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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
SIERRA HEARING ROOM
1001 I STREET
SECOND FLOOR
SACRAMENTO, CALIFORNIA

THURSDAY, SEPTEMBER 22, 2016
9:00 A.M.

PART 1A

VOLUME 17
PAGES 1 - 275

Reported by: Megan Alvarez, RPR, CSR No. 12470
Certified Shorthand Reporter

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 & 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 Ochenduszeko
12 Jean McCue
13 Jason Baker

14

15 PART I

16

17 FOR PETITIONERS:

18

19 California Department of Water Resources:

20

21 James (Tripp) Mizell, Esq.

22

23 Thomas M. Berliner, Esq.

24

25 INTERESTED PARTIES:

26

27 The U.S. Department of the Interior:

28

29 Amy L. Aufdemberge, Esq.

30

31 State Water Contractors:

32 Rebecca D. Sheehan, Esq.

33

34 The City of Roseville; Sacramento Suburban Water
35 District; San Juan Water District; the City of Folsom;
36 Yuba County Water Agency:

37

38 Ryan Bezerra, Esq.

1 INTERESTED PARTIES (Continued):

2 San Joaquin Tributaries Authority, The (SJTA), Merced
Irrigation District, Modesto Irrigation District,
3 Oakdale Irrigation District, South San Joaquin
Irrigation District, Turlock Irrigation District, and
4 City and County of San Francisco:

5 Tim O'Laughlin, Esq.

6
San Luis & Delta-Mendota Water Authority:

7
Rebecca R. Akroyd, Esq.

8

9 Westlands Water District:

10 Philip A. Williams, Esq.

11
Biggs-West Gridley Water District (BWGWD), Glenn-Colusa
12 Irrigation District (GCID):

13 Andrew M. Hitchings, Esq.

14
Nevada Irrigation District (NID), Butte Water District
15 (BWD), Richvale Irrigation District (RID), Anderson -
Cottonwood Irrigation District, Plumas Mutual Water
16 Company (PMWC), Reclamation District 1004, South Feather
Water and Power Agency, western Canal Water District
17 (WCWD), paradise Irrigation District:

18 Dustin C. Cooper, Esq.

19
The Sacramento Valley Group:

20
David Aladjem, Esq.

21

22 Tehama-Colusa Canal Authority & Water Service
Contractors in its Service Area:

23
Meredith Nikkel, Esq.

24

25

1 I N D E X

2 PETITIONER'S WITNESSES:

3

4 PANEL FIVE:

5 MAUREEN SERGENT (LEAD, DWR-53)

6 RAY SAHLBERG (LEAD, DOI-3)

7 ROBERT COOKE (PANEL, DWR-60)

8 Direct Examination by Mr. Mizell4

9

10 Cross-Examination by Mr. O'Laughlin31

11 Cross-Examination by Ms. Akroyd92

12 Cross-Examination by Mr. Williams105

13 Cross-Examination by Mr. Hitchings118

14 Cross-Examination by Mr. Cooper128

15 Cross-Examination by Mr. Bezerra178

16 Cross-Examination by Mr. Aladjem244

17 Cross-Examination by Ms. Nikkel258

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EXHIBITS

(NO EXHIBITS WERE MARKED)

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1 SEPTEMBER 22, 2016 - THURSDAY 9:00 A.M.

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

3 --o0o--

4 CO-HEARING OFFICER DODUC: Good morning,
5 everyone. It is 9:00 o'clock. Welcome back to the
6 California WaterFix water right petition hearing.

7 I am Tam Doduc, board member and hearing
8 officer. Joining us shortly will be the board chair and
9 co-hearing officer Felicia Marcus. And then a little
10 bit later, we will also be joined by board member Dorene
11 D'Adamo.

12 To my left are senior staff counsel
13 Dana Heinrich and senior staff Water Resources Control
14 engineer Kyle Ochenduszk. We will also be joined later
15 by program manager Diane Riddle.

16 Some general announcements.

17 Oh, we also have Ms. McCue and other staff
18 here today to provide assistance as well.

19 So standard general announcements before we
20 begin. Please take a moment right now and identify the
21 exits closest to you. We are in a different room. In
22 the event that an alarm sounds, we will evacuate this
23 room and we will either be directed into a protective
24 vestibule or take the stairs down to the first-floor
25 exit, and we will convene in the park awaiting the

1 all-clear instructions to return.

2 Secondly, this meeting -- this hearing is
3 being recorded and Web-casted. So please always speak
4 into the microphone and always begin by identifying
5 yourself and whom you represent.

6 We have a court reporter with us today. Thank
7 you and welcome back. The transcript will be available
8 after the completion of Part I-A. If you need to have
9 it earlier, please make arrangements with the court
10 reporting service.

11 Finally, and most importantly, as you know by
12 now, please take a moment and put all your noise-making
13 devices on silent vibrate, off, whatever, that does not
14 create a noise. Even if you think it's already
15 silenced, please take a moment and check, as I am doing
16 now.

17 Before we resume, any housekeeping procedural
18 matters? I will note that Mr. O'Laughlin notified me
19 earlier today that he and the State Water Contractor
20 will be switching places in the order of
21 cross-examination of this panel as he will not be
22 available later.

23 Are there any other issues, Mr. Mizell?

24 MR. MIZELL: That's your fault too. I just
25 want you to know that.

1 CO-HEARING OFFICER DODUC: It's too early to
2 start with this, Mr. Mizell.

3 MR. MIZELL: Yes. Earlier the hearing officer
4 indicated a desire to bring back all of the witnesses
5 for further questioning for the board's purposes on
6 September 29th and 30th. In a response, I indicated
7 that there are key modeling staff who are consultants to
8 the department who have conflicts with the 29th but will
9 be available the 30th. And if it makes sense, if we
10 could agree to schedule the modelers for the 30th, that
11 would help with my logistical needs.

12 CO-HEARING OFFICER DODUC: We will so schedule
13 the modelers for the 30th.

14 Anything else? All right.

15 With that, Mr. Mizell, are you ready with your
16 water rights panel?

17 MR. MIZELL: Yes, we're ready.

18 The panel you have before you today are
19 Ms. Maureen Sergent, Mr. Rob Cooke, and
20 Mr. Ray Sahlberg. They'll be discussing water rights
21 and presenting a PowerPoint presentation on the matter
22 to summarize the written testimony.

23 CO-HEARING OFFICER DODUC: At this time, I
24 will ask you to please stand and raise your right hand.

25 Do you swear or affirm that the testimony you

1 are about to give is the truth? And, if so, answer

2 "Yes, I do."

3 WITNESS SERGENT: Yes, I do.

4 WITNESS COOKE: Yes, I do.

5 WITNESS SAHLBERG: Yes, I do.

6 CO-HEARING OFFICER DODUC: You may begin,

7 Mr. Mizell.

8 --oOo--

9 DIRECT EXAMINATION

10 MR. MIZELL: Ms. Sergeant, is DWR Exhibit 19 a
11 correct copy of your statement of qualifications?

12 WITNESS SERGENT: Yes, it is.

13 MR. MIZELL: And is DWR Exhibit 53 a correct
14 copy of your written testimony?

15 WITNESS SERGENT: Yes, it is.

16 MR. MIZELL: And, Mr. Cooke, is DWR Exhibit 20
17 a correct copy of your statement of qualification?

18 WITNESS COOKE: Yes, it is.

19 MR. MIZELL: Is DWR 60 a correct copy of your
20 written testimony?

21 WITNESS COOKE: Yes, it is.

22 MR. MIZELL: I'll turn that over to
23 Amy Aufdemberge.

24 MS. AUFDEMBERGE: Amy Aufdemberge from the
25 Department of the Interior. I have a couple of issues

1 to address at this time, as well, just to clarify some
2 things.

3 But first, we'll start with: Mr. Sahlberg, is
4 DOI 1 a true and correct copy of your statement of
5 qualifications?

6 WITNESS SAHLBERG: Yes, it is.

7 MS. AUFDEMBERGE: And is DWR 14A a true and
8 correct copy of your written testimony.

9 WITNESS SAHLBERG: Yes, it is.

10 MS. AUFDEMBERGE: We have a couple things at
11 this point -- well, I guess just to be clear on the
12 record, we wanted to go through and have Mr. Sahlberg
13 verify DOI 5, DOI 5 errata, DOI 9 through 31
14 consecutively.

15 Are those all true and correct copies?

16 WITNESS SAHLBERG: Yes, they are.

17 MS. AUFDEMBERGE: Thank you.

18 Then we have a portion of Mr. Sahlberg's
19 testimony, especially in the PowerPoint, that is a
20 background section for the CVP project description.
21 It's a project description of the CVP, not of the
22 Cal WaterFix. We offer it as factual testimony just to
23 make sure that some of the basic infrastructure facts of
24 the CVP are in the record.

25 So, we could forgo -- we could submit that and

1 he could cross-examine on it. But we don't believe he
2 means to actually present it orally, unless you would
3 like to see it.

4 CO-HEARING OFFICER DODUC: I'm sorry. Help me
5 understand. You presented as background information the
6 expert, in your opinion, is qualified to testify and
7 answer cross-examination on it. But --

8 MS. AUFDEMBERGE: Yeah. But this portion of
9 the CVP is really just factual testimony for the record.
10 We're more than happy to go through it. And we're --
11 either way, he's obviously eligible to be cross-examined
12 on it. But in the interest of time, I think that most
13 people in this room probably have pretty good
14 understanding of -- of the facts in here, so we can --

15 CO-HEARING OFFICER DODUC: You do not need to
16 cover it in your direct, if that's the question.

17 MS. AUFDEMBERGE: That's the question.

18 CO-HEARING OFFICER DODUC: Yes.

19 MS. AUFDEMBERGE: Thank you.

20 And then we have one more -- if we're -- if
21 it's possible to bring up Mr. Sahlberg's written
22 testimony, which is DOI 4. If you could go to page 2 of
23 that.

24 Mr. Sahlberg, do you see the second page,
25 paragraph 2 of your written DOI 4?

1 MR. SAHLBERG: Yes, I do.

2 MS. AUFDEMBERGE: Do you have any clarifying
3 statements you'd like to make?

4 MR. BERLINER: Yes. The first sentence says
5 that I join in the testimony of Maureen Sergent of the
6 Department of Water Resources.

7 What I meant by "join in the testimony" is
8 that I agree with her analysis and conclusions and saw
9 no need to repeat the same analysis in my written
10 testimony.

11 MS. AUFDEMBERGE: Thank you. That's all we
12 have. Thanks.

13 CO-HEARING OFFICER DODUC: Thank you.

14 MR. MIZELL: With that, we will turn to
15 Ms. Sergent, who will present an oral summary of her
16 written testimony, and she may provide two
17 clarifications or corrections to the details in her
18 written testimony which we will then follow with a
19 written errata sheet we will submit.

20 WITNESS SERGENT: Yes. Before I begin with my
21 direct, I just wanted to make two corrections to the --
22 in my testimony, typographical errors.

23 The first one is on page 8 of my testimony at
24 line 19. It currently says "or decreased by 1.2 million
25 acre feet." It should read "decreased by 1.1 million

1 acre feet."

2 And then the second correction is on page 20,
3 at line 2. It reads currently "DWR-303." It should
4 read "DWR-304."

5 Thank you.

6 CO-HEARING OFFICER DODUC: Thank you. So
7 noted for the record.

8 WITNESS SERGENT: Good morning, Chair Doduc,
9 Board Member Marcus, and board staff. I'm Maureen
10 Sergent. I'm a senior engineer with the Department of
11 Water Resources. I work in the State Water Project
12 Analysis Office, and for the past 24 years, my
13 responsibilities have included primarily working with
14 State Water Project water rights and water
15 transfer-related activities.

16 As part of my testimony, I will summarize the
17 four State Water Project rights that are involved in the
18 California WaterFix petition for change.

19 I will address the issue raised by the board
20 as to whether or not the petition would, in effect,
21 initiate a new water right.

22 I will then examine some of the -- briefly
23 examine some of the information provided in earlier
24 panels and describe how DWR believes that the
25 information provided by DWR and reclamation is

1 sufficient for the board to make its necessary finding
2 that the petition can be approved without injuring other
3 utilizers of the water.

4 Lastly, I will describe several different
5 categories of contracts that DWR has executed with its
6 State Water Project contractors as well as Feather River
7 and within the Delta.

8 DWR holds four water rights permits that
9 provide private area water supply for the State Water
10 Project. DWR is diverse water under those water rights
11 to 29 State Water Project contractors, primarily for
12 municipal, industrial, and irrigation purposes.

13 Those contractors are located in the
14 Feather River, San Francisco Bay area, San Joaquin
15 Valley, Central Coast, and Southern California area.

16 In addition to the water delivered to our
17 State Water Project contractors, we deliver -- we
18 release significant amounts of storage for salinity
19 control and fisheries purposes.

20 The State Water Project supply is derived
21 primarily from a combination of unstored water in
22 Feather River, unregulated flow in the Delta, and
23 upstream storage releases.

24 As you've heard described by a number of other
25 individuals, the State Water Project appropriates water

1 only after its meets all of its regulatory requirements
2 and contractual requirements. And due to the current
3 location of the State Water Project export facilities in
4 the southern Delta, there are a number of times, even
5 during excess flows, when that location results in a
6 significant constraint on the ability to export water.

7 DWR and reclamation are jointly responsible
8 for meeting most of the objectives contained in the
9 D-1641, and the two projects coordinate their
10 operations.

11 As you heard Mr. Leahigh testify earlier, the
12 State Water Project is operated consistent with all of
13 our regulatory obligations, including those contained in
14 D-1641, the two biological opinions for Delta smelt and
15 salmon, the Corp of Engineers permit, the Department of
16 Fish and Wildlife incidental tank permit, and any other
17 observations that are placed on the State Water Project.

18 This is a table that I prepared to summarize
19 the four State Water Project water rights that are
20 included in this petition.

21 As you can see, the water rights contain
22 individual quantities for both direct diversion and
23 diversion to storage from the Feather River near
24 Oroville, as well as from the Sacramento-San Joaquin
25 Delta.

1 Those four permits currently contain a number
2 of points of currently authorized points of diversion
3 and rediversion. The two permits that authorize
4 diversion from the Feather River include locations in
5 the Oroville-Thermalito complex as well as the North Bay
6 Aqueduct.

7 And all four permits contain authorized points
8 of diversion at Clifton Court Forebay, which is the
9 intake to Banks Pumping Plant, as well as the Jones
10 Pumping Plant, and a location identified as the Delta
11 water facilities, which is located near Hood. That
12 location was the originally intended intake to the
13 Peripheral Canal.

14 The current proposal before you is to add the
15 three new points of diversion in the North Delta
16 identified as California WaterFix Intakes 2, 3, and 5.

17 As you saw earlier, all four permits contain
18 individual amounts that identify how much water can be
19 diverted or rediverted under each permit. However, all
20 four permits contain a term that limits the maximum rate
21 of diversion, combined rate of diversion, from Delta
22 under all four permits to 10,350 CFS.

23 You've heard already that the petition before
24 you requests the inclusion of three new points of
25 diversion, the three intakes of maximum -- capacity of

1 3,000 CFS each. All the other provisions contained in
2 the permits will remain unchanged, including the source
3 of the water, the rate of direct diversion and diversion
4 to the storage, the season of diversion, the maximum
5 combined rate of diversion from the Delta, which will
6 remain at 10,350 CFS, and the place and purpose of use.

7 In its notice of the petition for change, the
8 Water Board identified one of the issues to be addressed
9 as whether or not this petition would, in effect,
10 initiate a new water right.

11 Water Code Section 1701 identifies that -- or
12 specifies that a water right holder can change its point
13 of diversion with the approval of the State Water Board.
14 And consistent with the requirements of Water Code
15 Section 1701 and the reasoning provided by the State
16 Water Board in its decisions, this petition requests no
17 increase in the maximum rate of diversion under any of
18 the permits, no change in the season of diversion, no
19 change in the source of water to be diverted, and no
20 change in the combined maximum rate of diversion from
21 the Delta.

22 Water Code Section 1701 does not restrict the
23 number of diversions that can be requested or the size
24 of any particular diversion if it is within the existing
25 permits of the water rights. Therefore, DWR believes

1 that this petition does not, in effect, initiate a new
2 water right.

3 DWR and reclamation have developed the
4 information that's being presented in this petition as
5 well as the information that was provided for this
6 hearing in order to provide the board with sufficient
7 information to make its required finding that these
8 facilities can be designed and constructed and operated
9 without injuring any other legal user of water.

10 As has been discussed in earlier testimony,
11 DWR and reclamation operates first to meet in-basin and
12 all regulatory and contractual requirements. All
13 existing protections, including those in D-1641, will
14 remain in place.

15 There will be California WaterFix-specific
16 requirements that will be adopted as part of any order,
17 and those must be in effect before any water could be
18 diverted through the facilities.

19 The California WaterFix does not change any of
20 the upstream operational criteria. And DWR will
21 continue to meet the terms and conditions of any of our
22 upstream contractual requirements as well as in-stream
23 flow requirements.

24 Because the projects are operated first to
25 meet the in-basin demands, the availability of

1 unregulated flow to other legal users will not be
2 diminished. And while there may be small changes during
3 lower flow periods, the -- and in water levels, we've
4 shown that those changes are small. Those changes are
5 both small in size and duration as well as the number of
6 years in which those would occur.

7 And while there may be some small changes in
8 water quality, the modeling also shows that D-1641
9 requirements can continue to be met and that upstream
10 end of September storage will remain unchanged.

11 DWR has exclusive right to their storage, and
12 while there may be some changes as a result of change in
13 release schedule or change in quantity of the storage
14 releases, no other water right holder has a right to
15 those storage releases.

16 And as I mentioned earlier, while the modeling
17 shows there may be some small changes in water quality,
18 the requirements contained in D-1641 will be met. And
19 those requirements were established under the
20 Water Board's water quality responsibilities in water
21 quality control plan. Most of those objectives are
22 implemented on the projects through D-1641, and the
23 department is committed to continuing to meet those
24 objectives to protect these beneficial uses.

25 I'll now describe several different categories

1 of contracts that the department has executed.

2 The first type is the long-term water supply
3 contract that DWR has executed with our water supply
4 contractors. Those contracts identify how we allocate
5 the water available in any particular year to those
6 contractors.

7 We executed water supply settlement agreements
8 with diverters that had existing water rights on the
9 Feather River. The major settlement agreements involved
10 six contractors who had prior rights. The -- we also
11 have general settlement agreements with parties in the
12 Delta. Some of those agreements contain a water supply
13 component, some water quality, and some combination of
14 both.

15 And the settlement agreements were executed
16 during the time when DWR was -- had applied for its
17 initial petitions or to appropriate water, and during
18 the period when facilities were being constructed. They
19 were executed to address issues associated with
20 State Water Project operations both on the Feather River
21 and in the Delta.

22 And DWR is committed to continuing to meet the
23 terms of the conditions of both the long-term water
24 supply contracts and all of these settlement agreements.

25 DWR delivers water to 29 State Water Project

1 contractors consistent with the terms of the water
2 supply agreements. Those agreements each contain a
3 Table A amount, and that amount is essentially the
4 proportional share of each contractor's -- or each
5 contractor's proportional share of the water that is
6 determined to be available in any particular year for
7 delivery to the contractors.

8 The current combined maximum Table A for the
9 contractors downstream of Oroville is just under
10 4.2 million acre feet.

11 As you heard Mr. Leahigh discuss earlier, the
12 water that is determined in any particular year to be
13 available for delivery to our water supply contractors
14 considers first the -- the hydrologic conditions, the
15 upstream contractual requirements, the -- any of our
16 regulatory requirements, including what is necessary to
17 meet Delta objectives, among a number of other concerns.

18 Those contracts contain no specific guarantee
19 of any quantity beyond their share of what's available
20 in any particular year. And they do not contain any
21 entitlement to a particular operational scenario or
22 end-of-season storage in Oroville.

23 And DWR has sole discretion over the operation
24 of its State Water Project facilities.

25 The primary settlement agreements that DWR

1 holds with diverters on the Feather River includes six
2 settlement contracts with diverters who had prior rights
3 to divert from the Feather River, both in location near
4 Oroville, the currently diverted now out of the
5 Thermalito Afterbay, as well as four contractors that
6 divert downstream of Lake Oroville.

7 Each of those contracts provides for a defined
8 water supply with a specific contract deficiency that is
9 tied solely to the inflow to Oroville. We can cut those
10 contractors only in years when the inflow to Oroville
11 meets or is below specific targets.

12 DWR operates in Oroville each year to first
13 consider how much water is necessary to meet those
14 contractual obligations in each of those contracts.
15 However, the contracts themselves do not assign any
16 portion of DWR's water rights to any of those
17 contractors. They do not contain any specific
18 entitlement to storage in Oroville or entitlement to any
19 particular operational scenario or end-of-season target
20 storage. DWR retains sole discretion over Lake Oroville
21 operations.

22 The California WaterFix does not change any of
23 the upstream operational criteria. It doesn't change
24 any of the terms of the settlement agreements. And as
25 DWR has done historically, we will continue to meet the

1 Feather River instream flow requirements as well as the
2 obligations under those settlement agreements.

3 DWR has settlement agreements with five
4 different entities in the Delta: Contra Costa, City of
5 Antioch, North Delta Water Agency, Byron-Bethany
6 Irrigation District, and East Contra Costa Irrigation
7 District.

8 The Contra Costa Water District and City of
9 Antioch contract both specify the number of days that
10 water of a particular quality shall be available at
11 their points of diversion. And they also identify what
12 will be considered the water supply deficiency if those
13 number of days are not met and what the compensation for
14 that water supply deficiency will be.

15 The department executed an agreement with
16 North Delta Water Agency in 1981, and that agreement is
17 for water of a suitable quality for diversion by any of
18 the diverters within the boundaries of the North Delta
19 Water Agency.

20 The North Delta Water agency contract includes
21 essentially the entire North Delta region, and so it
22 covers all of the diverters within the North Delta area.

23 That contract specifies the water quality to
24 be obtained at a number of locations throughout
25 North Delta Water Agency, and it also identifies --

1 contains draught emergency provisions that identify what
2 controls during a drought and what steps the department
3 should take as well as provisions to compensate
4 landowners if, in drought emergencies, the department is
5 unable to maintain those water quality objectives.

6 The Byron-Bethany Irrigation District is an
7 agreement that addresses issues between BBID and the
8 department for its diversions from the intake channel to
9 the Banks Pumping Plant.

10 And the last contract, East Contra Costa
11 Irrigation District, DWR executed an agreement with
12 East Contra Costa in 1981, and that agreement recognized
13 but did not quantify the ECCID's, or East Contra
14 Costa's, pre-1914 water right. And it contains water
15 quality objectives that must be maintained at
16 Indian Slough. And those objectives are intended to
17 protect the historic agricultural use within East Contra
18 Costa from April through October.

19 Subsequent to signing the agreement
20 East Contra Costa and Contra Costa Water District
21 requested an amendment to that agreement to allow water
22 under the East Contra Costa agreement to be diverted at
23 Contra Costa's diversion facilities at Rocks Slough and
24 Old River for municipal treatment and delivery to the
25 surface area of East Contra Costa.

1 There was some change in use within the
2 district. I think East Contra Costa has no ability to
3 treat for municipal purpose. It is an ag district.

4 Although this represented a change in purpose
5 of use as well as season of use from the historic use
6 within East Contra Costa, DWR agreed to allow the change
7 on the condition that it did not result in a greater
8 water supply demand on the project as well as a
9 recognition that the water quality objectives for
10 agricultural purposes contained in the agreement would
11 be the controlling objectives required.

12 And if the, in drought emergencies, DWR was
13 not able to maintain those and there were diverters
14 within the district that saw crop losses associated with
15 that, any impacts associated with water quality would be
16 limited to agricultural diverters within the district.

17 These agreements were executed to address
18 potential issues associated with State Water Project
19 operations within the Delta. And those agreements
20 contain provisions whereby the districts' consent to the
21 diversions by the projects from the Delta as long as
22 those agreements are in effect and the department is in
23 conformance with those agreements. Again, the
24 California WaterFix will not change any of the terms of
25 these agreements, and we will continue to honor the

1 commitments in those agreements.

2 In March of this year, DWR executed a
3 settlement agreement with Contra Costa Water District
4 related to potential CEQA affects associated with the
5 California WaterFix. This agreement allows Contra Costa
6 water to be diverted -- a portion of Contra Costa's
7 water to be diverted to the California WaterFix
8 facilities. The amount of diversion depends on --
9 varies from 250,000 acre feet a year, depending on the
10 amount of water that -- the total amount of water that
11 is diverted through the facilities.

12 The source of the water is Contra Costa water.
13 There is no water supply component in the settlement
14 agreement. It does not increase total annual diversions
15 from the Delta, nor does it increase the diversions by
16 Contra Costa. And based on the analysis done by
17 Dr. Nader Tehrani, it does not affect other legal users
18 in the Delta.

19 So, in conclusion, DWR believes it has
20 demonstrated that the California WaterFix facilities can
21 continue to operate within all the terms of the existing
22 permits and the existing regulatory requirements
23 protecting other legal users. There will be no
24 expansion of the quantity, rate, timing, source,
25 purpose, or place of use of any of the -- under any of

1 the water rights. It will not, in effect, initiate a
2 new water right. And we believe that this information
3 supports a finding by the board that the California
4 WaterFix petition can be approved without injuring other
5 legal users as a result of the construction or operation
6 of the State Water Project.

7 CO-HEARING OFFICER DODUC: Thank you,
8 Ms. Sergeant.

9 Before you continue, Mr. Mizell, let me just
10 note for the record that during the presentation of
11 Ms. Sergeant's testimony, we've been joined by
12 Chair Marcus, board member Dorene D'Adamo, and
13 Ms. Riddle.

14 Mr. Mizell?

15 MR. MIZELL: That concludes Ms. Sergeant's
16 PowerPoint. We'll turn it over to Ray Sahlberg at this
17 point.

18 If Ray's slides are not included on this
19 PowerPoint presentation, we have a second file, and --

20 MS. McCUE: Could you identify that list,
21 Maureen Sergeant's PowerPoint for the record? I think
22 it's DWR 3.

23 WITNESS SERGENT: That's correct.

24 MR. MIZELL: We may need five minutes to get
25 Ray's PowerPoint file to the clerk.

1 CO-HEARING OFFICER DODUC: All right. Let's
2 take a five-minute break. We'll resume at 9:40.

3 (Off the record at 9:34 a.m. and back on
4 the record at 9:40 a.m.)

5 CO-HEARING OFFICER DODUC: We are back on the
6 record.

7 Ms. Aufdemberge, are you ready to present
8 Mr. Sahlberg?

9 MS. AUFDEMBERGE: Yes, Your Honor.

10 WITNESS SAHLBERG: Good morning, Hearing
11 Officer Doduc, Hearing Officer Marcus, board member
12 D'Adamo, board staff. My name is Ray Sahlberg. I'm the
13 water rights officer for the Mid-Pacific Region for the
14 Bureau of Reclamation.

15 I lead a group that administers and protects
16 the water rights for reclamation facilities within the
17 region. We review petitions and applications from other
18 parties for potential injury to reclamation water
19 rights. We also prepare and file petitions to implement
20 various reclamation projects as required. We are also
21 the group that does the permitting reporting for the
22 Bureau's permits to the State Board.

23 Today I'm here to testify about the WaterFix
24 and its relationship with the Central Valley Project.

25 We're joining in the WaterFix petition to add

1 the three points of diversion to certain reclamation
2 water rights. I was going -- reclamation, as I stated
3 earlier, we join in the testimony of Maureen Sergent of
4 DWR on the changes requested by the petition, the fact
5 that it's not initiating a new water right, and the fact
6 that the information provided by the panel, various
7 panels, supports the conclusion by the State Board that
8 the WaterFix will not injure any legal users of water.

9 All right.

10 CO-HEARING OFFICER DODUC: Mr. Sahlberg,
11 please identify this exhibit.

12 WITNESS SAHLBERG: This exhibit is DOI 5A.

13 CO-HEARING OFFICER DODUC: And what page are
14 we on since it's not numbered?

15 WITNESS SAHLBERG: My apologies.

16 I'm sorry. We're on -- can you give us a
17 moment, since we're --

18 CO-HEARING OFFICER DODUC: The page is
19 entitled "CVP Water Rights Permits."

20 WITNESS SAHLBERG: And that would be --

21 CO-HEARING OFFICER DODUC: I guess that's the
22 only way to identify it.

23 WITNESS SAHLBERG: This would be starting
24 page 9. That's page 9. That's page 10. Okay.

25 CVP has 31 water right permits, 22 direct

1 diversion storage permits and 9 power permits.
2 11 permits are the subject -- are included in the
3 WaterFix petition. They are permits for our Shasta,
4 Trinity, and Folsom facilities.

5 The rates of diversion starts with -- storage
6 amounts for each permit -- for each facility are shown
7 above. Here's a breakup -- a summary of each permit
8 that's part of the petition.

9 Again, we're joining and concurring with DWR's
10 testimony on what the petition is asking for. All other
11 provisions of our permits will remain unchanged: The
12 sources of water, the rate of direct diversion,
13 diversion to storage, the season of diversion, the CVP
14 maximum combined rate of diversion from the Delta which
15 is 4600 CFS, our consolidated place of use and the
16 purposes of use under these permits.

17 The existing main points of
18 diversion/rediversion of these permits included
19 Shasta Dam, Trinity Dam, Whiskeytown Dam, Folsom Dam,
20 the Tehama-Colusa Canal, the diversion facilities for
21 our Sacramento settlement contractors, the Jones Pumping
22 Plant at Tracy, and Friant Dam.

23 The proposed -- we are proposing to add three
24 new intake locations in the Northern Delta to -- near
25 Hood to the permits listed in the petition. There is a

1 map of where all those facilities are. You'll notice
2 the Tracy -- the intakes between Tracy and Sacramento.

3 Again, we are joining and concurring with
4 Ms. Sergent's testimony that this is not a new water
5 right. We are not seeking any increase in -- any
6 increase in rates of diversion in the Delta beyond
7 currently permitted rates. We are not seeking an
8 expansion of our season of diversion or in the
9 consolidated -- CVP's consolidated place of use. We're
10 not seeking changes in our purposes of use under our
11 permits.

12 We also join and concur with Ms. Sergent's
13 testimony that the information provided supports a
14 conclusion that the WaterFix will not injure other legal
15 users of water. They will be operated in a manner that
16 allows reclamation to meet senior water right
17 obligations and current CVP regulatory and legal
18 obligations. We will continue to honor all senior water
19 rights. We will -- compliance with D-1641 will ensure
20 that there are no impacts in Delta water users by the
21 WaterFix.

22 Minor changes in water quality will still be
23 within D-1641 limits and objectives. And the settlement
24 agreements between the Department of Water Resources and
25 Contra Costa will not affect our ability to meet senior

1 water rights and our legal obligations.

2 I'd like to move on to our contracts.

3 Reclamation has several different of types of contracts
4 for the CVP.

5 First one is what we call a long-term water
6 service and repayment contract. These are contracts for
7 water appropriated under the CVP's water rights.

8 The second type of contract is what we call
9 our water right settlement contract. These are
10 contracts that settle disputes, water right disputes,
11 resulting from construction of CVP facilities.

12 The contract amount for the water right
13 settlement contract is negotiated between the
14 reclamation and the contractors. It is not a
15 quantification of the contractors' underlying right.

16 We have 127 long-term water service and
17 repayment contracts. The maximum amount of water
18 deliverable under those contracts is one -- is
19 6.1 million acre feet. The actual quantity for any
20 contractor is eight years, depending on a number of
21 factors, and Mr. Mizell's testimony went into that in
22 detail. And nothing in the contracts governs overall
23 CVP operations.

24 The Sacramento River settlement contracts are
25 136 contracts of water users downstream of the

1 Shasta Dam. Again, they settle water rights disputes
2 resulting from the construction of Shasta Dam. They do
3 contain a shortage provision that is based on the inflow
4 into Lake Shasta. This is known as the Shasta criteria.

5 Shortage provision provides they get either
6 100 percent of their contract supply or 75 percent of
7 their contract supply, depending on Lake Shasta's
8 hydrology. And the amounts that they receive under the
9 contract are shown above.

10 I would also add that the contracts have two
11 components -- base supply, which is the quantities to
12 settle water rights dispute, and project water, which is
13 water appropriated under the CVP's permits -- that is
14 provided to cure what we call deficiencies in their
15 water rights.

16 This is delivered typically in the late summer
17 when their -- their base or own water rights would have
18 insufficient supplies to meet their demand. And the
19 amounts that they receive in Shasta in critical years
20 are shown there.

21 Other CVP settlement agreements: There's the
22 exchange contract. That's with four contractors on the
23 San Joaquin River which allows us to operate the Friant
24 division. They exchange their rights of the San Joaquin
25 River in exchange for a supply of water from the Delta.

1 That contract has shortage provisions based on the
2 Shasta criteria. Normally, they get 840,000 acre feet.
3 In a Shasta critical year, they only receive
4 650,000 acre feet.

5 We also have also nine other settlement
6 contracts in the San Joaquin River. Those shortage
7 provisions, again, are based on the Shasta criteria.

8 We have the San Joaquin River holding
9 contracts. These are contracts with diversion below
10 Friant Dam to settle a water rights dispute that was the
11 subject of Dugan v. Rank. They provide for five CFS if
12 the contract provides for diversion. And there's no
13 shortage provision in those contracts.

14 And have five other contract agreements on the
15 American and Stanislaus Rivers to settle other water
16 rights disputes.

17 California WaterFix will not change any
18 provision of these contracts. They will not -- it will
19 not alter upstream operational criteria, will not change
20 the terms of the water service repayment settlement
21 contracts or any other operational agreements. We will
22 continue to comply with the terms and conditions of all
23 of these contracts.

24 That concludes my testimony.

25 CO-HEARING OFFICER DODUC: Thank you.

1 Anything else, Mr. Mizell? Ms. Aufdemberge?

2 MR. MIZELL: Not at this time. The panel is
3 available for cross-examination.

4 CO-HEARING OFFICER DODUC: All right.

5 Before we proceed, a question for the court
6 reporter. I've seen you turn your head to look at the
7 screen. Is it helpful for you? If so, could we ask
8 that during the break perhaps, a monitor be set up for
9 her so she doesn't have to keep turning back and forth?

10 THE REPORTER: It would helpful.

11 CO-HEARING OFFICER DODUC: We will try to make
12 that happen.

13 With that, we will now turn to
14 cross-examination. And Mr. O'Laughlin, you are up.

15 Mr. O'Laughlin, I don't see Ms. Morris in the
16 room. Is that because -- or is the State Water
17 Contractor represented here today?

18 MS. SHEEHAN: Yes.

19 CO-HEARING OFFICER DODUC: Okay. If that's
20 the case then, Mr. O'Laughlin, I will still allow you to
21 go first because of your scheduling conflict, but I
22 would prefer then to go back to the order, and we'll
23 start with the State Water Contractors after you.

24 MR. O'LAUGHLIN: Is this where you want me
25 today?

1 CO-HEARING OFFICER DODUC: I'm glad you added
2 that caveat "today."

3 MR. O'LAUGHLIN: We've already talked about
4 that. Okay.

5 --o0o--

6 CROSS-EXAMINATION

7 MR. O'LAUGHLIN: We have an exhibit that we
8 used last time -- there's a list of them. Met your
9 statements telling you what they were. We'll call them
10 up during the cross-examination. You wanted to know
11 ahead of time what we would be discussing.

12 So there's two areas of inquiry. One with
13 Mr. Sahlberg has to do almost exclusively with the
14 operations of New Melones Reservoir and meeting
15 requirements at Vernalis and/or the interior Delta. We
16 have some minor questions about the permits for -- that
17 reclamation has put in for the WaterFix projects and
18 what's in and out. We also have some questions about
19 the permits and their ability to divert San Joaquin
20 River water at Jones.

21 So we're pretty much focused with Mr. Sahlberg
22 on the south end of the valley.

23 In regards to Ms. Sergent's testimony, we will
24 be inquiring about the scope and extent of what DWR did
25 to ascertain the changes in reservoir storage at the

1 projects under California WaterFix on a monthly basis
2 and how those did or did not match up with senior water
3 right diverters in the Sacramento-San Joaquin Bay Delta.

4 Those are the two general areas of inquiry.

5 CO-HEARING OFFICER DODUC: On that second
6 one -- well, I'll allow you to continue with that.

7 MR. O'LAUGHLIN: You can ask.

8 CO-HEARING OFFICER DODUC: But to the extent
9 that Ms. Sergent cannot get into the modeling or any of
10 the technical aspects, you might not get the answer
11 you're seeking.

12 MR. O'LAUGHLIN: Oh, I fully expect not to get
13 the answer I'm seeking.

14 CO-HEARING OFFICER DODUC: Mr. O'Laughlin --

15 MR. O'LAUGHLIN: I hate giving away the story
16 at the beginning. But, yes, an exercise in futility
17 here today. But we have to make a record, and we'll
18 just go through the process. and I'll ask the questions.
19 And I'm sure there's a lot of questions that will not be
20 answered, but that's perfectly okay.

21 CO-HEARING OFFICER DODUC: All right.
22 Mr. O'Laughlin.

23 MR. O'LAUGHLIN: It's probably going to take
24 at least an hour, but probably not much more, I hope.
25 Okay.

1 Ms. Sergeant, my name is Tim O'Laughlin. I
2 represent the San Joaquin Tributaries Authority and a
3 number of units.

4 On page 11 of your testimony, line 6, you
5 state that the -- starting at line 4, really: "The SWP
6 and CVP must continue making supplemental storage
7 releases to meet the D-1641 requirements even after they
8 have ceased appropriating unregulated flow."

9 Is that a true and correct statement in
10 regards to the operations in the New Melones Reservoir?

11 Is that a correct statement?

12 WITNESS SERGENT: Excuse me. As far as
13 whether we have ceased --

14 MR. O'LAUGHLIN: No. Whether you continue to
15 make releases to meet D-1641 even after you have ceased
16 appropriating unregulated flow at New Melones Reservoir.

17 WITNESS SERGENT: With respect to operations
18 at the New Melones Reservoir, you're going to have to
19 ask as far as the schedule release. But with respect
20 Term 91 conditions --

21 MR. O'LAUGHLIN: No, this is not Term 91.
22 Read this statement. It says "D-1641."

23 So my question is --

24 CO-HEARING OFFICER DODUC: Hold on. Hold on,
25 Mr. O'Laughlin. It would be helpful if we could get

1 that portion up so that all of us can see what

2 Mr. O'Laughlin is reading.

3 MR. O'LAUGHLIN: Sure. That's Maureen

4 Sergeant's direct testimony, page 11, starting at line 4.

5 CO-HEARING OFFICER DODUC: DWR 19?

6 MR. O'LAUGHLIN: Yes.

7 CO-HEARING OFFICER DODUC: Oh, no. That's --

8 I'm sorry. "Statement of Qualifications."

9 WITNESS SERGENT: DWR 53.

10 CO-HEARING OFFICER DODUC: 53. Page?

11 MR. O'LAUGHLIN: Page 11, lines 4 through 7.

12 WITNESS SERGENT: This statement is correct in

13 that if the requirements are not being met in the Delta

14 and we are no longer making appropriations of

15 unregulated flow, DWR and reclamation must make

16 supplemental storage release. The operators determine

17 where those supplemental storage releases must come from

18 depending on what they're trying to meet.

19 MR. O'LAUGHLIN: My question is -- take a

20 look -- you got to focus on the question. The question

21 is very specific. It's to New Melones Reservoir. Okay?

22 If you can answer the question in regards to the

23 New Melones operations, answer the question. If you

24 prefer that you don't know the answer, just say you

25 don't know.

1 CO-HEARING OFFICER DODUC: Mr. O'Laughlin,
2 state -- enough. State the question.

3 MR. O'LAUGHLIN: Well, the question -- I'll
4 just have it read back.

5 Can you please read it back?

6 CO-HEARING OFFICER DODUC: I think it's more
7 efficient if you reask the question.

8 MR. O'LAUGHLIN: Okay. Looking at this line
9 again, do you know if New Melones Reservoir continues to
10 release water from supplemental storage releases to meet
11 D-1641 at Vernalis after they had ceased appropriating
12 unregulated flow?

13 WITNESS SERGENT: To my knowledge, they do.

14 MR. O'LAUGHLIN: Okay.

15 WITNESS SERGENT: And you can confirm that
16 with Mr. Milligan.

17 MR. O'LAUGHLIN: Did you confirm that with
18 Mr. Milligan?

19 WITNESS SERGENT: I did not ask Mr. Milligan.

20 MR. O'LAUGHLIN: What evidence have you relied
21 upon that reclamation continues to release water from
22 storage to meet D-1641 requirements at Vernalis?

23 WITNESS SERGENT: My knowledge with respect to
24 New Melones operations is limited to my conversations
25 with reclamation. So I'll defer any further questions

1 on it to Ray.

2 MR. O'LAUGHLIN: That's fine. But that's not
3 going to happen. You said you believe they did this,
4 and you said you confirmed it.

5 So who did you talk to at reclamation that
6 told you that reclamation continues to release water
7 from storage to meet requirements of D-1641 at Vernalis?

8 WITNESS SERGENT: It's based on my
9 conversations with water rights staff at reclamation and
10 CBO staff.

11 MR. O'LAUGHLIN: Who would that be?

12 WITNESS SERGENT: It would be both
13 Ray Sahlberg and Lisa Holmes as well as Liz Kidick
14 [phonetic].

15 MR. O'LAUGHLIN: And they told you that
16 reclamation meets the Vernalis requirements under
17 D-1641?

18 WITNESS SERGENT: As required and as they can.

19 MR. O'LAUGHLIN: So as you sit here today,
20 then, you believe that the statement set forth on
21 page 11, lines 4 through 7, that we just went through is
22 true and correct; is that true?

23 WITNESS SERGENT: I believe it is.

24 MR. O'LAUGHLIN: Mr. Sahlberg, I have
25 background questions for you, first.

1 You graduated from Santa Clara University
2 School of Law in 1993; is that correct?

3 WITNESS SAHLBERG: Yes.

4 MR. O'LAUGHLIN: When did -- did you take the
5 California Bar at that time?

6 WITNESS SAHLBERG: I took it in that summer,
7 yes.

8 MR. O'LAUGHLIN: Okay. Did you pass?

9 WITNESS SAHLBERG: Yes, I did.

10 MR. O'LAUGHLIN: And so you've been a member
11 of the California Bar since 1993?

12 MR. MIZELL: Objection. Relevance.

13 MR. O'LAUGHLIN: Well --

14 CO-HEARING OFFICER DODUC: Mr. O'Laughlin?

15 MR. O'LAUGHLIN: Goes to his expertise, his
16 background, his ability to testify. Goes to the weight
17 of his testimony.

18 CO-HEARING OFFICER DODUC: Go ahead,
19 Mr. Sahlberg.

20 WITNESS SAHLBERG: Yes. I have been a member
21 of the Bar since then.

22 MR. O'LAUGHLIN: Okay. Now, since -- looking
23 at your resume that you attached, it doesn't appear that
24 between 1993 and 2003 that you did any work regarding
25 water rights; is that correct?

1 WITNESS SAHLBERG: I did some work related to
2 my job as a repayment specialist with the bureau
3 starting in 2000.

4 MR. O'LAUGHLIN: And does a repayment
5 specialist's expertise have to do with water rights?

6 WITNESS SAHLBERG: You have to have some
7 knowledge of water rights in working with the contracts.

8 MR. O'LAUGHLIN: Okay. And then since 19- --
9 since 2003, you've been dealing with water rights for
10 the United States Department of Interior and forward,
11 correct? Water rights?

12 WITNESS SAHLBERG: Actually, I started the
13 position as water rights officer in July of 2006.
14 During the time I was in Washington, I did a lot of
15 things related to reclamation, not just water rights.

16 MR. O'LAUGHLIN: Okay. In regards to your
17 work from 2003 into 2006 for the United States
18 Department of Interior, tell me how much of your work
19 was done in regards to California water rights as
20 opposed to other water rights in the western states?

21 WITNESS SAHLBERG: Almost none.

22 MR. O'LAUGHLIN: And would it be safe to say
23 that since you've taken on the responsibility as water
24 rights officer for the Mid-Pacific region from 2006 to
25 the present, almost all of your work has been with

1 California water rights; is that correct?

2 WITNESS SAHLBERG: That's correct.

3 MR. O'LAUGHLIN: I noticed in your PowerPoint
4 that you're going -- it's reclamation's -- your
5 testimony that three new points of diversion are going
6 to be requested for 11 permits identified in your
7 PowerPoint; is that correct?

8 WITNESS SAHLBERG: That's correct.

9 MR. O'LAUGHLIN: Okay. I noticed in the
10 11 permits identified for the PowerPoint that there are
11 no permits for the New Melones project.

12 WITNESS SAHLBERG: That's true.

13 MR. O'LAUGHLIN: Why are there no permits for
14 the New Melones projects that were submitted as part of
15 the California WaterFix?

16 WITNESS SAHLBERG: One reason is currently the
17 place of use for New Melones is limited to four
18 counties. The WaterFix would be delivering water
19 outside of those counties. That is probably the main
20 reason.

21 MR. O'LAUGHLIN: Okay. Is it your
22 understanding that there are going to be appropriate
23 Delta flow criteria as part of the proceedings for the
24 California WaterFix?

25 WITNESS SAHLBERG: It's my understanding.

1 MR. O'LAUGHLIN: Okay. Do you have any
2 understanding, as you sit here today, whether or not the
3 flows that have been presented at Vernalis include the
4 Bureau's position regarding appropriate Delta flow
5 criteria?

6 In other words, you've done -- you've said
7 that you're going to try to meet D-1641 and you're
8 making salinity releases, you're meeting other
9 obligations. Do you consider the modeling that you
10 presented to be the appropriate Delta flow criteria for
11 Vernalis?

12 CO-HEARING OFFICER DODUC: Objection. Asked
13 and answered. We went over this with the model.

14 MR. O'LAUGHLIN: No. This isn't a modeling
15 question; this is a water right question. Because this
16 is going to go to the question of whether or not how the
17 permits at New Melones operate and are subjected to or
18 not subjected to the California water rights.

19 I'll just tell you, I'll just --

20 CO-HEARING OFFICER DODUC: Actually, that's
21 fine. I'm going to ask him to answer.

22 MR. MIZELL: I'd like to repeat the
23 Department's standing objection to discussions regarding
24 the San Joaquin River as those are not part of the
25 California WaterFix.

1 CO-HEARING OFFICER DODUC: So noted.

2 Go ahead and answer, Mr. Sahlberg, to the best
3 of your ability.

4 WITNESS SAHLBERG: I'm sorry. Can you repeat
5 the question, please?

6 MR. O'LAUGHLIN: Well, can I -- can we just
7 take one second, if I may, Chair.

8 That's an important point. And I don't know
9 what we want to do with it right now. But if -- if,
10 truly, DWR and reclamation's position is that the
11 San Joaquin River is not going to be involved at all in
12 California WaterFix, including the appropriate Delta
13 flow criteria, I'm happy to stop my cross-examination,
14 drop my protest, and leave, because that's an important
15 point.

16 I'll just tell you where I'm going with this.
17 We've always had the position that we're not opposed to
18 WaterFix and we're not proponents of WaterFix. We just
19 don't understand WaterFix. But our concern was -- is
20 that more water would be coming out of the San Joaquin
21 River to meet the California WaterFix permit terms and
22 conditions, including appropriate Delta flow criteria.

23 If they're saying that the San Joaquin River
24 is off the table in regards to the California WaterFix
25 permit terms and conditions, we're perfectly happy with

1 that. I don't know if you're happy with that. Okay.
2 I'm just being honest about it. I don't know if that's
3 included or not, but we'll be out and I'll stop.

4 That's my concern. I mean, I can go through
5 all these questions and I take Mr. Mizell, you know. If
6 we're out, we're out, and I'll stop.

7 And it poses an interesting question. If you
8 want to take a break and talk to your counsel, you
9 could. Because our concern and is -- you get it?

10 CO-HEARING OFFICER DODUC: I got it,
11 Mr. O'Laughlin. I'm not prepared to let you off the
12 hook that easily.

13 Let's go ahead. You know, whatever agreements
14 you want to discuss with Mr. Mizell and petitioners, you
15 do that on your own time. Let's go ahead and just
16 proceed.

17 Unless Mr. Mizell would like to stipulate
18 without minding the board, let's go ahead and allow
19 Mr. O'Laughlin to proceed with his questioning.

20 And now we have totally confused Mr. Sahlberg.

21 MR. O'LAUGHLIN: Well, no. I'm waiting to
22 hear from DWR. I mean, because, quite honestly, my --
23 trust me, currently, at this time as you well know,
24 my --

25 CO-HEARING OFFICER DODUC: Mr. O'Laughlin?

1 Mr. O'Laughlin, enough. You've asked a question.

2 Mr. Mizell, you still have an objection?

3 MR. MIZELL: I do have the standing objection
4 that the San Joaquin System is not part of the
5 California WaterFix project. I'll be clear, though:
6 It's not the Department's position that it is incumbent
7 upon us to dictate what the appropriate Delta flow
8 criteria are.

9 We read the Delta Reform Act to mean that the
10 board has the purview and the responsibility under that
11 act to consider what they believe are the appropriate
12 Delta flow criteria, and we will meet the regulatory
13 requirements imposed upon the department.

14 So I'm not -- in that statement, letting
15 Mr. O'Laughlin off the hook, because I do not know what
16 is within the board's mind as to what they want to
17 consider on appropriate Delta flow criteria.

18 The project as proposed, however, does not
19 include any changes to the San Joaquin system at this
20 time because we are not putting forth what we believe is
21 the board's duty to determine those appropriate Delta
22 flow criteria.

23 CO-HEARING OFFICER DODUC: All right. That's
24 enough testifying from both counsels.

25 Mr. Sahlberg.

1 WITNESS SAHLBERG: If you are asking me
2 whether the modeling for the WaterFix includes a
3 component of outflow from the San Joaquin River, I would
4 say you have to ask the modelers.

5 MR. O'LAUGHLIN: And that would have been
6 Kristin White, correct?

7 WITNESS SAHLBERG: Among others.

8 MR. O'LAUGHLIN: Is that outflow component
9 fully set forth in the documents that reclamation
10 presented as part of the California part of this
11 proceeding?

12 WITNESS SAHLBERG: I'm sorry?

13 MR. O'LAUGHLIN: Yes. Was the Vernalis
14 outflow component presented as part of the petition in
15 the testimony here today?

16 WITNESS SAHLBERG: No, I don't think so.

17 I don't really understand the question.

18 MR. O'LAUGHLIN: Okay. So let's continue on.

19 You said earlier that the New Melones permits
20 are regulated to the four counties. Can you explain to
21 the board what you meant by that?

22 WITNESS SAHLBERG: New Melones permits limit
23 the delivery of water appropriated at New Melones under
24 the bureau's permits to four counties, which are
25 Calaveras, San Joaquin, I think Tuolumne, and -- I can't

1 remember the other one off the top of my head.

2 MR. O'LAUGHLIN: Were you present when

3 Mr. Milligan testified here at the WaterFix?

4 WITNESS SAHLBERG: I was in the audience.

5 MR. O'LAUGHLIN: Were you present when

6 Ms. Kristin White testified here at the California

7 WaterFix proceedings?

8 WITNESS SAHLBERG: I was in the audience.

9 MR. O'LAUGHLIN: Okay. Is there any portion

10 of the testimony that either Mr. Milligan or Ms. White

11 presented that you disagree with?

12 WITNESS SAHLBERG: No.

13 MR. O'LAUGHLIN: If you could turn your

14 attention to page 2 of your testimony, Mr. Sahlberg.

15 Unfortunately, your testimony does not have

16 lines, so we'll have to divvy up -- figure out what

17 we're talking about.

18 But it looks like it's -- looks like it starts

19 on line 6.

20 CO-HEARING OFFICER DODUC: Let's, for the

21 record, identify it as DOI 4. Is that correct?

22 MR. O'LAUGHLIN: Yes.

23 CO-HEARING OFFICER DODUC: Yes.

24 MR. O'LAUGHLIN: Starts with: "In managing

25 the delivery of CVP water."

1 WITNESS SAHLBERG: Okay.

2 MR. O'LAUGHLIN: So I'm going to focus once
3 again -- and this is on New Melones.

4 WITNESS SAHLBERG: Okay.

5 MR. O'LAUGHLIN: Do you consider the -- it
6 says that "reclamation operates its facilities to meet
7 all statutory and regulatory requirements prior to
8 satisfying contractual obligations."

9 Do you see that line?

10 WITNESS SAHLBERG: Yes.

11 MR. O'LAUGHLIN: Okay. So when you talk about
12 contractual obligations in regards to this statement at
13 this location, is this how the priority occurs at
14 New Melones Reservoir in regards to the '88 agreement
15 between Oakdale and South San Joaquin Irrigation
16 Districts and the United States Bureau of reclamation?

17 WITNESS SAHLBERG: We consider meeting senior
18 water rates to be a statutory and regulatory obligation.

19 MR. O'LAUGHLIN: So, then, if I understand
20 that correctly, maybe rephrase it a little bit
21 differently, then it would be your testimony that the
22 1988 agreement would be a statutory or regulatory
23 requirement; is that correct?

24 WITNESS SAHLBERG: The need to meet senior
25 water rights is a statutory requirement.

1 MR. O'LAUGHLIN: Thank you.

2 There's numerous obligations as set forth in
3 your continuing in that sentence there, including water
4 rights decision D-1641, you have the AFRP, you have
5 biological opinions.

6 Can you tell me the priority at New Melones
7 Reservoir for how the project is operated given the
8 various statutory, regulatory, and contractual
9 obligations?

10 WITNESS SAHLBERG: First of all, I don't
11 believe I listed the AFRP up there.

12 And, secondly, I refer you to the operations
13 testimony on how New Melones is operated to meet those
14 obligations.

15 MR. O'LAUGHLIN: Well, you're the water right
16 person so I have you. I've talked to the operation
17 people. What I want to know is, from a water right
18 perspective, how you set the priorities for meeting the
19 obligations.

20 WITNESS SAHLBERG: I'm sorry. Can you
21 rephrase the question, please?

22 MR. O'LAUGHLIN: Yeah. As the water right
23 person, you have competing statutory, regulatory, and
24 contractual obligations at New Melones. How do you, as
25 the water right person, set the priority for allocating

1 the water resources?

2 WITNESS SAHLBERG: Priorities are set by the
3 operations group.

4 MR. O'LAUGHLIN: So from the water right
5 perspective, you have no input into how New Melones is
6 operated between meeting a ESA obligation under the OCAP
7 biological opinion versus meeting D-1641? Is that what
8 you're telling me?

9 WITNESS SAHLBERG: That's basically correct.

10 MR. O'LAUGHLIN: Do you know, as you sit here
11 today, whether or not the reclamation meets all D-1641
12 requirements at Vernalis?

13 WITNESS SAHLBERG: For the most part, yes.
14 There are times when, due to hydrology and other
15 factors, we ask for and get relief from the D-1641
16 standard via temporary change petition.

17 MR. O'LAUGHLIN: Is your office currently
18 working on the State Water Resources Control Board
19 temporary urgency change petition order that required
20 reclamation to come up with an operation plan to meet
21 the April/May pulse flow requirement?

22 WITNESS SAHLBERG: Water Rights Office is not
23 working on the operations plan.

24 MR. O'LAUGHLIN: Is the Water Right Department
25 working on the TUCP order regarding the water rights

1 allocations for the TUCP for the -- for the water that
2 was used in 2016?

3 MR. MIZELL: Objection. I'll put back on the
4 record the standing objection we have to discussing
5 drought operations and TUCP because they're beyond the
6 California WaterFix.

7 CO-HEARING OFFICER DODUC: Mr. Sahlberg,
8 answer to the best of your ability.

9 Your objection was noted.

10 WITNESS SAHLBERG: I don't know.

11 MR. O'LAUGHLIN: All right. When -- did you
12 assist Ms. Olson in coming up with the modeling
13 parameters to be used to set forth the flows at Vernalis
14 and how New Melones was going to be operated?

15 WITNESS SAHLBERG: I don't know who Ms. Olson
16 is.

17 MR. O'LAUGHLIN: I'm sorry. Ms. White.

18 WITNESS SAHLBERG: No, I didn't.

19 MR. O'LAUGHLIN: Sorry. Okay.

20 So who told Ms. White what operating
21 parameters to use in regards to making water available
22 from New Melones Reservoir?

23 WITNESS SAHLBERG: I'm afraid you'd have to
24 ask Ms. White that question.

25 MR. O'LAUGHLIN: So did you ever tell

1 Ms. White that you have to meet CVP contractors before
2 you meet ESA obligations when you're modeling
3 New Melones Reservoir?

4 WITNESS SAHLBERG: I did not have that
5 conversation with her.

6 MR. O'LAUGHLIN: Did you have any similar type
7 conversations with her in regards to that?

8 WITNESS SAHLBERG: No.

9 MR. O'LAUGHLIN: Is it your understanding that
10 this proposed project is predicated on inflows and
11 outflow to the Delta?

12 WITNESS SAHLBERG: Yes, generally.

13 MR. O'LAUGHLIN: And the key inflow components
14 of the Delta is the San Joaquin River at Vernalis,
15 correct?

16 WITNESS SAHLBERG: Correct.

17 MR. O'LAUGHLIN: Is reclamation amenable,
18 then, to conditioning its permits at New Melones to
19 ensure that the water that is being -- has been modeled
20 previously and presented as part of this petition, in
21 fact, is going to be at Vernalis if this petition is
22 approved?

23 WITNESS SAHLBERG: That is a policy decision
24 that's beyond my pay grade.

25 MR. O'LAUGHLIN: Okay. Do you -- do you -- in

1 regards to the water rights in your department, do you
2 deal with the Endangered Species Act and the OCAP
3 biological opinions?

4 WITNESS SAHLBERG: No.

5 MR. O'LAUGHLIN: Who at reclamation deals with
6 the Endangered Species Act and the OCAP biological
7 opinions in regards to whether or not the RPAs are being
8 met?

9 WITNESS SAHLBERG: That would be the
10 Central Valley Operations Office.

11 MR. O'LAUGHLIN: If I ask questions about the
12 current consultation occurring under the OCAP BOs, you
13 would not know anything about that; is that correct?

14 WITNESS SAHLBERG: That is correct.

15 MR. O'LAUGHLIN: As you sit here today,
16 what -- what is your understanding from a water right
17 perspective of the state -- how is the state going to
18 bind reclamation to the commitment in the petition to
19 meet the flows set forth under D-1641 in the OCAP
20 biological opinions that were modeled?

21 MS. AUFDEMBERGE: Objection. That's compound
22 and assumes facts not in evidence, and legal conclusion.

23 MR. O'LAUGHLIN: Well, I'll rephrase it.

24 CO-HEARING OFFICER DODUC: Rephrase it and
25 break it up, Mr. O'Laughlin.

1 MR. O'LAUGHLIN: Thank you.

2 CO-HEARING OFFICER DODUC: Actually, I would
3 like to know the answer to this question.

4 MR. O'LAUGHLIN: Yes. I think it's a
5 fascinating question.

6 So what is your understanding of the authority
7 of the State Water Resources Control Board to bind
8 reclamation to meet the D-1641 flow components at
9 Vernalis as part of this change petition?

10 WITNESS SAHLBERG: The State Board --

11 MR. BERLINER: I'm going to object. This
12 calls for a legal conclusion. He's a water rights
13 expert; he's not expert on interchange between the
14 reclamation laws and the board's jurisdiction and
15 whether or not the United States has preemption
16 arguments or has exceeded the jurisdiction of the state.
17 I think this is well beyond the expertise of this
18 witness. It's not a water rights question.

19 MR. O'LAUGHLIN: That's a fascinating
20 statement.

21 CO-HEARING OFFICER DODUC: Mr. O'Laughlin,
22 enough.

23 Mr. Sahlberg, answer to the best of your
24 ability. If you do not know, you may say you do not
25 know.

1 WITNESS SAHLBERG: I do not know.

2 CO-HEARING OFFICER DODUC: I would be curious,
3 though, in terms of your expertise as the lead water
4 rights witness for reclamation, if you had not
5 necessarily a legal opinion but an opinion as a water
6 rights expert in responding to Mr. O'Laughlin's
7 question. Recognizing that, although, I do not have the
8 advantage of a law degree or being a member of the Bar,
9 I often have opinions on water rights matters.

10 WITNESS SAHLBERG: I'm sorry, Mr. O'Laughlin.
11 After all that, can you repeat your question, please?

12 MR. O'LAUGHLIN: No, that's not a problem.

13 I just want to know what authority does the
14 State Water Resources Control Board have to bind
15 reclamation to make sure that the flows that you've
16 presented as part of your petition at Vernalis, in fact,
17 show up.

18 WITNESS SAHLBERG: First of all, I'm not quite
19 sure what you mean by "bind."

20 MR. O'LAUGHLIN: Okay. Let me ask it a
21 different way.

22 So are you currently aware that the
23 United States Bureau of Reclamation has permit terms and
24 conditions on the New Melones projects to meet D-1641
25 flow obligations at Vernalis?

1 WITNESS SAHLBERG: Yes.

2 MR. O'LAUGHLIN: Okay. Now, is it your
3 understanding that those permit terms and conditions
4 would continue to occur as this project moved forward?

5 WITNESS SAHLBERG: They would still stay in
6 place, yes.

7 MR. O'LAUGHLIN: And is it, based on your
8 previous statement on page 2, it's your understanding
9 that reclamation will meet those obligations in its
10 permit terms and conditions, correct?

11 WITNESS SAHLBERG: Correct.

12 MR. O'LAUGHLIN: So let's move on to the next
13 question which is the more interesting question.

14 So the more interesting question is the --
15 it's your understanding that reclamation has a OCAP BO
16 RPAs for the New Melones project that included Table 2E
17 which are the recommended flow requirements for the
18 New Melones project; is that correct?

19 MR. BERLINER: Yeah.

20 WITNESS SAHLBERG: I understand those are in
21 place.

22 MR. O'LAUGHLIN: Okay. So my question is:
23 When the modeling was done, the Table 2E flows were
24 included in the model, correct?

25 MS. AUFDEMBERGE: Objection. Asked and

1 answered. We've been through this. The modeling panel
2 has testified at length.

3 CO-HEARING OFFICER DODUC: Mr. O'Laughlin is
4 asking Mr. Sahlberg what he knows. So he may answer.

5 WITNESS SAHLBERG: I do not know. I do not
6 know if those were included in the model.

7 MR. O'LAUGHLIN: Okay. Is it your
8 understanding that the OCAP BO RPA flows for the
9 New Melones project set forth in Table 2E may change
10 over time?

11 WITNESS SAHLBERG: Certainly possible.

12 MR. O'LAUGHLIN: And, in fact, reclamation has
13 requested a reconsultation under the OCAP BO opinion,
14 correct?

15 WITNESS SAHLBERG: That's my understanding.

16 MR. O'LAUGHLIN: And so within the next six or
17 nine months, those flows that were set forth in the
18 modeling may change, correct?

19 WITNESS SAHLBERG: They may.

20 MR. O'LAUGHLIN: So here's my question: So if
21 the modeling was done based on Table 2E flows and
22 Table 2E flows may change under ESA, how is the board
23 going to ensure when it issues its permits for
24 California WaterFix that those flows will show up at
25 Vernalis as set forth in the modeling that you folks

1 have done?

2 CO-HEARING OFFICER DODUC: Let's flip that to
3 how the reclamation ensure compliance, rather than --

4 MR. O'LAUGHLIN: Sure. That's fine with me.

5 WITNESS SAHLBERG: I would say that would be
6 an operations question.

7 MR. O'LAUGHLIN: Do you have any
8 understanding, as you sit here today, how many times the
9 New Melones project has violated the February through
10 June flow requirements for D-1641?

11 WITNESS SAHLBERG: I do not.

12 MR. O'LAUGHLIN: Do you know -- as you sit
13 here today, do you know how many times the New Melones
14 project has violated its project terms and conditions in
15 meeting the April/May pulse flow?

16 WITNESS SAHLBERG: I'm not aware of any
17 violations.

18 MR. O'LAUGHLIN: Do you know, as you sit here
19 today, if -- how many times the New Melones project has
20 violated the permit terms and conditions to meet the
21 October pulse flow?

22 WITNESS SAHLBERG: I'm not aware of any
23 violations.

24 MR. O'LAUGHLIN: And in regards to -- do you
25 know if D-1641, how many times it's violated the

1 Vernalis salinity requirement?

2 WITNESS SAHLBERG: I'm not aware of any
3 violations.

4 MR. O'LAUGHLIN: Are you aware of any
5 requirements in the New Melones permits that make it
6 responsible to meet interior Delta salinity standards?

7 WITNESS SAHLBERG: There are requirements.

8 MR. O'LAUGHLIN: Do you know if those
9 requirements to meet interior Delta salinity are on the
10 New Melones project permits or are on other reclamation
11 permits?

12 WITNESS SAHLBERG: They're on the reclamation
13 permits as well as New Melones.

14 MR. O'LAUGHLIN: I noticed in your submittal
15 on page 2 -- and you talked about it previously --
16 there's no discussion of AFRP. Is there a reason why
17 you left out the Anadromous Fish Restoration Program?

18 WITNESS SAHLBERG: The list of requirements
19 are not all-inclusive.

20 MR. O'LAUGHLIN: Okay. Are there AFRP
21 statutory requirements at New Melones?

22 WITNESS SAHLBERG: I do not know.

23 MR. O'LAUGHLIN: Who would know that?

24 WITNESS SAHLBERG: Central Valley Project
25 Operations Office.

1 MR. O'LAUGHLIN: When you -- would it be safe
2 to say, too, that if, in a given year, that your office
3 does not determine how much water goes to the
4 Stockton East or Central San Joaquin Water Conservation
5 District under their CVP contracts from the New Melones?

6 WITNESS SAHLBERG: The allocations are made by
7 the Central Valley Project Operations Office.

8 MR. O'LAUGHLIN: Okay. So going back, and I
9 have one follow-up question in regards to the ESA.
10 Sorry about beating the ESA drum.

11 Mr. Milligan testified that the OCAP BO table
12 inflows would be met, but he stated that the D-1641
13 April/May pulse flows would not be met.

14 Is there a water right reason for that, as far
15 as you know, within reclamation as to why that was done
16 or why that is being done?

17 WITNESS SAHLBERG: Water right reason?

18 MR. O'LAUGHLIN: Uh-huh. Because you're a
19 water right expert, right?

20 WITNESS SAHLBERG: I believe -- I cannot think
21 of a water right reason.

22 MR. O'LAUGHLIN: And if I have any questions
23 about the federal supremacy clause, I should direct
24 those to other people at reclamation other than
25 yourself?

1 WITNESS SAHLBERG: Are we talking
2 constitutional supremacy clause?

3 MR. O'LAUGHLIN: Yes, in regards to the
4 Endangered Species Act.

5 WITNESS SAHLBERG: Yes, you should.

6 MR. O'LAUGHLIN: Do you an understanding, as
7 you sit here today as a water right expert, whether ESA
8 and the federal supremacy clause trumps the State Water
9 Resources Control Board permit terms and conditions for
10 D-1641?

11 MS. AUFDEMBERGE: Objection. Calls for a
12 legal conclusion.

13 CO-HEARING OFFICER DODUC: He may answer that
14 he does not know.

15 WITNESS SAHLBERG: I do not know.

16 MR. O'LAUGHLIN: Are you familiar with the
17 permit terms and conditions for the New Melones project
18 that require the DFW 1988 agreement flows to be met?

19 WITNESS SAHLBERG: Yes.

20 MR. O'LAUGHLIN: Okay. Is it reclamation's
21 position that the permit terms and conditions for the
22 New Melones project that call for the DFW agreement
23 flows to be met are subsumed by Table 2E?

24 MR. BERLINER: I don't know.

25 MR. O'LAUGHLIN: Okay. Do you know if they're

1 being met by Table 2E?

2 WITNESS SAHLBERG: I don't know.

3 MR. O'LAUGHLIN: Okay. Do you know, since
4 2009, if reclamation has made any AFRP releases from
5 New Melones Reservoir?

6 WITNESS SAHLBERG: I don't know.

7 MR. O'LAUGHLIN: Do you know if flows are
8 currently being released by reclamation to meet OCAP BO
9 RPA water temperature objectives on the
10 Stanislaus River?

11 MS. AUFDEMBERGE: I object to this line of
12 question. He's already testified that operations are
13 not within his division and...

14 MR. O'LAUGHLIN: I'm just cleaning up various
15 components of this that have to be met. I want to make
16 sure I have a clear record of what Mr. Sahlberg does and
17 doesn't do. This is just one component of OCAP BO.

18 CO-HEARING OFFICER DODUC: Let's just go ahead
19 and proceed.

20 WITNESS SAHLBERG: No, I don't know.

21 MR. O'LAUGHLIN: Thank you.

22 Turning to page 6 of your testimony, it's
23 almost -- it's the second-to-the-last paragraph, the
24 last sentence.

25 WITNESS SAHLBERG: Okay.

1 MR. O'LAUGHLIN: Okay. Mr. Milligan and
2 Ms. Olson both testified that D-1641 has not been met
3 and would not be met going forward. So what do you mean
4 by compliance with D-1641 will ensure that Delta water
5 users are not impacted by CWF operations?

6 WITNESS SAHLBERG: I'm sorry. Could you
7 repeat that question?

8 MR. O'LAUGHLIN: Sure.

9 Mr. Milligan and Ms. White -- I'm sorry --
10 Ms. White I keep saying. Ms. Olson. I don't know why I
11 say that.

12 CO-HEARING OFFICER DODUC: Focus,
13 Mr. O'Laughlin.

14 MR. O'LAUGHLIN: Okay. Is there a reason why
15 Mr. Milligan -- no, sorry. I got thrown off a little
16 bit. Sorry.

17 Mr. Milligan and Ms. Olson both testified that
18 D-1641 has not been met and would not be met going
19 forward. How is it that you state that there will be
20 compliance with D-1641, or what do you mean by
21 "compliance with D-1641"?

22 WITNESS SAHLBERG: My testimony -- the
23 sentence you're referring to refers to in-Delta water
24 users. I do not know what Mr. Milligan or Ms. White
25 said by they would not be compliant with D-1641.

1 MR. O'LAUGHLIN: I have a question for you.
2 Is it your view, then, that if the salinity requirement
3 is being met at Vernalis, that the water-in Delta water
4 users are not impacted?

5 WITNESS SAHLBERG: Yes.

6 MR. O'LAUGHLIN: Okay. Do you believe -- so
7 is it your understanding as a water right attorney that
8 a water right has to do not only with -- mainly with
9 quantity and not quality, correct?

10 In other words, it has a point of diversion, a
11 place of use, a maximum rate of diversion, a diversion
12 amount, total amount used. So what it has to really do
13 about is quantity, correct?

14 WITNESS SAHLBERG: First of all, my position
15 is a water rights officer, not a water rights attorney.

16 MR. O'LAUGHLIN: Okay.

17 WITNESS SAHLBERG: Second of all, I think your
18 question is a little bit incomplete.

19 MR. O'LAUGHLIN: Maybe I'll ask it
20 differently.

21 I'm confused by the statement. And we'll get
22 to it with Ms. Sergent's testimony. But what I'm
23 driving at is, it seems to imply that if water quality
24 is being met, that a water right is being met. And do
25 you, in your mind, make those two the same: Water

1 quality and water quantity?

2 WITNESS SAHLBERG: No.

3 MR. O'LAUGHLIN: Okay. So, in fact, you could
4 have a water quality parameter being met, but if the
5 flows are so low, a water right quantity may not be met,
6 correct?

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

8 MS. SHEEHAN: This is Becky Sheehan for the
9 State Water Contractors. And I would like to object.
10 This is an incomplete hypothetical. Water rights where?
11 Water quality where? It's quite vague.

12 CO-HEARING OFFICER DODUC: Well, the sentence
13 is quite vague. I believe that's what Mr. O'Laughlin is
14 trying to get into.

15 So your objection is noted, but I will allow
16 Mr. O'Laughlin a little bit more time to pursue this.

17 MR. O'LAUGHLIN: Sorry. I turned off my mic
18 so I wasn't talking at the same time.

19 So that's the very point. Let's start at
20 Vernalis maybe. So do you -- do you find that meeting
21 the water quality salinity requirement at Vernalis is
22 the same as fulfilling downstream prior rights -- water
23 rights?

24 CO-HEARING OFFICER DODUC: Actually, before
25 you answer that, Mr. O'Laughlin, let me see if I can

1 help out.

2 Mr. Sahlberg, in this subject sentence that
3 Mr. O'Laughlin is focused on, when you state "compliance
4 with D-1641," what do you mean by that?

5 WITNESS SAHLBERG: What that means is D-1641
6 has water quality and outflow requirements among other
7 things. And if we comply with -- the basically the
8 outflow requirements, the in-Delta uses will be met as a
9 function of meeting those outflow requirements. Water
10 comes in, they take their -- under their rights, and if
11 more -- and by those diversions, outflow drops, we do
12 what we need to do to make sure that the outflow
13 requirements are met. That's what that means.

14 CO-HEARING OFFICER DODUC: So in this sentence
15 in this part of your testimony, you are not focusing on
16 just the water quality requirements of D-1641?

17 WITNESS SAHLBERG: Correct.

18 CO-HEARING OFFICER DODUC: Thank you.

19 MR. O'LAUGHLIN: So this includes a quantity
20 component, correct?

21 WITNESS SAHLBERG: Yes.

22 MR. O'LAUGHLIN: Okay. So in -- basically,
23 then, as I envision it, there's enough water moving
24 through the Delta that it's going to meet the quantity
25 needs and the quality needs because in order to push

1 water out through the Delta outflow, there's enough
2 water in the system, correct?

3 WITNESS SAHLBERG: Correct.

4 MR. O'LAUGHLIN: Okay.

5 Can we put up in my submittals? I think it's
6 No. 14, State Water Contractors' complaint.

7 Are you familiar, Mr. Sahlberg, with the State
8 Water Project Contractor complaint that was filed with
9 the State Water Resources Control Board alleging that
10 there will be still illegal diversions in the Delta?

11 WITNESS SAHLBERG: I know they filed a
12 complaint. I'm not familiar with the particulars of it.

13 MR. O'LAUGHLIN: Well, how do you reconcile
14 your statement that you just made to the board that when
15 you're releasing water to meet Delta inflow and outflow,
16 that these water rights in the Delta are being met?

17 MR. MIZELL: Objection. Relevance.

18 CO-HEARING OFFICER DODUC: I'm sorry,
19 Mr. Mizell?

20 MR. MIZELL: Objection. Relevance. The State
21 Water Contractors' complaint is not proposing to speak
22 for either the department or reclamation. It was done
23 under their own authority. And to say how our witnesses
24 need to somehow reconcile the proposal under the
25 California WaterFix with what the State Water

1 Contractors has put forward really isn't germane to this
2 hearing.

3 CO-HEARING OFFICER DODUC: Would you like to
4 restate your question?

5 MR. O'LAUGHLIN: No, I don't. I think it's a
6 perfectly great question. Here's the reason why: So
7 the problem here is just -- I'm sorry. I should tone it
8 down a little bit.

9 CO-HEARING OFFICER DODUC: Then you will not
10 be Mr. O'Laughlin we all know and not quite love.

11 MR. O'LAUGHLIN: So here's -- you're driving
12 me crazy.

13 CO-HEARING OFFICER DODUC: I have missed you.

14 MR. O'LAUGHLIN: That's a line from you a
15 couple weeks ago that's posted in my office. "You're
16 driving me crazy, but not in a good way." It's posted
17 in my office.

18 Came back to try to be serious. This is a
19 very fascinating point because if you read the testimony
20 that's being presented, the testimony is presented in
21 terms of water quality and water quality parameters
22 being met.

23 So, actually, Mr. Sahlberg says that if water
24 quality is being met, there's enough flow going through
25 the Delta that is being described.

1 But what's interesting about the modeling that
2 is done is if you assume that water is being released --
3 and we'll get to this with Ms. Sergent in a bit about
4 stored water. Well, wait a second. They are saying
5 that that water is exclusively theirs. So right away --
6 I'm not saying this is true. I'm not saying it's
7 correct. All I'm saying is that people believe that
8 there's a 200- to 400,000 acre foot hit in the Delta
9 from people taking water that shouldn't be entitled to
10 it. And based on that, how you run the projects and how
11 you model the projects for meeting demands in the Delta
12 are entirely different. That's the point.

13 CO-HEARING OFFICER DODUC: So, Mr. O'Laughlin,
14 what was your question again?

15 MR. O'LAUGHLIN: Okay. I'll try to rephrase
16 it, you know, maybe I'll go a different way.

17 So if I understand your statement correctly,
18 you -- you're not familiar with this complaint; is that
19 correct?

20 WITNESS SAHLBERG: That's correct.

21 MR. O'LAUGHLIN: Give me a couple minutes. I
22 want to make sure that I run through my list of
23 questions for Mr. Sahlberg and that I'm completed.

24 Okay. So have you reviewed the draft water
25 quality control plan SED that has been put out by the

1 State Water Resources Control Board last week?

2 WITNESS SAHLBERG: No.

3 MR. O'LAUGHLIN: Have you previously reviewed
4 the draft water quality control plan SED that was put
5 out in 2012?

6 WITNESS SAHLBERG: The water rights group
7 reviewed it, yes.

8 MR. O'LAUGHLIN: And would that include you?

9 WITNESS SAHLBERG: Yes.

10 MR. O'LAUGHLIN: Okay. Did you -- do you have
11 any understanding why, in the draft EIR/EIS that the
12 water quality control plan SED from 2012 was not
13 included?

14 WITNESS SAHLBERG: Included where?

15 MR. O'LAUGHLIN: In -- why -- in the draft
16 EIR/EIS from California WaterFix.

17 WITNESS SAHLBERG: No, I don't. No.

18 MR. O'LAUGHLIN: Do you have any
19 understanding, as you sit here today, from a water right
20 perspective what the operations at New Melones would
21 look like in regards to the 2012 draft for New Melones'
22 project operations?

23 WITNESS SAHLBERG: No, I don't.

24 MR. O'LAUGHLIN: Do you have any
25 understanding, as you sit here today, that Table 2E

1 flows would have priority over water quality control
2 plan unimpaired flows?

3 WITNESS SAHLBERG: I'm sorry. Can you repeat?

4 MR. O'LAUGHLIN: Do you have any
5 understanding, as you sit here today, from a water
6 rights perspective, if Table 2E flows would have
7 priority over water quality control plan unimpaired
8 flows?

9 WITNESS SAHLBERG: No, I don't.

10 MR. O'LAUGHLIN: Were you familiar with the
11 submittal by the Department of Interior in reclamation
12 for the 2012 water quality control plan SED?

13 WITNESS SAHLBERG: It's been a long time since
14 I've looked at it.

15 MR. O'LAUGHLIN: Okay. Do you have any
16 understanding of what reclamation's positioning is on
17 the priority of water being released from New Melones
18 Reservoir in regards to unimpaired flow?

19 WITNESS SAHLBERG: I don't recall.

20 MR. O'LAUGHLIN: Do you have any understanding
21 if reclamation will be able to meet the -- and I'll use
22 the old one, the 2012 -- 35 percent unimpaired flow in
23 maintaining the model flows at Vernalis that are part of
24 this petition?

25 WITNESS SAHLBERG: No, I don't.

1 MR. O'LAUGHLIN: Do you know how, if you know,
2 under water rights, that reclamation will meet the
3 carryover storage requirements under the proposed water
4 quality control plan and still meet the model flows that
5 are part of this petition?

6 WITNESS SAHLBERG: No, I don't.

7 MR. O'LAUGHLIN: Thank you.

8 MR. BERLINER: If we're going to be switching
9 to a different area --

10 CO-HEARING OFFICER DODUC: Hold on,
11 Mr. Berliner.

12 MR. BERLINER: Wonder if this might be an
13 appropriate time for a break, if that's convenient.

14 MR. O'LAUGHLIN: Perfectly fine with me.

15 CO-HEARING OFFICER DODUC: Let's take our
16 10-minute break.

17 We will resume at 10:56.

18 (Off the record at 10:46 a.m. and back
19 on the record at 10:57 a.m.)

20 CO-HEARING OFFICER DODUC: All right. If you
21 could please take your seats.

22 We will resume now, and I'm actually one
23 minute late.

24 Mr. O'Laughlin, please continue.

25 MR. O'LAUGHLIN: Thank you.

1 I have questions now for Ms. Sergeant.

2 When you were drafting your declaration, did
3 you look at the water code to ascertain what is an
4 injury to any other legal user of water?

5 WITNESS SERGENT: I'm generally familiar with
6 the provision. I didn't specifically go back to the
7 water code before I prepared my testimony.

8 MR. O'LAUGHLIN: Do you know if change
9 petitions are generally governed by Chapter 10,
10 Section 1700, of the water code?

11 WITNESS SERGENT: Generally.

12 MR. O'LAUGHLIN: Do you have an opinion, as
13 you sit here today, of whether or not the language in
14 Water Code Section 1700(2)(d) should be interpreted the
15 same as the language in 1727(b)(1) governing temporary
16 changes in points of diversion?

17 WITNESS SERGENT: I don't have an opinion as
18 interpreting various provisions of the water code.

19 MR. O'LAUGHLIN: They both state that they
20 would not injure any legal user of water.

21 Do you -- do you understand that those
22 conditions are to be interpreted and applied the same
23 for both a change petition and a temporary transfer?

24 WITNESS SERGENT: I don't have an opinion as
25 to that.

1 MR. O'LAUGHLIN: Do you think that they should
2 be treated differently?

3 MR. MIZELL: Objection. Asked and answered.

4 CO-HEARING OFFICER DODUC: Mr. O'Laughlin,
5 she's already answered that. You're not going to get an
6 interpretation out of her.

7 MR. O'LAUGHLIN: With regard to the rule
8 against injuring any other legal user of water, is there
9 a difference in your mind factually between changing a
10 point of diversion in a water transfer?

11 WITNESS SERGENT: I'm sorry. I'm not --

12 MR. O'LAUGHLIN: Sure. Is there a factual
13 difference between changing a point of diversion in a
14 water transfer as it applies to any -- injuring other
15 legal users of water?

16 WITNESS SERGENT: Again, I'm not prepared to
17 give you any interpretations as to different provisions
18 or comparing the current petition to water transfers.

19 For this petition, I tried to evaluate the
20 information available to see if there were changes that
21 might impact the ability of other legal users to use
22 their water.

23 MR. O'LAUGHLIN: Are you a water right
24 attorney?

25 WITNESS SERGENT: I am not.

1 MR. O'LAUGHLIN: Are you an attorney?

2 WITNESS SERGENT: I am not. I'm an engineer.

3 MR. O'LAUGHLIN: Well, that scores a couple
4 points.

5 CO-HEARING OFFICER DODUC: Woo-hoo.

6 CO-HEARING OFFICER MARCUS: You see what I put
7 up with every day.

8 MR. O'LAUGHLIN: Did you review any State
9 Water Resources Control Board cases as to the definition
10 of "injury to other legal users of water" in preparing
11 your testimony?

12 WITNESS SERGENT: Excuse me. State Water
13 Resources Control Board cases? Are you referring to
14 legal cases?

15 MR. O'LAUGHLIN: Yes.

16 WITNESS SERGENT: I did not.

17 MR. O'LAUGHLIN: Okay. Did you refer to any
18 State Water Resources Control Board orders regarding
19 injury to other legal user of water?

20 WITNESS SERGENT: I have reviewed State Water
21 Resources Control Board orders, a number of orders over
22 the course of my working in water rights for state water
23 project.

24 MR. O'LAUGHLIN: Were you present when either
25 Mr. Leahigh or Mr. Milligan testified?

1 WITNESS SERGENT: I was not present, but I did
2 watch portions of the testimony.

3 MR. O'LAUGHLIN: Okay. Specifically, I asked
4 Mr. Leahigh and Mr. Milligan if reservoir storage would
5 change daily and/or monthly, and they both agreed. Do
6 you agree with that statement by those two individuals?

7 WITNESS SERGENT: Based on my review of the
8 information provided by the modelers, the graphics
9 provided by the modelers, I agree. There may be some
10 temporal changes.

11 MR. O'LAUGHLIN: But, generally, in the months
12 stored, September was the same or better; is that
13 correct?

14 WITNESS SERGENT: That's my recollection, yes.

15 MR. O'LAUGHLIN: The other thing I asked
16 Mr. Leahigh and Mr. Milligan about, and I don't know if
17 you've talked about this, on page 11, line 10 to 15, you
18 opined that "It is my understanding that such water
19 users do not have a right to store water uses from the
20 CVP."

21 Is it your understanding -- Mr. Milligan and
22 Mr. Leahigh both testified that water, other than stored
23 water, would be being released by the projects. Is that
24 your understanding?

25 WITNESS SERGENT: It is my understanding that

1 the projects release both components of inflow as well
2 as storage.

3 MR. O'LAUGHLIN: Okay. So in regards to
4 line 12, you state it seems to imply that the only water
5 being released from the reservoirs is stored water, and
6 that's just not right, right?

7 WITNESS SERGENT: I believe that
8 mischaracterizes my testimony.

9 MR. O'LAUGHLIN: Okay. So why don't you tell
10 me what you meant, then, that "This would not injure
11 other legal users because it is my understanding that
12 such water users do not have a right to stored water
13 releases from this SWP CVP"?

14 WITNESS SERGENT: My testimony refers to water
15 stored under DWR's water rights.

16 MR. O'LAUGHLIN: Okay. So are you only
17 talking then that water being released from the
18 reservoirs -- maybe I'll ask it a different way.

19 How do you then reconcile this statement with
20 Mr. Sahlberg's statement that the amount of water
21 entering the Delta and meeting Delta outflow satisfies,
22 under all -- under all conditions, water users in the
23 Delta?

24 WITNESS SERGENT: I'm sorry. I'm not
25 understanding your question. My testimony relates to

1 the rights, whether or not other water users have a
2 right to project storage. It doesn't -- it doesn't
3 describe anything related to inflows to the Delta.

4 MR. O'LAUGHLIN: No. But what I'm trying to
5 get at is, do you understand that stored water is
6 released from Oroville to meet Delta water quality
7 requirements?

8 WITNESS SERGENT: Yes.

9 MR. O'LAUGHLIN: Okay. And your testimony is
10 that Delta water quality components under D-1641 will
11 always be met, correct?

12 WITNESS SERGENT: My testimony is that DWR and
13 reclamation will continue to operate to meet D-1641
14 objectives. Mr. Leahigh spent quite a bit of time
15 describing how we operate to meet those objectives, but
16 there are times when meeting those objectives is not
17 possible due to hydrologic or meteorologic conditions.

18 MR. O'LAUGHLIN: Okay. My question is this,
19 though. So Mr. Sahlberg just stated earlier that if
20 water is entering the Delta to meet water quality, that
21 that water would also meet the in-Delta demand.

22 Are you saying in this statement here that the
23 people in Delta are not entitled to the stored water
24 that's being released to meet water quality in the
25 Delta?

1 WITNESS SERGENT: My testimony is that no
2 other water users have a right to the storage releases.
3 Storage releases are made to maintain water quality.
4 And at some time -- I believe later in my testimony I
5 described how those releases maintain a water quality
6 that would be better than what would exist absent those
7 storage releases.

8 DWR does not make a determination as to all
9 the diverters in the Delta, whether or not -- what the
10 basis of their right to divert is. They release water
11 quality or they make releases to maintain the objectives
12 in D-1641 which were adopted to protect other legal
13 users. It's the board's job to determine who those
14 legal users are.

15 MR. O'LAUGHLIN: Well, what I'm trying to get
16 at, though -- I'm sorry. Am I done?

17 CO-HEARING OFFICER DODUC: Yes.

18 MR. O'LAUGHLIN: Oh, okay.

19 Thank god.

20 CO-HEARING OFFICER DODUC: Did you want to
21 finish this line of questioning?

22 MR. O'LAUGHLIN: Yeah. I have about -- it's
23 about a half hour, hopefully. Not more than that.

24 CO-HEARING OFFICER DODUC: Just on this line
25 of questioning?

1 MR. O'LAUGHLIN: Oh, no, all together.

2 CO-HEARING OFFICER DODUC: Can you do it in
3 15?

4 MR. O'LAUGHLIN: Probably not. I'm not that
5 good.

6 CO-HEARING OFFICER DODUC: Let's give him 15,
7 and we'll go with that.

8 MR. O'LAUGHLIN: Well, what I'm trying to
9 understand here is that you make a statement that
10 there's not going to be an injury to any legal user of
11 water in the Delta, but then you just said that you've
12 made no determination as to who has what rights in the
13 Delta to divert what water. So how do you reconcile
14 those two?

15 WITNESS SERGENT: I don't believe those two
16 are related. We make releases to meet our -- the water
17 quality objectives that the board has determined are
18 sufficient to meet the beneficial uses.

19 So if we are meeting the objectives that are
20 necessary for diverters in the Delta to put that water
21 to beneficial use, that protects those diverters in the
22 Delta that have a legal right to divert.

23 MR. O'LAUGHLIN: Well, how -- are you familiar
24 with the exhibit that I previously showed about the
25 State Water Contractors' complaint to the State Water

1 Resources Control Board?

2 WITNESS SERGENT: I have read it, but I was
3 not...

4 MR. O'LAUGHLIN: How do you reconcile their
5 belief that water is -- is being taken illegally in the
6 Delta with your statement that if water quality is being
7 met, in-Delta demands are being satisfied?

8 WITNESS SERGENT: I believe those two don't
9 have anything to do with each other. Contractors have a
10 complaint related to whether or not there are some
11 diverters in the Delta that are diverting illegally.

12 The Department is not making any of those
13 determinations. We are releasing water to meet our
14 objectives, and it provides a water quality in the Delta
15 that's sufficient to allow those with valid water rights
16 to divert.

17 MR. O'LAUGHLIN: So at what point in time does
18 DWR abandon the water that is being used to meet the
19 water quality control plan water quality objectives in
20 the Delta?

21 WITNESS SERGENT: We do not abandon the water.
22 That's released for water quality objectives.

23 MR. O'LAUGHLIN: Okay. Can you point to
24 someplace where I can find it where there is a state
25 board order that protects that water as it moves through

1 the system so that it is not abandoned by DWR?

2 MR. MIZELL: Objection. Relevance.

3 MR. O'LAUGHLIN: If -- well.

4 MR. MIZELL: This goes to current operations.

5 This is not the California WaterFix.

6 CO-HEARING OFFICER DODUC: Ms. Sergeant, answer

7 to the best of your ability. You're doing a good job as

8 it is.

9 WITNESS SERGENT: DWR made it clear on a

10 number of occasions that it does not abandon the water

11 that is released. Water quality and fisheries'

12 objectives are beneficial uses listed during the State

13 Water Project rights. We release water for those

14 purposes.

15 The Water Board has, in some of its reasoning

16 in the most recent -- including the most recent

17 approvals of the temporary urgency changes, that the

18 other diverters are not entitled to the releases made to

19 meet water quality objectives.

20 T-1594 -- I'm sorry. Water rights position

21 1594 -- I'll try to slow down -- was an effort by DWR

22 and reclamation to protect their releases made for water

23 quality objectives. A number of the contracts

24 specifically state that we -- the place of use within

25 the Delta is to -- is water's not to be moved outside

1 the Delta to the detriment of potential return flows.
2 There have been a number of cases where DWR has made an
3 effort to protect those storage releases.

4 MR. O'LAUGHLIN: Where in D-1641 does it say
5 that the water that's being released to meet interior --
6 to meet Delta water quality parameters is protected?

7 WITNESS SERGENT: It's not an element of
8 D-1641. It was not an issue that I recall being
9 addressed in D-1641. The water quality is -- again, the
10 water is released to make specific -- for specific
11 beneficial purposes that are listed in DWR's permits,
12 and DWR does not abandon the water -- those flows that
13 are released for that purpose.

14 MR. O'LAUGHLIN: How does DWR recapture water
15 being released to meet X2?

16 WITNESS SERGENT: I didn't say that DWR
17 recaptures the water. I said it's protected because it
18 is as required to meet the beneficial purpose for which
19 it's released.

20 MR. O'LAUGHLIN: Can you point me to something
21 in the Porter-Cologne Act that equates meeting a water
22 quality requirement to a water right permit term or
23 condition?

24 MR. MIZELL: Objection. Calls for a legal
25 conclusion.

1 MR. O'LAUGHLIN: If she knows.

2 WITNESS SERGENT: I cannot.

3 MR. O'LAUGHLIN: Okay. Can you ascertain or
4 tell me why Water Code Section 1707 exists if your
5 statement is true and correct regarding your belief that
6 the water is not abandoned until it meets Delta outflow?

7 MR. MIZELL: Objection. Calls for a legal
8 conclusion.

9 MR. O'LAUGHLIN: If you know.

10 CO-HEARING OFFICER DODUC: Mr. O'Laughlin,
11 this is --

12 MR. O'LAUGHLIN: No, but this is very
13 important point and I'll tell you why. I know you're
14 giving me time to do this, but the important point here
15 is this: The statements being made by DWR in regards to
16 what water is being released at what time to meet what
17 condition is extremely important to understand, meet
18 whether or not there is an injury to a legal user of
19 water downstream.

20 And I fully understand DWR's position that if
21 stored water is being released, no one downstream has a
22 right to divert such stored water until it meets the
23 water quality control plan requirement.

24 I'm almost done with this. I just have a few
25 more. We'll get her understanding and I'll move on, and

1 then we'll make a legal argument at a later date about
2 whether or not that's true. I have no problem with
3 that.

4 CO-HEARING OFFICER DODUC: Okay. You
5 anticipated my direction to you. There's only so much
6 Ms. Sargent will provide, so let's get to the chase and
7 let's move on.

8 WITNESS SERGENT: It's my understanding that
9 Water Code Section 1707 was implemented to allow
10 diverters to dedicate water for instream purposes and to
11 protect that downstream. They do not have those listed
12 purposes within their water rights. DWR's water rights
13 all contain beneficial uses of salinity control and
14 fishery and wildlife purposes.

15 Water is released specifically to meet the
16 requirements. Outflow is -- is not something that is
17 satisfied until you exit the Delta. It's also -- the
18 board has determined the outflow objective or inflow
19 objectives for the San Francisco Bay area.

20 So those objectives in the water quality
21 control plan for outflow were related to inflow to the
22 Delta, and it's DWR's position that no water is
23 abandoned at any point within the Delta that is released
24 for those purposes.

25 MR. O'LAUGHLIN: Thank you.

1 So I wanted to turn our attention to the
2 reservoir operations.

3 Can you put up DWR -- I mean Exhibit No. 12,
4 DWR white paper, please?

5 MS. McCUE: SJTA 12?

6 MR. O'LAUGHLIN: Please.

7 In your testimony, you stated -- it's in your
8 curriculum vitae -- that you helped draft the white
9 paper; is that correct?

10 WITNESS SERGENT: That's correct.

11 MR. O'LAUGHLIN: And you're familiar with the
12 white paper, correct?

13 WITNESS SERGENT: Yes, I am.

14 MR. O'LAUGHLIN: And you deal with this on a
15 yearly basis, this document; is that correct?

16 WITNESS SERGENT: Depending on the year.

17 MR. O'LAUGHLIN: Okay. Scroll down to the
18 next page.

19 Okay. Are you familiar with the term "refill
20 requirement" as set forth in the white paper for DWR?

21 WITNESS SERGENT: Yes, I am.

22 MR. MIZELL: Objection. Relevance. This
23 document's talking about transfers. That's not what the
24 California WaterFix -- we're not proposing any
25 transfers. And although it's listed on Ms. Sergent's

1 CV, that does not in and of itself make it relevant to
2 this hearing.

3 CO-HEARING OFFICER DODUC: Mr. O'Laughlin?

4 MR. O'LAUGHLIN: Sure. Actually, this is why
5 I asked the questions early on between the difference
6 between an injury under diversions and under transfers
7 and how they're treated by the State Water Resources
8 Control Board.

9 Bear with me.

10 CO-HEARING OFFICER DODUC: I always do.

11 MR. O'LAUGHLIN: Our position is that injuries
12 to legal user of the water under the transfer position
13 and under the change petitions are treated exactly
14 identical by the State Water Resources Control Board.

15 So what we will be talking about here is that
16 if the reservoirs go lower, and then they're subject --
17 and then they're refilled, how that impacts downstream
18 senior water right holders that may have been entitled
19 to water that was captured under these monthly operation
20 scenarios that otherwise wouldn't have been and what the
21 impacts to those senior water right holders would be.

22 CO-HEARING OFFICER DODUC: I'll allow it.

23 MR. O'LAUGHLIN: Okay. So can you describe
24 for the board what your understanding of "refill" is?

25 WITNESS SERGENT: Yes. When a party proposes

1 to make a transfer that is based on releasing water from
2 their reservoir that is in excess of what would be
3 needed to meet the demands within their service area,
4 that creates a hole in the reservoir that would not
5 exist absent the transfer and absent moving water
6 outside that they're -- their authorized place of use.

7 And in the following year, if that water is
8 refilled at a time when other water users downstream
9 have abandoned that water, it could result in a
10 reduction in the stream flow that would not exist absent
11 the transfer.

12 MR. O'LAUGHLIN: Okay. Thank you.

13 Now, when you were doing your analysis, did
14 you look at the amount of water that was going -- was
15 being refilled in the reservoirs in these temporal
16 months that we talked about earlier? Did you look at
17 that actual amount, quantity of water?

18 WITNESS SERGENT: I'd like to clarify
19 something.

20 MR. O'LAUGHLIN: Sure.

21 WITNESS SERGENT: This refill criteria relates
22 to transfers. It relates specifically to water that is
23 released for a transfer that is in excess of the water
24 that is needed within the service area or to meet the
25 requirements of the permits.

1 The California WaterFix has nothing to do with
2 transferring water to any other user outside the State
3 Water Project use -- place of use or using water for a
4 purpose that is outside the existing permits.

5 The water levels that are shown in the
6 modeling results are well within the normal operating
7 criteria of the State Water Project, and any fluctuation
8 in the water rights, either -- or in the upstream --
9 I'll try and slow down -- in the upstream reservoirs
10 is -- is not related to any change that is outside the
11 normal operating criteria of the projects.

12 So this refill does not apply -- the refill
13 criteria would not apply to the WaterFix in any way.

14 MR. O'LAUGHLIN: Well, I'd move to strike, but
15 I'm not in the mood for it. So can I just have an
16 answer to my question?

17 Did you look at the amount of water that went
18 into the reservoirs during these months, due to the
19 drawdown?

20 WITNESS SERGENT: I looked at the graphs that
21 were provided by the modeling group, yes.

22 MR. O'LAUGHLIN: Did you ascertain the
23 quantities of water in any month that were being
24 refilled into the reservoir that otherwise wouldn't have
25 been refilled into the reservoir due to the California

1 WaterFix?

2 WITNESS SERGENT: I did not distinguish for
3 any particular month what the refill would have been.
4 The reason I did that is neither the State Water Project
5 nor the CVP diverts water to its reservoirs at a time
6 when other legal users downstream have a demand for that
7 water. All the demands downstream are being met.

8 CO-HEARING OFFICER DODUC: So is answer is no?

9 WITNESS SERGENT: Well, the answer is I looked
10 at it, and I did not consider it to be a potential
11 impact because we only divert water to storage at times
12 when all downstream demands are being met.

13 That is the typical time, say, if you're
14 trying to compare this to the refill criteria, with
15 refill criteria, that upstream user that created the
16 hole for a transfer can only refill that hole at times
17 when all downstream use is being met.

18 So by the nature of DWR's water rights and the
19 requirements that we have, DWR is only diverting water
20 to storage under all conditions at times when all
21 downstream uses are being met.

22 So it would -- there wouldn't be any reason to
23 have a refill requirement on any operational change at
24 an SWP reservoir because, by its very nature, the
25 permits allow us to divert water at times when there is

1 excess flow available. And we don't divert water if it
2 would mean that there is a demand downstream that can't
3 be met at that time.

4 MR. O'LAUGHLIN: Okay. Moving on.

5 Can you put up Exhibit 3 from the SJTA,
6 please?

7 When you were doing your analysis to ascertain
8 injury to any legal user of water, did you look at the
9 demand of downstream riparians or senior water right
10 holders at times when your reservoirs were pushing --
11 putting water into storage due to these temporary --
12 temporal changes?

13 WITNESS SERGENT: I believe my last answer
14 addresses the current question.

15 MR. O'LAUGHLIN: So the answer would be you've
16 not looked for or ascertained what downstream water
17 rights are or demands were at any time during the year;
18 is that correct?

19 WITNESS SERGENT: My answer is that we only
20 divert water at times when all downstream demands are
21 being met.

22 MR. O'LAUGHLIN: And if that was factually
23 incorrect, then would your statement still hold that
24 there is no injury to legal users of water?

25 WITNESS SERGENT: I don't believe my answer is

1 factually incorrect.

2 MR. O'LAUGHLIN: I know, but if it is...

3 CO-HEARING OFFICER DODUC: No, Mr. O'Laughlin.

4 Let's not go there.

5 MR. O'LAUGHLIN: Well, it's a simple question.

6 If -- if her -- it goes to essence of her --

7 CO-HEARING OFFICER DODUC: No, Mr. O'Laughlin.

8 Move on.

9 MR. O'LAUGHLIN: This is a very important
10 point in regards to where we go with California
11 WaterFix. Because if she's incorrect in her factual
12 statement, okay, then does her opinion that there isn't
13 injury to legal user of water still stand?

14 It may stand on other bases or for other
15 reasons, but for this very important factual point, it's
16 extremely relevant to understand how that fits in with
17 her opinion. Because, quite frankly, right now, it's
18 the entire basis of her opinion.

19 CO-HEARING OFFICER DODUC: Mr. O'Laughlin,
20 enough.

21 Ms. Sergeant, one more time for the record.

22 WITNESS SERGENT: I don't believe my statement
23 is factually incorrect.

24 CO-HEARING OFFICER DODUC: All right.

25 Mr. O'Laughlin, please wrap up.

1 Was there any line of questioning --

2 MR. O'LAUGHLIN: One last line.

3 CO-HEARING OFFICER DODUC: Okay.

4 MR. O'LAUGHLIN: Do you -- in your testimony,

5 it seems to imply -- and I raised this point with

6 Mr. Sahlberg as well. Do you equate water quality and

7 water quantity as the same thing?

8 WITNESS SERGENT: No.

9 MR. O'LAUGHLIN: Thank you.

10 No further questions.

11 CO-HEARING OFFICER DODUC: Thank you,

12 Mr. O'Laughlin.

13 MR. O'LAUGHLIN: Thank you.

14 CO-HEARING OFFICER DODUC: State Water

15 Contractors. Ms. Sheehan, do you have

16 cross-examination?

17 MS. SHEEHAN: Becky Sheehan for State Water

18 Contractors. We do not have any cross-examination of

19 this panel.

20 CO-HEARING OFFICER DODUC: Group No. 4,

21 San Luis Obispo & Delta-Mendota.

22 Ms. Akroyd, what is your line of questioning?

23 How much time do you anticipate needing?

24 MS. AKROYD: I anticipate less than 20 minutes

25 of questioning and -- in terms of the summary, a number

1 of the protestants for CVP contractors who I intend to
2 ask Mr. Sahlberg some questions regarding what their
3 contracts provide regarding both storage and shortages.

4 The reason for that is we believe that given
5 the terms of some of the contracts, some of the injuries
6 they are complaining of may not be legal injuries under
7 the water code.

8 CO-HEARING OFFICER DODUC: Okay. Proceed.

9 --o0o--

10 CROSS-EXAMINATION

11 MS. AKROYD: Good morning, Mr. Sahlberg.

12 WITNESS SAHLBERG: Good morning.

13 MS. AKROYD: First, I'd like to see if we can
14 bring up Exhibit DOI 9, which is the table listing CVP
15 contracts.

16 Mr. Sahlberg, are you familiar with this
17 table?

18 WITNESS SAHLBERG: Yes.

19 MS. AKROYD: And this table shows all of
20 reclamation CVP water contracts broken into groups,
21 correct?

22 WITNESS SAHLBERG: Correct.

23 MS. AKROYD: I'm going to ask you a series of
24 questions regarding provisions in these various groups
25 of contracts.

1 First, page 1 of this table lists a number of
2 water service contracts for north of Delta CVP
3 contractors, correct?

4 WITNESS SAHLBERG: Correct.

5 MS. AKROYD: Do the north of Delta CVP water
6 service contracts include any provisions requiring
7 reclamation to maintain any specific minimum storage
8 leveling in its reservoirs?

9 WITNESS SAHLBERG: They do not.

10 MS. AKROYD: Going to the next page, please,
11 page 2.

12 Page 2 of the table identifies north of Delta
13 American River M&I contracts. Do any of the contracts
14 listed here require reclamation to maintain any specific
15 minimum storage levels in its reservoirs?

16 WITNESS SAHLBERG: They do not.

17 MR. BEZERRA: I'd like to object to that
18 question. It's incomplete.

19 CO-HEARING OFFICER DODUC: Identify yourself
20 for the record.

21 MR. BEZERRA: My name is Ryan Bezerra.
22 Bartkiewicz, Kronick & Shanahan, for the City of Folsom,
23 City of Roseville, San Juan Water District --

24 CO-HEARING OFFICER DODUC: Part of Group 7.

25 MR. BEZERRA: Ryan Bezerra, Bartkiewicz,

1 Kronick & Shanahan for the Cities of Folsom, Roseville,
2 San Juan Water District, Sacramento Suburban Water
3 District.

4 We'll bring on cross-examination -- we've done
5 it already. All of these contracts are subject to the
6 terms and conditions of reclamation water right permits
7 for its operation of its facilities, including
8 Folsom Reservoir. Those water right permits have terms
9 and conditions regarding the protection of American
10 River contractors.

11 So the question is objectionable in that it
12 mischaracterizes the evidence. It mischaracterizes the
13 content of the contracts and how they are subject to
14 water right permit terms and conditions.

15 CO-HEARING OFFICER DODUC: Ms. Akroyd, please
16 rephrase your question.

17 MS. AKROYD: First, in response to the
18 objection, I believe it's relevant, because as I kind of
19 gave in my summary --

20 CO-HEARING OFFICER DODUC: I'm allowing you to
21 ask the question, just rephrase it.

22 MS. AKROYD: Perhaps narrowing the question
23 slightly. Focusing solely on the terms of the contracts
24 and not the permit terms, which made -- Mr. Bezerra said
25 he may address...

1 Sorry, Mr. Bezerra.

2 CO-HEARING OFFICER DODUC: Mr. Bezerra?

3 MR. BEZERRA: Yes, I'd like to object on best
4 evidence grounds. She's asking a question about the
5 contents of these contracts without presenting the
6 contracts themselves.

7 The contracts refer to multiple water right --
8 they refer to water right permit terms and conditions.
9 They also refer to various acts of Congress. So asking
10 all of these questions about what these contracts
11 contain without presenting the contracts themselves is
12 objectionable under best evidence grounds.

13 CO-HEARING OFFICER DODUC: I'll note your
14 objection, but I'm going to allow her to proceed. And
15 the witnesses will answer to the best of their ability.
16 If they're not familiar with something, I'm sure they'll
17 say so.

18 MS. AKROYD: And we will, in some of the
19 questions as I proceed, be opening up very specific
20 contracts and looking at very specific contracts, asking
21 if those are representative of others in the group.
22 But, for this line of questioning, if Mr. Sahlberg needs
23 to ask for some of them, we can do so. Thank you.

24 So going back to question. For this list of
25 contracts which are north of Delta American River M&I

1 contracts, are you aware of whether any of the contracts
2 listed here require reclamation to maintain any specific
3 minimum storage levels in its reservoirs?

4 WITNESS SAHLBERG: They do not.

5 MS. AKROYD: Go on to the next page, please,
6 page 3.

7 Pages 3 through 6 of this table lists the
8 Sacramento River settlement contracts.

9 Same question: Are you aware whether any of
10 these contracts include provisions requiring reclamation
11 to maintain any specific minimum storage levels in its
12 reservoirs?

13 WITNESS SAHLBERG: They do not.

14 MS. AKROYD: And please proceed to page 7.

15 Pages 7 through 11 list a number of additional
16 contracts for other service areas, correct?

17 WITNESS SAHLBERG: Correct.

18 MS. AKROYD: Are you aware whether any of
19 these CVP contracts will include provisions requiring
20 reclamation to maintain any specific minimum storage
21 levels in its reservoirs?

22 WITNESS SAHLBERG: They do not.

23 MS. AKROYD: Thank you.

24 And I'd like to turn briefly to several
25 specific contracts that involve the use of

1 Folsom Reservoir but do you know involve CVP water.

2 First I'd like to have Exhibit SJWD14 brought
3 up.

4 CO-HEARING OFFICER DODUC: Mr. Bezerra?

5 MR. BEZERRA: Just anticipating the
6 possibility of objecting.

7 MS. AKROYD: Mr. Sahlberg, SJWD 14 is a
8 Warren Act contract between the United States and
9 San Juan Water District, correct?

10 WITNESS SAHLBERG: Correct.

11 MS. AKROYD: What is your understanding of
12 what a Warren Act contract is?

13 WITNESS SAHLBERG: Warren Act contract
14 provides for the use of the federal facilities to store
15 and convey nonproject water, in other words, water that
16 is not appropriated under a reclamation water right.

17 MS. AKROYD: Do you know whether this contract
18 requires reclamation to maintain a specific minimum
19 storage level in Folsom Reservoir?

20 CO-HEARING OFFICER DODUC: Mr. Bezerra?

21 MR. BEZERRA: Again, objection on best
22 evidence grounds. The contract is in the record, and
23 she's asking for a characterization of its terms.

24 CO-HEARING OFFICER DODUC: She's asking an
25 expert witness for his expert opinion.

1 Answer, please, Mr. Sahlberg.

2 WITNESS SAHLBERG: I'm not aware of any such
3 provision.

4 MS. AKROYD: Thank you.

5 We can bring up next Roseville 11. Thank you.

6 Roseville 11 is a contract for conveyance of
7 nonproject water between United States and City of
8 Roseville. This again is a Warren Act contract between
9 the United States and City of Roseville, correct?

10 WITNESS SAHLBERG: Correct.

11 MS. AKROYD: Does this contract require a
12 reclamation to maintain a specific minimum storage level
13 in Folsom Reservoir?

14 MR. BEZERRA: Objection. Best evidence.

15 CO-HEARING OFFICER DODUC: We'll just make
16 that a standing objection so that you don't have to keep
17 coming up --

18 MR. BEZERRA: Thank you.

19 CO-HEARING OFFICER DODUC: -- and I can keep
20 overruling you.

21 Please answer.

22 WITNESS SAHLBERG: No, it does not contain any
23 such provision.

24 MS. AKROYD: Are you aware of any other
25 Warren Act contract that involved the use of

1 Folsom Reservoir?

2 WITNESS SAHLBERG: No, I am not.

3 MS. AKROYD: Okay. Next, I'd like to have

4 Exhibit DOI 25 brought up. Thank you.

5 DOI 25 is a contract between the United States

6 and City of Folsom for the conveyance of water rights

7 water; is that correct?

8 WITNESS SAHLBERG: Yes.

9 MR. O'LAUGHLIN: Please go to page 9 of the
10 document.

11 Actually, we're looking for Article 3D. I'm
12 trying to remember if it's 9 of the PDF or 9 of the
13 interior numbers.

14 Right there. Perfect. Thank you.

15 So looking at Article 3D which is on screen,
16 does the contract require reclamation to make all
17 reasonable efforts consistent with the overall operation
18 of the project to maintain sufficient flows and levels
19 of water from the Folsom Reservoir?

20 WITNESS SAHLBERG: That's what it says.

21 MR. BEZERRA: Objection. This misstates the
22 evidence. She's calling out one section of the contract
23 and asking what the contract then requires. If we're
24 going to go down this route, we need to deal with the
25 entire contract which deals with City of Folsom's

1 pre-CVP water rights.

2 CO-HEARING OFFICER DODUC: So noted.

3 Ms. Akroyd?

4 MS. AKROYD: Thank you. And going where I'll
5 be going with this, is I'm going to be asking several
6 questions regarding Mr. Sahlberg's opinion and his
7 understanding of this contract. Thank you.

8 Does this contract -- are you aware whether
9 this contract further defines what reasonable efforts
10 are?

11 WITNESS SAHLBERG: No, it does not.

12 MS. AKROYD: Are you aware whether the
13 contract defines "consistent with the overall operation
14 of the project"?

15 WITNESS SAHLBERG: No, it does not.

16 MS. AKROYD: On that point, were you here when
17 Mr. Milligan testified for interior?

18 WITNESS SAHLBERG: Yes, I was.

19 MS. AKROYD: Did Mr. Milligan describe the
20 considerations that go into operating Folsom Reservoir
21 consistent with CVP project purposes?

22 WITNESS SAHLBERG: Yes, he did.

23 MS. AKROYD: Thank you.

24 Turning back to Article 3D. Does the Folsom
25 contract further define what sufficient flows and levels

1 are?

2 WITNESS SAHLBERG: No, it does not.

3 MS. AKROYD: Do you know whether this contract
4 requires reclamation to maintain any specific elevation
5 in Folsom Reservoir?

6 WITNESS SAHLBERG: It does not.

7 MS. AKROYD: Does this contract require
8 reclamation to maintain any specific quantity of the
9 storage in Folsom Reservoir?

10 WITNESS SAHLBERG: No, it does not.

11 MS. AKROYD: Switch gears a little bit and
12 turn to the so-called shortage provisions that are in
13 reclamation CVP contracts.

14 But first in your testimony and presentation,
15 you described how reclamation provides CVP water
16 pursuant to a number of different types of CVP
17 contracts, water service, settlement, exchange,
18 et cetera, correct?

19 WITNESS SAHLBERG: Correct.

20 MS. AKROYD: Thank you.

21 These different types of contracts often
22 include different types of contract provisions, correct?

23 WITNESS SAHLBERG: Yes, they do.

24 MS. AKROYD: Focus now on the shortage
25 provisions in CVP water service contracts.

1 First, what is your understanding of what is
2 meant by a "shortage provision"?

3 WITNESS SAHLBERG: Shortage provision in a CVP
4 contract states that the United States is not liable if
5 it does not provide full contract quantity for a number
6 of reasons.

7 MS. AKROYD: Thank you.

8 Look at a specific example, DOI 15.reclamation
9 is identified as -- this is a sample water service
10 contract for the Sacramento River Division. It's a
11 contract between the United States and the Orland-Artois
12 Water District.

13 If you can please scroll to Article 12 of the
14 contract which I believe is at page 30 of the BDF.

15 That's fine. We'll be focusing on the
16 Article 12B. That's the right page. Thank you.

17 Please read or look at Article 12B. Sorry.
18 Next page. Thank you. If you can read that to yourself
19 and then let me know when you're done.

20 WITNESS SAHLBERG: Okay.

21 MS. AKROYD: Consistent with your explanation
22 before of a shortage provision, does Subdivision 12B
23 identify possible causes of shortages?

24 WITNESS SAHLBERG: Yes, it does.

25 MS. AKROYD: And are actions taken by the

1 contracting officer to meet legal obligations a possible
2 cause of shortage?

3 WITNESS SAHLBERG: Yes, they are.

4 MS. AKROYD: Do actions taken to meet legal
5 obligations include actions taken to meet federal
6 statutory requirements such as the ESA?

7 WITNESS SAHLBERG: Yes.

8 MS. AKROYD: And do actions to meet legal
9 obligations also include actions taken to meet the terms
10 and conditions of water rights permits issued by the
11 State Water Board?

12 WITNESS SAHLBERG: Yes.

13 MS. AKROYD: Subdivision 12B states that when
14 conditions of shortage occur, no liability shall accrue
15 against the United States, correct?

16 WITNESS SAHLBERG: Correct.

17 MS. AKROYD: Is it your understanding that a
18 number of the different categories of CVP contracts
19 include similar shortage provisions?

20 WITNESS SAHLBERG: The water service -- yes,
21 almost all CVP contracts have some type of shortage
22 provision.

23 MS. AKROYD: And is the shortage provision in
24 this sample Sacramento River Division water service
25 contract representative of shortage provisions in other

1 Sacramento Division water service contracts?

2 WITNESS SAHLBERG: Yes, it is.

3 MS. AKROYD: Is it also representative of
4 shortage provisions in water service contracts for other
5 divisions of the CVP?

6 MR. BERLINER: Yes, it is.

7 MS. AKROYD: Switching gears.

8 Is there any provision in the water service
9 contract entitling contractors north of the Delta to a
10 higher percentage allocation of CVP water than water
11 service contractors south of the Delta?

12 WITNESS SAHLBERG: No, there is not.

13 MS. AKROYD: Next I'd like to turn to a
14 different subset of contracts, the Sacramento settlement
15 contracts. If you can please bring up Exhibit DOI 11.

16 DOI 11 has been identified by reclamation as a
17 sample settlement contract. It is a contract between
18 United States and Maxwell Irrigation District, correct?

19 WITNESS SAHLBERG: Yes.

20 MS. AKROYD: If you can please turn to
21 Article 3I which is at page 11 of the contract.

22 Sorry. 11 of the contract. 11 at the bottom
23 of the page, so it's probably further along.

24 Next page. Very top of the screen there. If
25 you can please review that and then let me know when

1 you've completed.

2 MS. McCUE: Just for the record, it's page 12
3 of the contract.

4 MS. AKROYD: Sorry. My mistake.

5 WITNESS SAHLBERG: Okay. I'm done.

6 MS. AKROYD: Similar to the shortage provision
7 we already discussed, this provision excuses reclamation
8 from liability for shortages of project water because of
9 actions taken to meet legal obligations, correct?

10 WITNESS SAHLBERG: Right.

11 MS. AKROYD: And is this provision
12 representative of the shortage provision in other
13 Sacramento settlement contracts?

14 WITNESS SAHLBERG: It is.

15 MS. AKROYD: Thank you. Nothing further.

16 CO-HEARING OFFICER DODUC: Thank you,

17 Ms. Akroyd.

18 Group No. 5. Mr. Williams.

19 --o0o--

20 CROSS-EXAMINATION

21 MR. WILLIAMS: Yes, ma'am, good morning.

22 Philip Williams, deputy general counsel for
23 Westlands Water District.

24 I see Mr. Bezerra walking back up so...

25 He's filling in for Ms. Morris today in terms

1 of the pouncing.

2 CO-HEARING OFFICER DODUC: You're --

3 MR. WILLIAMS: Ms. Morris may object to the
4 characterization.

5 CO-HEARING OFFICER DODUC: Your line of
6 questioning and time estimate, Mr. Williams, is?

7 MR. WILLIAMS: Yes, ma'am. I expect to take
8 about 15 minutes.

9 CO-HEARING OFFICER DODUC: Wetlands Water
10 District. And you'll be exploring?

11 MR. WILLIAMS: August 10th, Mr. Lily presented
12 a document regarding Term 11 of certain permits
13 regarding Folsom Reservoir. The intent of my line of
14 questioning will be to fully elucidate what protections
15 that Term 11 provides.

16 CO-HEARING OFFICER DODUC: Okay.

17 MR. WILLIAMS: Mr. Sahlberg, my questions will
18 be directly mostly to you, sir.

19 Mr. Baker, would you please pull up Westlands
20 Water District 7. This is State Water Resources Control
21 Board Water Rights Permit 11315.

22 Mr. Sahlberg, are you familiar with this
23 permit?

24 WITNESS SAHLBERG: Yes.

25 MR. WILLIAMS: Mr. Baker, please pull up

1 Westlands 8.

2 Mr. Sahlberg, are you familiar with this
3 permit?

4 WITNESS SAHLBERG: Yes, I am.

5 MR. WILLIAMS: Both of these permits contain
6 terms, one of which in each is Term 11, correct?

7 WITNESS SAHLBERG: Correct.

8 MR. WILLIAMS: Would you like to scroll
9 through to make sure or are you confident?

10 WITNESS SAHLBERG: I'm confident.

11 MR. WILLIAMS: Mr. Baker, would you please
12 pull up BKS 1. And I apologize. It's not -- there it
13 is.

14 Mr. Sahlberg, please look at the highlighted
15 objections.

16 If you'd scroll down, Mr. Baker.

17 Mr. Sahlberg, if you would read to yourself
18 first the highlighted section on the first page and then
19 the highlighted section on the second page.

20 WITNESS SAHLBERG: Okay. I'm done with
21 No. 11. Is there another one?

22 MR. WILLIAMS: Go down to the second page,
23 Mr. Baker.

24 CO-HEARING OFFICER DODUC: For the record, as
25 he's doing that, this is an excerpt from?

1 MR. WILLIAMS: This is BKS1. I understand
2 this is excerpt from the two permits that I just
3 presented.

4 CO-HEARING OFFICER DODUC: Okay.

5 WITNESS SAHLBERG: Okay.

6 MR. WILLIAMS: Two highlighted paragraphs are
7 identical in language, are they not?

8 WITNESS SAHLBERG: Yes, they are.

9 MR. WILLIAMS: Mr. Baker, would you please
10 pull up Roseville 5.

11 I'm sorry. Roseville 5 is on there as
12 "Westlands.B" if everyone trusts me.

13 No.

14 Are you familiar with Decision 893, sir?

15 WITNESS SAHLBERG: Yes, I am.

16 MR. WILLIAMS: To your knowledge, what is
17 the -- what was the historical trigger for Decision 893?

18 WITNESS SAHLBERG: Briefly, Decision 893 is
19 the water rights decision on various applications to
20 appropriate water from the American River filed by
21 numerous parties: City of Sacramento, Eldorado County,
22 Georgetown Divided Utility District, I think, and, of
23 course, the United States among others.

24 MR. WILLIAMS: And this decision provided
25 terms and conditions for certain permits at issue from

1 that decision; is that correct?

2 WITNESS SAHLBERG: That is correct.

3 MR. WILLIAMS: Mr. Baker, please pull up
4 Westlands 9. Contains Term 14 for Applications 13370,
5 13371. It is page 72 of Decision 893. And I'll refer
6 to that as Term 14.

7 Are you familiar with Term 14, sir?

8 WITNESS SAHLBERG: Yes, I am.

9 MR. WILLIAMS: Would you please read it to
10 yourself.

11 WITNESS SAHLBERG: Okay.

12 MR. WILLIAMS: I just asked you to read to
13 yourself Term 11 from BKS1.

14 Term 14, as it appears here, is nearly
15 identical to Term 11; is that correct?

16 WITNESS SAHLBERG: That's correct.

17 MR. WILLIAMS: In fact, the only real
18 difference is the specific application to the permits in
19 question?

20 WITNESS SAHLBERG: Correct.

21 MR. WILLIAMS: So, sir, just so we're all
22 clear on the progression, the relationship here,
23 Westlands submitted two applications that resulted in
24 D 893 inside --

25 WITNESS SAHLBERG: Sorry.

1 MR. WILLIAMS: I'm sorry. Reclamation. What
2 did I say? I said Westlands? We're going to do that
3 tomorrow.

4 Reclamation submitted -- excuse me.
5 Reclamation submitted two applications which resulted in
6 Decision 893 being issued. Inside that decision was
7 Term 14, correct?

8 WITNESS SAHLBERG: Yes.

9 MR. WILLIAMS: And D 893 included this term
10 which included for permits to be included in
11 Permits 11315 and 11316?

12 WITNESS SAHLBERG: Correct.

13 MR. WILLIAMS: I want to turn to the substance
14 of Term 14.

15 It provides a protection for Placer,
16 Sacramento, and San Joaquin Counties, does it not?

17 WITNESS SAHLBERG: Yes.

18 MR. WILLIAMS: And is it your understanding
19 that the protection this affords is that the delivery of
20 the water pursuant to the permits in question shall not
21 be -- shall not be made beyond the counties in question
22 until the needs of those counties are met, provided,
23 however, that those parties enter into contracts with
24 reclamation by July 1st, 1968?

25 WITNESS SAHLBERG: Yes, that's correct.

1 MR. WILLIAMS: So the protection provided was
2 contingent upon the parties entering into contracts
3 prior to July 1968?

4 WITNESS SAHLBERG: That's correct.

5 MR. BEZERRA: Objection.

6 CO-HEARING OFFICER DODUC: Date error?

7 MR. BEZERRA: Yeah. It actually misstates the
8 term because in a later decision, I believe it was
9 E1356 --

10 MR. WILLIAMS: Yes.

11 MR. BEZERRA: -- the board later extended the
12 date to 1975.

13 MR. WILLIAMS: December 31st, 1975.

14 CO-HEARING OFFICER DODUC: Mr. Williams?

15 MR. WILLIAMS: I'm going to get there.

16 Are you -- so some of the parties in these
17 counties entered into contracts prior to this date; is
18 that correct?

19 WITNESS SAHLBERG: That's correct.

20 MR. WILLIAMS: Are you familiar with some of
21 these contracts?

22 WITNESS SAHLBERG: Yes.

23 MR. WILLIAMS: And those contracts would
24 contain the kind of shortage provisions as you've just
25 discussed with Ms. Akroyd which are typically found in

1 reclamation water service contracts, correct?

2 CO-HEARING OFFICER DODUC: Hold on,

3 Mr. Williams.

4 Mr. Bezerra?

5 MR. BEZERRA: Objection. Best evidence. It
6 misstates the evidence. We're talking about the terms
7 of specific water service contracts, all of which, I
8 believe, state that they are subject to reclamation
9 compliance with all water right terms and conditions
10 that apply to the Central Valley Project.

11 CO-HEARING OFFICER DODUC: Mr. Williams?

12 MR. WILLIAMS: Do you want me to respond to
13 that, ma'am, or just -- I'm speaking specifically to
14 Term 11 in the permits.

15 CO-HEARING OFFICER DODUC: Focus on that.

16 MR. WILLIAMS: So going to Mr. Bezerra's
17 point, in fact, the deadline in Term 14 was extended,
18 was it not?

19 WITNESS SAHLBERG: That's correct.

20 MR. WILLIAMS: And it was extended to
21 December 31, 1975, correct?

22 WITNESS SAHLBERG: Yes.

23 MR. WILLIAMS: Decision 1356, that extended
24 that deadline, correct?

25 WITNESS SAHLBERG: Yes, it does.

1 MR. WILLIAMS: Mr. Baker, would you please
2 pull up Westlands 11.

3 I will refer to this as Term 19. You see that
4 in the center there? This is page 16 of Decision 1356.

5 You already established that Term 19 provided
6 for the extension of Term 14, correct?

7 WITNESS SAHLBERG: Correct.

8 MR. WILLIAMS: Did Term 19 here in any other
9 way modify Term 14 of Decision 893?

10 WITNESS SAHLBERG: No, no.

11 MR. WILLIAMS: Mr. Baker, please pull up
12 Westlands 12.

13 Westlands 12 is Water Rights Order 70 amending
14 and affirming Water Rights Decision 1356.

15 Are you familiar with Water Rights Order 70,
16 sir?

17 WITNESS SAHLBERG: Yes.

18 MR. WILLIAMS: Mr. Baker, will you please pull
19 up Westlands 13.

20 This is page 7 of Order 70.

21 This water rights order ordered that
22 paragraph 19 be deleted, did it not?

23 WITNESS SAHLBERG: Yes, it did.

24 MR. WILLIAMS: And by "paragraph 19," I mean
25 Term 19 of D 1356.

1 WITNESS SAHLBERG: Correct.

2 MR. WILLIAMS: The effect of that deletion was
3 to reinstate the deadline of July 1st, 1968, correct?

4 WITNESS SAHLBERG: Correct.

5 MR. WILLIAMS: Are you aware of the bases for
6 that decision -- or that deletion? Excuse me.

7 WITNESS SAHLBERG: I believe the board said
8 that the protections and preferences provided by Term 19
9 was no longer necessary and that the parties seeking
10 water within those three counties could have other means
11 to obtain a supply, such as filing for a water right.
12 Generally, that's it.

13 MR. WILLIAMS: Okay. To your knowledge, sir,
14 no other order or decision issuing from the state board
15 has modified Term 14; is that correct?

16 WITNESS SAHLBERG: That's correct.

17 MR. WILLIAMS: So I just want to summarize,
18 make sure that -- I'll ask you to confirm or deny.

19 Term 14, as properly and fully understood,
20 prevented the delivery of water outside the counties in
21 question, either of them being Placer, Sacramento, and
22 San Joaquin, until July 1st, 1968, the date which the
23 board set for parties within those counties to enter
24 into contracts for the delivery of the water in
25 question. Do you agree with that?

1 WITNESS SAHLBERG: Yes.

2 MR. WILLIAMS: And that, therefore, because
3 Term 14 of D 893 and Term 11 as found in Permits 11315
4 and 11316 are nearly identical, Term 11 is best
5 understood to mean the same?

6 WITNESS SAHLBERG: Yes.

7 MR. WILLIAMS: Thank you.

8 CO-HEARING OFFICER DODUC: Mr. Bezerra?

9 MR. BEZERRA: Object to the question. As long
10 as it's Mr. -- Mr. Sahlberg's understanding, that's
11 fine.

12 MR. WILLIAMS: I don't mean to indicate
13 otherwise.

14 CO-HEARING OFFICER DODUC: So noted.

15 MR. WILLIAMS: Thank you, ma'am. I have no
16 further questions.

17 CO-HEARING OFFICER DODUC: Thank you,
18 Mr. Williams. That was interesting. And not the only
19 reason I allowed for that friendly cross-examination
20 from you and as well as Ms. Akroyd.

21 With that, let's take our lunch break and
22 we'll resume at 1:00 o'clock.

23 (Whereupon the luncheon recess was taken
24 at 11:52 a.m.)

25 --o0o--

1 SEPTEMBER 22, 2016 AFTERNOON SESSION 1:00 P.M.

2 --o0o--

3 CO-HEARING OFFICER DODUC: Welcome back.

4 We'll resume cross-examination of the water rights
5 panel, Group No. 6.

6 Is anyone here from Group No. 6? Not seeing
7 anyone.

8 Group No. 7, you're up for cross-examine.
9 Identify yourself.

10 MR. HITCHINGS: Andrew Hitchings on behalf of
11 Glenn-Colusa Irrigation District and Biggs-West Griddley
12 Water District.

13 For Group 7, we just want to apprise you of
14 the approach that we intend to take. I have some -- I
15 was going to go first. I have some very specific
16 questions with regard to some of the settlement contract
17 characterizations in the testimony.

18 I would then be followed by Mr. Cooper. And
19 he, at the beginning of his cross-examination, he could
20 take you through the summary of the areas that he's
21 going to cover. Then followed by Mr. Bezerra. And then
22 there may be some additional limited cross-examination
23 cleanup that Mr. Aladjem may have.

24 We did our best to coordinate our
25 cross-examination to not have any duplications to the

1 extent possible. So we're going to try and do this as
2 efficiently as we can, like we've done with the other
3 panels.

4 CO-HEARING OFFICER DODUC: And you estimate
5 your total time to be?

6 MR. HITCHINGS: I would say my time is
7 probably going to be about 10 to 15 minutes.

8 And then I'll let the other counsel indicate
9 their estimates.

10 CO-HEARING OFFICER DODUC: Mr. Cooper?

11 MR. COOPER: Dustin Cooper, an hour and a
12 half.

13 MR. BEZERRA: Ryan Bezerra, hour and a half to
14 two hours.

15 CO-HEARING OFFICER DODUC: Okay. Mr. Aladjem?

16 MR. ALADJEM: David Aladjem. I'll be doing
17 some cleanup, probably not more than 15 to 20 minutes.
18 But since I have a court appearance tomorrow in
19 Southern California, if we run out of time this
20 afternoon, I'd appreciate being able to do it next week.

21 CO-HEARING OFFICER DODUC: We'll try to
22 accommodate that, but I would encourage you to encourage
23 Mr. Bezerra to be more efficient.

24 MR. BEZERRA: I haven't even conducted any
25 cross-examination. Hopefully I haven't been too

1 inefficient.

2 CO-HEARING OFFICER DODUC: Two hours, we'll
3 see. We'll see.

4 MR. BEZERRA: I will attempt to be as
5 efficient as possible.

6 CO-HEARING OFFICER DODUC: Thank you.

7 --o0o--

8 CROSS-EXAMINATION

9 MR. HITCHINGS: Good afternoon again. This is
10 Andrew Hitchings.

11 And good afternoon, Mr. Sahlberg, Ms. Sergeant.

12 My questions are going to be -- and,
13 Mr. Cooke, I don't want to leave you out. Sorry about
14 that.

15 My questions are going to be focused mainly on
16 Mr. Sahlberg's testimony. So I'd like to first refer
17 to --

18 Well, first of all, before I get to that, with
19 regard to the cross-examination that ended right before
20 the morning session, I did have some questions about
21 whether, Mr. Sahlberg, you had discussed your testimony
22 or the presentation of your testimony with any of the
23 legal counsel from Westlands Water District or San Luis
24 Obispo & Delta-Mendota Water Authority prior to the
25 hearing today?

1 WITNESS SAHLBERG: Yes.

2 MR. HITCHINGS: Can you explain when those
3 discussions occurred?

4 WITNESS SAHLBERG: They took place over the
5 period of two weeks, one session about two weeks ago and
6 another one yesterday.

7 MR. HITCHINGS: Okay. And who did you meet
8 with from -- from either Westlands or San Luis Obispo &
9 Delta-Mendota or both?

10 WITNESS SAHLBERG: I met with Mr. Williams,
11 Ms. Akroyd, Dan O'Hanlon, and Jon Rubin.

12 MR. HITCHINGS: And did you meet with all four
13 of those attorneys during both sessions?

14 WITNESS SAHLBERG: I don't believe Mr. Rubin
15 was present at the second one.

16 MR. HITCHINGS: And what was generally
17 discussed during those meetings or sessions?

18 WITNESS SAHLBERG: We discussed the shortage
19 provisions in the contract and the Term 14 provision in
20 the Folsom water rights.

21 MR. HITCHINGS: And did you exchange any
22 written correspondence with counsel for either of those
23 organizations as part of the face-to-face meeting
24 sessions that you had?

25 WITNESS SAHLBERG: I did not exchange any

1 written correspondence.

2 MR. HITCHINGS: Did you send any written
3 correspondence to them?

4 WITNESS SAHLBERG: I sent e-mails
5 acknowledging receipt of documents from them.

6 MR. HITCHINGS: And so that means you did also
7 receive correspondence from them or documents from them
8 as part of the meetings prior to your testimony?

9 WITNESS SAHLBERG: Yes.

10 MR. HITCHINGS: Thank you.

11 If we could change gears and move to DOI
12 Exhibit 4. That's Mr. Sahlberg's written testimony. In
13 particular, if we could pull up page 8. And I'd like to
14 focus on the second paragraph.

15 And these questions are going to go to
16 Sacramento River settlement contracts.

17 And, in particular, if you could -- I'd like
18 to direct you to the third sentence in that. It starts
19 with: "The terms of the agreements vary slightly."

20 Do you see that it's about six lines, seven
21 lines down in that paragraph?

22 WITNESS SAHLBERG: Yeah.

23 MR. HITCHINGS: And in that sentence, you
24 state that "Base supply is an amount reclamation and the
25 contractor agree satisfies their state-granted senior

1 water rights," correct?

2 WITNESS SAHLBERG: That's correct.

3 MR. HITCHINGS: So I'm concerned about this
4 characterization of the settlement contracts and
5 particularly how base supply is characterized, so I have
6 a few questions that are going to go into that.

7 If we could refer to DOI 11, which is the
8 Maxwell Irrigation District -- district form contract
9 that was discussed earlier today.

10 And you're familiar with this contract; is
11 that correct?

12 WITNESS SAHLBERG: Yes. Excuse me.

13 MR. HITCHINGS: And if we could look at -- so
14 in this contract itself, can you point to any provisions
15 in that where the parties have agreed that base supply
16 quantities satisfy the contractors' senior water rights?

17 WITNESS SAHLBERG: Might be in the explanatory
18 recitals.

19 MR. HITCHINGS: As you're sitting here today,
20 can you think of anything specific in the explanatory
21 recitals that uses that term that you did, that it
22 satisfies the senior water rights?

23 WITNESS SAHLBERG: No, I can't.

24 MR. HITCHINGS: If I could direct your
25 attention to page 4. It's actually page 4 of the

1 contract itself. It might be PDF 6. In particular,
2 Article 1D.

3 In describing and defining contract total
4 there, that period that's covered under the contract and
5 the agreement on diversion quantities under the contract
6 total is -- is from April 1st to October 31st; is that
7 correct?

8 WITNESS SAHLBERG: That's correct.

9 MR. HITCHINGS: And if we could move to
10 page 19 of that same contract. And it's the contract
11 page number which might be PDF 21, I think.

12 And then looking at Article 91A when it's
13 referring to the agreement on water quantities; is that
14 correct?

15 MR. BERLINER: You mean 9A1?

16 MR. HITCHINGS: I'm sorry. 9A1. Thank you.

17 MR. BERLINER: I'm sorry. What was the
18 question again?

19 MR. HITCHINGS: This term addresses the
20 agreement between the parties --

21 WITNESS SAHLBERG: Yes.

22 MR. HITCHINGS: -- on water quantities; is
23 that correct?

24 WITNESS SAHLBERG: That's correct.

25 MR. HITCHINGS: And, again, this covers -- if

1 you look at line 425, it indicates that the contract
2 covers the April 1st to October 31?

3 WITNESS SAHLBERG: That's correct.

4 MR. HITCHINGS: If we could move to Exhibit A
5 of the contract. That's right after page 36.

6 Maybe two more pages down. Next page.

7 And so this schedule of diversions under the
8 contract, this also just covers an agreement with regard
9 to the period April through October; is that correct?

10 WITNESS SAHLBERG: That's correct.

11 MR. HITCHINGS: So the settlement contracts,
12 they include agreements with regard to diversions only
13 during the period April through October, correct?

14 WITNESS SAHLBERG: Correct.

15 MR. HITCHINGS: So they do not limit the
16 settlement contractors' diversions under the water
17 rights outside that period; isn't that correct?

18 WITNESS SAHLBERG: That's correct.

19 MR. HITCHINGS: And so some of the settlement
20 contractors may have water rights that are outside that
21 period that are not covered by or otherwise satisfied by
22 the contract; is that correct?

23 WITNESS SAHLBERG: That's correct.

24 MR. HITCHINGS: If we could move to back to
25 Article 9 on page 19. And it's contract page 19. And,

1 again, this is the agreement on quantities of water.

2 In reading this Article 9A1, it says: "During
3 the term of the settlement contracts and any renewals
4 thereof, it shall constitute full agreement between the
5 United States and the contractor as to quantities of
6 water"; is that correct?

7 WITNESS SAHLBERG: Yes, that's what it says.

8 MR. HITCHINGS: And then if we move to
9 Article 9D on page 21, two more pages down.

10 The first sentence of paragraph D there at
11 line 467: "If the contracts are not renewed or they're
12 otherwise terminated, the parties have agreed that the
13 rights of the parties to divert and use water shall
14 exist as though the settlement contracts had never been
15 entered into"; is that correct?

16 WITNESS SAHLBERG: I believe it says, "have
17 not been entered into." But, yes, that's correct.

18 MR. HITCHINGS: Okay. Thank you.

19 So given the provisions that indicate that the
20 term of the contract or the period of time each year
21 covered by the contract is only April through October
22 and the fact that the agreement on the quantities of
23 water to be diverted are only during the term of the
24 contract or any renewal thereof, the parties have not,
25 in fact, agreed that the contracts satisfy their senior

1 water rights; isn't that correct?

2 WITNESS SAHLBERG: Can you go back to 9A1,
3 please?

4 MR. HITCHINGS: Were you confused with my
5 question? Or do you need to review this to answer that
6 question?

7 WITNESS SAHLBERG: Well, the contract -- well,
8 according to 9A1 -- it's an agreement on the quantities
9 of water for April through October but not for the whole
10 year.

11 MR. HITCHINGS: So your statement in your
12 testimony on page 8 says that they agree -- reclamation
13 and the contractor agree that the base supply satisfies
14 their senior water rights; isn't that correct?

15 WITNESS SAHLBERG: That's what it says, yes.

16 MR. HITCHINGS: But the contract itself only
17 covers April through October and only covers during the
18 period that the contract is actually being performed and
19 in place; isn't that correct?

20 WITNESS SAHLBERG: That's correct.

21 MR. HITCHINGS: So isn't it also correct,
22 then, that it can't necessarily satisfy all of those
23 settlement contractors' senior water rights using your
24 terminology?

25 WITNESS SAHLBERG: I'm sorry. Can you

1 rephrase that? You said "it." I don't know what you
2 mean by "it."

3 MR. HITCHINGS: Your testimony is that the
4 parties have agreed that the base supply quantities
5 agreed to satisfy their senior water rights; isn't that
6 correct?

7 WITNESS SAHLBERG: Yes.

8 MR. HITCHINGS: But the contract only covers a
9 defined period and only covers when the contract is in
10 place.

11 WITNESS SAHLBERG: That's correct.

12 MR. HITCHINGS: So that agreement is limited
13 to what they agreed to divert while the contract is in
14 place, correct?

15 WITNESS SAHLBERG: That's correct.

16 MR. HITCHINGS: And only that; isn't that
17 correct?

18 WITNESS SAHLBERG: That's correct.

19 MR. HITCHINGS: Okay. During your
20 cross-examination by San Luis Obispo & Delta-Mendota
21 with regard to this exhibit, there was a -- some
22 discussions with regard to Article 3I. If we could go
23 to that provision.

24 CO-HEARING OFFICER DODUC: Do you have a page
25 number, Mr. Hitchings?

1 MR. HITCHINGS: Yes. Excuse me. It's on
2 contract page 12.

3 During that cross-examination by you, do you
4 recall that being characterized during the questioning
5 as a so-called shortage provision?

6 WITNESS SAHLBERG: Yes.

7 MR. HITCHINGS: And that provision is really a
8 limitation on liability provision, not a shortage
9 provision; isn't that correct?

10 WITNESS SAHLBERG: I suppose you can
11 characterize it that way.

12 MR. HITCHINGS: Are there other -- are there
13 more specific provisions in the contract that deal with
14 critical year cutbacks and constraints on availability
15 of water?

16 MR. BERLINER: Are you talking about Shasta
17 critical use?

18 MR. HITCHINGS: I'm talking about whether
19 there's other provisions in the contract that more
20 directly address when shortages are imposed under the
21 contracts.

22 WITNESS SAHLBERG: Yes.

23 MR. HITCHINGS: And with regard to Article 3I,
24 that only applies to project water quantities under the
25 contract, not base supply quantities; is that correct?

1 WITNESS SAHLBERG: That's correct.

2 MR. HITCHINGS: Okay. I think that's all I
3 have. Thank you very much for your testimony.

4 CO-HEARING OFFICER DODUC: Thank you,
5 Mr. Hitchings.

6 Mr. Cooper?

7 MR. COOPER: Dustin Cooper,
8 Anderson-Cottonwood Irrigation District, et al.

9 --oOo--

10 CROSS-EXAMINATION

11 MR. COOPER: Good afternoon, Hearing Officers,
12 witnesses. My name is Dustin Cooper. I represent nine
13 protesting parties as part of the Sacramento Valley
14 Water Users Group.

15 Ms. Sergeant, my questions will directly mostly
16 to you.

17 They concern, Hearing Officers, the facts
18 Ms. Sergeant is relying upon in support of her statements
19 that there is no injury to other legal users of water
20 resulting from the WaterFix. I will also ask questions
21 concerning Ms. Sergeant's description and understanding
22 of the diversion agreements between the entities on the
23 Feather River and the State of California.

24 I have some questions about DWR policies and
25 Ms. Sergeant's training related to assessing injury to

1 other legal users of water.

2 And as I spoke before, I anticipate my
3 questions taking approximately one and a half hours.

4 Ms. Sergeant, if -- I've handed out before you
5 a stack of documents. The first is DWR 53 which I've
6 identified is MLF 2 because I have some highlights on it
7 to ease in locating where I'm going to ask you
8 questions.

9 So if you could turn to page 2 of that
10 document, lines 12 through 15. Your written testimony
11 says: "I evaluate petitions for change submitted to the
12 State Water Board by other water users for potential
13 impacts to SWP water rights, and file protests and
14 participate in State Water Board proceedings as
15 necessary related to changes that may affect DWR's water
16 rights."

17 Do you see that, see where your written
18 testimony says that?

19 WITNESS SERGENT: I do.

20 MR. COOPER: When you use the phrase
21 "potential impacts to the State Water Project water
22 rights," are you referring to potential injury to the
23 State Water Project water rights?

24 WITNESS SERGENT: I am.

25 MR. COOPER: So can we use those two words

1 interchangeably, "potential impacts" and "potential
2 injury"?

3 WITNESS SERGENT: Probably.

4 MR. COOPER: Does DWR have a policy on how it
5 assesses whether third-party petitions for change may
6 injure its State Water Project water rights?

7 WITNESS SERGENT: We don't have a policy. I
8 review petitions to determine if during Term 91
9 conditions, water might be divert that would not
10 otherwise be diverted and it would result in -- in less
11 water in the system.

12 MR. COOPER: So if DWR does not have a policy
13 to help you assess whether there are -- any third-party
14 petition may impact its State Water Project water
15 rights, describe for me how you were trained to assess
16 whether there's -- there may be injury.

17 WITNESS SERGENT: Well, as -- I've been
18 working with State Water Project water rights since the
19 1991 Drought Water Bank. I came to DWR at the end of my
20 master's program in which I took course at UC Davis
21 School of Law in water law as well as a course at
22 UC Davis in water law. Attended a number of water
23 rights conferences throughout the years. I used to
24 attend an annual conference to try to keep up on issues
25 related to water rights. My focus in my master's

1 program was on water resources management, and I felt
2 water rights was an important aspect of trying to
3 determine whether or not something would affect
4 potentially DWR's water rights.

5 MR. COOPER: In your experience --

6 CO-HEARING OFFICER DODUC: Hold on,
7 Mr. Cooper. Before you continue, Ms. Sergeant, if you
8 could move the microphone closer to you. I can barely
9 hear you.

10 WITNESS SERGENT: Is that better?

11 CO-HEARING OFFICER DODUC: Much better. Thank
12 you.

13 MR. COOPER: In your experience, based on your
14 work with DWR, would DWR conduct modeling of a proposed
15 change to determine if there's a potential injury to its
16 water rights?

17 WITNESS SERGENT: It would depend on the
18 change proposed.

19 MR. COOPER: In your experience, have you, in
20 fact, in the past done modeling of a third-party
21 proposed change?

22 WITNESS SERGENT: I don't do any modeling. I
23 would rely on modeling done by DWR staff.

24 MR. COOPER: But DWR has, at least that you
25 are aware of?

1 WITNESS SERGENT: I'm trying to think of
2 change petitions. I can think of at least the
3 Contra Costa Los Vaqueros change.

4 MR. COOPER: In that particular instance or
5 any other that you're familiar with, would DWR use the
6 same modeling that has been used in this proceeding?

7 WITNESS SERGENT: I'm not a modeler. I would
8 not know what type of modeling was done.

9 MR. COOPER: Then I think I know the answer to
10 this question: If -- would you know the version of the
11 modeling that DWR used in these other proceedings?

12 WITNESS SERGENT: I would not.

13 MR. COOPER: Okay. Do you know if DWR would
14 model project operations without the change and then
15 model project operations with the proposed third-party
16 change?

17 WITNESS SERGENT: I'm -- I can't speak
18 specifically to any modeling question.

19 MR. COOPER: Were you directly involved in the
20 Los Vaqueros change petition that you mentioned earlier?

21 WITNESS SERGENT: Just indirectly.

22 MR. COOPER: In your training, have you
23 assessed whether there's -- there's a minimum threshold
24 of potential injury before DWR may decide to file a
25 protest to a third-party change petition?

1 WITNESS SERGENT: I have not. We evaluate
2 each petition on its own.

3 MR. COOPER: Will -- to your knowledge, will
4 DWR protest petitions for change by third parties if
5 there's a potential for any injuries to its water
6 rights?

7 WITNESS SERGENT: We decide which petitions,
8 you know, whether or not to protest a petition based on
9 the individual petitions and whether or not it's in a
10 basin that is tributary to an area that the State Water
11 Project operates. And if the petitioner has agreed to
12 include petitions that would say -- include Term 91 or
13 something like that that would protect the Department,
14 we would not necessarily protest.

15 MR. COOPER: I'm trying to ask questions
16 directed to the threshold. Based on your training and
17 experience, what's the minimum threshold you need to see
18 before you recommend DWR protest a third-party change
19 petition?

20 WITNESS SERGENT: I think I answered that we
21 don't have necessarily have a threshold. Each petition
22 is the evaluated on its own.

23 MR. COOPER: Is it fair to say generally that
24 the face value of DWR's State Water Project water rights
25 amounts to millions of acre feet per year?

1 WITNESS SERGENT: That would be true.

2 MR. COOPER: In your opinion and based on your
3 training and experience, would DWR protest a third-party
4 change petition if the requested change resulted in the
5 possible unavailability of 1 acre foot available to DWR
6 under its permits to the State Water Project?

7 MR. BERLINER: Objection. Asked and answered.
8 The witness has indicated they addressed each transfer
9 on itself without a threshold.

10 CO-HEARING OFFICER DODUC: I would agree,
11 Mr. Cooper. Please move on.

12 MR. COOPER: Ms. Sergeant, if we could just
13 scroll up to the same page of MLF 2, which is your
14 highlighted written testimony, lines 1 and 2.

15 You're reciting kind of your work experience
16 and that you have extensive work evaluating water
17 transfer proposals and requests to convey transfer water
18 through SWP facilities.

19 Do you see that, where your testimony says
20 that?

21 WITNESS SERGENT: I do.

22 MR. COOPER: Now, you and I have worked
23 together extensively on water transfer proposals, so I'm
24 familiar with the process. But my question is just to
25 inform the hearing officers and the audience about your

1 procedure when you receive a transfer proposal that the
2 proponents wish to use State Water Project facilities.

3 I'm specifically referring to Water Code
4 Section 1810(d), with a particular focus on the
5 no-injury evaluation as part of that code section.

6 Can you explain to us your understanding of
7 that?

8 WITNESS SERGENT: My understanding of Water
9 Code Section 1810?

10 MR. COOPER: (d).

11 WITNESS SERGENT: (d)?

12 When we -- Water Code 1810 says that if there
13 is capacity available in a public entity's facilities,
14 that we make that capacity available to another -- to
15 the transfer -- the potential transferee if the transfer
16 can be made without injuring other legal users of water
17 without unreasonably impacting, say, the environment or
18 without unreasonably impacting the county in which the
19 water is developed.

20 MR. COOPER: When you're assessing water
21 transfer proposals and assessing third-party petitions
22 for change, is there any difference in your training or
23 your experience in what you believe may constitute an
24 injury to DWR's State Water Project water rights?

25 WITNESS SERGENT: That depends on the

1 petition. Petition can be made for transfer purposes,
2 to appropriate new -- to make a new appropriation, to
3 export water. It depends on what the petitioner is
4 requesting and where that petitioner is located.

5 MR. COOPER: Mr. Baker, if you would pull up
6 the document I've identified as MLF 4.

7 Ms. Sergeant, you've already authenticated this
8 with Mr. O'Laughlin's questioning. Just again, you are
9 familiar with this document, correct?

10 WITNESS SERGENT: Yes, I am.

11 MR. COOPER: Mr. Baker, if you would scroll to
12 the next page where the highlighted text is.

13 That reads -- this is Appendix A of the water
14 transfer white paper.

15 And it reads -- the highlighted text reads:
16 "When the projects contract to convey transferred water
17 through their facilities or otherwise weigh in on
18 proposed transfers, they must be sure that the water
19 supply to which their project contractors are legally
20 entitled is not unlawfully diminished at the transfer.
21 If it is diminished, it is effectively and involuntarily
22 and uncompensated transfer of someone else's water and
23 substitutes legal injury."

24 Do you see that text?

25 WITNESS SERGENT: I do.

1 MR. COOPER: Do you see the phrase "unlawfully
2 diminished"?

3 WITNESS SERGENT: I do.

4 MR. COOPER: What is your understanding of
5 that phrase?

6 WITNESS SERGENT: I did not -- I want to
7 clarify that I did not write this particular section.
8 One of the attorneys in our office of chief counsel
9 provided that section.

10 MR. COOPER: Okay. Thank you.

11 What is your understanding of the phrase
12 "unlawfully diminished"?

13 WITNESS SERGENT: Well, I'm not prepared to
14 make a legal determination of what is lawfully or
15 unlawfully. I can explain how we try to ensure that
16 someone else's water is not included in a transfer.

17 MR. COOPER: Well, I'm trying to understand.
18 Your testimony is that you have extensive experience
19 evaluating water transfer proposals?

20 WITNESS SERGENT: That's correct.

21 MR. COOPER: And I believe that includes an
22 assessment under 1810(d) of whether that transfer
23 injures any third party, including DWR.

24 WITNESS SERGENT: That's correct. And if your
25 question to me is how do we assess whether or not that

1 transfer might injure another legal user of water, I can
2 address that.

3 MR. COOPER: Yes.

4 WITNESS SERGENT: Okay. With respect to
5 transfers, we look at the method being proposed to make
6 water available. Each method being proposed has the
7 potential to change the downstream supply in a different
8 way.

9 So what we try to assure is that the water
10 supply downstream will not see a reduction due to what
11 we call, say, a paper water transfer. Someone has the
12 right to divert 10,000 acre feet of water. That doesn't
13 mean that they consume 10,000 acre feet of water. A
14 portion of that would return to system as return flow.

15 So we try to look at the net difference, net
16 amount of water that would be made available by any
17 particular proposal so that we are not including what
18 would otherwise return to the system in the amount of
19 water that we agree to convey through the State Water
20 Project.

21 MR. COOPER: You mentioned one of the things
22 DWR's trying to prevent is a reduction in downstream
23 flow?

24 WITNESS SERGENT: That's correct.

25 MR. COOPER: In your opinion, is any reduction

1 in downstream flow an injury to DWR's water rights?

2 MR. MIZELL: Objection. Asked and answered.

3 This again goes to threshold of injury that he talked
4 about 10 minutes ago.

5 CO-HEARING OFFICER DODUC: Answer it one more
6 time for the record.

7 WITNESS SERGENT: We don't assess a threshold.
8 And whether or not there -- you know, it's -- it's
9 1 acre foot or 10 acre foot, we use the same methodology
10 to assess every transfer.

11 MR. COOPER: Do you attempt to avoid all
12 downstream reduction inflows?

13 WITNESS SERGENT: What we attempt to do is use
14 the best available information we have to us to estimate
15 the net amount of water that would be made available by
16 any transfer and to limit the amount that we would
17 convey to that.

18 MR. COOPER: Okay. Mr. Baker return to MLF 2
19 again.

20 This is DWR 53 with highlights. It's your
21 testimony with highlights. Page 3, Footnote 2, which
22 reads: "In my testimony, I uses terms of art that are
23 commonly used in water rights-related activities such as
24 injury to other legal users of water or beneficial use.
25 This terminology is used in relation to my analysis of

1 the facts and not intended to express legal
2 conclusions."

3 Do you see where your testimony says that?

4 WITNESS SERGENT: I do.

5 MR. COOPER: For purposes of my remaining
6 questions for you today, when I ask questions about
7 injury to other legal users of water, I'm going to adopt
8 the same caveat that you have. I'm just asking you for
9 facts, not -- not asking you to offer a legal
10 conclusion. Is that okay?

11 WITNESS SERGENT: Okay.

12 MR. COOPER: So as I read your testimony,
13 there's 10 or so locations where you say, either
14 verbatim or in effect, that the California WaterFix will
15 not injure other legal users of water.

16 Do you generally recall that testimony?

17 WITNESS SERGENT: I recall that in my
18 testimony. I do make reference to the project will not
19 injure any other legal user of water. I don't know how
20 many times I mention it.

21 MR. COOPER: When you offer that testimony,
22 are you using the same standards that DWR uses in the
23 context of third-party petitions for change and water
24 transfer proposals that utilize State Water Project
25 facilities?

1 WITNESS SERGENT: I use the same basic
2 principles. With respect to the State Water Project, in
3 most cases I'm referring to how we will maintain certain
4 specific standards that have been determined by the
5 Water Board to be protective of water rights.

6 MR. COOPER: So based on this explanation in
7 Footnote 2 of your written testimony, your testimony is
8 that there are no facts that you are aware of that would
9 lead you to the opinion that the California WaterFix
10 injures any other legal user of water?

11 WITNESS SERGENT: My testimony is that the --
12 I've reviewed the information prepared. And based on my
13 review of that, I don't see anything that would lead me
14 to conclude that there would be an injury to another
15 legal user of water.

16 MR. COOPER: So if there were facts presented
17 to you that showed a potential for injury, that would
18 potentially change your general opinion that the
19 California WaterFix will not injure other legal users of
20 water; is that correct?

21 WITNESS SERGENT: I'm not going to say that
22 something that would be presented would change my
23 opinion. I would have to see what that was and how it
24 was prepared and be able to understand what went into
25 it.

1 MR. COOPER: The question was just that it
2 would potentially change your opinion?

3 MR. MIZELL: Object as asked and answered
4 under the questions that Tim O'Laughlin asked at the
5 beginning of the day.

6 CO-HEARING OFFICER DODUC: Please, I
7 appreciate where you're going with this. I appreciate
8 it puts the witness in a difficult position. But as an
9 engineer, as a technical person, when offering data, do
10 you approach data analysis with an open mind and reach
11 conclusions based on that analysis?

12 WITNESS SERGENT: Yes.

13 CO-HEARING OFFICER DODUC: And if data -- when
14 new data is provided, should new analysis -- should your
15 analysis lead to different conclusions, you would revise
16 accordingly?

17 WITNESS SERGENT: Absolutely. We would
18 consider the information before us, the validity of it,
19 have it analyzed and -- certainly.

20 CO-HEARING OFFICER DODUC: Thank you.

21 I think we put that one to rest. Move on,
22 Mr. Cooper.

23 MR. COOPER: Thank you.

24 Ms. Sergeant, if I could direct your attention
25 to the document identified as MLF 2, that's your --

1 again, your written testimony, page 3, line 22, through
2 page 4, line 3, which -- in which you testify: "My
3 testimony builds on the information of other testimony
4 in Part I to provide additional information to the State
5 Water Board to support a decision that, within the
6 framework of DWR's water rights, regulations, and
7 contracts, the CWF can be constructed and operated
8 without injuring other legal users of the water.

9 "This other testimony includes Mr. Leahigh's
10 testimony describing decisions on the timing and
11 quantities of water deliveries based on realtime
12 hydrologic and hydrodynamic information and modeling
13 testimony by Dr. Nader Tehrani and Mr. Munevar."

14 Do you see where your written testimony said
15 that?

16 WITNESS SERGENT: I do.

17 MR. COOPER: Is it fair to say that your
18 conclusion that there are no facts leading you to
19 believe the California WaterFix causes injury to other
20 legal users of water is based in part of Mr. Leahigh's
21 description of how the California WaterFix would be
22 operated in realtime?

23 WITNESS SERGENT: Based in part.

24 MR. COOPER: Are you aware of DWR's and
25 reclamation's factual stipulation that they have not

1 proposed any permanent terms or conditions in this
2 proceeding?

3 WITNESS SERGENT: Yes, I am.

4 MR. COOPER: Are you aware of Mr. Leahigh's
5 testimony that there are no currently proposed permit
6 terms or conditions that would require the California
7 WaterFix to be operated in realtime as described by
8 Mr. Leahigh?

9 WITNESS SERGENT: I remember a general
10 discussion of that. I can't repeat verbatim what
11 Mr. Leahigh said.

12 MR. COOPER: In general, you're aware of it?

13 WITNESS SERGENT: Uh-huh.

14 MR. COOPER: So the question to you then was:
15 In the absence of a firm commitment from DWR to operate
16 the California WaterFix as described by Mr. Leahigh, how
17 can you so definitively state that there are no facts
18 that you are aware of that the California WaterFix may
19 injure other legal users of water?

20 MR. BERLINER: Objection. Mischaracterizes
21 Mr. Leahigh's testimony. Taking it entirely out of
22 context.

23 CO-HEARING OFFICER DODUC: I'll ask you to try
24 to clarify your question.

25 MR. COOPER: Well, I thought Mr. Leahigh was

1 pretty clear when I was cross-examining him. I asked
2 him -- I had him go through how he would propose
3 operating the California WaterFix, and he gave a very
4 thorough description of that. And then I asked if DWR
5 had proposed any permit terms or conditions that would
6 require operations in the manner described and he said,
7 no. I think I fairly described Mr. Leahigh's testimony.

8 My question to Ms. Sergeant is: Given that --
9 which you can disagree with me -- if that's
10 Mr. Leahigh's testimony, given my understanding of that,
11 how can you so definitely say that the California
12 WaterFix, there's no facts that you're aware of that
13 would result in potential injury to third parties
14 resulting from the California WaterFix?

15 MR. BERLINER: And the basis for my objection
16 is that Mr. Leahigh's testimony explains, first of all,
17 the difference between modeling and realtime operations
18 and how he operates in realtime to avoid injury. So
19 it's not --

20 CO-HEARING OFFICER DODUC: Within the
21 boundaries.

22 MR. BERLINER: Exactly.

23 So within the context of WaterFix, based on
24 how they operate today and how they would operate under
25 the WaterFix criteria, to my mind, Mr. Leahigh made it

1 very clear that while modeling might show an impact at a
2 given time, for instance, let's say, the water quality
3 in the Delta, that they would take into account current
4 barometric pressures, tidal impacts, et cetera, and make
5 realtime adjustments, they could never be shown in the
6 modeling because the modeling is not capable of doing
7 realtime adjustments to the project.

8 So, in that way, he put forth the proposition
9 that in order to avoid an injury, whether it's quality
10 or quantity, he would make those realtime adjustments.

11 CO-HEARING OFFICER DODUC: Thank you,
12 Mr. Berliner. That was my understanding of his
13 testimony as well.

14 So I'll sustain the objection and will give
15 you another chance, if you want, to rephrase your
16 question.

17 MR. COOPER: Is there any operational
18 scenario, Ms. Sergeant, that you can envision where there
19 may be facts giving rise to a potential injury to third
20 parties resulting from the California WaterFix?

21 WITNESS SERGENT: I can't envision that as I
22 sit here today.

23 I think Mr. Leahigh spent some extensive
24 amount of time describing how, under current operational
25 conditions, we frequently have surplus capacity at the

1 existing export facilities. And, therefore, if the
2 project was inclined to operate such that it would
3 jeopardize meeting its settlement agreements or its
4 water quality requirements, it would have an opportunity
5 to do that now. And we do not operate that way. We
6 take our obligations very seriously. This is adding
7 additional flexibility. But the primary function, as
8 Mr. Leahigh indicated, was going to be to attempt to
9 capture some of those surplus flows.

10 In the drier year times when it might be a
11 concern to draw reservoir levels down further than what
12 we do now, if we wanted -- if we were going to operate
13 that way, we could already operate that way now because
14 we -- during those drier years is when we have the
15 export capacity at the pumps.

16 So I cannot envision a scenario where the
17 California WaterFix would result in an injury to other
18 legal users of water. As Mr. Leahigh indicated, it has
19 flexibility. At the time where reservoir levels are a
20 concern, he would add flexibility. But he didn't
21 envision sending more water during those periods.

22 MR. COOPER: Okay. If we can change to
23 page 11 of MLF 2, lines 10 through 11 -- excuse me -- 10
24 through 13.

25 This is where your written testimony says:

1 "Although there may be changes in SWP/CVP storage levels
2 for releases -- see Exhibit DWR 71, Section CV -- this
3 would not injure other legal users because it is my
4 understanding that such water users do not have a right
5 to stored water releases from the SWP/CVP."

6 Do you see where your written testimony says
7 that?

8 WITNESS SERGENT: I do.

9 CO-HEARING OFFICER DODUC: And if I recall,
10 Mr. O'Laughlin spent quite a bit of time on this. So I
11 would hope that you are exploring a different aspect.

12 MR. COOPER: I am, yes.

13 CO-HEARING OFFICER DODUC: Okay.

14 MR. COOPER: What legal users are you
15 referring to?

16 WITNESS SERGENT: Any legal diverter outside
17 the two projects under their individual water rights.

18 MR. COOPER: Would that include Feather River
19 entities that hold diversion agreements with the State
20 of California?

21 WITNESS SERGENT: The department has
22 contractual obligations to those settlement agreements,
23 but all of the water diverted under those permits, say
24 at Lake Oroville, are diverted under DWR's water rights.

25 MR. COOPER: Let's take one question at a

1 time. I think we'll get to that. I'm just trying to
2 get you to identify when you -- when you identify these
3 other legal users, I'm trying to understand who all --
4 who's the universe of other legal users you're referring
5 to.

6 WITNESS SERGENT: I believe I said any user or
7 diverter other than the State Water Project for our
8 water rights purposes.

9 MR. COOPER: So, then, that would include the
10 entities on the Feather River with diversion agreements?

11 WITNESS SERGENT: Yes.

12 MR. COOPER: If it was, in fact, presented to
13 you that some in-basin water users are entitled to
14 stored water releases, would you then conclude that
15 there's the potential for injury to other legal users
16 resulting from the California WaterFix?

17 WITNESS SERGENT: Again, all water stored at
18 Lake Oroville is stored under DWR's water rights. Other
19 water users, for example, Western Canal Water District,
20 has agreements with Pacific or PG&E to release stored
21 water for their purposes.

22 That stored water is released from upstream
23 and delivered to Western Canal. That is distinct from
24 saying that Western Canal would now have a right to a
25 water right to water stored in Lake Oroville. That's

1 water stored under a separate water right that is
2 delivered by that water right holder and conveyed by the
3 department.

4 MR. COOPER: So Western -- you mentioned
5 Western Canal Water District. They are one of the
6 entities holding a diversion agreement with the State of
7 California; is that correct?

8 WITNESS SERGENT: We do have a settlement
9 agreement with Western Canal Water District, that's
10 correct.

11 MR. COOPER: I'm going to refer to those
12 agencies as the Feather River Contractors for shorthand.
13 Is that okay with you?

14 WITNESS SERGENT: As long as, if we get into
15 particulars, we identify which because they have
16 different provisions in their agreements.

17 MR. COOPER: Okay. Fair enough.

18 Are you generally aware of the terms of the --
19 I believe there are six agreements with the
20 Feather River Contractors?

21 WITNESS SERGENT: Generally.

22 MR. COOPER: In your opinion, based on your
23 understanding of those agreements, would the state be
24 obligated to draft storage if necessary to provide the
25 quantities of water set forth in those diversion

1 agreements?

2 WITNESS SERGENT: Yes, we do that. There are
3 times when some of the water provided to those
4 contractors comes from Oroville storage.

5 MR. COOPER: So then in -- in the hearing
6 officers considering your testimony here on page 11,
7 lines 10 through 13, the hearing officers should
8 understand that the Feather River Contractors are
9 entitled to storage releases from Lake Oroville, if
10 necessary, to deliver the quantities of water set forth
11 in those agreements. Would you agree?

12 WITNESS SERGENT: There are times, like I
13 said, when we complement the water that we release to
14 the diverters from the Feather River does come from
15 Lake Oroville storage. But that water, again, just to
16 clarify, is stored under DWR's water rights.

17 MR. COOPER: Can we go back, Mr. Baker, to
18 page 10 of MLF 2?

19 I'm sorry. This is not highlighted. It's
20 lines 26 through 28, which reads: "DWR testimony and
21 supporting documentation provide evidence for the State
22 Water Board to determine that the changes proposed in
23 the petition can be approved without injuring other
24 legal users of water."

25 Do you see that, Ms. Sergeant?

1 WITNESS SERGENT: I do.

2 MR. COOPER: What facts specifically are you
3 drawing upon in this other DWR testimony and supporting
4 documentation to support your opinion that the
5 California WaterFix can be approved without injuring
6 other legal users of water?

7 WITNESS SERGENT: I reviewed the information
8 provided by Mr. Munevar that looked at the reservoir
9 levels, results of the modeling that showed potential
10 changes in reservoir levels to -- with specifically
11 considering the upstream requirements of the settlement
12 agreements. Those graphs showed essentially no change
13 in end-of-September storage, and which led me to
14 conclude that there would be no change in DWR's ability
15 to meet the obligations of the settlement contracts.

16 And with respect to other water users, say, in
17 Delta, I looked at Dr. Nader Tehrani's results from the
18 DSM2 modeling, as well as looking at his results for the
19 water levels. And then I looked at Mr. Leahigh's
20 testimony with respect to current operations.

21 MR. COOPER: And proposed operations as well?

22 WITNESS SERGENT: And proposed as well,
23 correct.

24 MR. COOPER: Anything else that you reviewed
25 or are relying upon?

1 WITNESS SERGENT: I also looked at some of the
2 information I had. The modelers provided me with some
3 more specific information related to compliance
4 locations of specific individual contracts that were
5 within the Delta.

6 MR. COOPER: Are those documents part of the
7 record in this proceeding, or were these separate
8 documents that you requested and reviewed?

9 WITNESS SERGENT: They are in the modeling
10 results. We did not present specific graphics at those
11 locations, but they are in the -- in the modeling
12 results.

13 MR. COOPER: Have you monitored the
14 presentation of direct testimony and cross-examination
15 of the prior witness panels?

16 WITNESS SERGENT: For the most part.

17 MR. COOPER: Have you heard any new or
18 different facts since the submittal of your written
19 testimony that alters your opinion that the California
20 WaterFix will not injure any other legal users of water?

21 WITNESS SERGENT: No, I have not.

22 MR. COOPER: How many years have you been part
23 of the team at DWR assessing what was then known as
24 BDCP, now known as the California WaterFix?

25 WITNESS SERGENT: I'm not a part of the BDCP

1 team. My involvement has been related to this change
2 petition.

3 MR. COOPER: So you first became involved when
4 the change petition was filed?

5 WITNESS SERGENT: That's correct.

6 MR. COOPER: Okay.

7 WITNESS SERGENT: Well, in preparation of the
8 change petition, yes.

9 MR. COOPER: Was that just a matter of months
10 before it was submitted or years?

11 MR. BERLINER: I believe it was at least a
12 year. I can't say if it was longer than that.

13 MR. COOPER: Okay.

14 WITNESS SERGENT: I'm sorry. I have to
15 correct that. I was also involved in development of
16 some of the information for the BDCP documents with
17 respect to water transfers. But with respect to water
18 rights, my involvement started with this petition.

19 MR. COOPER: Okay. At any point prior to your
20 signature of your testimony, which I believe was
21 May 31st of this year, were you concerned at any time
22 that the California WaterFix may injure other lawful
23 users of water?

24 WITNESS SERGENT: As I said, I was not
25 involved in the petition before that. But based on my

1 work with DWR, we operate to meet the objectives in the
2 Delta and in-basin needs. So I would not have a reason
3 to be concerned about something that they were
4 proposing.

5 MR. COOPER: As page 23 of your testimony,
6 DWR 53, you describe the California WaterFix settlement
7 agreement with Contra Costa Water District that was
8 executed March 24, 2016. Do you recall that testimony?

9 WITNESS SERGENT: I do.

10 MR. COOPER: Prior to execution of that
11 agreement, was it your opinion that the California
12 WaterFix resulted in injury to Contra Costa Water
13 District?

14 WITNESS SERGENT: My opinion hasn't changed.
15 I don't think the California WaterFix facilities results
16 in an impact or injury to any legal user.

17 MR. COOPER: So then why did DWR -- at least
18 to the extent of your understanding, why did DWR enter
19 into that settlement agreement with Contra Costa Water
20 District?

21 WITNESS SERGENT: I was not involved in the
22 negotiations, but it is my understanding that the
23 settlement agreement was a much broader agreement. It
24 was not related just specifically to water or changes in
25 water quality at that location.

1 It's a settlement of potential CEQA issues.
2 DWR entered it into without admitting any liability
3 associated with any particular injury, but it was to
4 cover a much broader range of issues. But I was not
5 involved in those negotiations.

6 MR. COOPER: Okay. So if that agreement had
7 not been executed, what I'm hearing you say is you would
8 still have the same opinion that you have today that
9 there are no facts that you're aware of giving rise to
10 potential injury resulting from the California WaterFix?

11 WITNESS SERGENT: That's correct.

12 MR. COOPER: Okay. Okay. Returning to MLF 2,
13 Ms. Sergeant, page 11, lines 24 through 26, which reads:
14 "The modeling demonstrates that changes in carryover
15 storage levels from the four CWF scenarios would be
16 higher or similar to storage levels in the NAA. This
17 information demonstrates a continued ability to meet
18 contractual obligations."

19 Do you see where your testimony says that?

20 MR. BERLINER: I do.

21 MR. COOPER: Do you recall Mr. Leahigh and
22 other witnesses explaining that one limitation in
23 modeling is that it does not necessarily capture all the
24 nuances of realtime operations?

25 WITNESS SERGENT: Yes, I do.

1 MR. COOPER: If modeling could more closely
2 reflect realtime operations, would you consider that a
3 good improvement?

4 WITNESS SERGENT: I'm not a modeling -- I
5 don't know that I need to opine on the -- on any changes
6 that might be made to the model.

7 MR. COOPER: So you just don't have an opinion
8 on whether that would be a good improvement?

9 WITNESS SERGENT: I don't have an opinion on
10 what improvements might be made and what effect they
11 might have.

12 MR. COOPER: Would you consider improved
13 modeling to be a better tool to assess whether the
14 California WaterFix may injure other legal users of
15 water?

16 WITNESS SERGENT: Again, I -- I believe that
17 the modeling that was done was done with the best
18 available tools to DWR's modelers. And that's what I
19 base my conclusions on.

20 MR. COOPER: So if there was improved modeling
21 that demonstrated a reduction in carryover storage in
22 the upstream State Water Project and CVP reservoirs,
23 would that be a fact that would change your opinion on
24 whether the California WaterFix injures other legal
25 users of water?

1 WITNESS SERGENT: It would not. As I
2 indicated before, if and -- you know, if another party
3 presented a modeling showed that to me, it would be
4 inconsistent with how the project currently operates.

5 In my work with transfers, typically if the
6 allocation is at or below 50 percent for State Water
7 Project contractors, that means there will be some
8 conveyance capacity as banks during those years. And
9 so, again, we are not necessarily export limited during
10 the average or below normal years. So I don't see it
11 would be inconsistent with my experience in how the
12 project has been operated to date.

13 We already have conveyance capacity in excess
14 of what we can use to the level that we think is
15 reasonable to protect the ability to meet our
16 obligations in the following year.

17 MR. COOPER: So back to the scenario I'm
18 presenting where there's an improved model that more
19 closely reflects realtime operations. And if that
20 improved model demonstrated a decrease in the
21 reliability of the upstream reservoirs in the ability to
22 comply with the terms of the various diversion
23 agreements and settlement agreements, would that be a
24 fact that would change your opinion on whether the
25 California WaterFix injures other legal users of water?

1 CO-HEARING OFFICER DODUC: I'm going to stop
2 here because even I can answer that in terms of what
3 she's going to say.

4 And what she has said is this scenario -- the
5 scenario you outlined, that modeling scenario, in her
6 opinion, is not realistic and would not reflect the
7 operational parameters that she understands the project
8 will be operating under.

9 So I don't think you're going to get more from
10 her than what you've gotten to date. I would encourage
11 you to move on.

12 MR. COOPER: Okay. I will.

13 Okay. If we can, it's actually beginning on
14 the same page of your written testimony.

15 Scroll down, Mr. Baker.

16 Starting at the end of page 11, line 27, your
17 testimony reads: "Also, as stated in Mr. Munevar's
18 testimony, water deliveries to CVP and SWP contractors,
19 including settlement contractors, exchange contractors,
20 Refuge Level 2, and Feather River service area
21 contractors, are provided at the same level as the NAA
22 under all CWF scenarios."

23 And there's a citation to Exhibit DWR 71.

24 Your testimony continues: "This modeling
25 demonstrates that the CWF operations would result in

1 insignificant changes to water deliveries to these
2 contractors and refugees and thus would not cause injury
3 to legal users of water."

4 Do you see where your testimony says that?

5 WITNESS SERGENT: I do.

6 MR. COOPER: Returning to your experience on
7 behalf of the DWR reviewing water transfer proposals
8 that use State Water Project facilities and third-party
9 petitions for change, would DWR be concerned about
10 either transfer or a third-party change petition that
11 resulted in insignificant changes to its water
12 deliveries?

13 WITNESS SERGENT: I believe you're conflating
14 two completely different things. The statement here
15 refers to the fact that the modeling shows insignificant
16 changes, therefore -- which, you know, likely could be
17 modeling artifacts. And all I'm referring to is that
18 this demonstrates that it won't affect our ability to
19 meet our contractual obligations. It's very difficult
20 than -- than your question posed as far as how we
21 analyze water transfers.

22 This -- in this case, we expect to be able to
23 fully comply with those settlement agreements and
24 deliver all the water to which those contractors are
25 entitled. We're not proposing to move water outside our

1 place of use to any other diverter.

2 And so I'm just not clear as to what you're
3 trying to get at with respect to transfer provision. We
4 intend to fully comply with the settlement agreements
5 and provide all the agreements to which those settlement
6 contractors are entitled.

7 MR. COOPER: What I'm trying to get at is if
8 the roles were switched and DWR was sitting in the
9 protestants' seat, would you let slide insignificant
10 changes? Using your terminology, would DWR -- would
11 you, yourself, be concerned about that?

12 WITNESS SERGENT: If the modeling showed
13 insignificant changes. Therefore, given the operational
14 flexibility that we have at Lake Oroville, there will be
15 no change in the ability to deliver the full entitlement
16 amounts to the contractors.

17 The reference to insignificant changes just
18 means that I looked at the modeling results. Nothing in
19 those modeling results indicated that it would impair
20 our ability to meet those contractual obligations. The
21 modeling results don't say that we will now deliver a
22 different quantity of water to those settlement
23 contractors. It indicates that we will have the same
24 ability to deliver to the contractors as we have done,
25 historically.

1 MR. COOPER: Switching topics slightly.

2 Are you aware of the State Water Board's
3 standard permit Term 91?

4 WITNESS SERGENT: Yes, I am.

5 MR. COOPER: Do you consider water right
6 holders with Term 91 to be legal users of water?

7 WITNESS SERGENT: I do.

8 MR. COOPER: If the California WaterFix
9 resulted in Term 91 being invoked more frequently, would
10 that be a fact that would impact your opinion on whether
11 the California WaterFix would injure other legal users
12 of water?

13 WITNESS SERGENT: I didn't see anything in the
14 information developed as part of the WaterFix that would
15 indicate to me Term 91 would be invoked any more
16 frequently as a result of the project being proposed by
17 the Department -- the Department's proposed project.

18 MR. COOPER: Well, my question is: If the
19 project did result in Term 91 being invoked more
20 frequently, would that be a fact that would lead you to
21 conclude that there's an injury?

22 WITNESS SERGENT: It would depend on what was
23 causing Term 91 to be invoked more frequently and
24 whether or not the board determined that the obligation
25 for that was an in-basin obligation or an obligation of

1 the projects.

2 And when I look at the information that's
3 available that has been developed for the water project,
4 the department is proposing a project that is between H3
5 and H4. H3 contains the requirements as the outflow
6 requirements and the conditions in D-1641. There are
7 some additional outflow objectives in H4. However,
8 those objectives occur in the March through May time
9 period when Term 91 is not invoked. They are also
10 applicable in years in which the end-of-May storage is
11 anticipated to be at least 2 million acre feet or above.
12 So those are not the drier year types.

13 And based on my experience in discussions with
14 our operations staff, the controlling objectives leading
15 up to the period when Term 91 is invoked are typically
16 outflow requirements. And so those outflow requirements
17 are based on inflow to the Delta. Nothing in the
18 California WaterFix will change inflow to the Delta.

19 And so, therefore, I don't -- I don't see
20 anything that could result in -- that would result from
21 the project being proposed by the department and earlier
22 implementation of Term 91.

23 If the Water Board elects to impose an outflow
24 requirement that would continue into the time period as
25 it gets drier, that is above what the department is

1 proposing. I don't have an opinion as to whether or not
2 that would be -- could result in injury to any other
3 legal user.

4 MR. COOPER: Is it fair to say that if that
5 scenario just played out, that you would need to
6 reassess whether there's potential injury?

7 WITNESS SERGENT: If that scenario played out?

8 MR. COOPER: If the scenario you just
9 described where there's a Water Board requirement for
10 Delta outflow.

11 WITNESS SERGENT: That would be something for
12 the Water Board to determine who -- who would -- who
13 would be responsible for that. If it's determined to be
14 an in-basin use, then I think it would be appropriate
15 that Term 91 be implemented earlier to protect the
16 inflow to the Delta if that's what the board determines
17 is necessary to meet objectives.

18 MR. COOPER: Okay. Mr. Baker, if you wouldn't
19 mind going to DWR 3, page 8.

20 Ms. Sergeant, this is your PowerPoint
21 presentation from this morning. Do you see the bullet
22 that says: "CWF-specific requirements will be adopted"?

23 WITNESS SERGENT: I do.

24 MR. COOPER: What requirements are you
25 referring to?

1 WITNESS SERGENT: Those requirements would
2 include any bypass requirements or sweeping velocity
3 requirements, any specific requirements related to
4 operation of the three intakes or operation of the
5 State Water Project that isn't contained in any
6 State Water Board order.

7 MR. COOPER: Are the CWF-specific requirements
8 that may be adopted limited to the options you just
9 described?

10 WITNESS SERGENT: No. Those, I believe, will
11 come out of this proceeding.

12 MR. COOPER: Is it possible that additional or
13 unforeseen requirements could be placed on California
14 WaterFix?

15 WITNESS SERGENT: I can't speculate as to what
16 the Water Board is going to include in its order.

17 MR. COOPER: So it's possible there may be
18 something that you're not anticipating today?

19 WITNESS SERGENT: I guess it's possible.

20 MR. COOPER: Given that you do not presently
21 know the full range of potential requirements that will
22 be adopted, how can you definitively state that there
23 are no facts that you're aware of that demonstrate
24 injury to other legal users of water?

25 WITNESS SERGENT: I think I've said a number

1 of times that DWR intends to continue to meet the
2 obligations in its permits, D-1641 requirement, and the
3 other requirements. I don't foresee a Water Board term
4 that would impact other legal users of water.

5 MR. COOPER: Are you aware of a requirement in
6 this proceeding to adopt an appropriate Delta flow
7 criteria?

8 Before you answer, I realize, Madam Hearing
9 Officers, that this is a Part II issue, but I'll have
10 very limited questions.

11 WITNESS SERGENT: I'm aware that that's one of
12 the elements considered in this proceeding.

13 MR. COOPER: In forming your conclusion today
14 that you are not aware of any facts giving rise to
15 potential injury to other legal users of water, have you
16 considered an appropriate Delta flow criteria?

17 WITNESS SERGENT: As I think has been
18 discussed numerous times, the project being proposed by
19 the department is a project between H3 and H4 that does
20 contain specific outflow. The department has analyzed a
21 much broader range at the request of the board.

22 MR. COOPER: Is it possible today your
23 conclusion today could change depending on what
24 ultimately is adopted as the appropriate Delta flow
25 criteria?

1 WITNESS SERGENT: I don't believe so.

2 MR. COOPER: Why is that?

3 WITNESS SERGENT: Because I think I already
4 went through the project -- the department is proposing
5 a project that is between H3 and H4. When I reviewed
6 the information developed for the proposed project, I
7 did not see anything in either the criteria or the
8 operation -- proposed operations that would lead me to
9 believe that they would result in any injury to any
10 other legal user of water.

11 If the board elected to impose a flow
12 objective that was greater than that, it would depend on
13 the board's determination. If that flow component in
14 excess of what the department was proposing would be
15 considered part of an in-basin obligation as opposed to
16 something that was specific to the potential impacts
17 associated with the California WaterFix, that would be
18 something for the board to evaluate.

19 MR. COOPER: So, then, is it fair to say that
20 your conclusion today is based on the proposal to -- in
21 the range of H3 on H4?

22 WITNESS SERGENT: Well, my -- my -- I don't
23 see anything in the -- what we've presented, H3 to H4,
24 that would result in an injury to other legal users of
25 water. I think we can say the same about the entire

1 range of what was analyzed.

2 MR. COOPER: Do you recall my questioning of
3 Mr. Leahigh concerning the possibility of future
4 temporary urgency change petitions, or TUCPs,
5 affecting --

6 WITNESS SERGENT: Sorry.

7 MR. COOPER: -- affecting the operation of the
8 State Water Project and California WaterFix?

9 WITNESS SERGENT: I recall that there was a
10 considerable discussion by a number of people on the
11 issue of the TUCPs.

12 MR. COOPER: Do you recall my questions to
13 Mr. Leahigh concerning potential future possible
14 conditions of approval imposed by the State Water
15 Resources Control Board?

16 WITNESS SERGENT: I don't.

17 CO-HEARING OFFICER DODUC: Mr. Cooper, perhaps
18 I could urge you to move along and just ask Ms. Sergent
19 the question you specifically want to ask her without
20 having necessarily to refer back to previous testimony.

21 MR. COOPER: Okay.

22 Do you understand, Ms. Sergent, that the
23 State Water Board maintains that conditions of approval
24 on a potential future TUCP, that those conditions are
25 not subject to a no-injury assessment?

1 WITNESS SERGENT: I'm not -- could you restate
2 that?

3 MR. COOPER: Sure.

4 Are you aware that the State Water Board takes
5 the position that conditions of approval on a future
6 TUCP are not subject to a no-injury assessment?

7 MR. MIZELL: Object as to relevance. I'm not
8 sure what the standards of the board holds itself to has
9 any relevance to the standards Ms. Sergent has used in
10 the evaluating the project.

11 CO-HEARING OFFICER DODUC: I was a bit unclear
12 about the question, too, Mr. Cooper. Perhaps you could
13 further clarify.

14 MR. COOPER: Well, I think Mr. Leahigh and
15 other witnesses have explained that TUCPs are on the
16 suite of options governing future operations of the
17 California WaterFix. And the TUCP process itself has a
18 no-injury analysis, but the Water Board -- and I have an
19 order from the Water Board that sets this out -- has
20 taken the position, at least in the past, that any
21 conditions of approval set forth in that TUCP are not
22 subject to a no-injury analysis.

23 CO-HEARING OFFICER DODUC: And your question
24 to Ms. Sergent is?

25 MR. COOPER: Is it possible that future TUCPs

1 with conditions of approval addressing the operations of
2 the California WaterFix may injure legal users of water?

3 MR. MIZELL: Objection as to vague.

4 WITNESS SERGENT: Well -- and I wouldn't
5 speculate as to what any terms or conditions the
6 Water Board might place on a future TUCPs.

7 The Water Board in its order goes through its
8 reasoning as to why it had -- I mean, it evaluates every
9 proposal and it goes through the reasoning as to why it
10 believes this can be done without injuring other legal
11 users of water. I'm not sure what additional
12 information you're looking for.

13 MR. COOPER: Okay. Let's move on to a
14 different topic.

15 Go back to MLF 2, page 17, bottom of 17,
16 carrying on to page 18.

17 CO-HEARING OFFICER DODUC: While Mr. Baker is
18 doing that, I notice you're about to run out of your
19 first 60 minutes, anyway. You've gone through quite a
20 vast topic.

21 What additional areas do you have?

22 MR. COOPER: I only have one. I may be have
23 10, 15 minutes.

24 CO-HEARING OFFICER DODUC: That's what I
25 thought.

1 Let's go ahead and give him another 10
2 minutes, and we'll take a break when he's done.

3 MR. COOPER: Thank you.

4 Okay. Your testimony at page 17 beginning at
5 line 25 reads: "The settlement agreements" -- which is
6 referring to the agreements the State of California has
7 with the Feather River Contractors -- "contain no
8 entitlement to SWP water stored in Oroville, storage of
9 local water, or end-of-season storage in Lake Oroville.
10 Water stored in Lake Oroville is stored exclusively
11 under DWR's water rights. The contractual entitlements
12 contained in the settlement agreements are independent
13 of Lake Oroville storage, and DWR has sole discretion
14 over" --

15 Mr. Baker, scroll down a little.

16 -- "DWR has sole discretion over operational
17 decisions related to reservoir operations, including
18 water levels and storage releases."

19 Do you see where your testimony says that?

20 WITNESS SERGENT: I do.

21 MR. COOPER: Now, this portion of your
22 testimony caused significant concern to the
23 Feather River Contractors. Are you generally aware of
24 their concern?

25 WITNESS SERGENT: I am generally.

1 MR. COOPER: The Sacramento Valley Water Users
2 Group, of which the Feather River Contractors are
3 members, submitted evidentiary objections on the basis
4 that the agreements should speak for themselves, not
5 your testimony. Are you aware that they submitted that
6 evidentiary objection?

7 WITNESS SERGENT: I may have read an
8 objection. I can't say that I remember what it was in.

9 MR. COOPER: Okay. Mr. Baker, if you could,
10 please pull up the document identified MLF 5.

11 Now, Ms. Sergeant, this is letter from the
12 Feather River Contractors and you see their letterhead's
13 there. And just a second -- it's dated July 15, 2016.

14 Have you seen this document before?

15 WITNESS SERGENT: Yes, I have.

16 MR. COOPER: Have you read it?

17 WITNESS SERGENT: Yes, I have.

18 MR. COOPER: To your knowledge, has there been
19 any response to this letter by DWR?

20 WITNESS SERGENT: That response is being
21 handled by the office of chief counsel, and I'm not
22 aware of what the status of that is.

23 MR. COOPER: The letter requested a meeting
24 between DWR and representatives of the Feather River
25 Contractors. Are you aware of any meeting occurring?

1 WITNESS SERGENT: I am not. And I believe
2 that you're aware of a number of conversations that have
3 happened between DWR and yourself as to other
4 discussions that are going on, and I'm not aware of any
5 communications that have happened since that time.

6 MR. COOPER: To your knowledge, has DWR held
7 internal meetings or engaged in discussions concerning
8 this letter?

9 WITNESS SERGENT: Yes, we have.

10 MR. COOPER: Can you tell me just
11 approximately when those occurred and who was involved?

12 WITNESS SERGENT: Well, there have been some
13 discussions that I was not involved in, so I can't give
14 you any information on that. We had at least one
15 internal meeting in the week after we received the
16 letter to discuss the issues contained in the letter.

17 MR. COOPER: Do you personally disagree with
18 any statement in this letter?

19 WITNESS SERGENT: I do.

20 MR. COOPER: Describe that for me.

21 WITNESS SERGENT: If we can scroll down.

22 MR. COOPER: Uh-huh.

23 WITNESS SERGENT: Do you have a copy of the
24 letter that I could see?

25 MR. COOPER: It should be in your packet

1 before you.

2 WITNESS SERGENT: Okay. It's been some time,
3 so give me a minute to read the letter.

4 MR. COOPER: Okay.

5 WITNESS SERGENT: In the last paragraph on
6 page 2, you state that my testimony misstates the terms
7 of the diversion agreement in that we have to operate
8 Oroville to maintain -- or to meet the -- the amount
9 specified in the agreements and, therefore, we do not
10 have sole discretion to do what we want.

11 I believe I said we have sole discretion over
12 the operation of Lake Oroville, and that means that it
13 is our operators who look at all of the obligations that
14 we have at Lake Oroville, and it is our operators who
15 make the decisions as to what water can be released
16 when.

17 And part of those considerations include the
18 water supply necessary to meet the settlement
19 agreements, the quantities contained in the settlement
20 agreements. But the settlement agreements do not have,
21 to my knowledge, any provisions that would indicate the
22 settlement contractors can require that any specific
23 end-of-season storage be met or that Lake Oroville be
24 operated in any particular way.

25 MR. COOPER: Okay. Well, let's get into that.

1 Mr. Baker, would you pull up the document I
2 identified MLF 3?

3 WITNESS SERGENT: Excuse me, but -- would you
4 like to go through other provisions -- there are a
5 number of provisions in this letter that I do disagree
6 with. Do you want to go through them, or do you want to
7 just focus on --

8 MR. COOPER: Let's focus on this for a moment
9 and we can return.

10 Mr. Baker, page 11. I'm not sure if it's PDF
11 or -- yes, that's it. Thank you.

12 Ms. Sergeant, this is DWR 329 that I've
13 highlighted. DWR 329 is a document you authenticated.
14 It's the diversion agreement between the State of
15 California and the joint water districts, the entities
16 making up the joint water districts.

17 WITNESS SERGENT: Yes, that's correct.

18 MR. COOPER: And I've highlighted Section 2F
19 of the agreement which says: "State shall operate
20 Oroville Dam and Lake Oroville and Thermalito Afterbay
21 and related facilities and the Afterbay diversion
22 structures to deliver the water provided for in
23 Articles 2A, 2B, 2C, 2D, 2E, and Article 3, in
24 accordance with the diversion schedules and notices to
25 be given by the joint manager."

1 Do you see where the agreement says that?

2 WITNESS SERGENT: I do.

3 MR. COOPER: Are you aware that all the other
4 diversion agreements contain similar clauses?

5 WITNESS SERGENT: Each of the diversion
6 agreements says that we shall operate Oroville in a
7 manner that -- you know, so that we'll deliver the water
8 under the agreements.

9 MR. COOPER: In your opinion, could DWR
10 operate Lake Oroville and related facilities in a manner
11 that negatively affects its ability to comply with the
12 various agreements?

13 WITNESS SERGENT: We do not do that, no.

14 MR. COOPER: So then would you say that DWR's
15 discretion in its operations of Lake Oroville and
16 related facilities are constrained to those operations
17 that are consistent with DWR's obligations under the
18 various diversion agreements?

19 WITNESS SERGENT: DWR's operations at
20 Lake Oroville are constrained by a number of things,
21 including our regulatory requirements and our
22 contractual obligations. And our pump operators take
23 all of that into account when they make decisions as to
24 what amount of water can be released.

25 CO-HEARING OFFICER DODUC: But it is their

1 discretion when it comes to the operating of the
2 projects, taking into account all these agreements and
3 requirements?

4 WITNESS SERGENT: That's correct.

5 CO-HEARING OFFICER DODUC: We've made that
6 point.

7 MR. COOPER: Okay. Well, that's all the
8 questions I have.

9 CO-HEARING OFFICER DODUC: Thank you.

10 Before we take our 10-minute break, let me
11 just -- this is not only for Mr. Bezerra who's coming
12 up, but the other parties who will be conducting
13 cross-examination. I've allowed Mr. O'Laughlin and
14 Mr. Cooper and others quite an extensive amount of time
15 asking Ms. Sergent -- and to a lesser degree,
16 Mr. Sahlberg -- questions that ask them to speculate
17 about different outcomes. And as you can tell, they've
18 been very reluctant to do so.

19 I appreciate that some of you might wish to
20 explore and restate all of that for the record for
21 various legal purposes, but let me assure you that I
22 would be very unwelcoming of that unless it adds value
23 to this board's understanding in making the decision
24 that is before us.

25 So when you conduct your cross-examination,

1 please keep in mind that these witnesses -- in
2 particular, Ms. Sergent -- has -- repeatedly say that
3 they're not comfortable speculating on potential
4 improvements in modeling that might result in a
5 different outcome. So please consider that as you
6 conduct your upcoming cross-examination.

7 With that, we will take a 10-minute break and
8 we will resume at 2:40.

9 (Off the record at 2:27 p.m. and back on
10 the record at 2:40 p.m.)

11 CO-HEARING OFFICER DODUC: Turning
12 cross-examination over to Group 7, Mr. Bezerra.

13 --o0o--

14 CROSS-EXAMINATION

15 MR. BEZERRA: Thank you very much.

16 Good afternoon. My name is Ryan Bezerra. I
17 represent the City of Folsom and Roseville. Sacramento
18 Suburban Water District and San Juan Water District.

19 Chair Doduc, the subjects I plan to cover, I
20 plan to cover, briefly, are the communications that
21 reclamation had with Westlands and San Luis &
22 Delta-Mendota Water Authority -- I'm sorry.

23 The subjects that I plan to cover are,
24 briefly, the communications that Westlands and San Luis
25 & Delta-Mendota Water Authority had with reclamation;

1 the assumptions that went into the -- about California
2 WaterFix operations that went into the witnesses'
3 opinions, the level of certainty associated with those
4 opinions; rights in stored water -- and those will be
5 different than the questions that Mr. O'Laughlin and
6 Mr. Cooper asked -- how the witnesses relied on the
7 modeling -- there's a couple subparts to that; and then
8 regulatory requirements that were assumed as part of
9 these witnesses' analyses.

10 To begin, I've got a couple of
11 cross-examination exhibits that are new that I'll
12 provide to the dais and to the witnesses.

13 CO-HEARING OFFICER DODUC: Mr. Bezerra, before
14 you begin, I was busy scribbling and lost track of your
15 last topic item after modeling.

16 MR. BEZERRA: Last topic will be regulatory
17 requirements that these witnesses assume in developing
18 their opinions.

19 CO-HEARING OFFICER DODUC: Okay. That's
20 assumed and not speculated?

21 MR. BEZERRA: Correct.

22 CO-HEARING OFFICER DODUC: Thank you.

23 MR. BEZERRA: Thank you.

24 So, Mr. Sahlberg, preliminarily, earlier today
25 you testified that prior to your testimony today you had

1 had communications with counsel for Westlands Water
2 District and San Luis & Delta-Mendota Water Authority to
3 prepare for your testimony today, correct?

4 WITNESS SAHLBERG: That's right.

5 MR. BEZERRA: And those communications, I
6 believe you said, occurred within the last two weeks?

7 WITNESS SAHLBERG: That's correct.

8 MR. BEZERRA: Were those the only
9 communications you had with those two entities regarding
10 your testimony today?

11 WITNESS SAHLBERG: That's correct.

12 MR. BEZERRA: Did those communications occur
13 after protestants submitted their cases in chief on no
14 later than September 2nd?

15 WITNESS SAHLBERG: I believe so, yes.

16 MR. BEZERRA: Was the purpose of those
17 communications to discuss preparing testimony concerning
18 protestants' Part I-B evidence?

19 WITNESS SAHLBERG: No.

20 MR. BEZERRA: What was the purpose of those
21 communications?

22 WITNESS SAHLBERG: The purpose of the
23 communications were to discuss the topic of so-called
24 Term 14 that was presented during cross-examination of
25 other panels by, I think, Mr. Lily, and to discuss the

1 shortage provisions of the contracts.

2 MR. BEZERRA: Are those subjects discussed in
3 the case in chief that you submitted for this hearing?

4 WITNESS SAHLBERG: Term 14 is not. I may have
5 touched on the shortage -- I have discussed shortage
6 provisions in various contracts in my testimony.

7 MR. BEZERRA: In your testimony today, you
8 discussed certain specific CVP water service products,
9 correct?

10 WITNESS SAHLBERG: Yes.

11 MR. BEZERRA: Does any of your testimony for
12 the case in chief cover any of those specific contracts
13 that you discussed today?

14 WITNESS SAHLBERG: Specific contracts, no.

15 MR. BEZERRA: Did the counsel for Westlands or
16 San Luis Obispo & Delta-Mendota Water Authority
17 specifically direct you to those specific water
18 contracts for possible testimony today?

19 WITNESS SAHLBERG: Did they -- we discussed
20 them. I don't understand what you mean by direct me to
21 them.

22 MR. BEZERRA: Did they ask you to prepare
23 testimony regarding the specific CVP water service
24 contracts that you discussed on your cross-examination
25 today?

1 WITNESS SAHLBERG: They did not ask me to
2 prepare testimony.

3 MR. BEZERRA: What did they ask you to do in
4 that regard?

5 WITNESS SAHLBERG: They asked me what I knew
6 about these provisions and -- asked me what I knew about
7 these provisions and went over some possible questions
8 about -- about the provisions that -- shortage
9 provisions and Term 14.

10 MR. BEZERRA: Did they indicate that they
11 would be asking you questions about those shortage
12 provisions in cross-examination today?

13 WITNESS SAHLBERG: Yes, they did.

14 MR. BEZERRA: Did the counsel for Westlands
15 and San Luis Obispo & Delta-Mendota Water Authority
16 provide you any information to prepare for your
17 testimony today that you did not previously have?

18 WITNESS SAHLBERG: Provided me with a copy of
19 decision of -- excerpts from Decision 1356 and Water
20 Order -- Water Rights Order 70.

21 MR. BEZERRA: So you had not previously
22 reviewed those documents in preparing your testimony for
23 the case in chief here today?

24 WITNESS SAHLBERG: No.

25 MR. BEZERRA: Thank you very much.

1 Moving on to my next subject for discussion.

2 Mr. Baker, if you could please pull up DWR 53
3 and specifically page 3. Scroll down to lines 22
4 through 25, please.

5 Ms. Sergeant, if you could refer to that
6 sentence, lines 22 through 25. And in particular, on
7 lines 24 to 25, it states: "The CWF can be constructed
8 and operated without injuring other legal users of
9 water."

10 That's your testimony, correct?

11 WITNESS SERGENT: Yes, it is.

12 MR. BEZERRA: And the CWF is the
13 California WaterFix in this case, correct?

14 WITNESS SERGENT: Correct.

15 MR. BEZERRA: Mr. Baker, if you could pull up
16 DOI 4 and specifically page 6.

17 CO-HEARING OFFICER DODUC: Did you ask for
18 DOI?

19 MR. BEZERRA: DOI 4, yes.

20 And then if you could scroll down, please, to
21 the first paragraph under Heading 6.

22 Mr. Sahlberg, do you see the second sentence
23 starts with the phrase, "As was discussed"?

24 WITNESS SAHLBERG: Yes.

25 MR. BEZERRA: And then that sentence ends with

1 the statement: "The CWF can be operated in a manner
2 that will allow for all legal obligations of the CVP to
3 be met."

4 Isn't that your testimony, correct?

5 WITNESS SAHLBERG: Yes.

6 MR. BEZERRA: Thank you.

7 Ms. Sergent and Mr. Sahlberg, in these pieces
8 of your testimony, why did you testify that the WaterFix
9 "could be" operated to comply with legal obligations
10 rather than it "will be" operated to comply with legal
11 obligations?

12 WITNESS SERGENT: I think I can answer for
13 myself in that, in our testimony, we are demonstrating
14 to the board that the project can be operated in a
15 manner that protects legal users of water because we
16 will -- and I believe that's the way my testimony is
17 presented -- we will continue to meet all of our
18 contractual and legal obligations.

19 We have indicated that we will continue to
20 meet those obligations. It's -- the fact that -- you
21 know, a statement that it can be operated was -- was
22 just an indication to the board that there is sufficient
23 information that we believe has been presented to the
24 board, say, so though that this is feasible, and that we
25 will continue to meet all of our obligations.

1 MR. BEZERRA: Mr. Sahlberg?

2 WITNESS SAHLBERG: I don't have anything to
3 add to that.

4 MR. BEZERRA: Okay. Ms. Sergeant, you said
5 that it was feasible for the projects to operate in
6 compliance with their obligations to other legal users
7 of water with CalWaterFix in place.

8 Will they, in fact, do so?

9 WITNESS SERGENT: When I said it's feasible to
10 do so, that means -- what I meant by that is that all of
11 the information shows that the project can be operated
12 that way. There's nothing in the information that I
13 reviewed that indicated it would not be feasible,
14 there's anything that would prevent us from continuing
15 to meet all of our obligations.

16 MR. BEZERRA: Again, you just stated that it
17 was feasible for you to meet your obligations. To the
18 best of your knowledge, have DWR and reclamation
19 proposed any requirements to ensure that you will, in
20 fact, satisfy those obligations to other legal users of
21 water?

22 WITNESS SERGENT: I believe your question
23 misstates what I said. I guess "feasible" is -- using
24 it in more of an engineering term, is that the
25 information provided, I guess, as an engineer, I look at

1 something and you do a feasible study. Is this
2 feasible? And if it is, then you go ahead.

3 And there's nothing that I've seen that shows
4 there's anything in the information provided that would
5 impair the ability of the project to meet all of its
6 obligations. I believe that we've stated -- all of the
7 panels have stated that we proposed to continue to meet
8 all of our obligations as we have done in the past. We
9 take our obligations -- both contractual and regulatory
10 obligations seriously. And we operate the project to
11 meet those obligations, and we will continue to operate
12 the project to meet those obligations.

13 MR. BEZERRA: Mr. Leahigh, do you agree with
14 Ms. Sergent's statement for purposes of reclamation
15 operations?

16 WITNESS SAHLBERG: Yes. United States will
17 continue to meet all its legal, regulatory, and
18 contractual obligations.

19 MR. BEZERRA: Do you believe there's any
20 uncertainty on this point considering the broad scope of
21 possible California WaterFix operations?

22 WITNESS SERGENT: I don't know how to restate
23 it. The projects are not going to operate in a manner
24 that would lead us to not meet our regulatory
25 obligations.

1 There are certainly conditions under which it
2 is a challenge to do so, such as, I think, like I
3 said -- I think I mentioned before there's been a lot of
4 discussion about the TUCP and the last couple of years'
5 obligations.

6 Those conditions are driven by hydrology, and
7 I don't think anyone could ever say that there is never
8 going to be a circumstance when we wouldn't have to ask
9 for relaxation of some of the standards. We've had to
10 do it in the past.

11 In these very critically dry years, that will
12 likely occur in the future. It is unrelated to the
13 California WaterFix facilities.

14 MR. BEZERRA: Mr. Sahlberg, do you agree with
15 Ms. Sergent's testimony on that point?

16 WITNESS SAHLBERG: Yes, I do.

17 MR. BEZERRA: And you're both aware that DWR
18 and reclamation have stipulated that you have submitted
19 no proposed terms and conditions to govern the operation
20 of the California WaterFix in your water right permits,
21 correct?

22 WITNESS SERGENT: I believe that misstates
23 DWR's position. DWR is going -- you know, the terms and
24 conditions would come after we have gone through this
25 process. It's correct that at this time we haven't

1 proposed terms and conditions, and I think we had a
2 number of discussions on that topic.

3 MR. BEZERRA: And your testimony is that with
4 the information you have available to you today, which
5 therefore includes no terms and conditions,
6 California WaterFix would operate to injure no other
7 legal user of water, correct?

8 WITNESS SERGENT: I believe my testimony is
9 that DWR and reclamation have operated historically to
10 meet D-1641, all of our regulatory obligations, and all
11 of our contractual obligations, and we will continue to
12 do that.

13 MR. BEZERRA: Thank you.

14 Mr. Sahlberg, that's also reclamation's
15 position?

16 WITNESS SAHLBERG: Yes, it is.

17 MR. BEZERRA: Okay. Thank you.

18 Moving on to the next topic. Mr. Baker, if we
19 could go back to DWR 53 and specifically page 8. Then
20 if we could scroll down to lines 25 and 26, please.

21 Ms. Sergent, this is your testimony. On
22 lines 25 and 26, you state: "The CWF petition for
23 change does not propose any changes to upstream
24 operational criteria," correct?

25 WITNESS SERGENT: That is correct.

1 MR. BEZERRA: What do you mean by the term
2 "upstream operational criteria" in this testimony?

3 WITNESS SERGENT: Well, I believe that
4 Mr. Leahigh went into this as well, but I consider that
5 to be all of the requirements at Lake Oroville whether
6 they be flood control, minimum instream flow
7 requirements, temperature requirements at the hatchery,
8 the obligations under the water right settlement
9 agreements.

10 MR. BEZERRA: And so in that case, you mean
11 regulatory requirements?

12 WITNESS SERGENT: Regulatory and contractual
13 requirements.

14 MR. BEZERRA: So you mean existing legal
15 obligations when you say "operational criteria,"
16 correct?

17 WITNESS SERGENT: I mean the operational
18 criteria for the -- for Lake Oroville.

19 MR. BEZERRA: And by that, legal obligations
20 to which the Department of Water Resources is subject?

21 WITNESS SERGENT: As well as the requirements
22 of the power plant and as far as any of the operations
23 related to Lake Oroville. The California WaterFix does
24 not propose to change any current operations --
25 operational criteria at Lake Oroville.

1 MR. BEZERRA: So your testimony is that DWR
2 will not change the operations of Lake Oroville with
3 California WaterFix in place; is that correct?

4 WITNESS SERGENT: That's not correct. I said
5 the operational criteria will not change. We will
6 continue to meet all of those.

7 And I believe Mr. Leahigh went into quite
8 extensive testimony on how there may be some changes in
9 certain years. There may be temporal changes throughout
10 the year. But none of the criteria will change.

11 And there could actually be some additional
12 releases from storage in years when the -- in the wetter
13 years when there is sufficient storage in Oroville.
14 That storage maybe at risk of spill the following year.

15 So there may be changes that happen at
16 Lake Oroville, but there will be no change in the
17 operational criteria at Lake Oroville.

18 MR. BEZERRA: Okay.

19 If we could, Mr. Baker, if you could please
20 pull up Exhibit DWR 324 and specifically page 5. Scroll
21 down below the paragraph -- I'm sorry. Page 5 and then
22 third paragraph numbered 6. And then I have a question
23 about a couple sentences after that.

24 Okay. Ms. Sergent, you have incorporated this
25 exhibit into your testimony, correct?

1 WITNESS SERGENT: Yes.

2 MR. BEZERRA: And do you see that at that
3 paragraph following the numbered paragraph, there's a
4 sentence that says: "The proposed change does not
5 include changes to upstream operational criteria.
6 Therefore, the upstream flow regime will not change as a
7 result of the proposed facility."

8 You've incorporated that into your testimony,
9 correct?

10 WITNESS SERGENT: Yes, I have.

11 MR. BEZERRA: When you use the phrase
12 "upstream operational criteria" in this instance, do you
13 mean what you just explained relative to Exhibit DWR 53?

14 WITNESS SERGENT: Yes, I do.

15 MR. BEZERRA: Okay.

16 Mr. Baker, could you please pull up DOI 5E,
17 please? And specifically the last page, which is the
18 24th page, although I don't believe it's numbered.

19 Mr. Sahlberg?

20 WITNESS SAHLBERG: Yes.

21 MR. BEZERRA: CWF will not alter upstream
22 operational criteria. You just heard Ms. Sergent
23 explain what she means by "upstream operational
24 criteria."

25 Is that the same definition of that phrase

1 that you have used in this exhibit?

2 WITNESS SAHLBERG: Yes.

3 MR. BEZERRA: Okay.

4 Could we now pull up -- Mr. Baker, please pull
5 up Exhibit DWR 4E and specifically page 35. This is
6 Mr. Leahigh's PowerPoint.

7 Under the second bullet, he has a statement
8 that "Proposed CWF North Delta diversions could increase
9 opportunity to use existing water rights, including
10 rediversion of stored water under balanced conditions."

11 In stating -- Mr. Sahlberg and Ms. Sergeant, in
12 stating that California WaterFix would not alter any
13 upstream operational criteria, did you consider any
14 changes to operations of the CVP and the SWP necessary
15 to take advantage of this opportunity identified by
16 Mr. Leahigh?

17 WITNESS SERGENT: Again, I think I've
18 described how there may be some changes in the actual
19 operations. There's no change in the operational
20 criteria.

21 I believe Mr. Leahigh went into quite an
22 extensive discussion about the opportunities that might
23 exist to use the flexibility of an additional point of
24 diversion to divert unregulated flow and then -- or
25 redivert stored water during balanced conditions.

1 I think he made it clear that it was unlikely
2 that any greater quantity of water might be released
3 during the drier year types. But some of that water
4 released might be diverted at an alternate location once
5 it reached the Delta.

6 MR. BEZERRA: Mr. Sahlberg, do you agree with
7 that statement relative to the operation of CVP with
8 CalWaterFix in place?

9 WITNESS SAHLBERG: Yes.

10 MR. BEZERRA: To both witnesses, in developing
11 your opinion that if the State Water Board were to
12 approve the California WaterFix change petition and that
13 no legal user of water would be injured, did you
14 consider any of these changes to CVP and SWP operations
15 that would be necessary to take advantage of the
16 increased opportunity to divert water, stored water,
17 identified by Mr. Leahigh?

18 WITNESS SERGENT: Well, I think I've stated
19 that the water being released is water that is stored
20 exclusively under DWR's water rights; that the modeling
21 shows that there be no change in end-of-September
22 storage; and that there -- that we can continue to meet
23 our obligations in the Delta as well as upstream.

24 So, yes, I considered that there might be some
25 small change in the way that the facilities are operated

1 with a new point of diversion. But there was nothing to
2 indicate that it would result in any injury to other
3 legal user of the water because of a slight change in
4 the way the project might be operated on any particular
5 day.

6 MR. BEZERRA: And, Mr. Sahlberg, is that also
7 how you analyzed this issue for purposes of the Central
8 Valley Project operations?

9 WITNESS SAHLBERG: Yes.

10 MR. BEZERRA: Ms. Sergeant, I heard you explain
11 that you rely on that modeling to identify any possible
12 operational changes with CalWaterFix in place; is that
13 correct?

14 WITNESS SERGENT: I reviewed the modeling
15 and -- and the -- you know, the results -- the graphical
16 results of the modeling. And I looked at the modeling
17 to see what changes there might be.

18 MR. BEZERRA: Mr. Sahlberg, did you conduct
19 the same analysis?

20 WITNESS SAHLBERG: Yes, I did.

21 MR. BEZERRA: Thank you.

22 Did either of you rely on any other
23 information to identify possible CVP and SWP operations
24 as identified by Mr. Leahigh to enable increased
25 rediversion of stored water?

1 WITNESS SERGENT: Excuse me. I'm sorry. Any
2 other operations?

3 MR. BEZERRA: I'm sorry. You said you relied
4 on the modeling, you reviewed modeling, correct?

5 WITNESS SERGENT: I reviewed the modeling
6 results, the graphical modeling results.

7 MR. BEZERRA: Is there any other information
8 that you reviewed for conducting the analysis you just
9 explained?

10 WITNESS SERGENT: I think earlier I described
11 the other information that I used in my analysis
12 including the DSM2 modeling results from
13 Dr. Nader Tehrani, as well as his review of the water
14 level information. And I did look at information in the
15 EIR documents as it might be relevant to -- to this.
16 That's basically the information that I evaluated.

17 MR. BEZERRA: Mr. Sahlberg, did you conduct
18 the same analysis for reclamation?

19 WITNESS SAHLBERG: I reviewed -- like I
20 earlier stated, I reviewed the modeling results provided
21 by DWR to arrive at that conclusion.

22 CO-HEARING OFFICER DODUC: Hold on a second.
23 Ms. Sheehan?

24 MS. SHEEHAN: Becky Sheehan from State Water
25 Contractors. And I'd just like to point out these

1 questions have been asked and answered. The witnesses
2 have repeatedly stated that the upstream requirements
3 will be -- will continue to be in effect as they
4 currently are and that there may be some changes. And
5 they've stated this for quite some time in these
6 proceedings, and it seems like it might be time to move
7 on.

8 CO-HEARING OFFICER DODUC: Mr. Bezerra,
9 obviously, you didn't -- at least you weren't satisfied
10 by the answers that you received from Mr. Leahigh and
11 the operations team and are exploring it further with
12 the water rights team.

13 So help me understand what you hope to get
14 from them that you did not get from operations.

15 MR. BEZERRA: Yes. These witnesses have
16 provided specific testimony that, in their opinion as
17 the administrators of the water rights for the State
18 Water Project and Central Valley Project, that all
19 operations would not result in injuries to legal users
20 of water. I'm entitled to explore what these witnesses
21 considered in reaching their unique conclusions.

22 CO-HEARING OFFICER DODUC: I agree that you're
23 entitled to explore it, and you have explored it.
24 They've said they relied on modeling, they've relied on
25 discussions and testimony from operations.

1 I'm not sure what else you can get from them
2 at this point.

3 MR. BEZERRA: I've essentially reached a
4 conclusion of that with one caveat.

5 Ms. Sergent testified she also reviewed
6 information from EIR. I'd like to understand what
7 information that was.

8 CO-HEARING OFFICER DODUC: All right.

9 WITNESS SERGENT: I looked at the water
10 quality -- I looked at the recirculating draft EIR and
11 looked at the -- the water quality and water supply
12 information that was contained in that as well as I
13 reviewed the groundwater section. I briefly looked at
14 the others, but not -- other sections but not with
15 respect to preparing my testimony.

16 MR. BEZERRA: Thank you.

17 If we could pull up, Mr. Baker, DWR 324 and
18 specifically page 5. And then scroll down, please, to
19 the paragraph below, the numbered paragraph 6.

20 Ms. Sergent, do you see the sentence there
21 that begins: "The proposed change"? We talked about
22 this a little bit. But, for the record, this sentence
23 states: "The proposed change does not include changes
24 to upstream operational criteria. Therefore, the
25 upstream flow regime will not change as a result of the

1 proposed facilities."

2 That's your testimony, correct?

3 WITNESS SERGENT: Yes, it is.

4 MR. BEZERRA: What do you mean by the phrase
5 "upstream flow regime"?

6 WITNESS SERGENT: By that I mean essentially
7 the -- the release of natural flow. And there may be
8 changes to their release of stored water, but those
9 changes are all within the existing requirements. There
10 will be no change in the -- the other thing that goes
11 into -- went into my determination was there's change in
12 the minimum instream flow requirements.

13 MR. BEZERRA: Okay. Let me make sure I
14 understand that.

15 So you're saying that the minimum stream flow
16 requirements in the upstream streams would not change,
17 correct?

18 WITNESS SERGENT: That's correct.

19 MR. BEZERRA: But you're saying that it's
20 possible that the actual flows in the upstream streams
21 could change as a result of the California WaterFix
22 operations?

23 WITNESS SERGENT: That's correct.

24 MR. BEZERRA: Mr. Sahlberg, is that your
25 understanding as well?

1 WITNESS SAHLBERG: Yes.

2 MR. BEZERRA: So you're not guaranteeing that
3 there will be no changes in actual flows as a result of
4 California WaterFix operations?

5 WITNESS SERGENT: No, I'm -- yes -- clarify.
6 I agree that there will be some change in the flow
7 possibly in the Feather River or Sacramento River at
8 times due to the operation of the facilities if releases
9 are made on a schedule that's temporarily slightly
10 different than it is now. But none of those changes
11 would affect other legal users of water.

12 MR. BEZERRA: And, Mr. Sahlberg, is that
13 essentially your testimony for the operations of
14 Central Valley Project facilities concerning the flows
15 in the Sacramento and American Rivers as well?

16 WITNESS SAHLBERG: Yes.

17 MR. BEZERRA: Thank you.

18 For purposes of giving that opinion, are you
19 relying on the modeling prepared by Mr. Munevar for this
20 hearing?

21 WITNESS SERGENT: With respect to the changes
22 in the -- in the minimum flow -- there are no changes in
23 the minimum flow criteria. I relied on the agreement
24 that we have with Fish and Wildlife for minimum flows,
25 and the WaterFix does not propose to change anything in

1 that agreement.

2 MR. BEZERRA: And for the possibility that
3 real flows may actually change, you're relying on
4 Mr. Munevar's testimony concerning that?

5 WITNESS SERGENT: I relied on the modeling
6 results for upstream reservoirs as well as Mr. Leahigh's
7 testimony regarding realtime operations.

8 MR. BEZERRA: And what information precisely
9 about realtime operations did you rely on to determine
10 whether or not there would be changes to the actual
11 flows as a result of California WaterFix operations?

12 WITNESS SERGENT: Discussions with operations
13 that there could be -- I think I mentioned before that
14 there could be changes in the exact timing of when water
15 might be released in any particular year, but that by
16 the end of year, the -- the end-of-September storage
17 would be the same. And in the modeling result, it shows
18 some slight differences in curves between the various
19 alternatives temporally, but by the end of September,
20 the storage levels are relatively unchanged.

21 MR. BEZERRA: Mr. Sahlberg, does that reflect
22 your testimony concerning reclamation operations?

23 WITNESS SERGENT:

24 WITNESS SAHLBERG: Yes.

25 MR. BEZERRA: Ms. Sergent, you've said you've

1 reviewed the modeling. When you say "modeling," are you
2 referring just to the exhibits that Mr. Munevar had
3 submitted to this hearing or are you referring to
4 something else as well?

5 WITNESS SERGENT: I reviewed the graphical
6 representations of Mr. Munevar's modeling results.

7 MR. BEZERRA: That Mr. Munevar submitted for
8 this hearing?

9 WITNESS SERGENT: That's correct.

10 MR. BEZERRA: Have you reviewed any of the
11 other modeling results that Mr. Munevar may have
12 produced?

13 WITNESS SERGENT: I reviewed the graphical
14 modeling results that showed deliveries as well.

15 MR. BEZERRA: And, Mr. Baker, could you pull
16 up DWR 514, please?

17 Ms. Sergeant, when you refer to all these
18 results, you're referring to this exhibit; is that
19 correct?

20 WITNESS SERGENT: This exhibit as well as the
21 information that's contained in the recirculated draft,
22 the EIR.

23 MR. BEZERRA: In the recirculated draft, the
24 EIR?

25 WITNESS SERGENT: With respect to the water

1 supply section, yes.

2 MR. BEZERRA: Okay. Thank you very much.

3 If we could pull up Exhibit DWR 3 and page 3
4 of that.

5 Ms. Sergeant, this is your PowerPoint, correct?

6 WITNESS SERGENT: That's correct.

7 MR. BEZERRA: And in it, you state at that SWP
8 will be operated consistent with all SWP regulatory
9 requirements, correct?

10 WITNESS SERGENT: That's correct.

11 MR. BEZERRA: The State Water Project is
12 subject to -- its diversions in the South Delta are
13 subject to a permit issued by United States Army Corps
14 of Engineers, correct?

15 WITNESS SERGENT: That's correct.

16 MR. BEZERRA: And what limitations does that
17 permit impose on South Delta diversions for the
18 State Water Project?

19 WITNESS SERGENT: That would be better
20 answered by Mr. Leahigh. I believe he went into that in
21 his testimony as well.

22 MR. BEZERRA: Okay. But you are assuming that
23 you would continue to comply with that permit in making
24 the statement in your PowerPoint?

25 WITNESS SERGENT: That's correct.

1 MR. BEZERRA: Would that permit limitations
2 apply to diversions at the North Delta diversion?

3 WITNESS SERGENT: As Mr. Leahigh testified, he
4 doesn't believe they would apply at the North Delta
5 facilities.

6 MR. BEZERRA: Thank you.

7 Moving on to rights and stored water.

8 Mr. Baker, if we could return to DWR 53 and particularly
9 page 11.

10 Ms. Sergent, you have a statement there
11 beginning on page 10 that reads -- and I'll omit the
12 parenthetical: "Although there may be changes in
13 SWP/CVP storage levels on releases, this will not injure
14 other legal users of water, because it is my
15 understanding that such water users do not have a right
16 to store water from SWP/CVP."

17 That's your testimony, correct?

18 WITNESS SERGENT: That's correct.

19 MR. BEZERRA: You're involved in the
20 administration of water supply and contracts involving
21 DWR, correct?

22 WITNESS SERGENT: I do not administer the
23 contracts, no.

24 MR. BEZERRA: In your testimony, you state
25 that you had quite a bit of discussion with Mr. Cooper

1 about DWR's supply contracts on the Feather River.

2 WITNESS SERGENT: That's correct. I'm
3 familiar with the contracts.

4 MR. BEZERRA: Okay.

5 WITNESS SERGENT: And there are particular
6 proposals that may relate to one of the contractors or
7 water diverted in a particular area, so I oftentimes
8 review a proposal for consistency with the contracts.
9 But we have a separate group within the State Water
10 Project Analysis Office that administers the contracts.

11 MR. BEZERRA: Thank you. I appreciate the
12 clarification.

13 Mr. Sahlberg, you're involved in the
14 administration of the reclamation water supply contract,
15 correct?

16 WITNESS SAHLBERG: Not currently.

17 MR. BEZERRA: Not currently. Have you been?

18 WITNESS SAHLBERG: When I first started at the
19 bureau in 2000, I was.

20 MR. BEZERRA: Okay. And you are currently the
21 water rights officer for the Mid-Pacific region of
22 reclamation, correct?

23 WITNESS SAHLBERG: Correct.

24 MR. BEZERRA: And you have offered testimony
25 regarding a variety of CVP water supply contracts,

1 correct?

2 WITNESS SAHLBERG: Yes, I have.

3 MR. BEZERRA: Ms. Sergeant, could DWR grant
4 another water user a right in its stored water as part
5 of its contract?

6 WITNESS SERGENT: What do you mean "grant a
7 right"? Would we assign a portion of our water right to
8 another water user? Is that what you're asking?

9 MR. BEZERRA: No. Just -- you could have a
10 water supply contract that involves the supply of stored
11 water to a different water user, correct?

12 WITNESS SERGENT: We have water supply
13 contracts with 29 State Water Contractors that involve
14 the delivery of project water.

15 MR. BEZERRA: Okay. Thank you.

16 Mr. Sahlberg, reclamation could have contracts
17 providing for the delivery of stored water to other
18 water users, correct?

19 MR. BERLINER: Objection. Calls for a legal
20 conclusion. Central Valley Project includes -- has
21 specific guidance regarding new contracts.

22 CO-HEARING OFFICER DODUC: The question,
23 Mr. Berliner, was whether there are contracts.

24 MR. BERLINER: No, he asked whether they could
25 enter into a contract.

1 CO-HEARING OFFICER DODUC: Mr. Bezerra?

2 MR. BEZERRA: It's fine. We'll skip the
3 subject.

4 CO-HEARING OFFICER DODUC: Yeah, let's.

5 MR. BEZERRA: Mr. Sahlberg, I'll refer you to
6 your testimony, Exhibit DOI 4, specifically the last
7 sentence -- excuse me -- specifically page 9. Page 9
8 begins: "Finally, there are settlement contracts."

9 Thank you.

10 Do you see that sentence, Mr. Sahlberg?

11 WITNESS SAHLBERG: Yes.

12 MR. BEZERRA: Are you aware of the uses of the
13 San Juan Water District?

14 WITNESS SAHLBERG: Yes.

15 MR. BEZERRA: Are you aware that San Juan
16 Water District receives water that reclamation diverts
17 directly from Folsom Reservoir?

18 WITNESS SAHLBERG: Yes.

19 MR. BEZERRA: Are you aware that San Juan
20 Water District delivers water for municipal and
21 industrial use?

22 WITNESS SAHLBERG: Yes.

23 MR. BEZERRA: At the end of the sentence on
24 page 9 of Exhibit DOI 4, you have a reference to
25 Exhibits DOI 23 through DOI 27, correct?

1 WITNESS SAHLBERG: Correct.

2 MR. BEZERRA: And those are contracts
3 involving the United States?

4 WITNESS SAHLBERG: Yes.

5 MR. BEZERRA: And specifically operations of
6 reclamation?

7 WITNESS SAHLBERG: Yes.

8 MR. BEZERRA: Do any of those contracts
9 involve San Juan Water District?

10 WITNESS SAHLBERG: San Juan does have a water
11 rights settlement contract with the bureau.

12 MR. BEZERRA: Are any of the exhibits that you
13 reference in this sentence, any of those contracts
14 San Juan Water District settlement contract?

15 WITNESS SAHLBERG: I don't believe we included
16 San Juan's as a sample of one of those contracts, no.

17 MR. BEZERRA: Okay. I'd like -- I have given
18 you a document marked SJWD 10.

19 WITNESS SAHLBERG: Yes.

20 MR. BEZERRA: It's a 19- -- it's a copy of a
21 1954 contract between the United States and North Ditch
22 Company, correct?

23 WITNESS SAHLBERG: That's what it says, yes.

24 MR. BEZERRA: To the best of your knowledge,
25 is this San Juan Water District's settlement contract?

1 WITNESS SAHLBERG: I believe it's the
2 predecessor to it.

3 MR. BEZERRA: Okay. Did you consider San Juan
4 Water District's settlement contract in preparing your
5 opinion that CalWaterFix could be constructed and
6 operated without injuring another legal user of water?

7 WITNESS SAHLBERG: Yes.

8 MR. BEZERRA: How did you consider that
9 contract in developing that opinion?

10 WITNESS SAHLBERG: It is -- a water rights
11 settlement contract, is one of the -- excuse me -- one
12 of the contracts that we meet first before we allocate
13 water for other project purposes.

14 So they would be met first and modeling shows
15 that -- that we can make the deliveries of water while
16 meeting all our statutory and regulatory contractual
17 obligations including this contract.

18 MR. BEZERRA: And you just said modeling
19 indicates. What modeling is that?

20 WITNESS SAHLBERG: That would be the model
21 shown in DWR 514.

22 MR. BEZERRA: Thank you.

23 Why did you not submit a copy of this contract
24 as part of the testimony?

25 WITNESS SAHLBERG: We submitted samples of

1 contracts of each type rather than every contract we had
2 with everybody, mostly to save space and time. It would
3 have been well over 300 contracts we would have
4 submitted for the record.

5 MR. BEZERRA: Thank you.

6 Are you aware of the minimum level of the
7 water storage in Folsom Reservoir that is necessary for
8 San Juan Water District to obtain its water supply under
9 this contract?

10 WITNESS SAHLBERG: That would be a question
11 for the operators.

12 MR. BEZERRA: So you are not aware of that
13 minimum level of storage?

14 WITNESS SAHLBERG: No, I am not.

15 MR. BEZERRA: Okay. Thank you.

16 Mr. Sahlberg, referring back to your
17 testimony, your exhibits --

18 Actually, why don't we go back to
19 Exhibit DOI 4, page 9, that same section.

20 Thank you very much.

21 At the end of the paragraph that begins
22 "Finally," you have a reference to DOI 23 through 27,
23 correct?

24 WITNESS SAHLBERG: Correct.

25 MR. BEZERRA: And Exhibits DOI 23 through 25

1 reflect reclamation's water right contract with the City
2 of Folsom, correct?

3 WITNESS SAHLBERG: I'm sorry. Could you say
4 that again?

5 MR. BEZERRA: Sure. Exhibits DOI 23 through
6 DOI 25 reflect reclamation's water right contract with
7 the City of Folsom, correct?

8 WITNESS SAHLBERG: Yes, that's correct.

9 MR. BEZERRA: Are you aware that the City of
10 Folsom obtains its water supply under that contract
11 through a water supply intake in Folsom Dam?

12 WITNESS SAHLBERG: I'm aware of that.

13 MR. BEZERRA: Are you aware of the minimum
14 level of water that needs to be stored in
15 Folsom Reservoir for the City of Folsom to take delivery
16 under that contract?

17 WITNESS SAHLBERG: I am not.

18 MR. BEZERRA: If we could please pull up
19 Roseville 5.

20 Mr. Sahlberg, you testified about this exhibit
21 previously. This is a Decision 893 by the State Water
22 Rights Board from 1958, I believe. Are you familiar
23 with this decision?

24 WITNESS SAHLBERG: Yes, I am.

25 MR. BEZERRA: Thank you.

1 If we could go to page 5. And if we could
2 just scroll down a little bit further. Thank you.

3 In your testimony earlier today, you stated
4 that you understood this decision to have been
5 precipitated by a number of water right applications on
6 the American River, correct?

7 WITNESS SAHLBERG: That's correct.

8 MR. BEZERRA: Could you please read the first
9 paragraph displayed here beginning "Application 12295."

10 WITNESS SAHLBERG: Okay.

11 MR. BEZERRA: Based on this, is it your
12 understanding that the City of Roseville had its own
13 water rights application pending at the time of this
14 decision?

15 WITNESS SAHLBERG: It appears so.

16 MR. BEZERRA: Do you know whether or not that
17 water right application was granted?

18 WITNESS SAHLBERG: I believe it was not.

19 MR. BEZERRA: Thank you.

20 If we could please go to page 54 in this
21 document. If we could please scroll down.

22 In the first paragraph on this page, there is
23 a text. If we could -- there you go. Thank you very
24 much.

25 There's text in this decision. I'll read it

1 just so the record's clear. This is, again, a statement
2 about by the State Water Rights Board: "Permits are
3 being issued to the United States to appropriate enough
4 American River water to adequately supply the applicants
5 naturally dependent on that source, and availability of
6 water to such applicants is reasonably assured by the
7 terms to be contained in the permits to be issued to the
8 United States restricting exportation of water under
9 those permits insofar as exportation interferes with the
10 fulfillment of the needs within Placer, Sacramento, and
11 San Joaquin Counties. Other applicants in more remote
12 areas must, if necessary, seek water from other
13 sources."

14 So you familiarized yourself with
15 Decision 893, correct?

16 WITNESS SAHLBERG: Correct.

17 MR. BEZERRA: Earlier today you testified
18 about Term 11 in reclamation's water rights Permits
19 Nos. 11315 and 11316. Would that be helpful?

20 WITNESS SAHLBERG: If you like.

21 MR. BEZERRA: I believe they're in
22 Exhibit BKS 1. This is BKS 1.

23 Mr. Sahlberg, you understand the highlighted
24 text on this page 1 of this exhibit to be Term 11?

25 WITNESS SAHLBERG: Yes.

1 MR. BEZERRA: Thank you.

2 The portion of D 893 I just read, do you
3 understand that to be the basis for the adoption of this
4 Term 11 in reclamation's Permits 11315 and 11316?

5 WITNESS SAHLBERG: Yes.

6 MR. BEZERRA: Thank you.

7 If we could please go to Exhibit Roseville 11.

8 Mr. Sahlberg, this is a Warren Act contract
9 between the United States and City of Roseville,
10 correct?

11 WITNESS SAHLBERG: That's what it says.

12 MR. BEZERRA: I know you answered this
13 question earlier, but could you please explain generally
14 what a Warren Act contract is?

15 WITNESS SAHLBERG: Yes. A Warren Act contract
16 is a contract between the United States and somebody who
17 has a nonproject, a non -- source of water not
18 appropriated in reclamations and water rights that seeks
19 to use reclamation facility for storage or conveyance of
20 that water.

21 MR. BEZERRA: And specifically as to
22 Exhibit Roseville 11, do you have an understanding what
23 the source of water is that Roseville obtains through
24 reclamation's facilities under that contract?

25 WITNESS SAHLBERG: No, I don't.

1 MR. BEZERRA: You don't. Okay.

2 Do you know if it's under a different entity's
3 water rights?

4 WITNESS SAHLBERG: Yes, I believe so.

5 MR. BEZERRA: What entity?

6 WITNESS SAHLBERG: I'm sorry. Placer County
7 Water Agency.

8 MR. BEZERRA: Thank you very much.

9 Do you have an understanding as to the minimum
10 level of water stored in Folsom Reservoir that is
11 necessary for the City of Roseville to obtain contract
12 water from Placer County Water Agency through this
13 Warren Act contract?

14 WITNESS SAHLBERG: No, I don't.

15 MR. BEZERRA: Thank you.

16 Can you please pull up DWR 14, particularly
17 page 17 -- I'm sorry -- 514. My apologies. And page 17
18 of that exhibit.

19 Mr. Sahlberg, did you rely on this figure,
20 Figure 14 in Exhibit DWR 514, in developing your
21 opinions about CalWaterFix's effect on other legal users
22 of water?

23 WITNESS SAHLBERG: It was one of them.

24 MR. BEZERRA: Thank you.

25 Do you understand that 90,000 acre feet of

1 storage in Folsom Reservoir is the minimum amount of
2 storage in that reservoir that is possible for CAL SIM
3 to model?

4 WITNESS SAHLBERG: I'm sorry. Repeat that?

5 MR. BEZERRA: Sure.

6 Do you see on Exhibit 514, specifically
7 Figure 14, each of the curves reaches a level of
8 approximately 90,000 acre feet at a bare minimum roughly
9 5 to 7 percent of the time?

10 WITNESS SAHLBERG: Okay.

11 MR. BEZERRA: Is that your understanding of
12 this exhibit?

13 WITNESS SAHLBERG: Yes.

14 MR. BEZERRA: Was that your understanding when
15 you relied on this exhibit in developing your opinions?

16 WITNESS SAHLBERG: Yes.

17 MR. BEZERRA: Thank you.

18 Do you understand that the minimum level of
19 Folsom Reservoir storage is possible for California
20 Water -- excuse me -- CalSim?

21 In developing your opinion that the operation
22 of California WaterFix would not injure any other legal
23 users of water, did you rely on this exhibit and figure?

24 WITNESS SAHLBERG: Yes.

25 MR. BEZERRA: Thank you.

1 Is it your understanding that 90,000 acre feet
2 of water in Folsom Reservoir is the minimum that CalSim
3 is capable of modeling?

4 MR. MIZELL: Objection. Assumes facts not in
5 evidence. Mr. Bezerra has not laid the foundation that
6 that's an assumption in CalSim.

7 CO-HEARING OFFICER DODUC: Mr. Bezerra?

8 MR. BEZERRA: It's not an assumption as I
9 understand it. It's a result as demonstrated by the
10 fact that Mr. Munevar testified to this as an accurate
11 representation of his CalSim modeling. And judging by
12 the exhibit, it is not possible for CalSim to model a
13 lower level of storage in Folsom Reservoir.

14 CO-HEARING OFFICER DODUC: Mr. Sahlberg, what
15 is your understanding of 90,000 acre feet level there?

16 WITNESS SAHLBERG: My understanding of it is
17 that, as Mr. Bezerra said, 5 to 7 percent of the years
18 modeled, that it goes to 90,000 feet including under the
19 no-action alternative.

20 MR. BEZERRA: Thank you.

21 WITNESS SERGENT: If I could just clarify
22 something. There was a considerable amount of
23 discussion in the operations panel and the modeling
24 panel over this -- this round of these graphs, and there
25 was a considerable amount of discussion to say that this

1 is how the models operate. It is not how the operators
2 operate.

3 And so the key to take away from a lot of
4 these graphs is that there is essentially no change from
5 the no-action alternative.

6 But before the projects ever got to a level
7 like this, many different operational changes would have
8 happened. There would likely have been a petition to
9 the Water Board.

10 The function of getting to this location is
11 not a function of the WaterFix; it is a function of
12 hydrology. And the models can't pick up all of those
13 operational things that would be taken into
14 consideration before we get to this point.

15 So I don't know how much more we have to dwell
16 on the very low level when it was made very clear by the
17 other panels that this is not something that the
18 operators operate to.

19 MR. BEZERRA: Thank you. I appreciate the
20 clarification, Ms. Sergeant. But you relied on the
21 modeling to develop your opinion that there would be no
22 injury to legal users of water as a result of the
23 implementation of Cal WaterFix, correct?

24 WITNESS SERGENT: I believe we testified that
25 we relied on the modeling as well as the operations

1 testimony and discussions with the operators.

2 MR. BEZERRA: And, Ms. Sergeant, to the best of
3 your knowledge, have DWR and reclamation proposed any
4 terms and conditions to control the realtime operations
5 of the projects to ensure that these conditions do not
6 occur?

7 CO-HEARING OFFICER DODUC: Asked and answered,
8 Mr. Bezerra.

9 MR. BEZERRA: Thank you very much.

10 Actually, if I could tell you where I'm going
11 with this, in light of the clarification.

12 CO-HEARING OFFICER DODUC: Please.

13 MR. BEZERRA: Mr. Sahlberg has just testified
14 that there's at least two water rights settlement
15 contracts for diversion from Folsom Reservoir that must
16 be met. And so I'd like to ask him whether or not this
17 sort of operation is realistic even in the no-action
18 alternative for purposes of developing his opinion.

19 CO-HEARING OFFICER DODUC: You can ask him,
20 but I won't put answers in his mouth. But keep in mind,
21 be reminded by Ms. Sergeant, as well as others, that the
22 models are used for comparative purposes, not
23 predictive.

24 MR. BEZERRA: I understand that they're the
25 only basis of information I've got to support -- to

1 understand the basis for their opinion that the project
2 would not injure other legal users of water.

3 CO-HEARING OFFICER DODUC: Mr. Berliner?

4 MR. BERLINER: Well, that and hours and hours
5 and reams and reams concerning operations. We've been
6 around this block so many times.

7 I mean, we've been through it with the
8 modeling panel, the operations panel. We're going
9 through it again. The answers are all the same.

10 CO-HEARING OFFICER DODUC: Thank you,
11 Mr. Berliner.

12 I will allow Mr. Bezerra a little leeway.
13 This is an important issue. I believe he'll understand
14 the limitation to which these witnesses will be able to
15 answer.

16 MR. BEZERRA: I do thank you.

17 Please pull up BKS 13. First page, top
18 graphic, Folsom Reservoir Storage 1931. Thank you.

19 I'll represent to the witnesses that this
20 graph is modeling results extracted from DWR modeling
21 made available for purposes of this hearing to reflect
22 Folsom Reservoir storage in the water year 1991 in all
23 of the modeled CalWaterFix scenarios. And for purposes
24 of the board, we will be authenticating this in
25 Part I-B.

1 If you could, Ms. Sergent and Mr. Sahlberg, do
2 you see the black line on that graph indicating
3 no-action alternative?

4 WITNESS SERGENT: I do, yes.

5 MR. BEZERRA: Mr. Sahlberg?

6 WITNESS SAHLBERG: I believe so, yes.

7 MR. BEZERRA: And that black line indicates
8 that the no-action alternative would reach 90,000 acre
9 feet at Folsom Reservoir in September of 1931, correct?

10 WITNESS SERGENT: That's what the black line
11 shows. Again, I think my answer is the same as before.
12 These are modeling results that the operators have
13 already indicated that this is not how they would
14 operate. They would take measures before these
15 conditions arrive to adjust their operations.

16 And so I don't think that these graphs or the
17 other graphs that show the conditions during the most
18 extreme water supply conditions are reflective of what
19 would happen. 1931? You could look back to 2014, 2015,
20 some of the other critically dry years.

21 We take a number of steps to make sure that,
22 to the extent the projects can, they maintain water
23 levels for a number of purposes. But we cannot control
24 hydrology, and we can't guarantee that we won't have
25 another critically dry year like we did in 2015 where

1 snow pack was only 5 percent of average.

2 But, again, those -- the operations of the
3 California WaterFix facilities in those years would not
4 impact that. This is -- and I think this may have
5 been -- or something similar may have been shown in some
6 of the modeling or the operations testimony, and I
7 believe they commented with respect to that.

8 MR. BEZERRA: Thank you, Ms. Sergeant.

9 Your testimony is that the California
10 WaterFix, in all possible operational scenarios, would
11 not operate to injure legal users of water, correct?

12 WITNESS SERGENT: That is correct.

13 MR. BEZERRA: Thank you.

14 WITNESS SERGENT: Excuse me. I said the
15 California WaterFix facilities. Yes, the operation of
16 the California WaterFix facilities we believe will not
17 injure other legal users of water.

18 MR. BEZERRA: In all possible operational
19 scenarios, correct?

20 WITNESS SERGENT: Correct, the operation of
21 the California WaterFix facilities.

22 MR. BEZERRA: Yes. Thank you.

23 So referring back to this BKS 13 and the
24 Folsom Reservoir storage in 1931, the black line
25 indicates in the no-action alternative Folsom Reservoir

1 would reach a minimum of the 90,000 acre feet in
2 September of 1931, correct?

3 CO-HEARING OFFICER DODUC: Just acknowledge
4 that that's what the graph says and then allow him to
5 proceed with his questions.

6 WITNESS SERGENT: Yes, that's what the graph
7 says.

8 MR. BEZERRA: And thank you.

9 Mr. Sahlberg, you understand that as well?

10 WITNESS SAHLBERG: Yes.

11 MR. BEZERRA: The other curves reflecting the
12 Boundary 1, H3, H4, and Boundary 2 scenarios, all reach
13 90,000 acre feet one month earlier, in August 1931,
14 correct?

15 WITNESS SERGENT: That's what your graph
16 shows, yes.

17 MR. BEZERRA: Well, I'll represent to you this
18 was extracted from DWR's modeling for this hearing.

19 WITNESS SERGENT: That's fine.

20 CO-HEARING OFFICER DODUC: Well, with all the
21 caveats you've already stated numerous times for the
22 record.

23 MR. BEZERRA: And, Mr. Sahlberg, you also
24 understand this graph to show that the with-action
25 alternatives reached 90,000 acre feet one month earlier

1 in 1931?

2 WITNESS SAHLBERG: That's what the graph
3 shows.

4 MR. BEZERRA: Thank you.

5 Do you have any reason to doubt the
6 authenticity of this graph?

7 CO-HEARING OFFICER DODUC: Yes, they do,
8 because it doesn't reflect the operational flexibility
9 that is integrated in the project.

10 When I can answer the questions for the
11 witnesses, that's a really bad sign.

12 MR. BEZERRA: Thank you, Ms. Doduc.

13 Exhibit 53, and particularly page 10, DWR 53,
14 bottom of page 10. Has the heading "6. Proposed
15 Change."

16 Thank you very much.

17 Ms. Sergent, in this portion of your
18 testimony, you indicate that you've relied on
19 Mr. Munevar's modeling to support your opinions; is that
20 correct?

21 MR. BERLINER: Objection. Asked and answered.

22 MR. BEZERRA: Okay. Thank you.

23 CO-HEARING OFFICER DODUC: Let's assume
24 everything in her testimony is correct, according to
25 her.

1 MR. BEZERRA: Thank you.

2 Page 11, lines 20 through 26, particularly on
3 line 24, you state that -- make a statement about
4 carryover storage level, correct?

5 WITNESS SERGENT: Correct.

6 MR. BEZERRA: What do you mean by carryover
7 storage levels?

8 WITNESS SERGENT: I mean the storage remaining
9 at the end of the season.

10 MR. BEZERRA: And by "the end of the season,"
11 you mean end of September?

12 WITNESS SERGENT: In this case, end of
13 September.

14 MR. BEZERRA: Mr. Sahlberg, do you agree with
15 that characterization?

16 WITNESS SAHLBERG: Yes.

17 MR. BEZERRA: Did you consider any other
18 monthly storage levels in developing your opinions?

19 WITNESS SERGENT: I did not because the
20 reservoir levels fluctuate routinely, depending on the
21 conditions in any particular year. And all of those
22 operational -- those changes were well within the normal
23 operating criteria of the reservoir.

24 MR. BEZERRA: So you did not consider any
25 possible changes in reservoir storage as a result of

1 California WaterFix operations in developing your
2 opinions?

3 WITNESS SERGENT: I reviewed -- I think I
4 stated this before. I reviewed the information that was
5 in the graphics, and I did not see anything in the
6 graphics that would indicate to me that the operation of
7 the WaterFix would affect our ability to meet our
8 contractual obligations.

9 In no circumstances did it appear to drop
10 below a point that we could meet those obligations as
11 opposed in comparing this operation to the no-action
12 alternative. We can make decisions to release a little
13 additional water in May and a little less water in the
14 middle of the summer. We still arrive at the same
15 location at the end of the season which would bring us
16 into the same position the following year.

17 MR. BEZERRA: Just to repeat the question to
18 make sure I get the answer: You did, in fact, consider
19 end-of-month storage in other months besides September
20 in developing your opinions?

21 WITNESS SERGENT: Maybe I wasn't clear in my
22 answer. I looked at the end-of-month storage graph. I
23 didn't see anything in there that would indicate we
24 couldn't meet our obligations. In the -- or the
25 operations testimony, there is information to say that

1 there could be some changes on timing.

2 However, the end-of-season storage targets are
3 the same -- I mean, end-of-September storage targets are
4 the same. So I didn't see anything in that testimony
5 that would make me believe there was a risk to our
6 ability to meet our contractual obligations.

7 MR. BEZERRA: Thank you.

8 Mr. Sahlberg, did you conduct the same
9 analysis?

10 WITNESS SAHLBERG: Yes, I did. I looked at
11 the end-of-September modeling results and not seen --
12 did not see anything in those or any other results that
13 would indicate we would have trouble meeting our legal,
14 regulatory, or contractual obligations.

15 MR. BEZERRA: You said "end of September."
16 Did you consider other months besides end of September
17 in develop that opinion?

18 WITNESS SAHLBERG: No, I did not.

19 MR. BEZERRA: Thank you.

20 CO-HEARING OFFICER DODUC: Mr. Bezerra, you
21 just reached the end of an hour.

22 MR. BEZERRA: Yes.

23 CO-HEARING OFFICER DODUC: Do you have
24 additional questioning relating to modeling reliance, or
25 are you ready to move on to the regulatory requirements?

1 MR. BEZERRA: Do I have a couple additional
2 lines of questioning with regard to modeling, but I
3 don't think it will take that long. If I could go
4 another half an hour, I suspect that would be
5 sufficient.

6 CO-HEARING OFFICER DODUC: How much time do
7 you tend to focus on the regulatory requirements?

8 MR. BEZERRA: Not much.

9 CO-HEARING OFFICER DODUC: I'm nudging you
10 into that area because I am doubtful you'll get more
11 from this witnesses with respect to modeling reliance.
12 I will allow you a little more time.

13 MR. BEZERRA: I don't think the regulatory
14 line of questioning will take very much. Probably
15 10 minutes.

16 CO-HEARING OFFICER DODUC: Let's give you
17 another 15 minutes and we'll check in after that. But
18 based on the answers that they've been providing, I
19 don't know how much more you'll get with the modeling
20 questions.

21 MR. BEZERRA: Thank you. Appreciate that.

22 If we could pull up DOI 4, specifically
23 page 3.

24 And the very bottom of that page, there's a
25 sentence that begins "The CVP operations." It states:

1 "The CVP operations are coordinated with the operations
2 of the State Water Project under the terms of the
3 coordinated operations agreement, COA, signed in
4 November 1986."

5 Mr. Sahlberg, this represents your testimony,
6 correct?

7 WITNESS SAHLBERG: Yes.

8 MR. BEZERRA: So, to the best of your
9 understanding, the COA applies to the operations of the
10 Central Valley Project and the State Water Project
11 generally, correct?

12 WITNESS SAHLBERG: Yes.

13 MR. BEZERRA: Are you aware that Mr. Munevar
14 testified that the modeling of Delta outflows for
15 alternative 4AH4 do not allocate the responsibility for
16 those outflows consistent with COA?

17 WITNESS SAHLBERG: Yes, I am.

18 MR. BEZERRA: Thank you.

19 Does it affect your analysis of possible
20 effects of California WaterFix on legal users of water
21 that that modeling of that alternative does not comply
22 with COA?

23 WITNESS SAHLBERG: I believe Mr. Milligan and
24 Mr. Leahigh both said it does not -- that particular --
25 is at odds with COA.

1 MR. BEZERRA: Thank you.

2 And your testimony that all possible
3 operations of California WaterFix would not hinder the
4 legal users of water applies to alternative 4AH4,
5 correct?

6 WITNESS SAHLBERG: Correct.

7 MR. BEZERRA: Does it affect that opinion that
8 alternative, the modeling of alternative 4AH4, does not
9 comply with COA?

10 WITNESS SAHLBERG: As I said, Mr. --
11 Mr. Milligan did say they did not comply -- that it was
12 at odds with COA. I'll leave it at that.

13 MR. BEZERRA: Thank you.

14 Ms. Sergeant, your testimony that implementing
15 California WaterFix would not injure other legal users
16 of water applies to all possible operations within the
17 range between the Boundary 1 scenario and the Boundary 2
18 scenario, correct?

19 WITNESS SERGENT: Well, the project being
20 propose by the department and reclamation is H3 to H4.

21 And at the request of the Water Board, a
22 broader range of potential outflows was analyzed for the
23 purposes of this hearing. And I believe that the
24 modeling results that I showed -- so evaluated showed
25 that, throughout the range, the project could be

1 operated without injuring other legal users of water.
2 There could be substantial impacts to State Water
3 Project contractors, but it appears that the regulatory
4 and contractual requirements could be met in all those
5 scenarios.

6 MR. BEZERRA: And you say "the range." You
7 range between Boundary 1 and Boundary 2.

8 WITNESS SERGENT: That's correct.

9 MR. BEZERRA: Thank you.

10 Mr. Sahlberg, your testimony that implementing
11 California WaterFix would not injure other legal users
12 of water also applies to the entire range between the
13 Boundary 1 and Boundary 2 scenarios, correct?

14 WITNESS SAHLBERG: That's correct.

15 MR. BEZERRA: Thank you.

16 If we could please pull up Exhibit DWR 71 and
17 specifically page 12. If we could scroll down to
18 lines 15 through 18.

19 This is Mr. Munevar's testimony. And this
20 portion of his testimony states: "When systemwide
21 storage levels are at or near dead pool, also described
22 as stressed water supply conditions, the CalSim II model
23 results should only be an indicator of stressed water
24 supply condition and should not be necessarily
25 understood to reflect actually what would occur in the

1 future under a given scenario."

2 Did either of you consider this limitation on
3 Mr. Munevar's modeling in developing your opinions that
4 California WaterFix would not injure other legal users
5 of water?

6 MR. BERLINER: Objection. Asked and answered.

7 CO-HEARING OFFICER DODUC: Let's state it one
8 more time for the record.

9 WITNESS SERGENT: I relied on the modeling
10 results as well as the operations results. And I
11 believe there has been a substantial amount of
12 discussion relating to the fact that, as Mr. Munevar
13 indicates here, the very extreme conditions at the far
14 end of the probability curve should not be considered as
15 how the project would operate.

16 There are a number of measures that would be
17 implemented before those conditions would become --
18 before those conditions would exist.

19 And there's a difference between the
20 no-action, and the California WaterFix facility does not
21 generate the hydrology that results in those very
22 critically dry conditions.

23 MR. BEZERRA: Mr. Sahlberg, does that reflect
24 your testimony as well?

25 WITNESS SAHLBERG: Yes.

1 MR. BEZERRA: Thank you.

2 To the best of your knowledge, have DWR and
3 reclamation offered any testimony to describe how
4 California WaterFix would, in fact, operate in stressed
5 water supply conditions as defined by Mr. Munevar?

6 WITNESS SERGENT: I don't believe we have
7 offered any specific testimony. We have the -- as to
8 any particular year in how that would operate in those
9 very critically dry years, so much depends on that
10 specific year. As I'm assuming that the same procedures
11 that have happened in the recent critically dry years
12 would occur in any similar conditions in the future, DWR
13 and reclamation worked very closely with a very broad
14 range of other resource agencies, including Fishery
15 Agency, State Water Resources Control Board. And so
16 it's very difficult to say what would happen.

17 And what would happen with the California
18 WaterFix facilities would likely depend on what water
19 quality objectives were controlling and what effect
20 operation at any particular location might have on
21 aiding the project and meeting, to the best of their
22 ability, those objectives.

23 MR. BEZERRA: Thank you.

24 Mr. Sahlberg, does Ms. Sergent's statement
25 reflect your testimony as well?

1 WITNESS SAHLBERG: Yes.

2 MR. BEZERRA: Thank you.

3 If we could please refer to back to
4 Exhibit DWR 324 and specifically page 1.

5 The bottom of the first paragraph, there's a
6 sentence that starts "Since that time." And it reads:
7 since that time" -- which is the timing of the change
8 petition.

9 "Since that time, additional information has
10 been released including CalSim DSM2 modeling and
11 reclamation January 2016 draft biological assessment,
12 BA."

13 Ms. Sergent and Mr. Sahlberg, you both
14 incorporated this statement into your testimony,
15 correct?

16 WITNESS SERGENT: That's correct.

17 MR. BEZERRA: And was this CalSim modeling
18 referenced in this sentence, was that modeling to
19 support the draft biological assessment?

20 WITNESS SERGENT: There was CalSim modeling
21 done to support biological assessment. There was also
22 CalSim modeling done as part of the WaterFix petition.

23 So referring to the CalSim model here, I'm not
24 aware of whether there was additional CalSim modeling
25 done for other purposes, but there was modeling done for

1 the biological opinion.

2 MR. BEZERRA: For the biological assessment?

3 WITNESS SERGENT: I'm sorry. Yes, the

4 biological assessment.

5 MR. BEZERRA: Did you rely on the biological

6 assessment modeling for any purposes in developing your

7 opinions?

8 WITNESS SERGENT: I did not.

9 MR. BEZERRA: Okay.

10 WITNESS SAHLBERG: I did not.

11 MR. BEZERRA: Okay.

12 If we could please refer to Exhibit BKS 14.

13 This is a new exhibit I provided today on
14 thumb drive. For these purposes, it's the letter that I
15 provided in your pack of documents at the beginning of
16 the cross-examination.

17 CO-HEARING OFFICER DODUC: Where is it here?

18 MR. BEZERRA: I can get my thumb drive back
19 and provide it. I thought I had done that earlier
20 today.

21 CO-HEARING OFFICER DODUC: All right. It is
22 up.

23 MR. BEZERRA: Thank you very much. I'm happy
24 to ask questions while you're standing.

25 WITNESS SERGENT: I'm going to have to stand

1 for a little while.

2 MR. BEZERRA: No problem.

3 Have either of you ever seen this letter
4 before?

5 WITNESS SERGENT: I have not.

6 CO-HEARING OFFICER DODUC: Ms. Sergeant, if
7 it's helpful, you may stand there and use that
8 microphone.

9 WITNESS SERGENT: Thank you. That would be
10 helpful.

11 MR. BEZERRA: Mr. Sahlberg, you?

12 WITNESS SAHLBERG: I have not, no.

13 MR. BEZERRA: Thank you very much.

14 We'll move on to the next subject then.

15 This is the regulatory requirements.

16 Hopefully, this will be short.

17 MS. McCUE: March 11, 2016, letter?

18 CO-HEARING OFFICER DODUC: For the record,
19 this is it?

20 MR. BEZERRA: I'm sorry. This March 11, 2016,
21 letter from the Department of Water Resources and the
22 Department of Interior to the Water Board. It responded
23 to the Water Board's May 4th requirement to address
24 certain informational requests.

25 And in particular just the -- I believe it's

1 the last page, there's a highlighted section. And I
2 added the highlighting. And it says that the -- the
3 department and -- the two departments would be
4 submitting the modeling conducted for the biological
5 assessment for their case in chief. And just the point
6 is the two -- the two witnesses said that they'd never
7 seen this before and they didn't rely on the biologicals
8 model. So we'll be done with that.

9 Moving on to regulatory requirements.

10 If we could pull up Mr. Sahlberg's PowerPoint,
11 DOI 5.

12 CO-HEARING OFFICER DODUC: 5 or 5 errata?

13 MR. BEZERRA: 5 errata. Thank you.

14 Mr. Sahlberg, in this PowerPoint, you list all
15 of the water right permits that apply to the
16 Central Valley Project, at least those that are subject
17 to this hearing, correct?

18 WITNESS SAHLBERG: That's right.

19 MR. BEZERRA: Thank you.

20 Page -- if we go to page 13. This page lists
21 Permits 11315 and 11316, which are the permits in
22 Folsom Dam Reservoir, correct?

23 WITNESS SAHLBERG: Correct.

24 MR. BEZERRA: Thank you.

25 And if we go back to BKS 1, page 1. We've

1 talked about this quite a bit today. This is Term 11 in
2 this permit.

3 Mr. Sahlberg, did you have any communications
4 with the modelers about this permit as they were
5 developing their modeling?

6 WITNESS SAHLBERG: No.

7 MR. BEZERRA: Thank you.

8 So you provided no direction to them about how
9 to consider this permit term in developing the modeling?

10 WITNESS SAHLBERG: No, I did not.

11 MR. BEZERRA: Thank you.

12 To the best of your knowledge, does
13 reclamation intend to comply with this water right
14 permit term in operating California WaterFix?

15 WITNESS SAHLBERG: This permit term is a
16 contracting preference, and as I've testified
17 previously, it was to allow -- let me just say, it was
18 to allow entities within Placer, Sacramento, and
19 San Joaquin Counties essentially first dibs on the
20 supply of water from Folsom Dam. They had a contracting
21 preference. They got in line first.

22 And as the subsequent decisions, it was
23 extended at one point to December 31, 1975. And then
24 that extension was rescinded, and the original
25 expiration date of preference of July 1st, 1968, went

1 back into place.

2 MR. BEZERRA: And that is your interpretation
3 of this permit term?

4 WITNESS SAHLBERG: Yes, it is.

5 MR. BEZERRA: Is that -- to the best of your
6 knowledge, is your interpretation of that term stated in
7 any location in Decision 893?

8 WITNESS SAHLBERG: For example, it would be
9 the last paragraph of the cover letter for D 893.

10 MR. BEZERRA: It's in the cover letter.

11 WITNESS SAHLBERG: It's in the cover letter
12 for D 893.

13 MR. BEZERRA: Thank you.

14 WITNESS SAHLBERG: There are other places
15 where it is more fully explained, I believe in
16 Decision 1356 and in Water Order 70.

17 MR. BEZERRA: Did you discuss any of the
18 testimony you just provided with the counsel for
19 Westlands Water District and San Luis Obispo &
20 Delta-Mendota Water Authority in preparing your
21 testimony?

22 WITNESS SAHLBERG: Yes.

23 MR. BEZERRA: Thank you.

24 CO-HEARING OFFICER DODUC: Are you about to
25 wrap up, Mr. Bezerra?

1 I am, in fact, wrapped up. I do have a
2 statement. We would like to reserve the right to
3 re-call Mr. Sahlberg for further testimony in light of
4 the friendly cross-examination that occurred earlier
5 today. That essentially was direct testimony that was
6 not previously provided, and so we would like the
7 opportunity to review that and potentially come back and
8 ask Mr. Sahlberg about that testimony that was provided.

9 CO-HEARING OFFICER DODUC: Let me ask my
10 counsel for advice on that procedural issue.

11 Mr. Williams, your thoughts?

12 MR. WILLIAMS: I will voice my objection on
13 behalf of Westlands, especially to the characterization
14 that it was direct testimony. It was not.

15 CO-HEARING OFFICER DODUC: It was definitely
16 friendly cross.

17 MR. WILLIAMS: I'm not willing to give people
18 second bites at cross-examination.

19 CO-HEARING OFFICER DODUC: So, Mr. Bezerra,
20 could you give me further details why you don't think
21 you can go into -- you spent a little bit of time going
22 into some of that. Not being an attorney, I'm hesitant
23 to allow additional cross on cross, rather than cross on
24 direct.

25 MR. BEZERRA: I understand that, certainly.

1 It appears that there has been some significant
2 coordination between nonprotestants, project proponents,
3 and the petitioners for development of testimony that
4 was provided for the first time today in response to
5 friendly cross-examination.

6 It appears there has been substantial
7 communications that may be subject to a subpoena. But
8 we can understand how reclamation went about developing
9 the opinions that they expressed for the first time
10 today concerning the effect of Cal WaterFix on other
11 legal users of water.

12 CO-HEARING OFFICER DODUC: Mr. Aladjem?

13 MR. ALADJEM: Thank you, Madam Chair.

14 We, the Sacramento Valley Group, would join
15 the objection, and I would like to add another reason.

16 CO-HEARING OFFICER DODUC: There wasn't an
17 objection; it was a request.

18 MR. ALADJEM: Request, thank you. It's
19 getting late in the day.

20 What we believe has happened here, and
21 Mr. Bezerra brought it out on his cross-examination,
22 that there was coordination after the submission of the
23 Part II -- excuse me -- I-B case in chief amongst
24 Westlands counsel and our witnesses this afternoon.

25 Effectively, what that has turned

1 Mr. Sahlberg's testimony into is rebuttal. And we have
2 an opportunity -- we were requesting an opportunity to
3 conduct essentially cross-examination on that rebuttal,
4 and that requires additional time. That is the basis
5 for the request.

6 CO-HEARING OFFICER DODUC: All right. I'm not
7 going to rule on that today.

8 I will request, though, should you wish to
9 conduct further cross-examination of these witnesses
10 based -- based on that argument, I will request it in
11 writing, and I will give Mr. Williams, the petitioners,
12 and others, the opportunity to respond as well.

13 MR. BEZERRA: Thank you very much. We
14 appreciate it.

15 CO-HEARING OFFICER DODUC: With that,
16 Mr. Aladjem, how much time do you think you need to
17 clean up your colleagues' cross-examination? I would
18 say wrap up. I'm sorry.

19 MR. ALADJEM: Thank you, Madam Chair. I think
20 I can wrap up the cross-examination in about 15 minutes.

21 CO-HEARING OFFICER DODUC: Okay.

22 MR. ALADJEM: If I may get my computer.

23 CO-HEARING OFFICER DODUC: Everyone stand and
24 stretch, and we'll take a short break after Mr. Aladjem
25 finishes his presentation or his cross-examination.

1 Actually, while he's doing that, let me also d
2 a check-in. Group No. 8, are you here? Colusa Canal
3 Authority?

4 Have we forgotten our group number already?

5 MS. NIKKEL: On behalf of Tehama-Colusa Canal
6 Authority -- Meredith Nikkel, Tehama-Colusa Canal
7 Authority. I do have cross, probably about 20 to
8 30 minutes.

9 CO-HEARING OFFICER DODUC: Okay. I think what
10 we'll do is we'll end the day with your
11 cross-examination then.

12 MS. NIKKEL: Thank you.

13 MR. ALADJEM: Madam Chair, a point of
14 clarification then. I will have probably, again, 15,
15 20 minutes, maybe half hour of cross-examination for the
16 City of Brentwood, which I believe is Group 10.

17 And if the chair would indulge me, we could do
18 that next week. Appreciate that.

19 CO-HEARING OFFICER DODUC: That is in addition
20 to --

21 MR. ALADJEM: Entirely different focus.

22 CO-HEARING OFFICER DODUC: Okay. Are you the
23 sole authorized rep for Group 10, or will there be
24 others for Group 10?

25 MR. ALADJEM: To be honest, I'm not sure who

1 else is in Group 10, but I believe that North Delta will
2 be --

3 CO-HEARING OFFICER DODUC: Aren't you
4 coordinating?

5 MR. ALADJEM: We are. But I believe that
6 North Delta will be before that.

7 CO-HEARING OFFICER DODUC: Okay. I will
8 definitely make a note Mr. Aladjem representing Group 10
9 next week.

10 MR. ALADJEM: Thank you, Madam Chair.

11 CO-HEARING OFFICER DODUC: Since we can
12 probably wrap up with Mr. Aladjem and Ms. Nikkel today,
13 why don't we go ahead and take our five-minute break and
14 that way we'll come back, wrap up the two.

15 Will five be enough or would the court
16 reporter like more? I will give you eight minutes. And
17 we'll resume at 4:15.

18 (Off the record at 4:08 p.m. on and back
19 on the record at 4:15 p.m.)

20 CO-HEARING OFFICER DODUC: Please get in
21 position, whether it's standing or sitting.

22 We will now turn the cross-examination over to
23 Mr. Aladjem.

24 MR. ALADJEM: Thank you, Madam Chair.

25 For the record, David Aladjem, Downey Brand on

1 behalf of the Sacramento Valley Group.

2 Mr. Sahlberg, Ms. Sergent, good afternoon.

3 --o0o--

4 CROSS-EXAMINATION

5 MR. ALADJEM: During our break, I noticed that
6 you were actually talking to counsel for Westlands and
7 with the federal contractors and state contractors.

8 Would each of you share with us what the
9 subject of those conversations was?

10 WITNESS SERGENT: I don't believe I had any
11 conversation with the federal contractors or --

12 CO-HEARING OFFICER DODUC: Where's
13 Mr. Sahlberg?

14 MR. ALADJEM: Ms. Sergent, you can answer the
15 question while we're here.

16 WITNESS SERGENT: I don't believe I had any
17 conversations with the federal contractors beyond saying
18 hello.

19 MR. ALADJEM: Thank you very much.

20 CO-HEARING OFFICER DODUC: Why don't we
21 proceed with any questioning of Ms. Sergent while we're
22 waiting --

23 MR. ALADJEM: I would be happy to.

24 We've been having a lot of conversations this
25 afternoon about the models effects of CalWaterFix. And

1 a number of occasions you have said that you believe
2 there will be no injury to other legal users of water
3 because realtime operations would prevent those injures
4 from occurring. Is that a fair statement?

5 MR. BERLINER: Asked and answered. Objection.

6 MR. ALADJEM: I'm laying a foundation for the
7 following question.

8 CO-HEARING OFFICER DODUC: Foundation has been
9 laid.

10 Move on, Mr. Aladjem.

11 MR. ALADJEM: Thank you.

12 Ms. Sergeant, I want to ask you, suppose in a
13 particular year water is exported from Lake Oroville
14 using the California WaterFix project, and there is a
15 reduction in carryover storage for the following year.

16 And in that following year, there is
17 inadequate water to meet downstream flow requirements
18 under the various environmental requirements and the
19 Feather River contracts. Would that then constitute an
20 injury?

21 MR. BERLINER: Objection. Incomplete
22 hypothetical.

23 Ms. Sergeant has already testified that they
24 can operate the reservoirs with existing facilities. So
25 in order to have a complete hypothetical, you have to

1 know how the California WaterFix is going to be operated
2 differently than current conditions. And if the
3 question wants to pursue that, that's fine, but this is
4 an incomplete hypothetical.

5 CO-HEARING OFFICER DODUC: Mr. Aladjem?

6 MR. ALADJEM: And, Ms. Doduc, I will be glad
7 to augment the hypothetical.

8 Assume current operations of the State Water
9 Project adding in the WaterFix project as proposed by
10 the department. So far so good?

11 WITNESS SERGENT: Okay.

12 MR. ALADJEM: One of the assumptions that
13 you've made is that end-of-September storage would be
14 the same with WaterFix and without WaterFix?

15 WITNESS SERGENT: That's correct. I believe
16 that's what the modeling --

17 MR. ALADJEM: Let's change that assumption.

18 So that there is 100,000 acre feet less of
19 carryover storage end of September in Oroville.

20 CO-HEARING OFFICER DODUC: Now, we've gone
21 down this path before, and Ms. Sergeant, what is your
22 opinion of that scenario that Mr. Aladjem is painting?

23 WITNESS SERGENT: In the years when low
24 carryover storage into the following year is an issue, I
25 don't see a difference between the current operations or

1 operations with WaterFix, and I believe Mr. Leahigh
2 testified extensively to this as well.

3 And as far as speculating on any condition
4 that might be put up, you know, some hypothetical
5 suppose this happened or that happened, I don't
6 anticipate at those type of hydrological conditions that
7 operation of the WaterFix will change the decisions made
8 regarding releases and end-of-season storage.

9 MR. ALADJEM: Chair Doduc, Ms. Sergent is
10 making two different statements here, and I want to
11 unpack them.

12 The first is she doesn't believe the
13 hypothetical can occur. She's entitled to her belief,
14 but I'm also entitled to ask her hypothetical questions
15 because she's an expert.

16 Second question is, she says that we will be
17 able to manage the WaterFix project so as to be able to
18 avoid injury. With this hypothetical, that's what I
19 would like to explore. I believe I'm entitled to ask
20 her that question.

21 CO-HEARING OFFICER DODUC: You know, I almost
22 reacted to that last entitlement statement because I was
23 about to allow you to ask your question.

24 MR. ALADJEM: Thank you, Chair Doduc.

25 CO-HEARING OFFICER DODUC: Go ahead. Let's

1 explore this a little bit. Let's play along with
2 Mr. Aladjem's scenario.

3 MR. BERLINER: Point of clarification: Could
4 Mr. Aladjem set forth his question so she can respond to
5 a whole question?

6 MR. ALADJEM: I would be glad to.

7 Let's assume, Ms. Sergeant, that the California
8 WaterFix project is in operation and that, in a given
9 year, the water -- the department is able export
10 100,000 acre feet of water in addition to what it would
11 have been able to do without WaterFix. Exports are
12 increased.

13 Now, we have a year where there's inadequate
14 water to meet the department's obligations under various
15 regulatory requirements, statutory requirements, and its
16 obligations to the Feather River settlement contractors.
17 What would happen then? Would there be an injury to the
18 Feather River settlement contractors?

19 MR. BERLINER: For the record, I'm going to
20 object as an incomplete hypothetical because we don't
21 know where the exported water came from. I think the
22 questioner is assuming that it's coming out of storage
23 in Oroville, but that's contrary to Mr. Leahigh's
24 testimony that indicated they would be capturing. Even
25 in a dry year, there are times where it's wet, as in the

1 example that he gave, where he was capturing water below
2 the reservoir, not from the reservoir.

3 CO-HEARING OFFICER DODUC: Mr. Aladjem, would
4 you like to add to your scenario?

5 MR. ALADJEM: I would add to that that this is
6 water that is being captured in the reservoir. We are
7 pulling down storage because we are able to do that, we
8 are able to export. And the premise of the California
9 WaterFix is big gulp, little sip. So we are storing
10 more water, we are moving it.

11 I'm now exploring what happened in the
12 subsequent year when there is, to use Mr. O'Laughlin's
13 phrase from this morning, a hole in the reservoir.

14 CO-HEARING OFFICER DODUC: Okay.

15 WITNESS SERGENT: I would like to clarify
16 something with respect to your question. You indicated
17 that the idea with the WaterFix was big gulp, little
18 sip, and that whole idea was that we could take
19 advantage of the high flows in the Delta, the
20 unregulated flows, and export some of those. It was not
21 that we would be drawing down making additional storage
22 releases from the reservoir to jeopardize our ability to
23 meet our contractual obligations.

24 So I take exception with the characterization
25 of the WaterFix as well as the hypothetical being posed

1 because I think there was quite a bit of discussion as
2 to the advantages to be seen. And in the modeling
3 testimony, they indicate that the majority of the
4 increase in exports is in the wetter year types.
5 John Leahigh extensively discussed how, even today,
6 there are limitations to exports that result in surplus
7 export capacity at times.

8 So I think there's been a mischaracterization
9 as to just what the WaterFix facilities will provide to
10 the department as -- and proposals as to how it will be
11 operated.

12 MR. ALADJEM: Ms. Sergeant, I appreciate your
13 reflections on my characterization of the WaterFix
14 project, but could you answer the question?

15 WITNESS SERGENT: Okay. I guess if you can
16 restate it without the additional suppositions on the
17 WaterFix.

18 MR. ALADJEM: Let's assume that the WaterFix
19 project is operating. There is 100,000 acre feet of
20 less carryover storage in the second year due to that
21 water being exported in the first year.

22 And let's just further assume that given that
23 100,000 acre feet hole in the reservoir, there is
24 inadequate water to meet all of the biological
25 requirements, the regulatory requirements, and deliver

1 full quantities to the Feather River settlement
2 contractors. Would that then be an injury to those
3 contractors?

4 WITNESS SERGENT: I guess I'm struggling with
5 the premise. I fundamentally disagree with the premise.
6 And I'm trying to picture a scenario where it would be
7 impossible. Because in order to not be able to meet all
8 of those requirements, it would have to be a series of
9 very critical years. We would have taken steps to
10 preserve a level. We have certain target storages that
11 will not change as a result of the WaterFix.

12 So I -- I'm just struggling with your -- the
13 premise of your question, that we are going to do that.
14 Because in the type of years when this could possibly be
15 an issue, there are already decisions made to retain
16 water in Oroville to preserve that.

17 MR. ALADJEM: Chair Doduc, I think we've
18 probably exhausted this line.

19 I would ask, Mr. Sahlberg, whether you agree
20 with Ms. Sergent?

21 WITNESS SAHLBERG: Yes.

22 MR. ALADJEM: Let me move on.

23 CO-HEARING OFFICER DODUC: Mr. Aladjem, at the
24 risk of infuriating others who to move on -- I'm afraid
25 that others will circle back to this, so I might circle

1 back -- let me make sure I that -- let me try one thing.

2 Putting aside, Ms. Sergeant, the WaterFix
3 proposal, if you had a scenario in which carryover
4 storage were reduced by whatever that amount and the
5 result -- as a result, certain requirements and
6 obligations could not be met, putting aside WaterFix in
7 any scenario, would that be, in your mind, an impact or
8 an injury?

9 WITNESS SERGENT: There would be an impact. I
10 don't know that I'm prepared to make --

11 CO-HEARING OFFICER DODUC: Agree. Okay.

12 WITNESS SERGENT: -- a determination.

13 CO-HEARING OFFICER DODUC: That's the best
14 you're going to get, Mr. Aladjem.

15 MR. ALADJEM: Chair Doduc, I had come to that
16 conclusion, which is why I was ready to move on.

17 Let me continue on a discussion that you had,
18 I believe, this morning and this afternoon with
19 Mr. Cooper. He was talking about water transfers and
20 how the department assesses whether or not there's an
21 injury.

22 Could you spend a couple moments explaining to
23 us the thought process of the department goes through in
24 ascertaining whether there's injury. You said it
25 depends on case by case, and I fully get that.

1 Could you just simply walk us through your
2 thought process?

3 MR. BERLINER: Object. This question calls
4 for a huge narrative response. I think it's fair if
5 they want to explore, assuming it's relevant, because
6 I'm struggling as to what the relevance is. But we're
7 in a question-and-answer format at this point on
8 cross-examination and to ask somebody a question like
9 this that can get a half an hour response I don't think
10 is a proper question.

11 CO-HEARING OFFICER DODUC: Mr. Aladjem?

12 MR. ALADJEM: Let me respond to Mr. Berliner.

13 Ms. Sergent has said many times this morning
14 that the department evaluates these on a case-by-case
15 basis. What I'm looking for are what are the criteria
16 the department uses in making its evaluation and how do
17 those criteria play into its decision.

18 CO-HEARING OFFICER DODUC: That's legitimate.

19 Please answer.

20 WITNESS SERGENT: We look at each transfer
21 proposal that comes in, and we look at the methodology
22 that's being used to make water available.

23 We get information that illustrates their --
24 the operations that would occur absent the transfer. So
25 that will depend on the type -- again, whether it's crop

1 idling, it would be a crop history -- to try to get a
2 feeling for what would happen absent the transfer.

3 And we evaluate the method being proposed for
4 the transfer and try to assess what would be the net
5 reduction in stream flow below that point of diversion.
6 And then we limit the amount of water that we agree to
7 convey through the State Water Project to that amount we
8 determine is the -- would be the net increase in water
9 made available as a result of the actions taken for the
10 transfer downstream of that -- that point of diversion.

11 MR. ALADJEM: So let me see if I can get this
12 correctly.

13 As long as there is a net increase in the
14 water being made available downstream then moving
15 through the department's facilities, the department
16 would find there is an injury or not an injury?

17 WITNESS SERGENT: There would not be an injury
18 to legal users if we limit our transfer quantity to the
19 net amount that is made available as a result of the
20 transfer actions.

21 MR. ALADJEM: I have one further question, and
22 it's actually for Mr. Sahlberg.

23 Ms. Sergent, thank you very much.

24 This morning there was some discussion that I
25 believe you had with Mr. O'Laughlin about priorities

1 about whether the water rights would be met or whether
2 regulatory requirements were met. You said that
3 regulatory statutory water right requirements are all
4 part of the same -- I will use word "bucket." You did
5 not use that. Do you recall that testimony?

6 WITNESS SAHLBERG: Yes.

7 MR. ALADJEM: Does reclamation give any
8 priority to meeting requirements under the biological
9 opinions or other ESA requirements vis-a-vis contractual
10 obligations or -- let me leave it at that.

11 WITNESS SAHLBERG: Give me a moment.

12 Our normal practice -- could you -- our water
13 rights obligations first. So we have a pot of water,
14 water rights, regulatory obligations, then water service
15 is basically it.

16 MR. ALADJEM: So if I were to try to assess --
17 describe what you just said, on a priority basis -- let
18 me see if I get this -- the prior water rights
19 obligations, the other regulatory obligations, including
20 ESA, and then the water service contract; is that
21 correct?

22 WITNESS SAHLBERG: That's correct.

23 MR. ALADJEM: Thank you very much.

24 No further questions.

25 CO-HEARING OFFICER DODUC: Actually, didn't

1 you have a question for Mr. Sahlberg when he was out of
2 the room?

3 MR. ALADJEM: Pardon me?

4 CO-HEARING OFFICER DODUC: Didn't you have a
5 question for Mr. Sahlberg when he was out of the room?

6 MR. ALADJEM: Thank you, Chair Doduc.

7 Mr. Sahlberg, I asked Ms. Sergent, I'll ask
8 you the same question. I thought I noticed you speaking
9 with counsel for Westlands and some of the other state
10 and federal contractors. Could you share with us what
11 that conversation was?

12 CO-HEARING OFFICER DODUC: Ms. Akroyd?

13 MS. AKROYD: Rebecca Akroyd, San Luis
14 Delta-Mendota Water Authority.

15 I'd object in terms of relevance. It does not
16 relate to the testimony from earlier today. And it
17 seems relevant when parties are speaking to each
18 other --

19 MR. ALADJEM: Chair Doduc, as Mr. Bezerra was
20 making his point, we believe there's been some coaching
21 going on here, and conversations between the federal
22 contractors and the witnesses are not privileged. I'm
23 entitled to know what they are.

24 CO-HEARING OFFICER DODUC: Please answer,
25 Mr. Sahlberg.

1 WITNESS SAHLBERG: When did these
2 conversations take place that you were referring to?

3 MR. ALADJEM: Well, since you've opened that
4 the door, I'd like to hear about all those
5 conversations.

6 WITNESS SAHLBERG: We first had conversations
7 two weeks ago. We had further conversation last week
8 and discussed it. We discussed the results of the
9 testimony today.

10 MR. ALADJEM: And when you said "discussed the
11 results of the testimony today," when did that occur?

12 WITNESS SAHLBERG: I believe at the last
13 break.

14 MR. ALADJEM: And when you say "discussed the
15 results of the testimony," did any of the counsel for
16 Westlands or the federal contractors give you
17 suggestions as to what you should say?

18 WITNESS SAHLBERG: No.

19 MR. ALADJEM: Did they critique what you had
20 said?

21 WITNESS SAHLBERG: No.

22 MR. ALADJEM: What did they tell you?

23 WITNESS SAHLBERG: We talked about the
24 questions that Mr. Bezerra had asked.

25 MR. ALADJEM: Could you elucidate further?

1 WITNESS SAHLBERG: They asked about --
2 honestly, no. I don't recall what we talked about. I
3 know it was 10 minutes ago, but it was mostly chitchat
4 about, you know...

5 MR. ALADJEM: Thank you, Mr. Sahlberg.

6 No further questions.

7 CO-HEARING OFFICER DODUC: Thank you.

8 MR. ALADJEM: Chair Doduc, thank you very much
9 for the courtesy of that last question.

10 CO-HEARING OFFICER DODUC: Thank you.

11 We'll see you next week for Group 10 or at
12 least part of Group 10.

13 Ms. Nikkel, I want to make sure that you are
14 comfortable you can cover your cross-examination in the
15 remaining time because we do have a hard stop at 5:00,
16 as you know, that video and audio shut down.

17 MS. NIKKEL: I believe I can.

18 Could you please pull in Exhibit DOI 15?

19 CO-HEARING OFFICER DODUC: And please state
20 your name and affiliation for the court reporter.

21 MS. NIKKEL: Meredith Nikkel for Tehama-Colusa
22 Canal Authority.

23 --o0o--

24 CROSS-EXAMINATION

25 MS. NIKKEL: Mr. Sahlberg, my questions will

1 be directed mostly to you.

2 First, are you familiar with this contract?

3 WITNESS SAHLBERG: Yes.

4 MS. NIKKEL: Have you ever spoken to any
5 attorney for Westlands or San Luis Obispo &
6 Delta-Mendota Water Authority about this contract?

7 WITNESS SAHLBERG: Not this particular
8 contract.

9 MS. NIKKEL: Have you spoken to any such
10 representative about a contract similar to it?

11 WITNESS SAHLBERG: Yes.

12 MS. NIKKEL: Which contract?

13 WITNESS SAHLBERG: The water service contracts
14 in general.

15 MS. NIKKEL: Can you be a little bit more
16 specific?

17 WITNESS SAHLBERG: No. If you're talking
18 about a specific contract we discussed, no. We just
19 talked about them in general.

20 MS. NIKKEL: Are you referring to the
21 discussions you had with those attorneys prior to this
22 hearing?

23 WITNESS SAHLBERG: Yes.

24 MS. NIKKEL: And did either of those attorneys
25 offer any suggestions about the interpretation of this

1 contract or any contract like it?

2 WITNESS SAHLBERG: They asked me what my
3 interpretation of it was.

4 MS. NIKKEL: And what did you tell them?

5 WITNESS SAHLBERG: I told them what I
6 previously testified to.

7 MS. NIKKEL: Okay. Thank you.

8 I want to ask you a little bit more about your
9 understanding and interpretation of this contract,
10 different aspects of this contract.

11 And also, we're going to talk specifically
12 about this contract, which is the Orland-Artois Water
13 District water service contract. I understand it's
14 representative of other water service contracts in this
15 division. Correct?

16 WITNESS SAHLBERG: Yeah.

17 MS. NIKKEL: Can we collectively call these
18 contracts the Tehama-Colusa Canal Water service
19 contracts?

20 WITNESS SAHLBERG: Yes. This contract is
21 representative of the Tehama-Colusa contract.

22 MS. NIKKEL: Thank you.

23 Can we refer to that as a category of contract
24 during this discussion?

25 WITNESS SAHLBERG: Sure.

1 MS. NIKKEL: You can clarify if you need to
2 about specific contracts.

3 Is it your general understanding that
4 reclamation is obligated to meet the requirements of
5 this contract?

6 WITNESS SAHLBERG: It's -- yes, it is required
7 to meets its obligations.

8 MS. NIKKEL: And is reclamation also
9 obligated, as part of those requirements under the
10 contract, to make water in certain amounts available for
11 delivery to the contractor?

12 WITNESS SAHLBERG: Subject to terms of the
13 contract, yes.

14 MS. NIKKEL: And is one of those terms of the
15 contract the terms regarding when there's a condition of
16 shortage?

17 WITNESS SAHLBERG: Yes.

18 MS. NIKKEL: And is it correct that during the
19 term condition of shortage, reclamation is only able or
20 obligated to deliver the water that it's able to under
21 that condition, correct?

22 WITNESS SAHLBERG: Correct.

23 MS. NIKKEL: So is it fair to say that
24 reclamation is obligated under this contract to deliver
25 any water that it is able to?

1 MS. AUFDEMBERGE: Objection.

2 CO-HEARING OFFICER DODUC: What is your
3 objection, Ms. Aufdemberge?

4 MS. AUFDEMBERGE: It's vague.

5 CO-HEARING OFFICER DODUC: Your microphone is
6 not on.

7 MS. AUFDEMBERGE: Vague and calls for a legal
8 conclusion.

9 MS. NIKKEL: I'm asking his expert opinion
10 about his understanding of this contract. And if we
11 want to be more specific, I can point to specific
12 language in the contract if that would be helpful for
13 the witness.

14 CO-HEARING OFFICER DODUC: Ask Mr. Sahlberg
15 first if he can answer the question.

16 WITNESS SAHLBERG: I think it would be helpful
17 if you pointed to specific language.

18 MS. NIKKEL: Okay. Let's do that.

19 Let's go first to pages 28 to 29, and this is
20 Article 12A. It's language we saw earlier this morning.

21 CO-HEARING OFFICER DODUC: Mr. Baker, go to a
22 wider view.

23 MS. NIKKEL: It's, unfortunately, the language
24 that straddles the page 28 to 29. So we'll start with
25 this part.

1 Mr. Sahlberg, are you familiar with
2 Article 12A?

3 WITNESS SAHLBERG: Yes.

4 MS. NIKKEL: And let's go to the next page.

5 And it refers to a condition of shortage, correct?

6 Article 12A refers to a condition of shortage, correct?

7 WITNESS SAHLBERG: Yeah, yeah. It states:

8 "In the event the contracting officer determines that a
9 condition of shortage appears probable." It does refer
10 to the condition of shortage.

11 MS. NIKKEL: Okay. And the "condition of
12 shortage" is capitalized, so there's a definition,
13 correct?

14 WITNESS SAHLBERG: Correct.

15 MS. NIKKEL: Okay. Let's move to that
16 definition. And it's located at page 4 in Article 1C.

17 Mr. Sahlberg, are you familiar with this
18 definition of "condition of shortage"?

19 WITNESS SAHLBERG: Yes.

20 MS. NIKKEL: And do you see that it defines a
21 condition of shortage to mean a condition respecting the
22 project during any year such that the contracting
23 officer is unable to deliver sufficient water to meet
24 the contract total?

25 WITNESS SAHLBERG: That's what it says, yes.

1 MS. NIKKEL: Okay. So based on this aspect --
2 this term of the agreement, is it your understanding
3 that reclamation is obligated to deliver any water that
4 it's able to pursuant to the terms of this contract?

5 MS. AUFDEMBERGE: Objection as to being vague
6 regarding "any water that it's able to." There's a
7 distinction between CVP water and other water.

8 CO-HEARING OFFICER DODUC: Mr. Sahlberg, what
9 is your understanding of these two provisions that
10 Ms. Nikkel has pointed out?

11 WITNESS SAHLBERG: My understanding is that
12 these provisions state that -- that it is not always
13 possible to deliver the contract total, which is max
14 amount of water available under the contract. And that
15 if that -- that we will -- Article 12A says we will do
16 what -- take reasonable measures to avoid that, but if
17 it happens, we're -- then a condition of shortage exists
18 and there's not sufficient water to deliver -- to
19 deliver to meet the contract total.

20 CO-HEARING OFFICER DODUC: Ms. Nikkel, back to
21 you.

22 MS. NIKKEL: Thank you.

23 And under a condition of shortage, a condition
24 of shortage only exists when reclamation is unable to
25 deliver water, correct?

1 WITNESS SAHLBERG: Is unable to deliver
2 sufficient water to meet the contract total.

3 MS. NIKKEL: Okay. Thank you.

4 So I want to move back to Article 12, and you
5 started talking about this.

6 Mr. Sahlberg, can we move to page 29? And
7 this is Article 12B.

8 And this is the provision of the contract that
9 you discussed with Ms. Akroyd this morning and
10 colloquially called these a shortage provision, correct?

11 WITNESS SAHLBERG: Correct.

12 MS. NIKKEL: Sorry. It's 12B, as in boy.

13 So is it your understanding of this provision
14 that it would limit reclamation's liability under
15 certain conditions?

16 WITNESS SAHLBERG: Yes.

17 MS. NIKKEL: And would it -- would it limit
18 reclamation's obligation -- or I'm sorry -- limit
19 reclamation's liability for reduced allocations under
20 this contract that would result from this project?

21 WITNESS SAHLBERG: Yes.

22 MS. NIKKEL: Can you explain how it would do
23 that? How would this provision limit reclamation's
24 liability resulting from reduced allocations under the
25 proposed project?

1 MR. BERLINER: Just a point of clarification:

2 When you use the word "project," are you referring to

3 California WaterFix?

4 MS. NIKKEL: Yes, I am, the proposed project

5 California WaterFix.

6 MR. BERLINER: Thank you.

7 WITNESS SAHLBERG: I would refer you to

8 Article 12C, where we are in condition of shortage, we

9 can apportion available project water among contractors

10 and other -- basically paraphrase, our other

11 contractors. So if the WaterFix was used to

12 apportion -- as part of our facilities to apportion

13 water among our contractors, that is within our ability

14 to do so under the contract.

15 MS. NIKKEL: Does Article 12C use the defined

16 term "condition of shortage"?

17 WITNESS SAHLBERG: It refers to Article 12B

18 which does mention condition of shortage.

19 MS. NIKKEL: And Article 12B qualifies a

20 condition of shortage under only certain circumstances,

21 correct?

22 WITNESS SAHLBERG: Yes.

23 MS. NIKKEL: So which of the circumstances in

24 Article 12B would the proposed California WaterFix

25 project fall within?

1 WITNESS SAHLBERG: Are you -- I don't -- I
2 think it's an incomplete hypothetical. You're stating
3 the only reason we would be in a condition of shortage
4 was because of the WaterFix? I don't think that's --

5 MS. NIKKEL: No, I'm not asking that at all.
6 So let just try to ask a very direct question about
7 Article 12B.

8 We just talked about how Article 12B uses the
9 words "condition of shortage" but qualifies it as only
10 discussing condition of shortage under certain types of
11 conditions, for example, errors in physical operations,
12 drought, or other physical causes, and it goes on.

13 I haven't asked my question. I'm happy to --

14 WITNESS SAHLBERG: Go ahead.

15 MS. NIKKEL: My question is: Does the
16 proposed California WaterFix Project fall within any of
17 those categories of Article 12B?

18 WITNESS SAHLBERG: The project is --

19 MR. BERLINER: Well, I'm going to object again
20 on the vagueness of your question, because you're not
21 differentiating between operations and physical
22 structures.

23 MS. NIKKEL: Let me try again with further
24 clarification.

25 Would operations under the proposed California

1 WaterFix Project fall within any of the categories in
2 Article 12B? And, if so, which one?

3 WITNESS SAHLBERG: Operations of the WaterFix?
4 Again, you're assuming the operations are the cause of
5 the condition of the shortage.

6 MS. NIKKEL: I'm not assuming. I'm asking --

7 WITNESS SAHLBERG: Well --

8 MS. NIKKEL: -- if any of these causes of the
9 condition of shortage would be the California WaterFix.

10 CO-HEARING OFFICER DODUC: Mr. Sahlberg, let
11 me try something differently. If under operation of the
12 WaterFix -- if operations under the WaterFix result in
13 physical -- impairments of physical operations or is
14 associated with a drought or other causes beyond the
15 control of the contracting officer, is it your
16 understanding that those conditions would meet the
17 definition of "shortage"?

18 WITNESS SAHLBERG: Let me say this: If the
19 operation of the WaterFix by itself was the sole cause
20 of a condition of shortage, I think we need to know what
21 do you mean by "operations of the WaterFix."

22 For example, the WaterFix may contain new
23 outflow criteria which is the legal obligation we would
24 need. So in operating the WaterFix, we have to meet
25 that legal obligation, then that would be a cause of

1 condition of shortage. If we were looking just at the
2 WaterFix and then, yes, one of those conditions would
3 apply.

4 MS. NIKKEL: I think we're getting somewhere,
5 and I think you do now understand. My question is:
6 What aspect of WaterFix could qualify? So are you
7 saying that some aspects could qualify as one of these
8 causes of a condition of shortage, correct?

9 CO-HEARING OFFICER DODUC: That's not what I
10 understand.

11 But Mr. Sahlberg?

12 WITNESS SAHLBERG: The WaterFix operation
13 is -- the WaterFix is operated as a whole, and it
14 includes, again, the legal obligations attached to it.
15 But to try to tease it out, I don't think you can -- I
16 don't think you can go there.

17 MS. NIKKEL: So are there -- and this will be
18 my last question before I move on. Are there operations
19 of the WaterFix that would not be one of the causes of
20 the conditions of shortage defined in Article 12B?

21 WITNESS SAHLBERG: Like I said, again, it's --
22 there's all the operations -- I'm sorry. Did you say
23 "not"?

24 MS. NIKKEL: Correct.

25 WITNESS SAHLBERG: I don't know how to answer

1 that question. It's too vague.

2 MS. NIKKEL: Okay. So I want to refer back to
3 the testimony you offered this morning when questioning
4 was being asked by Mr. Akroyd for San Luis Obispo
5 Delta-Mendota Water Authority. And I think I heard you
6 testify that there are no contract provisions that give
7 one contractor priority over another contractor; is that
8 correct?

9 WITNESS SAHLBERG: That's correct.

10 MS. NIKKEL: And are there any contract
11 provisions that disallow or prevent such priority?

12 WITNESS SAHLBERG: I'm not sure.

13 MS. NIKKEL: Sitting here today, you can't
14 point to one?

15 WITNESS SAHLBERG: Sitting here, no.

16 MS. NIKKEL: Are you aware of any legal
17 requirement outside of the terms of this contract that
18 would provide for such a priority?

19 WITNESS SAHLBERG: No.

20 MS. NIKKEL: Are you familiar with a Court of
21 Appeal decision commonly referred to as the Robie
22 decision?

23 WITNESS SAHLBERG: Yes, I am.

24 MS. NIKKEL: And are you familiar with the
25 holding in that opinion regarding area of origin as it

1 relates to CVP allocations?

2 MS. AUFDEMBERGE: Objection. Holding --
3 whether there was a holding in that case is a legal
4 conclusion.

5 MS. NIKKEL: I'm sorry. Whether there was a
6 holding is a legal conclusion? Is that what you said?

7 MS. AUFDEMBERGE: Your characterization of the
8 discussion of area of origin vis-a-vis CVP water,
9 whether there was a holding or not.

10 MS. NIKKEL: Understood.

11 CO-HEARING OFFICER DODUC: Good, because I
12 didn't.

13 Go ahead and reask your question, Ms. Nikkel.

14 MS. NIKKEL: Mr. Sahlberg, are you aware of
15 any holding in the -- and it's his understanding -- of
16 any holding regarding area of origin priority as it
17 applies to CVP allocations in the Robie decision?

18 WITNESS SAHLBERG: I'm aware that it was
19 discussed. I believe it -- I'm not aware that it was a
20 holding.

21 MS. NIKKEL: And can you describe for us your
22 understanding of that discussion?

23 WITNESS SAHLBERG: I believe the judge said --
24 and in my opinion it's dicta -- that he saw no reason
25 why the area of origin statutes could not apply to CVP

1 contract deliveries.

2 I'm not -- that's -- I'm not making a direct
3 quote, but that was the gist of it.

4 MS. NIKKEL: That's your understanding?

5 WITNESS SAHLBERG: Yeah.

6 MS. NIKKEL: And so is it, in your opinion,
7 any provision of this contract inconsistent with that
8 discussion in the Robie decision as you understand it?

9 WITNESS SAHLBERG: There's no provision in
10 this contract dealing with area of origins preference.

11 That was requested during a contract
12 negotiations, and the United States declined to add it
13 to the contract.

14 MS. NIKKEL: I appreciate that. And I'm
15 asking a little bit different question.

16 In your opinion, is there any provision of the
17 existing contract that would be inconsistent with the
18 discussion of area of origin in the Robie decision as
19 you understand it?

20 CO-HEARING OFFICER DODUC: If you do not know,
21 you do not know.

22 WITNESS SAHLBERG: I don't know.

23 MS. NIKKEL: Okay. This is my final question
24 on this topic, and then I do have another line of
25 questioning that's more specific to injury that we may

1 want to take up tomorrow if we really have a very hard
2 stop.

3 CO-HEARING OFFICER DODUC: We do.

4 MS. NIKKEL: Okay.

5 Mr. Sahlberg, would you agree that
6 reclamation's allocations decisions under this contract
7 are governed not only by this contract but also by state
8 and federal law?

9 WITNESS SAHLBERG: You have to talk to the
10 operators about how allocations decisions are made.

11 MS. NIKKEL: I'm not asking about operations,
12 but we have talked to them about that. I'm asking about
13 what legal obligations apply as a matter of water rights
14 to operations, and I believe that's within your area of
15 expertise as a water rights officer.

16 WITNESS SAHLBERG: I --

17 MS. AUFDEMBERGE: Objection. You asked about
18 allocations. And I believe Mr. Sahlberg is trying to
19 say that allocations are an operational function.

20 MS. NIKKEL: But those allocations are
21 governed -- my question is: Are those allocations
22 governed by state and federal law, in addition to this
23 contract, as a matter of water rights?

24 CO-HEARING OFFICER DODUC: To the best of your
25 knowledge, as a water rights expert, Mr. Sahlberg.

1 WITNESS SAHLBERG: The state and federal
2 obligations, I'm -- are -- are taken into account in
3 making allocation decisions by the Central Valley
4 Project Office.

5 MS. NIKKEL: I understand that they're taken
6 into account. But are they also -- are those
7 allocations governed by state and federal obligations --
8 state and federal law?

9 WITNESS SAHLBERG: I'm not -- I'm not clear
10 about the phrase "governed."

11 MS. NIKKEL: Obligated. Bound.

12 WITNESS SAHLBERG: Like I said, they're taken
13 into account.

14 MS. NIKKEL: That's your understanding?

15 WITNESS SAHLBERG: Yeah.

16 MS. NIKKEL: That's all I have. I have other
17 questioning. Shall we resume tomorrow morning with the
18 second line?

19 CO-HEARING OFFICER DODUC: Yes.

20 We'll adjourn until tomorrow morning at
21 9:00 o'clock.

22 MS. NIKKEL: Thank you.

23 (Whereupon, at 4:55 p.m. the proceedings
24 were concluded.)

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CERTIFICATE OF REPORTER

I, MEGAN ALVAREZ, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

DATED: _____

MEGAN F. ALVAREZ
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