the total quantities  
21 that would be taken during the excess time period  
22 versus all other time periods, correct?

23 WITNESS LEAHIGH: Generally, reviewing the  
24 modeling results, I can make that conclusion that the  
25 majority of the time that the new intakes are used is

1 when there's direct excess flows into the Delta.

2 MS. SPALETTA: What's "majority" mean?

3 WITNESS LEAHIGH: Significantly more than  
4 50 percent, so, I don't know. Rough numbers would  
5 probably be 70, 80 percent.

6 MS. SPALETTA: So according to your testimony  
7 today, that would be somewhere between 20 to 30 percent  
8 of the time that you would be operating the North Delta  
9 intakes at a time other than when there was excess  
10 flows?

11 WITNESS LEAHIGH: Well, I can't -- I'd have to  
12 look at the modeling results to really get a good  
13 number.

14 MS. SPALETTA: So as you sit here today,  
15 you're not sure?

16 WITNESS LEAHIGH: That's correct.

17 MS. SPALETTA: Okay. Let's look at your  
18 testimony again, Exhibit 51, Page 4, Lines 1 through 7.

19 This is really just a clarification question  
20 for me. It says, "For the purposes of this testimony,  
21 in-basin requirements include legal users of water in  
22 the Sacramento basin." You have that term capitalized.  
23 What do you intend the term "Sacramento basin" to mean?

24 THE WITNESS: Oh, there we go.

25 Yes, that would be -- so, there, I'm talking

1 about any legal users of water in the entire watershed  
2 of the Sacramento River.

3 MS. SPALETTA: Okay. Where does that  
4 watershed end?

5 WITNESS LEAHIGH: Well, the in-basin  
6 requirements include the -- meeting all of the  
7 Bay-Delta objectives, so it would end in the Delta.

8 MS. SPALETTA: It would include the entire  
9 legal Delta?

10 WITNESS LEAHIGH: I don't know if I could say  
11 that.

12 MS. SPALETTA: Would it include the entire  
13 area encompassed within Central Delta Water Agency and  
14 South Delta Water Agency?

15 WITNESS LEAHIGH: Yes. And the caveat is  
16 that -- so the in-basin, I've defined "in-basin" as  
17 both meeting all the Water Quality Control Plan  
18 objectives plus any legal users of water. So I think  
19 that would include any legal users of water in the  
20 Delta.

21 MS. SPALETTA: All right. Let's look at your  
22 Exhibit 411, which was your conceptual California  
23 WaterFix operation for the time period December 1st,  
24 2015 through April 30th, 2016. And you've already  
25 testified that this was an example to illustrate how

1 the North Delta diversions could operate during excess  
2 flow conditions.

3 So my question is is there a similar graph  
4 anywhere in your testimony or exhibits that shows an  
5 entire year?

6 WITNESS LEAHIGH: No, there's not.

7 MS. SPALETTA: Is there a similar graph for  
8 any other year type?

9 WITNESS LEAHIGH: No.

10 MS. SPALETTA: And as we look at this graph,  
11 how would we know what proportion of the total proposed  
12 CWF outflow would be taken at the North Delta intakes  
13 as opposed to the existing export pumps?

14 WITNESS LEAHIGH: You can't tell precisely,  
15 but generally the solid red line represents the --  
16 because that's the existing case, that is the South  
17 Delta diversion. So the -- the majority of the  
18 difference between the dotted red line and the solid  
19 red line would be North Delta diversion with the caveat  
20 that, under -- I know there was a few days in here  
21 where the South Delta diversion under the WaterFix  
22 rules would be -- would have resulted in lower South  
23 Delta diversions.

24 So at times, the North Delta diversion  
25 component would be greater than the difference between

1 the dotted red line and the solid red line. But for  
2 the most part, that would be the difference is -- solid  
3 red line is South Delta diversion and dotted red line  
4 is North Delta diversion.

5 MS. SPALETTA: And right now, during excess  
6 flow conditions such as what you've illustrated here,  
7 right now, without the California WaterFix, where does  
8 that water go once it is exported?

9 WITNESS LEAHIGH: Once is exported? The  
10 additional?

11 MS. SPALETTA: Between the time period of  
12 December and April, where does water go once it is  
13 exported?

14 WITNESS LEAHIGH: So during this period, some  
15 of the water that we divert goes to direct demand, but  
16 much of the water that's diverted during this time  
17 period would be temporarily stored in San Luis  
18 Reservoir south of the Delta.

19 MS. SPALETTA: Is the water delivered to  
20 underground storage anywhere?

21 WITNESS LEAHIGH: Generally, or this year  
22 or --

23 MS. SPALETTA: Generally.

24 WITNESS LEAHIGH: Generally? It is possible,  
25 yes.

1 MS. SPALETTA: And in fact, during this time  
2 period of the year, December through April, that is the  
3 time period of lowest irrigation demand for the year,  
4 correct?

5 WITNESS LEAHIGH: Yes, typically, that's a --  
6 a low period for irrigation. Perhaps mid April, start  
7 to see some increase in that demand.

8 MS. SPALETTA: What is the State's share of  
9 the San Luis capacity?

10 WITNESS LEAHIGH: It's a little over half of  
11 San Luis Reservoir.

12 MS. SPALETTA: What is the acre feet?

13 WITNESS LEAHIGH: Acre feet is 1,062,000 acre  
14 feet.

15 MS. SPALETTA: So in your previous exhibit we  
16 looked at, which was exhibit 411, you were showing that  
17 with the North Delta diversions you would be able to  
18 take an additional diversion amount of 1.2 million acre  
19 feet, which exceeds the entire capacity for State's  
20 share of San Lewis, correct?

21 WITNESS LEAHIGH: Yeah. This additional  
22 diversion could be a combination of both Central Valley  
23 project and State Water Project additional diversion.

24 MS. SPALETTA: The additional diversion amount  
25 would fill up more than half of San Luis?



1           WITNESS LEAHIGH: That's correct. And we did  
2 a check on that to ensure that there would have been a  
3 place for this. We -- San Luis was only about half  
4 full this year. So there would be a number of  
5 assumptions that you'd have to make if this additional  
6 diversion occurred. It could have also possibly  
7 changed the diversion, the direct diversion response  
8 from our contractors as well.

9           MS. SPALETTA: But if there is minimal  
10 irrigation demand during this time period, where are  
11 your contractors going to put the water?

12           WITNESS LEAHIGH: Well, certainly there's  
13 groundwater recharge locations in the San Joaquin  
14 Valley. There -- over the last two or three years of  
15 drought, many of our contractors have drawn down their  
16 internal surface supplies. And certainly there would  
17 be lots of opportunity to refill many of those depleted  
18 localized surface storage.

19           MS. SPALETTA: I have a question for you,  
20 again, going back to your testimony. This is a  
21 statement you made. This is Exhibit 61, Page 17, Lines  
22 5 through 7. The statement was that, "The projects  
23 will continue to meet existing Delta water quality and  
24 fishery objectives and any additional regulatory  
25 requirements for the CWF at a similar success rate as

1 demonstrated historically."

2           What additional regulatory requirements are  
3 you referring to? Are you talking about things that  
4 exist today or things that might be imposed?

5           WITNESS LEAHIGH: I'm trying to find the exact  
6 context here.

7           MS. SPALETTA: Okay. I'll give you a minute.

8           MR. BERLINER: Do you have line numbers?

9           MR. LONG: 5 through 7.

10          MR. BERLINER: 5 through 7?

11          MR. LONG: Yes.

12          MS. SPALETTA: Yes, I'm sorry. I thought did  
13 that. Lines 5 through 7 on Page 17.

14          WITNESS LEAHIGH: Trying to think back, I  
15 can't think exactly what I was thinking of in terms of  
16 your question was in terms of -- were there any  
17 additional regulatory requirements?

18          MS. SPALETTA: Mm-hmm.

19          WITNESS LEAHIGH: I can't remember exactly  
20 what I had in mind at that time.

21          MS. SPALETTA: Are you expressing an opinion  
22 about compliance with regulatory requirements that have  
23 yet to be developed? Or are you expressing an opinion  
24 about compliance with regulatory requirements that  
25 already exist?

1           WITNESS LEAHIGH: Well, I was thinking about  
2 the -- the water quality objectives that were already  
3 existed. So I'm trying to figure out what I would have  
4 been thinking about as far as the additional regulatory  
5 requirements.

6           I suppose it could have been modifications to  
7 the existing requirements.

8           MS. SPALETTA: As you sit here today, since  
9 you don't know what those modifications are, isn't it  
10 true that you cannot express an opinion about whether  
11 the projects can comply with something that is  
12 currently unknown?

13           WITNESS LEAHIGH: That's true, depending on  
14 what those additional regulatory requirements are.  
15 But -- so this probably have been more accurate to say  
16 the existing Delta water quality and fishery  
17 objectives.

18           MS. SPALETTA: Now let's talk about that.  
19 Your testimony included an analysis of the percentage  
20 of time that the projects have complied and the  
21 percentage of time that they have exceeded various  
22 water quality objectives.

23           And I have a question about how those numbers  
24 were computed with respect to the time periods where  
25 the projects have only had to comply with the relaxed

1 version of the objective because the State Board has  
2 approved a temporary urgency change.

3 So let me try ask a clear question on this.

4 The time period that your staff analyzed for  
5 the purposes of putting together this information in  
6 your testimony, did it include time periods where the  
7 water quality standards had been relaxed by the State  
8 Board?

9 WITNESS LEAHIGH: It included the modified  
10 requirements in 2014 and 2015.

11 MS. SPALETTA: Any other years?

12 WITNESS LEAHIGH: I believe those are the only  
13 two years in which we had modified standards.

14 MS. SPALETTA: So to the extent that the  
15 projects were successful in meeting the relaxed  
16 standard, did your staff count that as a compliance or  
17 as an exceedance?

18 WITNESS LEAHIGH: We treated it as a  
19 compliance because the Water Board had approved those  
20 modifications.

21 MS. SPALETTA: I see. I just wanted to  
22 clarify that the percentage of times for compliance and  
23 exceedance and the pie charts that you put in your  
24 PowerPoint only analyze what has happened in the past;  
25 they do not provide percentages of compliance or

1 exceedance for the proposed project, correct?

2 WITNESS LEAHIGH: The pie charts are only  
3 based on historical data.

4 MS. SPALETTA: And you have not prepared any  
5 similar charts to reflect the modeling for the future,  
6 correct?

7 WITNESS LEAHIGH: No. There were charts for  
8 projections from the modeling group.

9 MS. SPALETTA: But that was not part of your  
10 testimony?

11 WITNESS LEAHIGH: That was not. The part of  
12 my testimony was that our compliance rate in real life  
13 is much better than what the models would have  
14 projected for a no-action alternative, for example,  
15 even under current conditions. It shows much higher  
16 exceedance rates than our historical record. That was  
17 one of the primary points of my written testimony.

18 MS. SPALETTA: But you did not attempt to put in  
19 your written testimony what the actual results of those  
20 model runs for the proposed project were, correct?

21 WITNESS LEAHIGH: Well, those -- those are  
22 available as part of the modeling exhibits.

23 MS. SPALETTA: I understand that. But they're  
24 not part of your testimony?

25 WITNESS LEAHIGH: No, because we didn't -- we

1 did not develop any of that information in our office.

2 MS. SPALETTA: I believe, though, that part of  
3 your testimony expressed an opinion that the projects  
4 will continue to meet the objectives. So are you  
5 saying that the opinion you expressed is based on the  
6 work of others?

7 WITNESS LEAHIGH: No, it's -- the opinion is  
8 expressed based on our historical compliance rate and,  
9 added to that, the fact that the California WaterFix  
10 would just add additional flexibility or tools  
11 available to the projects in order to comply with the  
12 current standards.

13 So, if anything, we would expect an  
14 improvement with additional tools to meet the same  
15 objectives in the future.

16 MS. SPALETTA: Let's talk about that because  
17 you did testify previously about flexibility. And you  
18 were describing the knobs that the project has to work  
19 with. You said one knob you have right now was  
20 releases from storage. Another knob you have was the  
21 quantity of exports from the South Delta. And so  
22 having these North Delta diversion facilities  
23 essentially gave you a third knob to turn for  
24 flexibility. Do you recall that testimony?

25 WITNESS LEAHIGH: Yes.

1 MS. SPALETTA: And in your testimony, you said  
2 that one of the examples of what you could do with this  
3 third knob is to address the situation where you had  
4 salinity problems in the South Delta and that, by  
5 moving some of your exports from the south pumps to the  
6 new North Delta intakes, that would help you with the  
7 South Delta salinity problem.

8 Do you remember that testimony?

9 WITNESS LEAHIGH: No, I don't believe I said  
10 South Delta because in my mind that would reference  
11 more the South Delta objectives locations where we have  
12 very limited to no control over the objectives. That  
13 was part of Mr. Herrick's cross.

14 I was referring to the -- the ag standards,  
15 the Western, Central Delta ag standards. So that would  
16 be Jersey Point, San Andreas, those other locations in  
17 the Central Delta.

18 MS. SPALETTA: Those locations are actually  
19 located south of the North Delta intakes, correct?

20 WITNESS LEAHIGH: That's correct. I would  
21 characterize them more as in the central part of the  
22 Delta though.

23 MS. SPALETTA: So how would extracting more of  
24 the fresher Sacramento River water north of those  
25 locations help meet the salinity standards in the

1 Central Delta?

2 WITNESS LEAHIGH: So, yeah, we didn't really  
3 talk about that aspect of the operations, which is  
4 there is a certain amount of reverse flow that's  
5 necessary down Old and Middle River in order to bring  
6 some of that fresher water down the corridor from the  
7 north locations.

8 But there's a certain point, if our pumping  
9 gets high enough, it actually becomes more detrimental  
10 in that we start pulling on some of the -- I talked  
11 about the different paths that you had asked me about.  
12 And one of those paths would be pulling Sacramento  
13 water around the tip of Sherman Island, if you will.  
14 And if we're pumping high enough, we're actually  
15 drawing in saltier ocean water into the Central Delta,  
16 which starts to become more of a detriment than a  
17 positive.

18 So under those conditions when we're bringing  
19 in the saltier water and we're having issues with  
20 compliance at Jersey Point, let's say, we would want to  
21 shut down the effect of that draw on the -- to the  
22 South Delta export locations in order to minimize that  
23 draw of saltier water. So that's when we would want to  
24 shift from the South Delta to the North Delta diversion  
25 location, if -- assuming water quality conditions were



1 okay on the Sacramento River side of the Delta.

2 MS. SPALETTA: Wouldn't that shift, though,  
3 also improve the quality of the water that you're able  
4 to export?

5 WITNESS LEAHIGH: Yeah, depending on what the  
6 actual water quality conditions were.

7 MS. SPALETTA: Now, your testimony said that  
8 the South Delta salinity objectives are at times beyond  
9 the reasonable control of the projects. What do you  
10 mean by "reasonable"? Why did you use that qualifier?

11 WITNESS LEAHIGH: I'm sorry. So in which --  
12 I'm sorry. Can you repeat the question?

13 MS. SPALETTA: Sure. In your testimony, you  
14 said that at times, meeting the South Delta salinity  
15 objectives is beyond the reasonable control of the  
16 projects. Why did you use the qualifier "reasonable"  
17 as opposed to just saying it was beyond the control?

18 WITNESS LEAHIGH: You're talking about the  
19 South Delta standards?

20 MS. SPALETTA: Correct.

21 WITNESS LEAHIGH: Well, so what we've -- our  
22 export changes, as I've noted before in part of my  
23 testimony. The South Delta channels are very poor  
24 circulation patterns. And that, coupled with the poor  
25 water quality sources that are in the South Delta

1 channels themselves, represent a real challenge.

2 I think one thing that the Department was  
3 pursuing was the operable gates. Right now we put in  
4 the temporary barrier. We have a temporary barrier  
5 program, the rock barriers. But in order to help  
6 address this circulation issue, we have proposed  
7 building the permanent operable gates, which would have  
8 helped alleviate part of that circulation issue to  
9 bring in some of the fresher water from the Old and  
10 Middle River corridor into that area.

11 So far, we are -- as part of the NMFS BiOp, we  
12 were not allowed to, at least for now, put in those  
13 perform with those gates. And so I guess that's part  
14 of what I mean by "reasonable" in that it's not  
15 completely in our control.

16 MS. SPALETTA: I see. Thank you.

17 Okay. Now I'm going to ask a question of both  
18 you.

19 Mr. Milligan, what is the source of water that  
20 the CVP picks up when it uses Jones or Banks to pump  
21 its water?

22 WITNESS MILLIGAN: That depends on the time of  
23 year, the day of the year that the pumping is  
24 occurring.

25 MS. SPALETTA: And that's because all of the

1 different sources of water that flow into the Delta  
2 co-mingle, so there could be any culmination on any  
3 given date depending on circumstances present at those  
4 pumps, correct?

5 WITNESS MILLIGAN: That is an element of it.  
6 The other aspect is what types of conditions we're  
7 under. Are we in a place where we're predominantly  
8 moving a volume that is was previously stored, meaning  
9 more -- balanced conditions is the terminology we've  
10 been using, where we're in excess conditions, which  
11 could have flood flows from the San Joaquin River, for  
12 example, maybe, when the projects are pumping on a  
13 particular day.

14 MS. SPALETTA: And at times it could actually  
15 be flows that entered the Delta from Martinez with the  
16 tide, correct?

17 WITNESS MILLIGAN: Could be. Could be  
18 molecules of water that -- particularly ones that have  
19 some salt attached to them.

20 MS. SPALETTA: And, Mr. Leahigh, is the answer  
21 the same if I asked you the question as to State Water  
22 Project as to the source of water that you divert?

23 WITNESS LEAHIGH: Yes, I think I generally  
24 agree with Mr. Milligan's characterization.

25 MS. SPALETTA: So what you propose with this

1 project is to change a point of diversion and add a new  
2 point of diversion at a point much higher north in the  
3 Delta, the North Delta intake locations.

4 When you pump water from the North Delta  
5 intake locations what will be the source, Mr. Milligan?

6 WITNESS MILLIGAN: I would say the Sacramento  
7 River.

8 MS. SPALETTA: And is your answer the same,  
9 Mr. Leahigh?

10 WITNESS LEAHIGH: Yes, almost under every  
11 circumstance, it would be -- should be Sacramento  
12 River.

13 MS. SPALETTA: Thank you. I have a technical  
14 question about your petitions for change. If you don't  
15 know the answer to this and it's better for the water  
16 rates panel, please tell me.

17 But my understanding is there was only one  
18 petition for change submitted, even though it is to  
19 apply to multiple water rights for each of the  
20 projects; is that correct? Either of you can answer.

21 WITNESS MILLIGAN: I believe that's probably  
22 most expediently done with the water rights panel.

23 MS. SPALETTA: And was there any inclusion in  
24 the petition for change of an underground storage  
25 supplement to allow for groundwater recharge with any

1 of the water that you pick up at the pumps during  
2 excess conditions?

3 WITNESS LEAHIGH: I don't know if that would  
4 be necessary, but I think that will be best addressed  
5 by the water rights panel.

6 MS. SPALETTA: So you don't know?

7 WITNESS LEAHIGH: I don't know.

8 MS. SPALETTA: When the water is delivered to  
9 your contractors and used for groundwater recharge and  
10 groundwater banking, are you counting that as a  
11 beneficial use of water upon delivery?

12 WITNESS LEAHIGH: I think the same response,  
13 the water rights panel is better to address that  
14 question.

15 MS. SPALETTA: All right. I have no further  
16 questions for the panel.

17 CO-HEARING OFFICER DODUC: Thank you  
18 Ms. Spaletta.

19 Mr. Keeling?

20 MR. KEELING: Give us one minute?

21 CO-HEARING OFFICER DODUC: Okay.

22 CROSS-EXAMINATION BY MR. KEELING

23 MR. KEELING: Thanks to the epic cross-exam  
24 from Mr. Herrick and Ms. Spaletta, I will be brief. I  
25 spent most of the time crossing off questions.

1 CO-HEARING OFFICER DODUC: Bless you,  
2 Mr. Keeling.

3 MS. SPALETTA: I expect to get us out of here  
4 by 4:59, no later.

5 CO-HEARING OFFICER DODUC: You just lost some  
6 brownie points with that.

7 MR. KEELING: I didn't know I had any.

8 Gentlemen, can you put up DWR-61, Page 3, and  
9 I'll be referring to Lines 4 through 15 and.

10 This is from DWR-61, your written testimony,  
11 Mr. Leahigh. Do you have that in front of you?

12 CO-HEARING OFFICER DODUC: Mr. Keeling, could  
13 you please move the microphone closer to you?

14 WITNESS LEAHIGH: Yes, I have it.

15 MR. KEELING: On Line 12, it says, "I will  
16 describe how the SWP/CVP with the CWF would operate to  
17 continue to comply with all applicable requirements on  
18 the SWP/CVP to ensure other legal users of water are  
19 able to exercise their water rights."

20 And my question of you is, the phrase "all  
21 applicable requirements," I know we've talked about  
22 aspects of that so far in your examination. Can you  
23 tell me what you meant by that phrase besides  
24 Decision 1641 and the water contractors' contracts and  
25 the water rights of in-Delta legal users, which you've

1 already referred to as part of your in-basin  
2 requirements definition?

3 WITNESS LEAHIGH: Other than the ones you just  
4 described, nothing else comes to mind at the moment.  
5 The BiOp requirements would be the -- yeah, any  
6 applicable requirements. I can't think of anything  
7 else offhand, other than what you've mentioned.

8 MR. KEELING: You will recall that this  
9 morning Mr. Herrick asked you about Water Code Sections  
10 12200 through 12205; do you recall that testimony?

11 WITNESS LEAHIGH: Yes, I recall that.

12 MR. KEELING: I may have misunderstood this,  
13 and if so, correct me, please. I understood that those  
14 statutory provisions were not included in your  
15 understanding of applicable requirements.

16 WITNESS LEAHIGH: Well, I wasn't -- as I  
17 stated at the time, I wasn't familiar -- that familiar  
18 with those statutes when I was looking at them to the  
19 extent that those statutes have been incorporated in  
20 any of our other requirements, I'm not clear.

21 MR. KEELING: Thank you. I have essentially  
22 the same question with respect to Watershed Protection  
23 Statute of 1933, Water Code Section 114630 through  
24 11465. Do you have any familiarity at all with those  
25 statutes?

1           WITNESS LEAHIGH: Offhand, I -- I without  
2 seeing them, I couldn't say one way or the other for  
3 sure. But I don't believe I have much familiarity with  
4 them.

5           MS. SPALETTA: So as you sit here today, you  
6 don't think those are included in what you called "all  
7 applicable requirements for purposes of operations"?

8           MR. BERLINER: Objection, misstates his  
9 testimony.

10          MR. KEELING: If I've misstated it, please  
11 correct me.

12          WITNESS LEAHIGH: Well, I don't know what's in  
13 those provisions as I'm sitting here. I don't have it  
14 in front of me here.

15          MR. KEELING: Have you ever heard of the  
16 Watershed Protection statute?

17          WITNESS LEAHIGH: I've heard of -- yeah, I  
18 think I've heard of it.

19          MR. KEELING: Have you ever heard of the  
20 county of origin law?

21          WITNESS LEAHIGH: Yes.

22          MR. KEELING: Are you familiar with that  
23 statute?

24          WITNESS LEAHIGH: Generally.

25          MS. SPALETTA: Is that a statute the



1 provisions of which you would include in your  
2 understanding of the phrase "all applicable  
3 requirements"?

4 MR. BERLINER: Objection, vague and ambiguous.  
5 This is -- we're talking about operations, and this  
6 statute really is kind of an apples and oranges  
7 discussion here.

8 CO-HEARING OFFICER DODUC: Mr. Leahigh, just  
9 answer to the best of your ability given the general  
10 nature of the question.

11 WITNESS LEAHIGH: Well, again, to the extent  
12 that that statute is already incorporated to -- in any  
13 of our other permits or requirements, I can't say. So  
14 I can't say for sure one way or the other.

15 MR. KEELING: Do any of these three statutes  
16 we've just discussed, the Delta Protection Act of 1959,  
17 the Water Protection Statute of 1933 or the County  
18 Origin Laws 1931, did they play any role in your  
19 preparation of testimony as to the standards that would  
20 govern the operation of the project if the WaterFix is  
21 approved?

22 WITNESS LEAHIGH: Again, I don't know to what  
23 extent those might have been included in any of our  
24 other permits and requirements.

25 MR. KEELING: Mr. Leahigh, have you ever -- in

1 your capacity as a civil engineering working in water  
2 matters, have you ever worked on a large estuary in  
3 California other than the Delta?

4 WITNESS LEAHIGH: Worked on? No.

5 MR. KEELING: So you've never -- at least in  
6 California, you've never had experience with a project  
7 that entailed significant reductions in freshwater  
8 flows from an estuary?

9 MR. BERLINER: Objection, misstates his  
10 testimony.

11 CO-HEARING OFFICER DODUC: Please rephrase,  
12 Mr. Keeling.

13 MR. KEELING: Mr. Leahigh, in your work as an  
14 engineer in water-related matters, have you ever worked  
15 on a project that entailed a significant reduction in  
16 freshwater flows from a large estuary?

17 WITNESS LEAHIGH: Did you say "other than  
18 the" -- I'm sorry. Can you repeat the question?

19 MR. KEELING: In your work, I'm asking about  
20 you individually, have you ever worked on a project  
21 which entailed a significant reduction in -- of  
22 freshwater flows into a large estuary?

23 MR. BERLINER: I'm going to object as to the  
24 word -- use of the word "project." It's undefined in  
25 this context. Are we talking about an existing

1 project, a new project?

2 CO-HEARING OFFICER DODUC: Any project.

3 MR. KEELING: Well, that's a fair  
4 qualification.

5 CO-HEARING OFFICER DODUC: Where are you going  
6 with this, Mr. Keeling?

7 MR. KEELING: A new project.

8 CO-HEARING OFFICER DODUC: But Mr. Keeling,  
9 where are you going with this?

10 MR. KEELING: Well, at the risk of jumping  
11 ahead when I probably shouldn't as a cross-examiner, I  
12 want to find out how much experience these folks have  
13 taking freshwater flows, great quantities of freshwater  
14 flows out of existing estuaries and what the results  
15 were. Because -- from an operations point of view.

16 THE COURT: Okay. Fair enough.

17 WITNESS LEAHIGH: You qualified your question  
18 in terms of a new project. I don't have any  
19 experience.

20 MR. KEELING: Mr. Leahigh, are you aware of  
21 any project that was constructed in California in the  
22 last 50 years that resulted in significant reductions  
23 in freshwater flows through a large estuary?

24 WITNESS LEAHIGH: Well, certainly some would  
25 say the State Water Project certainly affects --

1 certainly affects flows in the Bay-Delta Estuary, yes.

2 MR. KEELING: That's why I qualified the last  
3 50 years. The State Water Project is older than 50  
4 years, is it not?

5 WITNESS LEAHIGH: Pretty close.

6 MR. KEELING: Other than the State Water  
7 Project, is the answer no?

8 WITNESS LEAHIGH: That's correct.

9 MR. KEELING: Are you aware of any project in  
10 the last 50 years anywhere in the United States that  
11 entailed a substantial reduction of freshwater flows  
12 into an estuary?

13 MR. BERLINER: Objection, relevance.

14 CO-HEARING OFFICER DODUC: Mr. Keeling?

15 MR. KEELING: I'd like to know what they  
16 looked at and what they studied before they concluded  
17 from an operations point of view a project that does  
18 exactly what this project proposes to do would be a  
19 good deal and wouldn't harm people.

20 MR. BERLINER: That's a very different  
21 question.

22 CO-HEARING OFFICER DODUC: Let's answer that  
23 question. I like direct questions, Mr. Keeling.  
24 Repeat that direct question.

25 MR. KEELING: What studies or prior examples,

1 if any, did you review involving projects that resulted  
2 in substantial reductions of freshwater flows through  
3 large estuaries?

4 WITNESS LEAHIGH: I haven't been involved in  
5 any studies of that sort.

6 MR. KEELING: Mr. Milligan, I have the same  
7 question for you.

8 WITNESS MILLIGAN: Might you repeat the  
9 question, please?

10 MR. KEELING: What studies or analyses or  
11 examples did you review that -- involving projects that  
12 entailed a substantial reduction of freshwater flows  
13 into a large estuary?

14 MR. BERLINER: I'm going to object on the  
15 grounds of vagueness with reference to the phrases  
16 studies or analyses, also as to what that encompasses.

17 CO-HEARING OFFICER DODUC: It's late on a  
18 Friday. I don't know that we want to dissect the words  
19 "study" and "analysis," but Mr. Keeling?

20 MR. KEELING: I was asking the question in  
21 response to your request that I go out to the direct,  
22 broader question.

23 So I could dissect it. We'd be here a while.

24 CO-HEARING OFFICER DODUC: In arriving at the  
25 conclusions that you have made in your various

1 testimonies, did you consider information beyond what  
2 was developed by your modelers and your contractors in  
3 support -- that was submitted to us? Was there any  
4 additional information considered that was not  
5 generated by the modelers specific for this hearing?

6 I'm trying, Mr. Keeling.

7 MR. KEELING: Fair enough.

8 WITNESS MILLIGAN: Hopefully this is a fair  
9 answer.

10 The Delta-San Joaquin -- Sacramento-San Joaquin  
11 River Delta is very unique, and even the categories of  
12 large estuaries. It's really not the same as the  
13 Everglades or Chesapeake Bay.

14 So it's a rather unique estuary, and I would  
15 say most of the work that's been done related to  
16 salinity, the effects of the various fisheries involved  
17 have been pretty unique related to the vast amount of  
18 work we've done with our current Delta System.

19 Even species involved -- a lot of work has  
20 been done related to the species -- are pretty unique  
21 to the Delta. From my understanding that work has been  
22 predominantly based on studies within the current  
23 geographical area.

24 It may be a good question for the second phase  
25 as to relate to some of the species. I do think

1 there's maybe been some thought given to smelt,  
2 smelt-related questions as it relates to Pacific  
3 Northwest. There's some similar species there. And I  
4 think there may have been some work done as relates to  
5 some of the terrestrial that may be applicable to some  
6 other areas.

7 But maybe to be direct to your questions as  
8 relates to myself, my understanding of the studies or  
9 work that have been done within the Department of  
10 Interior within the Everglades and let's say Chesapeake  
11 Bay as two examples, probably -- I haven't seen  
12 something that I would be able to call upon in a very  
13 direct sense as it relates to the dynamics here.

14 Most of my experience or observation from  
15 reading literature related to those projects in those  
16 two areas have been trying to balance resources and  
17 needs between MNI uses, agricultural, and then the  
18 wildlife habitat with both fishery and the terrestrial.  
19 And the Everglades is a great example of that.

20 MR. KEELING: Thank you very much for that  
21 clarification. Did you study -- Mr. Milligan, did you  
22 study any estuaries not in the United States on this  
23 issue?

24 WITNESS MILLIGAN: I have not. But I have  
25 seen at some symposiums some efforts by biologists to

1 pull on experiences on a number of estuaries around the  
2 world and tried to see how they may be able to relate  
3 to some of our questions here.

4           And the physical -- the topography of our  
5 Delta makes it a more difficult question, particularly  
6 with the agricultural use that's within the Delta and  
7 land subsidence associated with that in the -- although  
8 we have graded channels and you find that in other  
9 places, the degree that they're heavily leveed, armored  
10 and the types of diversions we have with agriculture  
11 seem to be very unique.

12           MR. KEELING: Thank you very much.

13           And this is for Mr. Leahigh to complete this  
14 line of questioning. Would I be correct, sir, in my  
15 understanding that you are not aware of any completed  
16 project during the last 50 years anywhere in which  
17 reducing substantial amounts of freshwater flow into a  
18 large estuary did not result in a reduction in water  
19 quality?

20           WITNESS LEAHIGH: I'm sorry. That was a very  
21 long question.

22           MR. KEELING: And it had two negatives in it,  
23 and I apologize. Why don't I see if I can get rid of  
24 one of the negatives.

25           Are you aware of any project completed in the



1 last 50 years that involved a substantial reduction of  
2 freshwater flows through a large estuary in which, as a  
3 result of the completed project, water quality was not  
4 reduced?

5 CO-HEARING OFFICER DODUC: Could we break that  
6 into two questions, Mr. Keeling?

7 So go ahead. Can you do that? Just start  
8 your question, and I will stop it.

9 MR. KEELING: Do you have any understanding of  
10 any large project completed within the last 50 years  
11 that entailed a substantial reduction of freshwater  
12 flows --

13 CO-HEARING OFFICER DODUC: Stop right there.  
14 Answer that question, please.

15 WITNESS LEAHIGH: Completed? It's -- I don't  
16 know. This is a very vague question. I don't know.

17 MR. KEELING: So if you don't know, it would  
18 be fair to infer, would it not, that you're not aware  
19 of any such project, completed project, that did not  
20 result in reduced water quality?

21 CO-HEARING OFFICER DODUC: That's not what he  
22 said.

23 MR. KEELING: Well, I'm asking.

24 CO-HEARING OFFICER DODUC: No. Let's move on,  
25 Mr. Keeling.

1           MR. MIZELL: This has been a very long week  
2 for our witnesses, and it's clear that they're getting  
3 a bit fatigued. If there's any way that we can --  
4 given Mr. Keeling informed us that that was the last  
5 question in that line of questioning. If there's any  
6 way we could break for the week, these folks would be  
7 able to supply the Board with more information if they  
8 had a rest.

9           CO-HEARING OFFICER DODUC: Mr. Keeling, what  
10 are your other lines of questioning?

11          MR. KEELING: I have -- I could probably  
12 finish this up in ten minutes, if that would help.

13          CO-HEARING OFFICER DODUC: Let's attempt to do  
14 that.

15          MR. KEELING: I mean, I have control over the  
16 questions, not the responses.

17                 In State Water projects, Mr. Leahigh -- excuse  
18 me, in operations, do you now currently employ any  
19 strategies or methods for the purpose of reducing  
20 harmful algal blooms in the Delta?

21          WITNESS LEAHIGH: No, not as part of -- I  
22 don't believe so as part of my current -- specifically  
23 looking at what you're asking, no.

24          MR. KEELING: In State Water Project  
25 operations under the WaterFix, if it's approved,

1 assuming it's approved, have you put in place or  
2 planned any strategies or methods for the purpose of  
3 reducing harmful algal blooms in the Delta?

4 MS. MORRIS: I'm going to object. Hold on.

5 CO-HEARING OFFICER DODUC: Ms. Morris?

6 MS. MORRIS: I'm going to object to this line  
7 of questioning. It assumes facts not in evidence.

8 Does Mr. Keeling has some evidence that the  
9 State Water Project or Central Valley Project  
10 operations cause or exacerbate harmful algal blooms?

11 CO-HEARING OFFICER DODUC: Mr. Keeling.

12 MR. KEELING: I thought this hearing was all  
13 about harm to legal users of water if the WaterFix is  
14 approved, and that, of course, will go to the  
15 conditions in which harmful algal blooms develop and  
16 flourish, reductions of freshwater flows, temperature  
17 changes, and the like.

18 CO-HEARING OFFICER DODUC: I think she is  
19 objecting to you making that correlation.

20 I believe you can answer -- you can ask that  
21 question without making that correlation, Mr. Keeling.

22 MR. KEELING: Well, I didn't make the  
23 correlation except in response to the objection, so --  
24 and in fact, I think there's no question pending. I  
25 think I got the answer to it.

1 CO-HEARING OFFICER DODUC: Did you?

2 WITNESS LEAHIGH: Okay. So to your question,  
3 your second question, I don't think I did respond to,  
4 which was with the California WaterFix.

5 MS. MORRIS: Is there a ruling on the  
6 objection or -- I'm sorry. Is there a ruling on the  
7 objection before the witness --

8 CO-HEARING OFFICER DODUC: The ruling,  
9 Ms. Morris, is that Mr. Leahigh will answer the  
10 question, and we will not recognize any sort of linkage  
11 between Mr. Keeling's implication of algal bloom and  
12 the proposed WaterFix, meaning one being a consequence  
13 of the other.

14 MR. KEELING: Right.

15 WITNESS LEAHIGH: No, not directly.

16 MR. KEELING: Thank you. Are you familiar  
17 with the term "residence time"?

18 WITNESS LEAHIGH: In the context of what?

19 MR. KEELING: In operating the State Water  
20 Project in the Delta, in that context.

21 WITNESS LEAHIGH: I'm familiar with the use  
22 that some folks have in terms of residence time, yes.

23 MR. KEELING: What is your understanding of  
24 the meaning of that term?

25 MR. BERLINER: Objection, relevance. Maybe

1 there's a question here, but --

2 CO-HEARING OFFICER DODUC: Let's go directly  
3 to your question, Mr. Keeling with respect to residence  
4 time.

5 MR. KEELING: Your experience -- and you may  
6 not be the right witness. Maybe you could tell me who  
7 it would be.

8 But in your experience, would a reduction in  
9 freshwater flows from the Sacramento River to the Delta  
10 affect residence time in any part of the Delta?

11 WITNESS LEAHIGH: I don't believe so, but  
12 that's better answered by the modeling panel.

13 MR. KEELING: Fair enough. In formulating  
14 your testimony about project operations under the  
15 WaterFix, did you consult with engineers employed by  
16 San Joaquin County? Did anyone on your team consult  
17 with employees of San Joaquin County?

18 WITNESS LEAHIGH: I can't speak for all of DWR  
19 but no, I personally did not.

20 MR. KEELING: Did you consult with engineers  
21 retained by reclamation districts located in San  
22 Joaquin county?

23 WITNESS LEAHIGH: I personally did not.

24 MR. KEELING: Are you aware of any such  
25 discussions by any members of your team?

1           WITNESS LEAHIGH: I'm not aware. I can't  
2 speak for the rest of DWR.

3           MR. KEELING: In formulating your testimony,  
4 did you consult with anyone in San Joaquin County who,  
5 to your knowledge, has responsibility for groundwater  
6 management?

7           WITNESS LEAHIGH: I have not, but I can't  
8 speak for everyone in DWR.

9           MR. KEELING: In formulating your testimony,  
10 at this hearing, did you consult with any employee of  
11 Metropolitan Water District?

12           WITNESS LEAHIGH: No.

13           MR. KEELING: Did you consult with any  
14 representative or agent of Metropolitan Water District?

15           WITNESS LEAHIGH: No.

16           MR. KEELING: Did you consult with any  
17 representative or agent of any of the Federal  
18 Contractors?

19           WITNESS LEAHIGH: No.

20           MR. KEELING: Same question for the State  
21 Contractors.

22           WITNESS LEAHIGH: No.

23           MR. KEELING: I really hate to disappoint you.  
24 It's been so much fun. But I'm going to have to end it  
25 here. I can't figure out a way to bring us to 4:59.

1 And by the way, thank you very much for your patience  
2 on a Friday afternoon, for the entire panel.

3 CO-HEARING OFFICER DODUC: Thank you,  
4 Mr. Keeling.

5 And I will also add my thanks to the entire  
6 panel, actually, Mr. Milligan and Mr. Leahigh, it's  
7 been a long week. I admire your fortitude. I hope you  
8 get a lot of rest between now and Thursday, when we  
9 shall see you again.

10 We will reconvene at 9:00 o'clock on Thursday,  
11 thank you.

12 A reminder from Mr. Ochendusko, we will be  
13 reconvening in the Coastal Hearing Room and not this  
14 room.

15 MS. MESERVE: Sorry I was closing down my  
16 computer. May I just put one thing on the record,  
17 please? Sorry. It will be very quick, I promise  
18 everyone.

19 I'm here on behalf of the Environmental  
20 Justice Coalition for Water, I'm an authorized  
21 representative. And I would just like to let the  
22 hearing officers know that the EJCW would like to join  
23 in the recent requests for extension of time. They  
24 would appreciate a tiny bit more time to prepare their  
25 cases in chief because they have very limited funding

1 and very few people. And they were not able to prepare  
2 a written response and asked me to convey that to you.

3 CO-HEARING OFFICER DODUC: Thank you,  
4 Ms. Meserve.

5 MR. MIZELL: It should also be stated -- this  
6 is Tripp Mizell.

7 It should also be stated that DWR's preparing  
8 a response to all the requests for extensions of time,  
9 and we will be submitting that on Monday.

10 CO-HEARING OFFICER DODUC: On Monday. Thank  
11 you.

12 All right. Thank you, everyone. Have a good  
13 weekend.

14 (Whereupon, the proceedings recessed  
15 at 4:12 p.m.)

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1 STATE OF CALIFORNIA )  
2 COUNTY OF MARIN ) ss.

3 I, DEBORAH FUQUA, a Certified Shorthand  
4 Reporter of the State of California, do hereby certify  
5 that the foregoing proceedings were reported by me, a  
6 disinterested person, and thereafter transcribed under  
7 my direction into typewriting and is a true and correct  
8 transcription of said proceedings.

9 I further certify that I am not of counsel or  
10 attorney for either or any of the parties in the  
11 foregoing proceeding and caption named, nor in any way  
12 interested in the outcome of the cause named in said  
13 caption.

14 Dated the 19th day of August, 2016.

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DEBORAH FUQUA  
CSR NO. 12948