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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION)
HEARING)

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
BYRON SHER AUDITORIUM
1001 I STREET
SECOND FLOOR
SACRAMENTO CALIFORNIA
PART 1A

Tuesday, September 27, 2016
9:00 A.M.

VOLUME 19
Pages 1 - 120

Reported By: Deborah Fuqua, CSR No. 1248

Computerized Transcription by ProCAT

1 APPEARANCES:

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present

5 Tam Doduc, Co-Hearing Officer:
6 Felicia Marcus, Chair and Co-Hearing Officer:
7 Dorene D'Adamo, Board Member

8 Staff Present

9 Diane Riddle, Environmental Program Manager
10 Dana Heinrich, Senior Staff Attorney (a.m.)
11 Kyle Ochenduzsko, Senior Water Resources Control Engr.

12

13

14 For California Department of Water Resources

15 James (Tripp) Mizell, Senior Attorney

16 Duane Morris, LLP
17 By: Thomas Martin Berliner, Attorney at Law

18

19

20 U.S. Department of the Interior, Bureau Reclamation,
21 and Fish and Wildlife Service

22 Amy Aufdemberge, Assistant Regional Solicitor

23

24

25 State Water Contractors

Stefanie Morris
Adam Kear
Becky Sheehan

26

27

28 (Continued)

29

1 APPEARANCES (continued)

2 California Sportfishing Protection Alliance, California
3 Water Impact Network, and AquAlliance
Michael Jackson

4 Cities of Folsom and Roseville, Sacramento Suburban
5 Water District, San Juan Water District, Yuba County
6 Water Agency
Bryan Bezerra

7 Pacific Coast Federation of Fishermen's Associations
8 and Institute for Fisheries Resources
Daniel Garrett-Steinman

9
10 Planetary Solutionaries
Patrick Porgans

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12 Snugg Harbor Resorts LLC
Nikki Suard

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14 Save the California Delta Alliance, et al.
Michael Brodsky

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16 Westlands Water District
Phil Williams

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18 San Joaquin Tributaries Authority
Tim Wasiewski

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I N D E X

WITNESSES CALLED BY PETITIONER PAGE

PANEL: MAUREEN SERGENT, RAY SAHLBERG,
ROBERT COOKE

CROSS-EXAMINATION BY:

Mr. Jackson (resumed)	7
Mr. Brodsky	17
Mr. Garrett-Steinman	52
Ms. Suard	66
Mr. Porgans	88

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1
2
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5
6
7
8
9
10
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12
13
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EXHIBITS

CROSS-EXAMINERS' EXHIBITS PAGE

Save the California Delta Alliance

SCDA-1	Aquatic Science Peer Review	47
SCDA-57	Map of Monitoring Stations	37
SCDA-58	Station OBI Salinity Graph	40
SCDA-59	Station ECD Salinity Graph	41

Pacific Coast Federation of Fishermen's Associations

PCFFA-85	State Water Resources Control board Order WR 2009-0061	55
----------	--	----

Snugg Harbor Resort

SHR-104	PowerPoint (modeling)	66
SHR-359	Steamboat Slough Data Gap 2016	73

Planetary Solutionaries

Porgans-121	Letter dated June 27, 1990	88
Porgans-122	Letter dated October 27, 1989	88

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1 **September 27, 2016**

9:00 a.m.

2 **PROCEEDINGS**

3 **---000---**

4 CO-HEARING OFFICER DODUC: Good morning,
5 everyone. It is 9:00 o'clock. And welcome back to the
6 California WaterFix Petition Hearing. I am Tam Doduc,
7 Board Member and Hearing Officer.

8 Also with me today are Board Chair Felicia
9 Marcus, Co-Hearing Officer; and also Board Member
10 DeeDee D'Adamo. To my left are Dana Heinrich and Kyle
11 Ochenduszko. We also have Ms. McCue and Mr. Baker
12 assisting us today.

13 Our usual quick announcements: Please take a
14 moment, identify the exits closest to you. In the
15 event of an alarm, we will evacuate this room. Take
16 the stairs -- not the elevators -- down to the first
17 floor and meet up in the park. Those of you who are
18 not able to use the stairs shall be directed into a
19 protective vestibule.

20 Secondly, this meeting is being recorded and
21 web cast. So please always speak into the microphone
22 and begin by stating your name and affiliation for the
23 record.

24 Third, most importantly, please take a moment
25 right now and put all your noise-making devices on

1 mute, silent, vibrate. Please check, even if you think
2 you did that already. Okay.

3 A couple things before we begin. There are a
4 couple of time-sensitive procedural matters that I want
5 to address before we resume cross-examination by
6 Mr. Jackson.

7 First, we had asked petitioners' witnesses to
8 return this Thursday and Friday to respond to
9 additional questions from State Water Board members and
10 staff. I have conferred with my colleagues, and we've
11 also reviewed the proposed questions submitted by the
12 Pacific Coast Federation of Fishermen's Associations
13 and the Institute for Fishery Resources, and we have
14 decided to not ask petitioners' witnesses to return for
15 additional questioning at this time.

16 We may ask witnesses for petitioners or for
17 other parties to return at some point in the future, or
18 we may direct the parties to address certain issues in
19 their closing briefs.

20 But, Mr. Mizell and Ms. Aufdemberg, your
21 witnesses will not be needed this week.

22 Second procedural matter concerns a written
23 request that we received yesterday from Mr. Ryan
24 Bezerra -- that might have been the day before
25 yesterday. I don't remember exactly when, but we did

1 receive a request from Mr. Bezerra, who is representing
2 the cities of Folsom and Roseville.

3 Mr. Bezerra requested an additional 45 minutes
4 to cross-examine the Water Rights panel concerning
5 certain water wrights permits and contracts. The basis
6 for this request is Mr. Bezerra's argument that
7 Mr. Sahlberg's testimony during so-called friendly
8 cross-examination by attorneys for Westlands and San
9 Luis & Delta-Mendota Water Authority resulted in
10 surprise testimony concerning Mr. Sahlberg's
11 interpretation of the permits and contracts in
12 question.

13 This, of course, is denied. I recognize that
14 the cross-examination by attorneys for Westlands and
15 Delta-Mendota Water Authority was not adverse, but
16 there are no rules that explicitly prohibit friendly
17 cross-examination in our proceedings as long as they do
18 not interfere with the efficient conduct of the
19 hearing.

20 Mr. Bezerra is correct that the Board's policy
21 is to discourage surprise testimony, but this policy
22 generally applies to direct testimony and exhibits, not
23 cross-examination.

24 And finally, although I respect Mr. Sahlberg's
25 expertise as a Water Rights officer, his interpretation

1 of the permits and contracts as they relate to the
2 issue of injury to legal users of water does not have
3 great probative value. The State Water Board is
4 capable of interpreting Water Rights permits and
5 contracts without the benefit of expert opinion.

6 In addition, protestants may present their own
7 testimony on rebuttal or during their cases in chief if
8 they disagree with Mr. Sahlberg's interpretation of the
9 permits and contracts, or perhaps more appropriately,
10 they can address those issues in their closing briefs.

11 I recognize that I said I would give parties
12 an opportunity to respond to any written request to
13 conduct additional cross-examination of the Water
14 Rights panel. We did receive three letters in
15 opposition to that request, but given that I am denying
16 the request, I do not believe it is necessary to give
17 any additional time or opportunities for responding to
18 that request. A -- so we can consider that closed.

19 A third procedural matter concerns a number of
20 the evidentiary objections that we've received to the
21 Part 1B cases in chief. Numerous parties have objected
22 to other parties' written direct testimony on the
23 grounds that the testimony exceeds the scope of Part 1
24 of the hearing. Based on our review, many of these
25 objections have merit.

1 So I want to give you a heads-up that we plan
2 to send the parties an e-mail next week directing them
3 to revise their written testimony, if necessary,
4 consistent with the scope of Part 1 of the hearing.
5 This does not necessarily mean that the testimony will
6 be excluded from the hearing altogether. Instead, some
7 parties will need to wait and submit some or all of
8 their testimony during Part 2 of the hearing.

9 And we'll provide further clarification and
10 instructions in that forthcoming e-mail.

11 Okay. Those are my announcements for today.

12 Mr. Bezerra?

13 MR. BEZERRA: Yes. Thank you. Thank you,
14 Ms. Doduc. I appreciate the ruling. We will deal with
15 the matter on rebuttal if necessary.

16 I had a different question. We're coming to
17 the close of Part 1A. It sounds like we won't have
18 Thursday and Friday in particular.

19 The question I have is when do you expect to
20 ask the petitioners to move their Part 1A evidence into
21 the record, and at what point in time will we be
22 dealing with the evidentiary objections to the Part 1A
23 evidence?

24 CO-HEARING OFFICER DODUC: Thank you. I don't
25 have an answer for you right now, but certainly those

1 are things we are discussing, and we will resolve them
2 sometime this week. We're going to give you an answer
3 sometime this week.

4 MR. BEZERRA: Yes. And the reason I asked
5 this morning unprompted is, you know, tomorrow I guess
6 will be the final day of Part 1A, and so those of us
7 who've made evidentiary objections, we'd like a little
8 bit of time to be able to deal with the issue before
9 petitioners move their evidence into the record.

10 CO-HEARING OFFICER DODUC: Thank you. We will
11 discuss it during one of our breaks. Thank you.

12 MR. BEZERRA: Thank you.

13 CO-HEARING OFFICER DODUC: Mr. Berliner, I
14 thought you had a hand up.

15 MR. BERLINER: I did. Thank you very much.
16 Tom Berliner for DWR.

17 You indicated that evidence or testimony could
18 be revised in light of exceeding the scope of Part 1.

19 Is that revision limited to those matters that
20 are deemed to be part of Part 2? Or are you going to
21 permit complete revision of testimony?

22 CO-HEARING OFFICER DODUC: No, just those
23 deemed to be not within the scope of Part 1 and,
24 therefore, should be moved to Part 2.

25 MR. BERLINER: Thank you.

1 CO-HEARING OFFICER DODUC: Mr. Brodsky? I saw
2 you standing up, which reminded me to let you know that
3 Mr. Aladjem has informed me that Group No. 10 does not
4 intend to conduct cross-examination. So you'll be next
5 after Mr. Jackson finishes his.

6 MR. BRODSKY: Yes, I did see that. Thank you.

7 CO-HEARING OFFICER DODUC: Not seeing any
8 further matters for discussion, Mr. Jackson, I will now
9 turn it back to you for your cross-examination. And,
10 Mr. Jackson, please remind me, since it's been a number
11 of days, what are you remaining topics?

12 MR. JACKSON: My remaining topics have to do
13 with the state and federal permits themselves and the
14 concept of those permits containing a live point of
15 diversion at Hood.

16 RAY SAHLBERG, MAUREEN SERGENT,

17 and ROBERT COOKE,

18 called as witnesses by the petitioner,
19 having been previously duly sworn, were
20 examined and testified further as
21 hereinafter set forth:

22 CROSS-EXAMINATION BY MR. JACKSON (resumed)

23 Question for Mr. Sahlberg.

24 Mr. Sahlberg, is it part of this project to
25 transfer CVP permits to the new three point of

1 diversions?

2 WITNESS SAHLBERG: Could you please rephrase
3 that question?

4 MR. JACKSON: Sure. Are you applying for a
5 change in point of diversion for the Bureau's water
6 rights?

7 WITNESS SAHLBERG: With the 11 water rights
8 listed in the petition.

9 MR. JACKSON: Excuse me?

10 WITNESS SAHLBERG: Yes, we're asking that the
11 WaterFix be added to the 11 permits listed in the
12 petition.

13 MR. JACKSON: Did the Bureau ever have a point
14 of diversion in their permits for a diversion on the
15 lower Sacramento River up until this date?

16 MR. BERLINER: Objection, asked and answered.

17 CO-HEARING OFFICER DODUC: Mr. Jackson, was
18 there a reason why you need to lay that foundation
19 again?

20 MR. JACKSON: One of the reasons is that I'm
21 not sure what the answer was the last time, and I would
22 like to clarify it.

23 CO-HEARING OFFICER DODUC: All right.
24 Mr. Sahlberg?

25 WITNESS SAHLBERG: With -- our permits -- some

1 of our permits on our Sacramento River permits list
2 points of diversion between Keswick and the Delta.
3 These are the diversion points for our Sacramento River
4 settlement contractors.

5 I guess other than that, if you're asking do
6 we have a point of -- current point of diversion listed
7 in the vicinity of Hood, other than those points of
8 diversion I just described, no, we don't.

9 MR. JACKSON: Thank you, sir.

10 What was the date on the permits for the
11 Bureau when the -- when the -- when your permits were
12 to expire?

13 WITNESS SAHLBERG: I don't recall at this
14 time.

15 MR. JACKSON: Are we -- would the -- what was
16 the time limit to put water to beneficial use under the
17 Bureau's permits?

18 WITNESS SAHLBERG: First of all, let me
19 clarify my previous answer.

20 Our permits have not expired. The time to put
21 water to beneficial use under the permits has expired,
22 but the permits themselves are still in place. And to
23 answer your present question, I don't recall exactly
24 the time period. I believe there's been one extension
25 of time that has run out as well.

1 MR. JACKSON: So at this point, there is no
2 ability to expand the actual water coming from the
3 permits; is that correct?

4 MR. BERLINER: Objection, calls for a legal
5 conclusion.

6 CO-HEARING OFFICER DODUC: I would -- I would
7 interpret Mr. Jackson's question to be based on the
8 water right permits to which Mr. Sahlberg is an expert.

9 So if you could answer that based on your
10 understanding of the permit as the water rights expert
11 being put forth by the Department.

12 WITNESS SAHLBERG: Okay. The time has expired
13 to put water to -- excuse me -- to the maximum
14 beneficial use under the permits.

15 MR. JACKSON: Yes. This question is for
16 Ms. Sergeant. Ms. Sergeant, was -- has the time to put
17 additional water to beneficial use on the State's
18 permits also expired?

19 WITNESS SERGENT: I believe I discussed this
20 earlier. The time to put water to beneficial use was
21 2009. We filed a petition for time extension in -- at
22 the end of 2009. In that time extension, the
23 Department indicated that, following the completion of
24 the analysis as part of this process, that the
25 Department will be requesting a long-term time

1 extension under those permits.

2 MR. JACKSON: And those time extensions have
3 been protested by a number of groups, including the
4 ones I represent; is that correct?

5 WITNESS SERGENT: I am aware that there were
6 protests. I can't recall who all protested those
7 petitions.

8 MR. JACKSON: Could you put up DWR-53,
9 Ms. Sergent's testimony, on Page 6, at the bottom.

10 Is DWR claiming that they have a right at the
11 present time to divert water at the location in Hood
12 described in your testimony?

13 WITNESS SERGENT: The point of diversion at
14 Hood is still included as an authorized point of
15 diversion in the permits held by DWR.

16 MR. JACKSON: And is it your opinion that you
17 could put water to beneficial use at that point, even
18 though the time to do that expired in 2009?

19 WITNESS SERGENT: As I mentioned earlier, the
20 Department has petitioned for a time extension both for
21 the period to complete construction as well as the time
22 period to put water to beneficial use.

23 We're here today to request three additional
24 points of diversion. And following completion of the
25 documents for the BDCP, we will be requesting a

1 longer-term time extension.

2 MR. JACKSON: Has the -- has DWR ever used the
3 point of diversion at Hood?

4 WITNESS SERGENT: As I believe I stated
5 earlier, there is no facility currently at Hood.

6 MR. JACKSON: Now, you indicate on Page 7 of
7 your testimony that the -- on Lines 12 through 14, that
8 a Northern Delta point of diversion and through-Delta
9 conveyance facility were components of the original
10 plan for the SWP conceived in the 1950s and 1960s.

11 Is the proposal before us today for a
12 through-Delta facility?

13 WITNESS SERGENT: It is. It's for diversion
14 at the location near the existing point of diversion
15 for delivery, for conveyance to the existing Clifton
16 Court Forebay. The location is very close to the one
17 that is included in the permits, and the location where
18 the water will be conveyed is same as the existing
19 Clifton Court Forebay.

20 MR. JACKSON: The words "through-Delta," what
21 do they mean to you?

22 WITNESS SERGENT: The water is being conveyed
23 from the north of the Delta through the Delta to the
24 Southern Delta.

25 MR. JACKSON: These are tunnels that will go

1 under the Delta and deprive the Delta of the flow,
2 correct?

3 WITNESS SERGENT: The conveyance is from the
4 north of the Delta through the Delta to the southern
5 location. It is not going through the Delta channels;
6 however, it is going through the Delta.

7 MR. JACKSON: The -- do you have an estimate
8 of how much water will no longer flow through the Delta
9 channels, given the configuration?

10 MR. BERLINER: Objection, asked and answered.

11 CO-HEARING OFFICER DODUC: We've been down
12 this path with some of the other panels. I'm curious
13 where you're going with this, Mr. Jackson.

14 MR. JACKSON: Where I'm going with this is to
15 provide certain facts for the consideration of the
16 Board members that highlight the fact that this is a
17 different program, since the water itself doesn't go
18 through the Delta anymore under this proposal.

19 CO-HEARING OFFICER DODUC: I think we're aware
20 that the project is proposing to divert water that will
21 no longer go through the Delta.

22 So, again, I'm struggling to understand the
23 relevance of further pursuing information that has
24 already been established.

25 MR. JACKSON: Thank you. I'm just trying to

1 highlight it for the Board. If the Board has that
2 fact, then I don't need to question.

3 CO-HEARING OFFICER DODUC: That water will be
4 diverted, and that water would not be -- remain
5 in-stream, yes, we are aware of that.

6 MR. JACKSON: Ms. Sergeant, the -- back to the
7 application that was filed in 2009 for an extension of
8 time on the water rights that are at issue here.

9 Has that hearing happened?

10 WITNESS SERGENT: The Board has not acted on
11 the petition at this time.

12 MR. JACKSON: To your knowledge, was the issue
13 of legal injury part of the protests that were filed on
14 that petition for extension of time?

15 MR. MIZELL: Objection, relevance.

16 CO-HEARING OFFICER DODUC: Mr. Jackson, that
17 petition is not before us at this time.

18 MR. JACKSON: The question had to do with
19 whether or not legal injury had ever been addressed.

20 CO-HEARING OFFICER DODUC: As part of that
21 petition. How are you linking it to the petition that
22 is before us right now?

23 MR. JACKSON: I'm going to link it by pointing
24 out that it would be -- could be out of order for the
25 Board to go forward with this petition until the issue

1 of legal injury from the extension of time is resolved.

2 CO-HEARING OFFICER DODUC: Okay. I'll allow
3 you a little bit of leeway since I don't believe that
4 matter has come up before.

5 Ms. Sergeant?

6 WITNESS SERGENT: Can you repeat the question.

7 MR. JACKSON: Yes. Was the issue of legal
8 injury from the extension of time request part of the
9 protest, to your knowledge?

10 WITNESS SERGENT: I'm not aware of what was
11 contained in any of the protests for the petition for
12 time extension.

13 MR. JACKSON: I think that's all I have.

14 CO-HEARING OFFICER DODUC: Thank you,
15 Mr. Jackson.

16 All right. Given Mr. Aladjem's statement this
17 morning declining cross-examination on behalf of Group
18 No. 10, we will now go back to Group No. 30 and
19 Mr. Brodsky.

20 MR. BRODSKY: Thank you.

21 CO-HEARING OFFICER DODUC: As Mr. Brodsky is
22 getting ready, let me just do a preliminary check-in to
23 see, for planning purposes, who we have today.

24 Group 32?

25 (No response)

1 CO-HEARING OFFICER DODUC: 33?
2 (No response)
3 CO-HEARING OFFICER DODUC: 34?
4 (No response)
5 CO-HEARING OFFICER DODUC: 35?
6 (No response)
7 CO-HEARING OFFICER DODUC: 37?
8 (No response)
9 CO-HEARING OFFICER DODUC: I see Group 38.
10 Do you have cross-examination? That's a nod
11 from Mr. Eichenberg [sic].
12 Group 39?
13 (No response)
14 CO-HEARING OFFICER DODUC: 40?
15 (No response)
16 CO-HEARING OFFICER DODUC: 41?
17 (No response)
18 CO-HEARING OFFICER DODUC: 42?
19 (No response)
20 CO-HEARING OFFICER DODUC: And Ms. Womack has
21 already conducted her cross for Group 43. So unless
22 other people show up, Mr. Eichenberg would be next.
23 And we might have to get to Mr. Bezerra's question
24 sometime today.
25 Begin, Mr. Brodsky.

1 CROSS-EXAMINATION BY MR. BRODSKY

2 MR. BRODSKY: Good morning. Michael Brodsky
3 on behalf of Saving the California Delta Alliance.

4 Good morning, Ms. Sergeant. Am I pronouncing
5 it correctly?

6 WITNESS SERGENT: That's correct.

7 MR. BRODSKY: Okay. Thank you.

8 I'd like to begin by asking about some of your
9 written testimony about historical salinity conditions
10 in the Delta.

11 As I understand it, your testimony is that the
12 projects have provided an incidental benefit to
13 in-Delta users by controlling salinity in the Delta
14 through reservoir releases. Sometimes that's stored
15 water; is that correct?

16 WITNESS SERGENT: At times, yes.

17 MR. BRODSKY: And it's your testimony that
18 construction and operation of the reservoirs has
19 decreased Delta salinity compared to historical
20 conditions?

21 WITNESS SERGENT: At times. That's correct.

22 MR. BRODSKY: Okay. Thank you.

23 And I also understand it's your testimony as a
24 water rights expert that in-basin users have no right
25 to reservoir releases of stored water for their use?

1 WITNESS SERGENT: My testimony is that, yes,
2 DWR or Reclamation have the exclusive right to our
3 storage, water that was stored during periods when it
4 was excess to all of the demands within the Delta or
5 within the watershed.

6 CO-HEARING OFFICER DODUC: Mr. Brodsky, I'm
7 sorry. Before you continue, could you please run down
8 your line of questioning for us?

9 MR. BRODSKY: I'm going to talk about the
10 salinity testimony in the -- in Ms. Sergent's
11 testimony, historical salinity.

12 I'm going to talk about the settlement
13 agreement with East Contra Costa Irrigation District,
14 and the monitoring that takes place to administer that
15 agreement that's right next to Discovery Bay. I've
16 asked about that gauge from two previous DWR witnesses,
17 and I was heartened to hear that Ms. Sergent is
18 actually familiar with it in her earlier testimony.
19 The other witnesses didn't know anything about it.

20 And then I want to talk about her conclusions
21 about how meeting D1641 compliance requirements and
22 D1641 compliance stations assures that in-Delta users
23 have reasonable protection of their use.

24 CO-HEARING OFFICER DODUC: Okay. That was
25 touched upon. I will trust that you will explore it in

1 a different way.

2 MR. BRODSKY: I will certainly attempt to do
3 that. And if I touch upon something that I didn't
4 happen to see when I was watching the video, I trust
5 you'll bring it to my attention.

6 CO-HEARING OFFICER DODUC: All right. Please
7 proceed.

8 MR. BRODSKY: So, let's see. Where did we
9 leave off?

10 In your testimony on Page 13 at Lines 24 to
11 27, to paraphrase it, you said that in-Delta users have
12 no right to releases of stored water to enhance water
13 quality above what would exist without SWP CVP
14 operations; is that correct?

15 WITNESS SERGENT: That's correct.

16 MR. BRODSKY: And that is because there's no
17 right to reservoir releases because the projects
18 already help rather than harm -- or it is the case that
19 the projects already helped rather than harmed the
20 salinity issues in the Delta?

21 WITNESS SERGENT: I believe I testified that
22 that is the case because, under claim of riparian or
23 appropriative rights, riparians and appropriators --
24 well, in the case of riparians, they're entitled to
25 what would be available, their correlative share of the

1 natural flow and water quality that would result -- be
2 resultant from that natural flow.

3 Appropriators are entitled to a natural flow
4 and any abandoned flows that might be available at
5 their point of diversion and the water quality that
6 would result due to those flows.

7 MR. BRODSKY: Okay. Thank you.

8 And, Mr. Sahlberg -- am I pronouncing your
9 name correctly?

10 WITNESS SAHLBERG: Yes, you are. Excuse me.
11 yes, you are.

12 MR. BRODSKY: Do you agree with Ms. Sergent's
13 characterizations of my question -- answers so far?

14 WITNESS SAHLBERG: Yes.

15 MR. BRODSKY: And so it's your testimony and
16 understanding that the CVP has no duty to reduce
17 salinity with releases of stored water because the CVP
18 does not cause salinity intrusion as compared to
19 pre-project conditions?

20 MR. BERLINER: Objection, misstates her
21 testimony.

22 CO-HEARING OFFICER DODUC: Yes. Mr. Brodsky,
23 please restate your question.

24 MR. BRODSKY: Let me rephrase.

25 It's your understanding that CVP has no duty

1 to release stored water from reservoirs to control
2 salinity in the Delta for the benefit of in-Delta
3 users?

4 MR. MIZELL: Objection, misstates the
5 testimony again.

6 CO-HEARING OFFICER DODUC: Yes. Mr. Brodsky,
7 I'm not sure how you rephrased that question.

8 What are you trying to get at?

9 MR. BRODSKY: I thought I was accurately
10 restating Ms. Sergent's testimony.

11 CO-HEARING OFFICER DODUC: That's not what --
12 I will not answer for Mr. Sahlberg.

13 Mr. Sahlberg, how did you interpret
14 Ms. Sergent's answer?

15 WITNESS SAHLBERG: The CVP and SWP under D1641
16 have the responsibility to meet water quality
17 objectives in the Delta. So if we have to release
18 water to do that, then, in some cases, we have to
19 release water to comply with those objectives and
20 requirements.

21 MR. BRODSKY: And you have no duty beyond that
22 to release stored water to enhance water quality for
23 in-Delta users?

24 WITNESS SAHLBERG: Our responsibility is to
25 meet the objectives in Decision 1641.

1 MR. BRODSKY: Okay. I think I can ask for a
2 yes or no answer to that.

3 The question was you have no responsibility to
4 release stored water from reservoirs to enhance water
5 quality for in-Delta users beyond meeting D1641?

6 MR. MIZELL: At this point, I'm going to
7 object to calling for a legal conclusion.

8 If the questioner is looking for a definitive
9 statement that he can somehow use against the witnesses
10 by indicating there are other statutes out there that
11 might go to the language he's using, I think that
12 calling for a yes or no answer is not very informative
13 to the Board at this time. The witnesses answered in
14 what they know.

15 MR. BRODSKY: I don't plan to bring up any
16 other statutes. The question is -- his testimony was
17 that operation of the CVP under WaterFix will not cause
18 legal injury to users. So he drew a legal conclusion
19 in that regard.

20 And my question is, in terms of within the
21 meaning of legal injury to users in the Delta, it's his
22 testimony that there's no obligation to release stored
23 water from reservoirs to enhance water quality for
24 users in the Delta because failure to do so is not
25 legal injury to users within the meaning of Water Code

1 1702 as long as he's meeting D1641.

2 CO-HEARING OFFICER DODUC: Mr. Brodsky, that
3 was so convoluted, I'm not sure I followed it.

4 But, Mr. Sahlberg, is it your opinion --

5 WITNESS SAHLBERG: Our responsibility is to
6 meet D1641.

7 CO-HEARING OFFICER DODUC: Okay. -- that your
8 responsibility is to meet the salinity objectives in
9 D1641?

10 WITNESS SAHLBERG: Yes, that's correct.

11 CO-HEARING OFFICER DODUC: Let's rest on this
12 and move on, Mr. Brodsky.

13 MR. BRODSKY: Okay. I'd like to look at D1641
14 which is SWRCB-21.

15 MR. BRODSKY: And if we could go to Page 83.
16 And if you could read the first full paragraph on
17 Page 83 beginning with "based on."

18 Have you had a chance to read it?

19 WITNESS SAHLBERG: Yes.

20 MR. BRODSKY: And the final sentence of that
21 paragraph concludes, "The USBR, through its activities
22 associated with operating the CVP in the San Joaquin
23 River Basin is responsible for significant
24 deterioration of water quality in the Southern Delta."

25 Have I read that accurately?

1 WITNESS SAHLBERG: That's what it says.

2 MR. BRODSKY: And I'd like to refer back to
3 Ms. Sergent for a moment if I can.

4 Ms. Sergent, excuse me. Page 13 of your
5 testimony at the bottom, lapping on to Page 14, you say
6 that the -- quote, "The SWP and CVP are not required to
7 maintain incidental benefits to water flows or flows
8 that may have previously resulted from a different SWP
9 CVP operation"; is that correct?

10 WITNESS SERGENT: That's correct.

11 MR. BRODSKY: And the different operation
12 we're talking about is that, prior to CWF, as many
13 people have talked about, water flows through
14 Sacramento River, water flows through the Central and
15 South Delta before reaching the export pumps. And
16 under CWF, a certain portion of that water will be
17 diverted at the North Delta diversions and won't flow
18 through the Delta; is that correct?

19 WITNESS SERGENT: Yes, water will be diverted
20 at the North Delta and will not flow through the Delta
21 channels.

22 MR. BRODSKY: And the fact that the water now
23 flows through the Delta results in what you've called
24 an "incidental benefit" or I think somewhere an
25 "incidental freshening" for in-Delta users but not one

1 they're entitled to?

2 MR. MIZELL: Objection, asked and answered.

3 MR. BRODSKY: I'm just asking the witness if
4 I've accurately understood her testimony.

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

7 WITNESS SERGENT: Yes, the enhancement of
8 water quality that was -- may have been resulted from
9 additional releases of project storage is not something
10 that the in-Delta users under their own water rights
11 would be entitled to claim.

12 MR. BRODSKY: I'd like to turn back to
13 Mr. Sahlberg.

14 So isn't it true then that, since we're not
15 going to have that freshening benefit, that CWF will
16 exacerbate the South Delta salinity problem?

17 MR. MIZELL: Objection, assumes facts not in
18 evidence. There's been no tie to the Vernalis flow
19 standards, not to mention the fact that the CWF doesn't
20 propose to change operations on the San Joaquin.

21 CO-HEARING OFFICER DODUC: Mr. Brodsky?

22 MR. BRODSKY: D1641 that we read said that it
23 exacerbates -- the CVP exacerbates the salinity problem
24 in the, quote, "South Delta."

25 CO-HEARING OFFICER DODUC: And your question?

1 Your question is?

2 MR. BRODSKY: My question to the witness is
3 isn't it true that CWF will exacerbate the South Delta
4 salinity problem referred to in D1641 that we just
5 read?

6 CO-HEARING OFFICER DODUC: Please answer.

7 WITNESS SAHLBERG: The sentence you referred
8 to referred to activities operating the CVP in the San
9 Joaquin River Basin. The WaterFix will not be in the
10 San Joaquin River Basin.

11 MR. BRODSKY: Does CVP operate the Lake Shasta
12 Reservoir?

13 WITNESS SAHLBERG: Yes, it does.

14 MR. BRODSKY: And some of the water that's
15 released from Lake Shasta after CWF will flow through
16 the North Delta diversions?

17 WITNESS SAHLBERG: Yes.

18 MR. BRODSKY: And absent the North Delta
19 diversions, that water would flow through the Central
20 and South Delta to reach the pumps; is that correct?

21 WITNESS SAHLBERG: It would flow through the
22 Central Delta.

23 MR. BRODSKY: The pumps are located in the
24 South Delta; is that correct?

25 WITNESS SAHLBERG: I'm not sure what you mean

1 by "South Delta."

2 MR. BRODSKY: Okay. Let's go to -- can we see
3 DWR-1 at Page 3.

4 MR. BAKER: For the record, we're pulling up
5 DWR-1 corrected errata.

6 MR. BRODSKY: Thank you.

7 And could you read the title of -- was this
8 slide prepared by the California WaterFix proponents?

9 WITNESS SAHLBERG: You'd have to -- I do not
10 know who prepared this slide. I know I did not.

11 MR. BRODSKY: Okay. Are you aware that this
12 is the California -- a DWR exhibit that they've
13 introduced into evidence?

14 WITNESS SAHLBERG: Yes.

15 MR. BRODSKY: Would you read the title of the
16 slide.

17 WITNESS SAHLBERG: "SVPS" -- I'm sorry. "SWP
18 CVP Facilities in the South Delta."

19 MR. BRODSKY: So this slide depicts facilities
20 in the South Delta, according to the people who
21 prepared it?

22 WITNESS SAHLBERG: According to the title of
23 the slide.

24 MR. BRODSKY: And what are the facilities
25 there, down at the bottom of the -- the bottom of the

1 slide? Could you read the names of those facilities.

2 CO-HEARING OFFICER DODUC: Actually, we can
3 read them.

4 What is your question, Mr. Brodsky?

5 MR. BRODSKY: My question is does this slide
6 portray Banks and Jones as being in the South Delta?

7 WITNESS SAHLBERG: In the Southwest Delta.

8 MR. BRODSKY: Okay. Thank you.

9 So my previous question was isn't it true that
10 your releases of water from Lake Shasta flowing through
11 the new diversion points rather than through the Delta
12 will exacerbate the salinity problem in the South
13 Delta?

14 WITNESS SAHLBERG: I do not know.

15 MR. BRODSKY: Okay. Thank you.

16 Okay. I'd like to turn back to Ms. Sergeant,
17 if I may.

18 You've testified that in your opinion there
19 will be no legal injury to users in the Delta because
20 D1641 can be met with the operation of CWF; is that
21 correct?

22 WITNESS SERGENT: I testified that there -- I
23 felt that the information provided supports the
24 decision by the Board that the petition could be
25 approved without injuring other legal users within the

1 Delta, based in part on the fact that the information
2 indicates we can continue to meet the objectives in
3 D1641.

4 MR. BRODSKY: Okay. And on what do you base
5 your opinion that you can continue to meet the
6 objectives in 1641?

7 CO-HEARING OFFICER DODUC: We've been here,
8 Mr. Brodsky.

9 MR. BRODSKY: I'll be very brief.

10 CO-HEARING OFFICER DODUC: I would ask you to
11 move on to your next question because she's answered
12 that question several times.

13 MR. BRODSKY: Did you rely on the modeling in
14 reaching your conclusion that 1641 could be met?

15 MR. BERLINER: Objection, asked and answered.

16 CO-HEARING OFFICER DODUC: Agreed.

17 Move on, please, Mr. Brodsky. She's walked in
18 detail through what she --

19 MR. BRODSKY: Okay. Let's go to the next
20 model. Thank you for pointing that out to me. I've
21 watched most of the testimony. I'll acknowledge I
22 haven't had the opportunity to watch all of it. So
23 thank you. Okay.

24 I'd like to view sort of in a different vein,
25 you testified about historical -- in your written

1 testimony about historical salinity conditions in the
2 Delta; is that correct?

3 WITNESS SERGENT: I included some information,
4 some excerpts from a DWR publication, the Delta Atlas,
5 to illustrate what I meant by the incidental benefit
6 that is provided at times by project releases.

7 MR. BRODSKY: Okay. So let's see. On Page --
8 on Page 15 of your testimony, at the top of the page,
9 you say, "Historical salinity was at times greater than
10 current conditions, particularly during drier periods";
11 is that correct?

12 WITNESS SERGENT: Yes, that's correct.

13 MR. BRODSKY: And you base that on what?

14 WITNESS SERGENT: In this particular
15 paragraph, I'm referencing the 1931
16 Sacramento-San Joaquin water supervisor's report.

17 MR. BRODSKY: Okay. Anything else you relied
18 on in your testimony with regard to historical salinity
19 conditions?

20 WITNESS SERGENT: That was what I relied on in
21 that paragraph. In the previous page, I discussed some
22 of the information that was contained in the Delta
23 Atlas.

24 MR. BRODSKY: Okay. Thank you.

25 Could we bring up City of Antioch Exhibit 216.

1 MR. BRODSKY: And maybe if we can just view
2 the title page. And this is a technical memorandum
3 dated February 2010 produced by Contra Costa Water
4 District titled "Historical Freshwater and Salinity
5 Conditions in Western Sacramento-San Joaquin Delta and
6 Suisun Bay."

7 Have I read that correctly?

8 WITNESS SERGENT: That appears to be the
9 title.

10 MR. BRODSKY: Okay. Thank you.

11 Could we go to Page v, romanette five.

12 MR. BAKER: Could you please repeat the page
13 number.

14 MR. BRODSKY: It's in the executive summary at
15 the beginning, small v; in other words, romanette
16 numeral five.

17 Should I show you a copy of the document? I
18 have it here.

19 CO-HEARING OFFICER DODUC: I think we're
20 getting there.

21 MR. BRODSKY: Okay. Okay. There we are.
22 Thank you.

23 Let me read from the first paragraph:
24 "Studies in salinity measurements confirm that, despite
25 salinity management efforts, Delta salinity is now at

1 or above the highest salinity levels found in the past
2 2500 to 4,000 years. Under equivalent hydrological
3 conditions, the boundary between salt- and freshwater
4 is now 3 to 15 miles further into the Delta than it
5 would have been without the increased diversions of
6 freshwater that have been taken place the past 150
7 years," end quote.

8 And then I'd like to read to you from the
9 bottom under Key Conclusions, "The major conclusions of
10 this study are, No. 1, salinity intrusion during the
11 last 100 years has been among the highest levels over
12 the past 2500 years; the Delta has been predominantly a
13 freshwater tidal marsh for the last 2500 years," end
14 quote.

15 So let me ask you, Ms. Sergeant, isn't it true
16 that a fair portrayal of salinity in the Delta should
17 disclose that current salinity levels are historically
18 very high?

19 MR. BERLINER: Objection. This document lacks
20 foundation. We don't know why it was prepared, who
21 prepared it. Perhaps this is an advocacy piece.
22 There's no authentication that these alleged facts are
23 in fact accurate.

24 So I would object to the use of this document
25 in the conduct of any cross-examination.

1 CO-HEARING OFFICER DODUC: I'll note your
2 objection, Mr. Berliner, but I would like Ms. Sergent
3 to answer.

4 WITNESS SERGENT: I think it's fairly well
5 established that, prior to the project's being
6 constructed, that development within the basin -- I'm
7 not surprised to know that there were possibly
8 salinities 2500 years ago that were different than what
9 occurred a hundred years ago or 150 years ago.

10 There has been a tremendous amount of
11 development within the Sacramento and San Joaquin
12 watersheds. One of the stated purposes of the State
13 Water Project was to provide salinity control because
14 at the level of development prior to the projects,
15 there was considerable salinity intrusion, particularly
16 during dry years.

17 So I don't believe the fact that the projects
18 provide substantial salinity control would alter my
19 opinion as to whether or not current diverters would
20 have a right under their individual water rights to
21 salinity that existed 2500 years ago.

22 MR. BRODSKY: Okay. Were you aware of this
23 report when you prepared your written testimony?

24 WITNESS SERGENT: I was not.

25 MR. BRODSKY: Being aware of it now, do you

1 think it would be reasonable in a discussion --
2 testimony that discusses historical salinity conditions
3 to mention that, regardless of the effects of the
4 projects, current conditions are very high in a
5 historical context?

6 WITNESS SERGENT: I don't think the
7 information contained in that -- in either the
8 description or the conclusions would change the fact
9 that the projects are currently providing substantial
10 benefit to maintaining salinity in the Delta during the
11 drier periods. I don't know that that would alter any
12 of the conclusions.

13 MR. BRODSKY: Okay. So I understand it
14 wouldn't alter your conclusions.

15 Do you think it would be fair, though, to
16 present at least the fact that current conditions are
17 in a -- when we're talking about historical salinity
18 conditions, that the Delta historically has been a
19 freshwater marsh and current conditions, even with the
20 projects, if they provide a benefit, are high in
21 historical natural context?

22 WITNESS SERGENT: In the context of this
23 hearing, we are evaluating whether or not the WaterFix
24 facilities would have -- can be constructed and
25 operated without injuring other legal users of water.

1 So I don't know that it's relevant to the
2 issue before the Board today.

3 MR. BRODSKY: Okay. Thank you. I think we've
4 covered that. Let's move on.

5 Earlier in your testimony, not today -- I
6 can't remember. It was a couple of days ago. It all
7 runs together at some point, doesn't it? You touched
8 on a settlement agreement between DWR and East Contra
9 Costa Irrigation District.

10 Do you recall that?

11 WITNESS SERGENT: Yes, I do.

12 MR. BRODSKY: And we refer to East Contra
13 Costa Irrigation District as ECID, correct?

14 WITNESS SERGENT: ECCID or East Contra Costa.

15 MR. BRODSKY: Okay. If we can bring up very
16 briefly Exhibit DWR-305.

17 Is this the agreement you were referring to?

18 WITNESS SERGENT: Yes, it is.

19 MR. BRODSKY: Okay. And then could we bring
20 up DWR-327 briefly and then -328 after that, briefly.

21 And is this 327, DWR-327, an amendment to the
22 ECCID DWR agreement?

23 WITNESS SERGENT: This agreement is an
24 agreement between East Contra Costa, Contra Costa Water
25 District and the Department that allowed for the

1 diversion of some portion of the water under the ECCID
2 contract by Contra Costa at their points of diversion.
3 And in it, it did change some provisions of that
4 original agreement.

5 MR. BRODSKY: Okay. Thank you very much.

6 And then could we take a quick look at
7 DWR-328.

8 And, then, so this is an amendment to DWR-327;
9 is that correct?

10 WITNESS SERGENT: This is an amendment to both
11 DWR-327 and the original agreement.

12 MR. BRODSKY: Okay. And is it correct, then,
13 that these three documents together represent the
14 current state of the agreement with regard to East
15 Contra Costa Irrigation District, or have there been
16 subsequent amendments that I'm not aware of?

17 WITNESS SERGENT: None that I'm aware of.

18 MR. BRODSKY: Okay. Thank you.

19 And so the general substance of these
20 agreements is for DWR to maintain certain water quality
21 standards at certain times at Indian Slough or,
22 alternatively, if those aren't being met, then to
23 provide an alternative source of water for ECCID?

24 WITNESS SERGENT: The agreement is essentially
25 to provide a certain -- to provide water at a certain

1 quality at Indian Slough; that's correct.

2 MR. BRODSKY: Okay. Thank you.

3 And then if we could look at Exhibit SCDA-57,
4 which is on the flash drive.

5 (Exhibit SCDA-57 identified for the record)

6 MR. BRODSKY: Okay. And I'm aware that the
7 hearing officers are sensitive to introducing exhibits
8 on cross-examination that we might not know where it
9 came from or that was produced for cross-examination.

10 So this is a screen shot of the California
11 Department of Water Resources Web page CDAC map. And I
12 believe it's self-authenticating. It's got DWR's logo
13 up at the top. I don't believe anybody's going to
14 challenge that this is authentic unless Mr. Mizell
15 wants to object.

16 CO-HEARING OFFICER DODUC: We'll just identify
17 it for now. And please go ahead with your
18 cross-examination.

19 MR. BRODSKY: Okay. Thank you. Okay.

20 And there on the left-hand side -- and I did
21 add the red arrow and the larger type "ECd" so that we
22 would be able to see it, but it's also identified on
23 the original map with a blue dot and the letters "ECd."

24 That's the gauge that's used to monitor
25 compliance in the DWR-ECCID agreement; is that correct?

1 WITNESS SERGENT: The agreement specifies it
2 can be either the ECCID pumping plant, or the
3 compliance location is actually Old River at Indian
4 River -- at Indian Slough.

5 MR. BRODSKY: But there was never a monitoring
6 station installed at Old River and Indian Slough; isn't
7 that correct?

8 WITNESS SERGENT: I'm not aware whether there
9 was or was not.

10 MR. BRODSKY: Okay. But this ECd gauge is
11 part of the monitoring agreement with -- between DWR
12 and ECCID?

13 WITNESS SERGENT: I believe so.

14 MR. BRODSKY: Okay. Thank you.

15 And we can see on the map there that that ECd
16 gauge is in close proximity to Discovery Bay; is that
17 correct?

18 WITNESS SERGENT: It appears so.

19 MR. BRODSKY: Thank you.

20 And on this map, we can also see, if we scroll
21 down just a little bit -- other way.

22 Also I've pointed out three other gauges
23 there: RSL, OBI and MDM.

24 And are you familiar that with the RSL
25 monitoring point being a compliance station, D1641

1 compliance station, for Rock Slough?

2 WITNESS SERGENT: That's correct.

3 MR. BRODSKY: And MDM is a DWR monitoring
4 gauge, Middle River at Middle River; is that correct?

5 WITNESS SERGENT: I'm not familiar with all
6 the gauging stations in the Delta.

7 MR. BRODSKY: You're not familiar with that
8 one? Okay. Are you familiar with the OBI gauge?

9 WITNESS SERGENT: Again, I don't work with the
10 gauges in the Delta.

11 MR. BRODSKY: Okay. Thank you.

12 Okay. I'd like to turn back for a moment to
13 Mr. Leahigh's testimony. At Page 19 of Mr. Leahigh's
14 testimony, he states that, "A station which is a good
15 generalized representation of Central Delta salinity
16 conditions is the salinity monitoring station on Old
17 River near Bacon Island."

18 MS. McCUE: Excuse me. This is DWR-61? And
19 what page are you talking about?

20 MR. BRODSKY: Page 19. And that would be at
21 Lines 5 to 6.

22 Are you familiar with Mr. Leahigh?

23 WITNESS SERGENT: Yes, I am.

24 MR. BRODSKY: Do you have any reason to doubt
25 his knowledge of the fact that this would be a good

1 monitoring station generalized for Central Delta
2 salinity?

3 WITNESS SERGEANT: I have no reason to doubt
4 that Mr. Leahigh picked the station that was
5 appropriate for his analysis that's discussed in that
6 portion of his testimony.

7 MR. BRODSKY: Okay. Thank you. All right.

8 I'd like to take a look at SCDA-58 if we
9 could. And again, Madam Hearing Officer, this is
10 downloaded directly from California Department of Water
11 Resources' website. And in the upper right-hand
12 corner, the output is identified with DWR's coding
13 there.

14 And this graph is for the period from
15 10/1/2012 to 10/1/2013, and it displays conductivity in
16 microsiemens per centimeter.

17 (Exhibit SCDA-58 identified for the record)

18 So I'd like to ask, Ms. Sergeant, for the
19 period of November 2012 on this graph, it appears that
20 salinity was below -- below 600 microsiemens per
21 centimeter for the entire month of November; is that
22 the way you read the graph?

23 WITNESS SERGEANT: It appears that it was.

24 MR. BRODSKY: Okay. Thank you.

25 And then could we go to SCDA-59. Thank you.

1 (Exhibit SCDA-59 identified for the record)

2 MR. BRODSKY: And this is a similar download
3 from DWR's website for the ECd station that we talked
4 about earlier for the same period of time. And this
5 graph shows that in November, same time period as we
6 looked at on OBI, EC was between 1600 and 2100
7 microsiemens per centimeter; is that correct?

8 WITNESS SERGENT: It varied. I'm not sure if
9 these are -- I'm assuming these are daily or I guess
10 12-hour numbers.

11 MR. BRODSKY: Close to 12-hour, meaning
12 they're both the same metrics.

13 WITNESS SERGENT: But they're not a -- I guess
14 I'm struggling with the relevance of looking at the
15 objectives at Bacon Island with respect to the East
16 Contra Costa Irrigation District agreement, which is --

17 MR. BRODSKY: Well, I'll make that point in my
18 next question. This question was just simply to read
19 the graph. Am I reading the graph correctly, or do you
20 agree that it shows EC in November at levels between
21 1600 and 2100 microsiemens per centimeter?

22 WITNESS SERGENT: It appears to show EC
23 between about 1100 and 2100.

24 MR. BRODSKY: Okay. Thank you very much.

25 And so my question is that even though OBI is

1 a good general indicator for Central Delta salinity, we
2 can have a very high spike in salinity ECd at the same
3 time that OBI is showing much lower levels of salinity.
4 Is that what these two graphs show?

5 MR. MIZELL: Objection as to the relevance of
6 a snapshot from a critical drought year as to the
7 general trends that might be experienced over the
8 course of what this project is proposing.

9 CO-HEARING OFFICER DODUC: Mr. Brodsky?

10 MR. BRODSKY: Oh, I haven't alleged any
11 general trends. And I'll note that Mr. Leahigh, in his
12 presentation, gave a snapshot on DWR-411 from a very
13 brief, very wet period.

14 CO-HEARING OFFICER DODUC: Thank you.

15 MR. BRODSKY: So I think the Board can sort
16 through who's cherry-picking data and who's not.

17 CO-HEARING OFFICER DODUC: We'll strike that
18 commentary.

19 Ms. Sergeant, please answer.

20 WITNESS SERGEANT: As with any of the salinity
21 readings throughout the Delta, if you look on 15-minute
22 or 12-hour or even a daily basis, you will see
23 variation in salinity.

24 The objectives are not 15-minute or daily
25 numbers. They are -- in regard to the ECCID agreement,

1 I believe it's a 14-day average. And they are the
2 objectives at the East Contra Costa location. And DWR
3 is required to meet the objectives at that location
4 under contract. We have done so historically, and we
5 propose to continue to do so.

6 I'd also like to point out that you're using
7 the month of November. The objectives in the agreement
8 are for April through October. So the period that
9 you're talking about is outside the period under which
10 there is a water quality objective contained in the
11 East Contra Costa agreement.

12 MR. BRODSKY: Okay. Thank you. I'm not
13 representing ECCID.

14 My point is that we can have a monitoring of
15 EC at 7- or 800 microsiemens at one station, and then
16 at the same time, at another station in close
17 proximity, we can have a level as high as 2100.

18 Isn't that what these two graphs show?
19 Regardless of what your interpretation of that is,
20 isn't that what these two graphs show?

21 WITNESS SERGENT: The graphs show that there
22 can be variability due to local discharges, a number of
23 different things. But again, you're using very short
24 time step.

25 MR. BRODSKY: I think you've answered my

1 question.

2 CO-HEARING OFFICER DODUC: Enough, enough.

3 All right. You've answered.

4 Let's move on, Mr. Brodsky.

5 MR. BRODSKY: Okay. So isn't it true that
6 meeting D1641 salinity standards at a D1641 compliance
7 point does not ensure the water quality will not be
8 seriously degraded at other points nearby at the same
9 time?

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

12 MR. BRODSKY: I'm not assuming any facts. I'm
13 just asking a question.

14 CO-HEARING OFFICER DODUC: Mr. Brodsky,
15 we're -- you -- rephrase the question.

16 MR. BRODSKY: Is it possible that, when you
17 are meeting D1641 standards at a D1641 compliance
18 station for salinity, that salinity could be much
19 higher at a location in the Delta nearby at the same
20 time?

21 WITNESS SERGENT: I don't know that it would
22 be much higher unless there were concentrated local
23 discharges.

24 But again, I would like to point out that we
25 comply with the objectives that the Water Board under

1 its authority for establishing the objectives that are
2 necessary to meet the beneficial needs within the
3 Delta, and we are complying with those objectives. And
4 the Water Board --

5 CO-HEARING OFFICER DODUC: Ms. Sergeant, that's
6 not what he's asked. Let's go ahead and acknowledge
7 the obvious. Based on the two graphs that he showed,
8 the answer to his question is yes, it is possible.

9 WITNESS SERGENT: It's possible, but he --
10 without the qualifier --

11 CO-HEARING OFFICER DODUC: Understood. Thank
12 you.

13 Mr. Brodsky.

14 MR. BRODSKY: Okay. Let's move on, then.

15 So if we could have DWR-4 at Page 17.

16 MR. BRODSKY: And that may be one of the
17 erratas. I'm sorry; I didn't quite keep up on the
18 errata for DWR's early exhibits. Yeah, that is an
19 errata. Okay.

20 So, Ms. Sergeant, this is a map of D1641 Bay
21 Delta standards stations; is that correct?

22 WITNESS SERGENT: That's correct.

23 MR. BRODSKY: Is it your understanding that
24 the D1641 compliance points taken together provide a
25 reasonable picture of Delta water quality?

1 MR. BERLINER: I'm going to object. We've had
2 substantial testimony --

3 CO-HEARING OFFICER DODUC: I don't believe
4 your microphone is on, Mr. Berliner.

5 MR. BERLINER: Sorry. We've had substantial
6 testimony previously in this proceeding, both on
7 operations and modeling groups, with experts on water
8 quality who were asked to answer all kinds of questions
9 in this area. And Mr. Brodsky had ample opportunity to
10 cross-examine them.

11 We are well beyond Ms. Sergent's testimony,
12 which was making a rather simple point related to water
13 quality and her opinion on compliance with 1641.
14 Delving this deep down into the facts when we had
15 experts exactly on this subject seems inappropriate
16 with this witness.

17 CO-HEARING OFFICER DODUC: Let's see.

18 Where are you going with this, Mr. Brodsky?

19 MR. BRODSKY: Where I'm going is that I want
20 to ask her on what does she base her opinion that
21 meeting D1641 means no legal injury to users in the
22 Delta, which is within her area of expertise. And I
23 want to lay just two minutes' worth of foundation on
24 what her understanding of D1641 is before I ask that.

25 CO-HEARING OFFICER DODUC: You know what?

1 Let's go ahead and ask that question because she's
2 answered before, but we'll get it on the record again,
3 on that basis.

4 MR. BRODSKY: Should I repeat the question?
5 Yeah.

6 Is it your understanding that D1641 compliance
7 points taken together provide a reasonable picture of
8 Delta water quality?

9 WITNESS SERGENT: I believe so.

10 MR. BRODSKY: Okay. Thank you.

11 And could we go to SCDA-1 at Page 3.

12 Maybe let's just go to the cover page just for
13 a moment first to identify the document.

14 (Exhibit SCDA-1 identified for the record)

15 MR. BRODSKY: And this is the independent
16 review panel report for the 2016 California WaterFix
17 Aquatic Science Peer Review which was prepared for CWF
18 at DWR's request.

19 And if we could go to Page 15 now.

20 Just under 2.1, if I may read, "The panel
21 believes that the PA" -- "PA" is proposed action,
22 they're referring to CWF there. "The panel believes
23 that the PA will create more than an incremental change
24 to the Bay Delta system. It will effect major changes
25 in hydrodynamics and associated transport throughout

1 the system downstream of the North Delta diversion."

2 Okay. And then I'd like to turn to SWRCB-104.

3 And if we could go to Page 3-83 when we find
4 that one. And this is the biological opinion that was
5 prepared by CWF and has been submitted to the federal
6 fisheries agencies.

7 MR. BERLINER: Biological assessment.

8 MR. BRODSKY: Assessment. Thank you,
9 Mr. Berliner.

10 And let me read from the second paragraph:
11 "Operations under the PA may result in substantial
12 change in Delta flows compared to the expected flows
13 under existing Delta configurations."

14 Okay. So with that in mind, let me ask you,
15 do you have any opinion on whether making major changes
16 to Delta hydrodynamics would require reassessing the
17 location of D1641 compliance stations?

18 MR. BERLINER: Objection. Same objection as
19 before. We've had experts on this subject who could
20 answer this competently.

21 CO-HEARING OFFICER DODUC: Ms. Sergent is free
22 to answer that she does not have an opinion.

23 WITNESS SERGENT: I do not work with modeling
24 or Delta hydrodynamics, and I don't have an opinion on
25 that question.

1 MR. BRODSKY: So your own personal knowledge,
2 you do not know if D1641 will continue to provide an
3 accurate picture of water quality after CWF?

4 MR. MIZELL: I'm going to object to this
5 being -- this line of questioning going towards a
6 challenge to the existing Water Quality Control Plan
7 and not the California WaterFix.

8 MR. BRODSKY: I'm not challenging the Control
9 Plan. The testimony is that D1641 will be adequate
10 after CWF, and D1641 makes major changes to flows in
11 the Delta. So I'm asking if those changes in flows to
12 the Delta require a reassessment of D1641 locations or
13 if she knows.

14 CO-HEARING OFFICER DODUC: Ms. Sergeant.

15 WITNESS SERGENT: That is beyond my area of
16 expertise.

17 CO-HEARING OFFICER DODUC: Thank you. And
18 we'll move forward. You have answered.

19 MR. BRODSKY: That concludes my
20 cross-examination. Thank you.

21 CO-HEARING OFFICER DODUC: Thank you,
22 Mr. Brodsky.

23 MR. BRODSKY: May I ask a procedural question?

24 CO-HEARING OFFICER DODUC: Mr. Brodsky?

25 MR. BRODSKY: So you had originally, with

1 regard to the case -- Part 1 cases in chief, issued
2 something that you were going to call for responses to
3 the objections?

4 CO-HEARING OFFICER DODUC: Those were the
5 objections to Mr. Bezerra's request to recall these
6 witnesses for additional cross-examination.

7 MR. BRODSKY: I see. I'm sorry. I
8 misunderstood.

9 CO-HEARING OFFICER DODUC: On which I've
10 already ruled.

11 MR. BRODSKY: In any case, DWR has submitted
12 objections to our evidence in our case in chief in
13 Part 1B, and we intend to submit a reply to you on that
14 very soon so you can consider that.

15 CO-HEARING OFFICER DODUC: Then please do it
16 very soon. They're under consideration right now.

17 MR. BRODSKY: Okay.

18 CO-HEARING OFFICER DODUC: All right. That
19 was Mr. Brodsky for Group No. 30.

20 32?

21 (No response)

22 CO-HEARING OFFICER DODUC: 33?

23 (No response)

24 CO-HEARING OFFICER DODUC: 34?

25 (No response)

1 CO-HEARING OFFICER DODUC: 35?

2 (No response)

3 CO-HEARING OFFICER DODUC: 36? There's no 36.
4 37?

5 (No response)

6 CO-HEARING OFFICER DODUC: 38. From far away,
7 you look like Mr. Eichenberg.

8 MR. GARRETT-STEINMAN: My name is Daniel
9 Garrett-Steinman, and I'm here on behalf of PCFFA and
10 the Institute for Fisheries Resources.

11 CO-HEARING OFFICER DODUC: Actually, before
12 you continue, do you have a time estimate for your
13 cross-examination?

14 MR. GARRETT-STEINMAN: No more than 15
15 minutes.

16 CO-HEARING OFFICER DODUC: Only 15 minutes?
17 All right. Then we'll allow you to proceed, and then
18 we'll take a break after you're done.

19 MR. GARRETT-STEINMAN: I just have a few
20 questions for Ms. Sergent about her testimony that the
21 proposed change on that version is a change --

22 CO-HEARING OFFICER DODUC: Please get closer
23 to the microphone and perhaps -- and please speak a
24 little bit slower.

25 And so that's your only line of questioning?

1 MR. GARRETT-STEINMAN: Yes. I'm just going to
2 ask Ms. Sergent about her testimony that the proposed
3 change is a change rather than a new water right.

4 CO-HEARING OFFICER DODUC: All right. Please
5 proceed.

6 CROSS-EXAMINATION BY MR. GARRETT-STEINMAN

7 MR. GARRETT-STEINMAN: Ms. Sergent, you
8 testified, essentially, that if the change petition is
9 approved, maximum annual diversions may increase
10 compared to what would occur if the petition was
11 denied, but you further testified that any increases
12 would remain within the quantities authorized under the
13 existing permits, correct?

14 WITNESS SERGENT: That's correct.

15 MR. GARRETT-STEINMAN: Okay. Would you agree
16 with the following statement: If the change petition
17 is approved, there may be some future point in time in
18 which the amount of water that SWP diverts will
19 increase as compared to the amount that would have been
20 diverted if the change petition were rejected?

21 WITNESS SERGENT: I believe we discussed the
22 proposed -- the possible changes at length in my
23 testimony as well as the modeling testimony.

24 MR. GARRETT-STEINMAN: So you're saying that
25 if a change petition is approved, there may be a future

1 point in time in which diversions will increase if the
2 petition is approved versus rejected?

3 MR. MIZELL: Objection, asked and answered.

4 CO-HEARING OFFICER DODUC: It's an important
5 point, so let's answer it one more time.

6 WITNESS SERGENT: Maximum annual diversions
7 may increase. The diversions -- diversion right will
8 not change. The amount of -- the allowed amount of
9 water put to storage will not change. The total
10 amount -- or the total rate of diversion from the Delta
11 will not change.

12 MR. GARRETT-STEINMAN: But I just want to be
13 very clear that it seems to me that the necessary
14 corollary of your testimony is that, at some future
15 point in time, there may be an actual increase in
16 diversions at that time compared to what would have
17 otherwise occurred.

18 CO-HEARING OFFICER DODUC: Yes, we've made
19 that point, and we acknowledge that point.

20 MR. GARRETT-STEINMAN: Okay. Just making
21 sure.

22 And then would you also agree with the
23 following statement, then: Approval of the change
24 petition may increase diversions compared to what the
25 State Water Project, as a practical matter, would have

1 been able to divert if the petition were denied?

2 WITNESS SERGENT: I don't -- I don't know that
3 I can answer that question. We are currently
4 authorized and we have diverted water at the maximum
5 rate currently allowed.

6 I can't say what the conditions in the future
7 might be without the WaterFix. So I -- I can't state
8 whether or not at some point in the future we might be
9 able to divert more than we currently have.

10 CO-HEARING OFFICER DODUC: Without WaterFix?

11 WITNESS SERGENT: Without the WaterFix.

12 MR. GARRETT-STEINMAN: Okay. On Pages 9 and
13 10 of your testimony, you reference State Water
14 Resources Control Board Order 2009-0061.

15 Was it your testimony on Friday that you
16 fairly characterized the reasoning in that order?

17 WITNESS SERGENT: It was my testimony that I
18 referenced some reasoning in that order that I felt was
19 applicable to the current petition.

20 MR. GARRETT-STEINMAN: Okay. I just recall
21 that Mr. Jackson asked you if you thought that you had
22 cherry-picked any items from the order, and I believe
23 you said you fairly characterized the reasoning. So I
24 just wanted to be clear on that.

25 WITNESS SERGENT: I believe I stated that I

1 selected the excerpts that I felt had reasoning that
2 was applicable to the petition.

3 MR. GARRETT-STEINMAN: Okay. So I'd like to
4 bring up that document which was on the flash drive I
5 provided as, I believe, PCFFA-85.

6 (Exhibit PCFFA-85 identified for the record)

7 MR. GARRETT-STEINMAN: Ms. Sergeant, are you
8 familiar with this document?

9 WITNESS SERGENT: I have read the document,
10 yes.

11 MR. GARRETT-STEINMAN: Okay. So I'd just like
12 to read a couple sentences on Pages 6 and 7 which I
13 highlighted: "Any approval of a change to allow
14 storage or direct diversion must be appropriately
15 conditioned to ensure that the change does not in fact
16 result in increased diversions over the amount to which
17 the petitioner would otherwise have been legally
18 entitled and, as a practical matter, would otherwise
19 have been able to divert were the permit to have
20 remained unchanged. This includes ensuring that the
21 current diversion limits imposed, e.g., by hydrology,
22 the petitioner's physical facilities, and the current
23 permit remain in effect."

24 Ms. Sergeant, were you aware of this statement
25 when you gave your testimony?

1 WITNESS SERGENT: Yes, I was.

2 MR. GARRETT-STEINMAN: Okay. No further
3 questions. Thank you.

4 CO-HEARING OFFICER DODUC: Thank you.

5 With that, we will take -- I think we'll take
6 a bit of a longer break, since we have a couple things
7 to discuss. So we will resume at 10:45.

8 (Recess taken)

9 CO-HEARING OFFICER DODUC: All right. Welcome
10 back, everyone. It's 10:45. Thank you for allowing us
11 that additional time for discussion.

12 Before we resume, let me address Mr. Jackson.

13 MR. JACKSON: Yes, I don't mean to interrupt,
14 but --

15 CO-HEARING OFFICER DODUC: Well, you just did.

16 MR. JACKSON: Yes. The -- there were
17 objections filed for Part 1B. I remember a
18 statement -- I don't know whether it was in writing or
19 just from you -- that led me to believe that we should
20 wait for a schedule to respond.

21 CO-HEARING OFFICER DODUC: Let -- I will
22 address that --

23 MR. JACKSON: Thank you.

24 CO-HEARING OFFICER DODUC: -- Mr. Jackson.
25 First of all, let me address Mr. Bezerra's

1 question from this morning regarding the exhibits from
2 petitioners for Part 1A.

3 Using our standard practice, we will allow
4 petitioners to submit their exhibits at the conclusion
5 of Part 1A. We will take it under submission, and we
6 will rule on admissibility and the objections to that,
7 inviting to follow as soon as possible.

8 So at this time, I will again, to be clear,
9 allow petitioners to offer the exhibits into evidence
10 at the close of their case in chief, as usual. We will
11 take them under submission, and we will issue a written
12 ruling on admissibility soon after.

13 MR. BEZERRA: Thank you, Ms. Doduc. Ryan
14 Bezerra for Cities of Folsom, Roseville, San Juan Water
15 District, Sacramento Suburban Water District.

16 I just want to get some clarification there.

17 So procedurally, I -- is this later today that
18 the petitioners will formally move all of their
19 exhibits in?

20 CO-HEARING OFFICER DODUC: At the conclusion
21 of their case in chief, any -- well, cross-examination
22 or redirect or recross.

23 MR. BEZERRA: It just -- it looks like we're
24 rapidly approaching that point in time, and I'm
25 wondering, do other parties -- will we be arguing our

1 objections in person, or will you just take the ones
2 that we already submitted and then you will rule on
3 them at some later point in time without further
4 argument?

5 CO-HEARING OFFICER DODUC: That's correct. We
6 have your objections that are made in writing, and we
7 will consider and review that in providing a written
8 ruling on the admissibility of the petitioners'
9 exhibits.

10 MR. BEZERRA: And one further question. This
11 is theoretical at this point. I'm not saying this will
12 actually happen.

13 CO-HEARING OFFICER DODUC: Like Ms. Sergent, I
14 love theoretical questions.

15 MR. BEZERRA: A great deal of information has
16 come out in cross that was not addressed by the prior
17 written objections to the petitioners' evidence.

18 Will there be an opportunity to capture the
19 possible objections to the information that came out on
20 cross, or information that possibly supports the
21 objections that were previously made? Is there some
22 way to capture that in --

23 CO-HEARING OFFICER DODUC: We will have that
24 in the transcript.

25 MR. BEZERRA: Yes, but it's not actually

1 captured in terms of evidentiary objections too much in
2 the transcript, where protestants are objecting to
3 existing evidence and further evidence that was brought
4 in. So it doesn't sound like we have a further
5 opportunity, from what you're proposing, to capture any
6 objections that may be supported by information that
7 came out on cross.

8 And again, I'm just trying to understand the
9 procedures, given that our previous objections were
10 strictly based on what was submitted in writing.

11 CO-HEARING OFFICER DODUC: And are you
12 referring to objections pertaining to the submission of
13 certain exhibits and testimony?

14 MR. BEZERRA: Well, let me give you an
15 example.

16 CO-HEARING OFFICER DODUC: Because, obviously,
17 we've received a lot of written objections on a myriad
18 of issues.

19 MR. BEZERRA: Let me give you a concrete
20 example. It's usually easier to deal with that way.

21 So the Sac Valley water users made a variety
22 of objections to the petitioners' evidence based in
23 part on their reliance on the modeling and the lack of
24 technical support.

25 We have learned through cross-examination that

1 the petitioners consider the modeling not to actually
2 reflect what might actually happen in severely dry
3 situations. That's new information. So we might like
4 to support the objections we submitted previously with
5 some reference to that testimony that came out on cross
6 as a further basis for excluding certain technical
7 evidence.

8 And it sounds like the procedures we're
9 talking about, we wouldn't have an opportunity to
10 capture that information.

11 CO-HEARING OFFICER DODUC: All right. Thank
12 you. We will take that request under advisement as
13 well.

14 Mr. Aladjem?

15 MR. ALADJEM: Thank you, Chair Doduc. David
16 Aladjem, Downey Brand, Sacramento Valley Group.

17 One further clarification. If the Board is
18 going to have petitioners move into evidence their
19 exhibits at the close of Part 1A -- there were a number
20 of exhibits offered by many protestants. And will
21 protestants have an opportunity to offer their exhibits
22 and move them into evidence as well?

23 CO-HEARING OFFICER DODUC: Okay. And your
24 question is whether they do that as part of 1A or as
25 part of 1B?

1 MR. ALADJEM: That is precisely correct.

2 CO-HEARING OFFICER DODUC: Okay. We will
3 consider that.

4 Mr. Brodsky?

5 MR. BRODSKY: Just a little follow-up on the
6 timing of getting in our oppositions and the objections
7 to evidence. In all candor, I've been approached by
8 several of the unrepresented parties to ask me to help
9 them get their responses in as well. So you said "very
10 soon."

11 CO-HEARING OFFICER DODUC: I'm sorry.
12 Responses to --

13 MR. BRODSKY: To the petitioners' objection to
14 the parties' Part 1 cases in chief.

15 CO-HEARING OFFICER DODUC: Part B, I haven't
16 gotten to that, yet, Mr. Brodsky. Right now we're
17 talking about petitioners moving their exhibits into
18 the record. I will get to that point when we wrap up
19 this issue.

20 MR. BRODSKY: Okay. Sorry.

21 CO-HEARING OFFICER DODUC: Are there any other
22 questions? We certainly will take Mr. Bezerra as well
23 as Mr. Aladjem's questions under consideration and get
24 back to you on that sometime this week or next week, as
25 soon as possible.

1 Okay. So moving on to 1B and 1B objections
2 that have been filed.

3 Just a point of clarification to my earlier
4 announcements as well as to address the question from
5 Mr. Brodsky, we are proposing to limit our ruling or
6 request that we sent out next week to objections
7 pertaining to the appropriateness of certain testimony
8 and exhibits within the scope of Part 1A -- I'm
9 sorry -- within the scope of Part 1.

10 So our focus will be on whether the exhibits
11 and testimony submitted appropriately falls within
12 Part 1 or Part 2. We will not be ruling immediately on
13 the other objections associated with Part 1B cases in
14 chief. When we do, when we get to that point, and if
15 it's appropriate, we will request and allow for
16 responses from the parties to whom objections were
17 made. But at this point we are only focused on whether
18 the -- we are only focused on the objections pertaining
19 to the appropriateness of certain testimony and
20 exhibits in Part 1.

21 And no, we're not taking responses on that.

22 MR. BRODSKY: You just said earlier that we
23 could submit responses as long as we got them in very
24 soon.

25 CO-HEARING OFFICER DODUC: I was under the

1 impression you were discussing -- so I was trying to
2 clarify. There were many objections on many grounds to
3 Part 1B cases in chief. What we'll be focusing on,
4 because with Part 1B starting at the end of October, is
5 the appropriateness of cases in chief and testimony and
6 exhibits for Part 1.

7 MR. BRODSKY: And we would like to submit a
8 response to petitioners' arguments that some of our
9 evidence belongs in Part 2 instead of Part 1.

10 We believe we have good arguments to offer the
11 Board as to why some of the things that they say belong
12 in Part 2 should actually be in Part 1, and we'd like
13 to have that considered. I believe that we do have a
14 due process right to respond.

15 The Board, obviously, will reach whatever
16 conclusion it's going to reach, but we do believe we
17 have the opportunity to respond to their objections
18 within the scope of whether or not something belongs in
19 Part 1 or Part 2.

20 CO-HEARING OFFICER DODUC: I will take that
21 under advisement.

22 MR. BRODSKY: All right. Thank you.

23 CO-HEARING OFFICER DODUC: Mr. Williams.

24 MR. WILLIAMS: Yes, ma'am. Phil Williams with
25 Westlands Water District. I support Mr. Brodsky's

1 points about due process in terms of allowing parties
2 to provide responses to objections.

3 CO-HEARING OFFICER DODUC: All right. This is
4 objections to Part 1B?

5 MR. WILLIAMS: Yes, ma'am.

6 CO-HEARING OFFICER DODUC: And right now we're
7 only talking about the scope.

8 MR. WILLIAMS: Yes, ma'am. I understand.

9 CO-HEARING OFFICER DODUC: All right. We'll
10 take that under advisement. Okay.

11 With that, Mr. Bezerra?

12 MR. BEZERRA: Thank you.

13 If we're done with the discussion of the
14 evidentiary objections, I have just a question about
15 procedures.

16 So Part 1B is scheduled to begin October 20th.
17 Parties have submitted their proposed groupings. Now,
18 I personally am getting a number of questions about
19 "When will I testify? How do I set my schedule?"

20 So I am just wondering what you're -- what you
21 think your timing may be in terms of setting groupings
22 so we can start figuring out how to schedule witnesses
23 to appear here.

24 CO-HEARING OFFICER DODUC: We will get back to
25 you on that as soon as possible as well.

1 MR. BEZERRA: Thank you very much.

2 CO-HEARING OFFICER DODUC: All right.

3 All right. Let's now resume.

4 Group No. 39?

5 (No response)

6 CO-HEARING OFFICER DODUC: Group No. 40? That
7 was Mr. Porgans, but he is not here yet.

8 Group No. 41. Ms. Suard, do you have
9 cross-examination?

10 MS. SUARD: Yes, please.

11 CO-HEARING OFFICER DODUC: Okay. Good
12 morning, Ms. Suard.

13 MS. SUARD: Good morning.

14 CO-HEARING OFFICER DODUC: What are your areas
15 of cross-examination?

16 MS. SUARD: I'm going to be solely focused on
17 impacts to water rights on a very specific location on
18 Steamboat Slough.

19 CO-HEARING OFFICER DODUC: Okay. And do you
20 have one of your wonderful PowerPoints?

21 MS. SUARD: You know, I did. I gave it to
22 them already.

23 CO-HEARING OFFICER DODUC: Okay.

24 MS. SUARD: I think they have to wait, wait to
25 bring up the PowerPoint.

1 CROSS-EXAMINATION BY MS. SUARD

2 MS. SUARD: If you can bring up SHR-104. It
3 was one that was brought up before.

4 (Exhibit SHR-104 identified for the record)

5 MS. SUARD: There we go. And I'm actually --
6 if we could just go ahead and go to Page 4. It's a
7 reference map. This is from the Water Board's website,
8 and you can see the link of where that came from and
9 when I accessed it. It was 8/11/2016 at 9:45 a.m.
10 Pacific time. And I'm providing this as a reference to
11 the different locations of drinking water wells, their
12 generalized locations.

13 So my question is about -- first of all, I
14 need the names, the party names to change so I can see
15 your names. I'm sorry.

16 So I'm not sure which one of you feels best
17 answering. I'm going to just open the question.

18 Are you familiar with the drinking water wells
19 along Steamboat Slough? Who would like to answer that?

20 WITNESS SERGENT: I am not.

21 MS. SUARD: You're not. Are any of you?

22 WITNESS COOKE: I'm not.

23 WITNESS SAHLBERG: I'm not.

24 MS. SUARD: Okay. So the representation in
25 the testimony is that the diversion through the

1 tunnels -- or actually any diversion from the
2 Sacramento River north of Steamboat Slough, it's my
3 understanding you're saying it won't impact our water
4 rights at all?

5 WITNESS SERGENT: I believe I testified that
6 that groundwater was an issue that was evaluated in the
7 recirculated Draft EIR, and it did not show a
8 measurable impact to groundwater levels, and that I
9 spoke with the -- with Ms. Buchholz, who worked on some
10 of that modeling, and she confirmed that the modeling
11 did not demonstrate an impact on water levels
12 associated with the California WaterFix.

13 MS. SUARD: Okay. Do you know what time
14 period that was from when that assessment of impacts to
15 groundwater was done?

16 WITNESS SERGENT: That was part of the
17 modeling done for the recirculated Draft EIR. I
18 couldn't tell you what the time period was in the
19 modeling.

20 MS. SUARD: Okay. Are you or was anybody --
21 anybody that you spoke to aware of the current
22 degradation of drinking water aquifer in the North
23 Delta?

24 WITNESS SERGENT: I'm not familiar with the
25 drinking water wells in the Delta. I believe it was --

1 again, I believe it was an issue addressed in the EIR,
2 the recirculated draft and the original draft.

3 MS. SUARD: Do you know what that recirculated
4 EIR/EIS, what was the conclusion of that?

5 WITNESS SERGENT: I believe the conclusion was
6 that there would not be a significant impact as a
7 result of the WaterFix, but I would have to go back and
8 refresh my memory based on that document.

9 MS. SUARD: Okay. So the next slide is --
10 well, wait a minute. Let me back up.

11 So this is drinking water wells, and that is
12 an aquifer issue.

13 I'd like to go to Slide 5, and this is also
14 from Water Board's website. You can see the location
15 of the slide. If it got blown up, you could see where
16 you could get it, State Water Rights Control Board
17 website.

18 And this map shows different locations where
19 either farmers or individuals -- it could be
20 residences; it could be businesses -- take water out of
21 the Delta. It follows right along the natural
22 waterways along there, as you can see. So there are
23 people who use that for drinking water. That's surface
24 water, not the aquifer.

25 Are you aware of any impacts to freshwater,

1 drinking water, from WaterFix proposal?

2 WITNESS SERGENT: I'm not aware of potential
3 impacts to drinking water from the water -- as a result
4 of the WaterFix.

5 MS. SUARD: Okay. So WaterFix, from graphics
6 that have been provided, it leaves approximately 5,000
7 cubic feet per second of flow below the intakes; is
8 that correct?

9 WITNESS SERGENT: That was -- that's one of
10 the bypass criteria, but there are -- there's a broad
11 range of operations, and in many cases the, flow past
12 the California WaterFix facilities will be much higher.

13 MS. SUARD: I'm concerned about dry and
14 critical years because I have seen the impact of dry
15 and critical years. I've been seeing it for five
16 years. So my questions are based on dry and critical
17 years, if that helps.

18 WITNESS SERGENT: Okay. During dry and
19 critical years, for the majority of the -- particularly
20 -- well, the irrigation season certainly, but for the
21 entire period when, say, Term 91 is a good reference
22 point. The projects are heavily augmenting the flow
23 into the Delta and the resultant water quality within
24 the Delta.

25 For example, the critical year 2015, Term 91

1 was in effect from essentially May through mid
2 December, which meant that during that period of time,
3 the projects were releasing supplemental storage to
4 maintain water quality in the Delta. So the water
5 quality, the water levels, and the flow that existed
6 during those critical periods was augmented by those
7 storage releases.

8 MS. SUARD: Isn't that a requirement of
9 operating the projects?

10 WITNESS SERGENT: We are required to meet
11 D1641 objectives, but it's not -- as I've mentioned
12 before, it's not an entitlement of any particular
13 diverter under their individual water right in the
14 Delta.

15 It is a requirement and the project provides
16 an incidental benefit to those users as a result of
17 those releases, but it is a requirement of the projects
18 due to the adoption of D1641 and not a result of an
19 underlying water right by an individual water user.

20 MS. SUARD: I'm not sure I would agree with
21 that, but I'm going to go on.

22 If you could look at -- or if we can go to
23 Slide 9, please. These are monitoring stations in the
24 Delta.

25 And could we enlarge it so we look more around

1 Steamboat Slough and Sutter and Ryer Island? It might
2 help. Can it get larger?

3 Are any of you guys -- Mr. Cooke, I don't know
4 if you're familiar with where the gauges are.

5 WITNESS COOKE: No, I'm not.

6 MS. SUARD: No? No.

7 So I -- I actually wanted to focus on
8 Steamboat Slough gauges. And on this graphic, it
9 shows -- you see the SSS, SUS, and SXS.

10 Do you see those locations? Any of you,
11 could -- it's --

12 WITNESS SERGENT: I do.

13 MS. SUARD: Okay. Are you familiar with these
14 flow gauges or water quality gauges?

15 WITNESS SERGENT: I'm not familiar with
16 individual gauges within the Delta. There is a --
17 there are compliance locations in the North Delta Water
18 Agency agreement. Steamboat Slough is entirely within
19 the North Delta Water Agency. And there is a -- I
20 believe one of the water quality locations is Steamboat
21 Slough.

22 MS. SUARD: Okay. Do you know which gauge
23 that might be?

24 WITNESS SERGENT: I would have to look at the
25 agreement. We could pull up the agreement and see.

1 MS. SUARD: I believe it's the ones that's
2 labeled the "SSS." Okay.

3 I -- do you think it's possible that water
4 quality on one single waterway which -- Steamboat
5 Slough is one of the natural waterways of the Delta.

6 In your opinion, do you think it's possible to
7 have adequate water quality to protect drinking water
8 rights at the north end of Steamboat Slough at the same
9 time as water quality in the south end of Steamboat
10 Slough is substandard?

11 WITNESS SERGENT: I'm not sure. Can you
12 rephrase your question, please?

13 MS. SUARD: Do you -- do you or did the
14 modelers express to you, is it possible to have
15 adequate drinking water quality at the north end of
16 Steamboat Slough at the SSS gauge and not at the south
17 end of Steamboat Slough at the SXS gauge?

18 MR. MIZELL: Objection as to the vagueness of
19 the question.

20 CO-HEARING OFFICER DODUC: Ms. Sergeant?

21 WITNESS SERGENT: I couldn't make any
22 conjecture on the -- the gradation of water quality in
23 Steamboat Slough.

24 What I can say is that the modeling doesn't
25 show any significant difference due to -- at the North

1 Delta Water Agency location on Steamboat Slough due to
2 the WaterFix. And if you look at what has been
3 provided historically -- for example, again, this area
4 is entirely within North Delta Water Agency, and it's
5 covered under the North Delta Water Agency contract.

6 If you look at the Department's compliance at
7 the locations in 2015, all -- at all locations the
8 water quality was met or was in excess of or better
9 than the objectives contained in that agreement with
10 the exception of Three Mile Slough.

11 And so if you look at the only location where
12 water quality didn't meet -- continue to meet those
13 objectives was a very small stretch between Three Mile
14 Slough and Rio Vista. At all other locations under
15 that contract, the water quality objectives were met or
16 exceeded in a critically dry year.

17 MS. SUARD: And those water quality objectives
18 were verified to be met using these gauges?

19 WITNESS SERGENT: That's correct.

20 MS. SUARD: Okay. Could we have the other --
21 the SHR-389, please.

22 (Exhibit SHR-389 identified for the record)

23 MS. SUARD: This is --

24 MR. LONG: I'm just clarifying that I'm
25 opening SHR-389 Errata.

1 MS. SUARD: Okay. This is errata; that's
2 correct. I'm sorry. I added a couple pages which I'm
3 not sure I'll need to submit. I'm going to just focus
4 on the first couple, but we'll see.

5 So again, I'm -- we're focusing in on the
6 gauges. And you can see that, on lower Steamboat
7 Slough, a gauge was installed only just in the last
8 year or so, year and a half. And that's on Steamboat
9 Slough. And you can see there's two different gauges.
10 One has more with water quality, and one relates to
11 flow.

12 So can we get Page 2, please.

13 So I've repeatedly gone to this particular
14 gauge, and this is an exact representation of what was
15 on the website on 8/29.

16 And then if you go to Page 3, just quick
17 reference just so you can see, Page 3 the is exact same
18 graphic.

19 So let's go back to Page 2 because it's easier
20 to see what's going on.

21 So what I noticed is the gauges -- there's
22 gaps in the data. There's been a pattern of gaps in
23 the data for Steamboat Slough.

24 And if you could move the slide down a little
25 bit so you can see the bottom part of the slide.

1 And in fact, for 2015, which is a critical
2 year, which I can tell you for a fact and I can show --

3 CO-HEARING OFFICER DODUC: What is your
4 question, Ms. Suard?

5 MS. SUARD: My question is how -- how can DWR
6 or USBR be sure of effects to flow and water quality
7 when the gauges don't consistently report?

8 WITNESS SERGENT: Again, I don't work with the
9 gauges in the Delta. I don't believe this is one of
10 the gauges that's used for compliance. It's measuring
11 flow, not water quality. And I don't know that there
12 are issues with the gauges at the compliance locations.

13 And if -- I mean, a gauge is a piece of
14 mechanical equipment, and if there is an outage, it's
15 addressed as quickly as possible. But I can't
16 represent whether or not an outage at this location at
17 a new station is representative of any other point in
18 the Delta.

19 MS. SUARD: The water quality, you said, is
20 based on the gauges; is that correct?

21 WITNESS SERGENT: There are water quality
22 monitoring stations where the water quality is recorded
23 for the North Delta Water Agency agreement, yes.

24 MS. SUARD: Okay. If -- if there were --
25 sorry. I'm trying to find one other document.

1 Are you aware of how many times a farmer or
2 somebody using water from Steamboat Slough for
3 irrigation, how many times they can use water that is
4 over 2 PPT before it ruins the crop or the landscape?

5 MR. MIZELL: Asked and answered. The witness
6 has already explained that she's not an agronomist.

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

9 WITNESS SERGENT: Yeah, that's beyond my area
10 of expertise.

11 MS. SUARD: Okay. Would you be able to
12 express in numbers how much cubic feet of diversion is
13 needed -- is diverted to result in 5 million acre-feet
14 of delivery?

15 WITNESS SERGENT: Excuse me. I'm not sure I
16 understand your question.

17 MS. SUARD: Where the -- so many of the
18 documents refer to the tunnels and everything, refer to
19 diversion of 9,000 cubic feet per second. And --

20 WITNESS SERGENT: That's the design capacity
21 of the proposed facilities combined, of the three
22 different intakes. But they're not proposed to be
23 operated at 9,000 cfs all the time. Operation will
24 depend on the inflow at the time, the bypass criteria,
25 which is not simply 5,000 cfs. It depends on --

1 there's criteria for first flush.

2 So it varies, depending on the time of year
3 and the various operations. So it's not 9,000 cfs
4 every day to arrive at a -- a number of total export.

5 In addition, the South Delta facilities will
6 continue to be used.

7 MS. SUARD: Constantly? South Delta is going
8 to continue to be used year round as well?

9 MR. BERLINER: Objection, asked and answered.

10 CO-HEARING OFFICER DODUC: So, yes, we have
11 gone through this, Ms. Suard. Curious, where are you
12 going?

13 MS. SUARD: I thought I heard it answered
14 different than what I had heard before, but I'll just
15 let it go. I can look in the record on that.

16 Okay. So the data I've been provided by DWR
17 refers -- I'm looking, again, at critical years, dry
18 years.

19 This 5,000 cubic feet of flow below the
20 proposed intakes, do you believe -- in your opinion, is
21 that sufficient flow to keep Steamboat Slough, Sutter
22 Slough, Miner Slough, Sacramento River, Georgiana and
23 the Delta Cross Channel Gates, assuming they're open --
24 so that's six waterways to split 5,000 cubic feet of
25 flow, plus all the farmer use, you know, in-Delta use.

1 Do you believe that it makes common sense that
2 that's going to leave sufficient flow to keep
3 freshwater in the Delta?

4 MR. MIZELL: Objection, asked and answered,
5 and relevance as to the question.

6 CO-HEARING OFFICER DODUC: Ms. Sergeant, was
7 this one of the diversion points you analyzed? Do you
8 have any specific knowledge in order to answer that
9 question?

10 WITNESS SERGENT: I don't. I'm not an expert
11 on Delta hydrodynamics. I would again just like to
12 clarify that, if we are concerned about the dry and the
13 critical years and the periods during, most frequently,
14 the summer months, the very low-flow periods, the water
15 that is entering the Delta is -- the natural flow is
16 heavily augmented by the State Water Project upstream
17 storage releases.

18 So under those conditions, the water quality,
19 the flow are greatly enhanced by the upstream storage
20 releases to a condition -- so it represents a condition
21 that would not exist absent those upstream storage
22 releases.

23 MS. SUARD: Okay. So I'm going to shift to --
24 I think it might be helpful to go back to the first
25 page of this slide. I'm just using it as a map

1 reference.

2 Are you familiar with where Prospect Island is
3 and Liberty Island and those areas?

4 WITNESS SERGENT: Generally.

5 MS. SUARD: Okay. When the modeling was
6 done, -- you know what? I'm going to withdraw that. I
7 think I do have -- I've asked what I needed to, but I
8 do have a procedural question.

9 CO-HEARING OFFICER DODUC: Yes, Ms. Suard?

10 MS. SUARD: Okay. First of all, I want to
11 apologize. I uploaded many documents that were --
12 really relate to Part 2. And so I do plan to submit
13 clarification. And I just assumed -- the procedure's
14 been a little bit confusing. So I want to get
15 everything up there that I could possibly use.

16 CO-HEARING OFFICER DODUC: You've anticipated
17 our requests. We will be sending an e-mail to parties
18 that submitted Part 1B testimony and exhibits that are
19 outside the scope of Part 1. So you are well ahead of
20 the curve.

21 MS. SUARD: Okay. Thank you.

22 So I -- procedurally, should I just remove
23 those?

24 CO-HEARING OFFICER DODUC: (Nods head
25 affirmatively)

1 MS. SUARD: Okay. I can do that.

2 The second question is there were -- there was
3 a blanket objection to all of my documents. And I was
4 actually out of town last week. I only received, like,
5 a general e-mail. I guess everybody did that.

6 What is our timing for responding to that?

7 CO-HEARING OFFICER DODUC: Thank you. I was
8 going to bring this up later, but since you brought it
9 up now, let's go ahead and address that. That question
10 was asked earlier by Mr. Brodsky as well as
11 Mr. Williams.

12 Parties can submit responses to 1B objections
13 at any time. However, if you're going to respond to
14 objections that pertain to the scope of Part 1, please
15 submit those responses this week.

16 MS. SUARD: Okay. Thank you.

17 Another -- okay. So, got that. This week by
18 Friday at 5:00.

19 CO-HEARING OFFICER DODUC: Ms. Suard, hold on.

20 Okay. My understanding is that you cannot
21 remove the documents that you have already uploaded.
22 But this will go to everyone else, too, who receives
23 the e-mail from us next week. You may upload documents
24 with strike-outs and removals of materials that should
25 be in Part 2.

1 Did I just further complicate things?

2 MS. SUARD: No. I just want to be able to
3 understand. So if I have a document labeled, you know,
4 401 -- actually, I had actually submitted that last
5 time around.

6 CO-HEARING OFFICER DODUC: Okay. I'm going to
7 hand this over to Mr. Ochenduszko or Ms. Riddle.

8 By the way, let the record show that
9 Ms. Riddle joined us earlier today.

10 MR. OCHENDUSZKO: I apologize. So this is a
11 technical matter for all the parties.

12 Once their FTP site has gone live, at the
13 point, you can't remove any of the documents. So what
14 we're asking for is that, if you have documents that
15 are more germane to Part 2, that you let us know only
16 by adding the documentation to the strike-out format.

17 MS. RIDDLE: I think this is probably going to
18 require some kind of a letter with you explaining what
19 you're potentially removing. If it's testimony and
20 your testimony still stands, you need to strike out the
21 portions of the testimony that pertain to Part 2.

22 If there's any ambiguity, you should be
23 explaining that to us, which are in part -- we're
24 proposing to be part of Part 1 and which you're
25 proposing to be part of Part 2.

1 So in some way you need to document that for
2 us either through strike-out, underline, or through a
3 letter indicating that you're not proposing to enter
4 any exhibits that you previously submitted, because you
5 can no longer modify those exhibits on our FTP site.
6 And many of those have already been posted on our
7 website, so we're going to have to go back and do some
8 cleanup work on that.

9 MS. HEINRICH: I have a suggestion, which
10 perhaps the clearest way, if you want to remove
11 exhibits from your 1B case in chief and hold them for
12 Part 2, is to submit a revised exhibit index that
13 indicates what exhibits you're actually planning on
14 offering in Part 1B.

15 MS. SUARD: Thank you. That sounds like a
16 little bit easier way of doing that.

17 CO-HEARING OFFICER DODUC: Ms. Suard, we will
18 attempt to be as clear as possible in the e-mail that
19 will go out next week regarding instructions on how to
20 revise and submit the appropriate exhibits for Part 1B.

21 MS. SUARD: Okay. Thank you.

22 So then one more procedural, I -- last time I
23 spoke here, I had been asked to and did submit the
24 graphics provided by DWR.

25 And was that accepted into evidence as it is,

1 or is there something else that's needed?

2 CO-HEARING OFFICER DODUC: Okay. So you touch
3 on the second issue that I was going to address earlier
4 that was raised by -- I believe it was Mr. Aladjem
5 regarding exhibits that have been offered in
6 cross-examination by parties for Part 1A.

7 We would like those exhibits to be offered
8 into evidence after your case in chief in Part 1B. So
9 hold on to that and move that into the record after you
10 finish your case in chief in Part 1B.

11 MS. SUARD: Okay. Thank you.

12 CO-HEARING OFFICER DODUC: Thank you.

13 Ms. Meserve is coming up.

14 MS. MESERVE: Good morning. Osha Meserve for
15 LAND and other parties.

16 Since we're talking procedural stuff, I wanted
17 to just bring up one more somewhat related issue.

18 We did receive objections on September 9th,
19 many of us, to testimony, exhibits, et cetera. There
20 was a pretty large group of objections coming from DWR
21 that came nearly five hours after the Board's deadline.
22 And, you know, one of my group, LAND, happens to be
23 within that.

24 We worked very hard to comply with the
25 deadlines. I understand when e-mails are sent

1 sometimes it can take longer if there's a lot of
2 attachments. So I think when there's just a few
3 minutes -- I understand it's all within the Court's
4 discretion, but I know that there were six parties that
5 received objections that, you know, were several hours
6 late.

7 And there's no -- the DWR has represented that
8 it intended to send those earlier on in the day, but I
9 don't think there's any evidence to show that. So I --
10 you know, we don't have -- we don't know when those
11 were written. All we know is when we received them.

12 So I wanted to -- I understand this probably
13 is to your attention, but I want to note that we of
14 course will respond to what we need to when we can, but
15 that's another moving part in this analysis.

16 CO-HEARING OFFICER DODUC: Thank you. It's
17 noted.

18 My understanding was that they had listed
19 those specific objections in their Attachment B that
20 was sent on time but failed to actually include the
21 attachments themselves.

22 MS. MESERVE: It was in an exhibit list. But,
23 yeah, there wasn't -- it wasn't, like, a proof of
24 service that said, "oh, we've prepared exhibit" -- I
25 mean, sorry -- "objections to all these things." It

1 was simply a table at the back of the objections.

2 So I didn't -- it wasn't typically -- like,
3 for me, in litigation with a proof of service, it's
4 going to list every single item that I'm giving a proof
5 of service for. Instead it was an exhibit to the back.

6 So you might want to look at the way it's set
7 up. I don't believe that's a proof of service of this
8 particular document.

9 CO-HEARING OFFICER DODUC: I actually did look
10 at it.

11 But, Mr. Berliner or Mr. Mizell, would you
12 like to state a response for the record?

13 MR. MIZELL: Yes, please. If it is helpful
14 for the Board, the metadata date stamp on the files
15 that were submitted, it is before the deadline came and
16 passed. So while I appreciate Ms. Meserve's
17 observations and concerns, I believe that the data
18 contained within the metadata of the files actually is
19 evidence that the objections were prepared before the
20 deadline. And our representation that they were simply
21 left off the e-mail is a correct representation.

22 CO-HEARING OFFICER DODUC: Thank you. So
23 noted.

24 MR. WASIEWSKI: Good morning. Tim Wasiewski
25 for the San Joaquin Tributaries Authority.

1 If a party is not submitting a case in chief
2 for 1B, when can we move to put our cross-examination
3 exhibits in?

4 CO-HEARING OFFICER DODUC: Either now or at
5 the end of Part 1B.

6 MR. WASIEWSKI: Okay. Thank you.

7 CO-HEARING OFFICER DODUC: Okay. All right.

8 And I see that Mr. Porgans has joined us. He
9 actually did inform us earlier that he would be
10 conducting cross-examination. So I will turn it over
11 to Mr. Porgans now.

12 MR. PORGANS: Good morning, Co-chairmen Doduc
13 and Marcus. Thank you for affording me the time to
14 bring some of these issues to your attention. And as
15 always, I'm not totally familiar with protocol. So if
16 I'm out of order, just straighten me right out.

17 CO-HEARING OFFICER DODUC: Thank you for
18 joining us Mr. Porgans. Before you begin could you
19 please sort of give us an outline of the topic areas
20 you will be conducting cross-examination on?

21 MR. PORGANS: Yes, I can recommend that much.

22 Basically, what I'm doing here today is I'm
23 going to review some of the previous water right
24 decisions that the State Board had adopted for the
25 operation of the Central Valley Project in particular.

1 And I'm looking at the information to try to provide
2 myself with some level of confidence that, when the
3 Bureau or the project operators say they're going to be
4 compliant, we need to go back and revisit to say if
5 they said that once before, twice before, or three
6 times before.

7 And the reason why I think that's important is
8 because, if someone tells you something, they give you
9 word and they don't come through, well, you know, you
10 have to prepare -- evaluate the situation for what it
11 is. I'm not casting aspersions of the Bureau or
12 anybody else. You know, I'm not doing that.

13 But I am going, if I may -- so I am Patrick
14 Porgans, and I'm representing Planetary Solutionaries.
15 And today, I'll be focusing in on water rights decision
16 D990, D1422, D1485, and D1641. Okay?

17 And what I did -- I do have one or two
18 potential exhibits that I would like to distribute to
19 the Bureau. And I do have copies for the Board, for
20 Members here. And we do have them electronically so we
21 can show you up there what -- Exhibit 121 and 122 as
22 well. So on that -- now, I gave this to the Bureau.

23 So it is -- there's three pages to that
24 exhibit. And if we can -- I don't know if we have
25 Porgans Exhibit 121 and 122 or we can put it up

1 electronically. I don't know if they have them over
2 there yet.

3 But I'd like to proceed with this -- oh, here
4 they are. So that's 121, and then we have 122. That's
5 121. There's 122. Thank you. It's a total of three
6 pages, and we'll be making reference to those as we
7 move forward on this line of questioning.

8 (Exhibit Porgans-121 and Porgans-122
9 identified for the record)

10 CROSS-EXAMINATION BY MR. PORGANS

11 MR. PORGANS: So before I begin, I'd like
12 to -- we'll come back to that, but I would like to have
13 DOI's Exhibit No. 4, Ray Salhberg's testimony, and I'd
14 like to go to Page 2. Okay. Right there.

15 "For the Project Description section of Part 1
16 of the CWF hearing..." this is Mr. Salhberg speaking,
17 "...I will describe the water rights permits held by
18 Reclamation for the CVP and the contracts for
19 delivering this water. The decisions on the timing and
20 quantities of water...can be delivered are based on
21 projected and real time hydrological [sic] and
22 hydrodynamic information more fully explained in the
23 testimony...of...Mr. Milligan [sic]."

24 So, "In managing the delivery of the
25 CVP...Reclamation operates its facilities to meet all

1 statutory requirements prior to satisfying contractual
2 obligations including Water Rights Decision D1641
3 [sic]."

4 And that's SWRCB-21. We might have to come
5 back to that later. And then it goes on from there.
6 It's going to meet everything.

7 So the Reclamation -- it goes on to say,
8 "Reclamation joins in the testimony of Ms. Maureen
9 Sergent of the Department of Water Resources on the
10 changes requested in the CWF Petition for Change, the
11 fact that this petition does not initiate a new water
12 right, and the requested changes will not injure other
13 legal users of water." I'm going to roll this guy
14 down, if you have -- thank you.

15 Reclamation -- so anyway, "My testimony" -- so
16 in joining then in supporting the Board of Water
17 Resources Request for Petition of Change and doesn't
18 include new water rights. So, it says, "My testimony
19 concludes with a description of the various CVP
20 contracts and that the CWF Petition for Change does not
21 affect the terms and conditions of those contracts."

22 Well, I went back and looked at -- at the --
23 at the issue there, and I came to the realization that
24 it's apparent, if you look at the information, that the
25 Department -- excuse me, Department of the Interior,

1 specifically the Bureau of Reclamation makes reference
2 to the fact that it's going to be compliant, it's going
3 to comply with all the rules and regulations, and it's
4 going to do that in a manner --

5 CO-HEARING OFFICER DODUC: So, Mr. Porgans, I
6 need for you to ask the witness a question.

7 MS. RIDDLE: If you could slow down a little,
8 too, please.

9 MR. PORGANS: Thank you. I'm sorry.

10 Can you put that back up there, the previous
11 page, please. Yeah.

12 So in its testimony, it says it's going to
13 comply. My question is, to your knowledge -- this can
14 to be for any one of the three of you; it doesn't
15 matter.

16 To any one of your knowledge do you know if
17 the Bureau has made similar commitments to meet all the
18 standards and requirements of -- that are issued under
19 the terms and conditions of their permits issued by
20 this Board?

21 MS. AUFDEMBERG: I'll just object as vague. I
22 mean --

23 CO-HEARING OFFICER DODUC: The question, as I
24 understand it, Mr. Porgans, to Mr. Sahlberg is has the
25 Bureau or Department made the commitments to comply

1 with the requirements of this Board.

2 And the answer had better be yes.

3 WITNESS SAHLBERG: Yes.

4 MR. PORGANS: So what I'm saying here is, if
5 we go over to -- let's see -- Exhibit 121. Can you put
6 Exhibit 121 back, please.

7 So on this one here, this is Paul Fujitani.
8 Do you recognize who Paul Fujitani is over there at the
9 Bureau of Reclamation?

10 WITNESS SAHLBERG: Yes, I know who Paul
11 Fujitani is.

12 MR. PORGANS: Thank you. So this is a memo
13 that's coming from Jerry Johns, and it's going to Walt
14 Pettit. And the reason why this is important, it says
15 right here, "Paul Fujitani of the Bureau of Reclamation
16 called today to inform us the Bureau will not be
17 meeting the 500 TDS requirement at Vernalis for June."
18 Are you aware of this?

19 WITNESS SAHLBERG: This letter is from 1990.
20 It predates my employment with the Bureau, so I'm not
21 familiar with it.

22 MR. PORGANS: Is there anybody here that
23 predates -- going back to 1990 on this subject matter?

24 WITNESS SERGENT: I have worked for the
25 Department of Water Resources since 1991.

1 MR. PORGANS: Oh, so the collective memory is
2 gone.

3 Anyway, so it says here -- it says on
4 Paragraph 2, "Mr. Fujitani also stated the Bureau
5 intends to try to meet the 500 TDS on a daily basis but
6 not on the monthly average as set forth in Decision
7 1422. They will not concern themselves with meeting
8 the monthly standard."

9 CO-HEARING OFFICER DODUC: So your question,
10 Mr. Porgans?

11 MR. PORGANS: Right, is -- is that -- I asked
12 them. I don't think they've been answering. Is anyone
13 familiar with this? This is something that has already
14 happened.

15 WITNESS SERGENT: If I may, I was not working
16 for the Department in '89 or '90, but I would just like
17 to point out that these were both critically dry years
18 in a sequence of dry years. And I believe the 1989
19 document references low flow in New Melones, which is
20 not an uncommon problem in critically dry years. It
21 appears that they were attempting to balance the
22 available storage at New Melones and the ability to
23 maintain a water quality objective at Vernalis.

24 MR. PORGANS: And Vernalis, would that have
25 been consistent with 222, meeting the Vernalis

1 standard?

2 WITNESS SERGENT: I'm not familiar with the --

3 MR. PORGANS: Can we go to the next exhibit up
4 there, please? 122. So, I don't know how to approach
5 this, Chairperson. But if you could help me -- help me
6 out here, because if they don't know what I'm asking
7 them, and these are records -- these are documents in
8 the record.

9 CO-HEARING OFFICER DODUC: I understand,
10 Mr. Porgans. Let me attempt to provide what I think is
11 the direction that you're going to.

12 Obviously there have been occasions in the
13 past, near as well as distant, where there have been
14 difficulties in achieving some of the standards. Were
15 you aware, either, any of you -- can you provide any --
16 any explanation to Mr. Porgans of why, in your opinion,
17 that should not reflect negatively on the projects in
18 terms of its commitments going forward?

19 WITNESS SERGENT: The Department operates the
20 projects to strive to meet the requirements in D1641 as
21 well as all their other requirements.

22 In every year, there are certain year types
23 that provide particular challenges. And critically dry
24 years are one of those particular challenges. The
25 project -- Mr. Leahigh, I believe, discussed at length

1 what he tries to do in realtime to address meeting
2 those objectives.

3 I believe the operations during the most
4 recent drought are representative of what the projects
5 try to do when conditions were historically dry. There
6 was very close coordination between the Water Board and
7 the fisheries agencies, the Department, and Reclamation
8 as to what the hydrology looked like. It was updated
9 as more information became available.

10 The inflows to the reservoirs were extremely
11 limited, particularly in 2015 when snowpack was only 5
12 percent of average. And there was a lot of modeling
13 done, a lot of discussion with the various agencies to
14 try to determine what would be the best use of the
15 storage that was available, and what other measures
16 could be taken in the Delta. There were temporary
17 barriers constructed.

18 So we try to make effort every effort to meet
19 those objectives to the extent we can. And I think, if
20 you look at the success in 2015 in meeting those
21 objectives compared to what conditions look like before
22 the projects were operating, you can see the efforts
23 that -- and the success that the Department has in
24 complying with those objectives.

25 MR. PORGANS: I appreciate the effort on the

1 Bureau's behalf and the Interior Department's behalf to
2 try to meet those standards. Thank you.

3 However, isn't it true that, any time you're
4 going to deviate from the standard, you have to come
5 and ask the Board about it; is that the way it works?

6 WITNESS SERGEANT: The Department, in both 2014
7 and 2015, did file a Temporary Urgency Change with the
8 Board to try to address the critically dry conditions,
9 yes.

10 MR. PORGANS: But you went through the process
11 on that to make that so it's in compliance with the --
12 with the conditions -- the terms and conditions of your
13 permit?

14 WITNESS SERGEANT: That's correct, and it was a
15 Joint Petition in 2014 and '15.

16 MR. PORGANS: So let's go to the exhibit here,
17 this 122. We'll move on now.

18 It says right here, in the first paragraph,
19 I'm going to ask you the question. It says, "The
20 Bureau believes water should not be released to meet
21 water quality at Vernalis the rest of this year." They
22 didn't come -- did you have knowledge or does anybody
23 know if they came to the Board to ask them to do that?

24 WITNESS SERGEANT: That predates my time.

25 MR. PORGANS: Will you move down that page,

1 please, because I got to get to this bottom line issue
2 here.

3 CO-HEARING OFFICER DODUC: Mr. Porgans, given
4 that these witnesses -- this predates their employment
5 at their respective agencies and they do not have a lot
6 of familiarity with this particular one, is there a
7 more general question that you would like to ask them
8 rather than specifically focused on this particular
9 incident?

10 MR. PORGANS: Well, if you think that would be
11 helpful, I'll do that. But I would like to proceed
12 just to the next page on the last paragraph, and then
13 I'll go there.

14 CO-HEARING OFFICER DODUC: Okay.

15 MR. PORGANS: Now, in this, this is -- this is
16 State Board speaking to Pettit on this paragraph, on
17 Page 2 on 122, "I told Mr. Johannis that the staff's
18 willingness to allow increases above the 500 ppm TDS
19 standard without recommending enforcement action last
20 year was based on the critical water supply conditions
21 the previous two years and the uncertainty of the 1989
22 water supply."

23 But it goes on to say -- I'm going to read it
24 from here, "It was also influenced by the fact that
25 water from storage in New Melones would be needed to

1 maintain water quality. However, this year we are on
2 the heels of a below normal water year and currently
3 New Melones is gaining water to storage. I emphasized
4 that the State Board did not recognize the 70,000 af
5 limit..." Okay? So let's got back to this now. I
6 would like to have these considered for evidence,
7 Porgans-121 and 122.

8 CO-HEARING OFFICER DODUC: And your question
9 to these witnesses?

10 MR. PORGANS: Okay. Are you familiar with
11 D1641?

12 WITNESS SERGENT: Yes, I am.

13 MR. PORGANS: Because that was in your time.
14 Okay. And D1641, I've got to find my place here.

15 It made reference to the fact that the amount
16 of water that -- and the terms and conditions would be
17 satisfactory for meeting the Vernalis standards. Are
18 you familiar with that at all? Or do I have to dig it
19 out?

20 WITNESS SERGENT: The Vernalis standard is a
21 Bureau objective. I mean, do you have a specific
22 question related to the Vernalis standard?

23 MR. PORGANS: Yeah, I was answering you about
24 the Vernalis standard. And I'm questioning you as to
25 whether in fact -- have you ever gone back and

1 conducted a review of your compliance there at
2 Vernalis?

3 WITNESS SERGENT: Is your question directed to
4 me?

5 MR. PORGANS: Either one -- whoever can answer
6 it.

7 WITNESS SERGENT: I just want to make it clear
8 that it's not a Department objective.

9 MR. PORGANS: It's not a Department objective.
10 I understand that.

11 CO-HEARING OFFICER DODUC: Mr. Sahlberg, are
12 you able to answer the question?

13 WITNESS SAHLBERG: I believe other --
14 Mr. Leahigh's testimony contained information on
15 compliance with D1641 standards. I do not recall if
16 Vernalis was specifically mentioned in that testimony.

17 MR. PORGANS: Well, I'm going to have to let
18 that go, because I can't find my place here. And I'm
19 obviously missing something. Maybe a couple of brain
20 cells.

21 Anyway, so getting back to -- I want to go
22 back to D990, if I may. And I do believe that is an
23 exhibit that the State Board has up there. Maybe
24 SWB-13 [sic] and 14. Can you pull up 13, State Water
25 Board Exhibit 13.

1 CO-HEARING OFFICER DODUC: Ms. Sergeant, if you
2 need to stand, the podium is available behind you as
3 well.

4 WITNESS SERGENT: Thank you. I think I'm
5 doing okay up to now.

6 MR. OCHENDUSZKO: Mr. Porgans, can you please
7 identify the exhibit you wish us to bring up one more
8 time, please?

9 MR. PORGANS: I believe it was the one you
10 have there, 13, and I'm going to go to 14, too. But I
11 want 13 first, if you would, please.

12 MR. OCHENDUSZKO: Right now on the screen is
13 SWRCB-13, which appears to be a permit. Can you
14 verify, is this what you wanted us to bring up?

15 MR. PORGANS: Yes, I believe that's it. I
16 just have to peruse it for a minute and determine where
17 I am in this.

18 Now, under the terms and conditions of -- wait
19 a minute. Hold it there. Excuse me. I have to do
20 some work here.

21 Is this particular exhibit pertinent to the
22 amount of water that the Bureau can export out from
23 either the Sacramento River or the San Joaquin Delta,
24 Sacramento-San Joaquin Delta?

25 WITNESS SERGENT: I'd just like to clarify.

1 the document that's up now is a petition for temporary
2 transfer. It's commonly referred to as a "consolidated
3 place of use." It relates only to exchanges between
4 DWR and Reclamation contractors of previously allocated
5 State Water Project or CVP water. And those
6 contractors are all located downstream of the Delta.
7 It has no impact on the amounts of water that are
8 exported from the Delta.

9 MR. PORGANS: Can we see 14, please.

10 Thank you for explaining that to me.

11 This is another transfer?

12 WITNESS SAHLBERG: Yes.

13 MR. PORGANS: I'm actually looking for Water
14 Right Permit 12722. And it was filed under Application
15 9363. And it says here it's at SW-13 [sic]. But it's
16 apparently not the one.

17 CO-HEARING OFFICER DODUC: Perhaps,
18 Mr. Porgans, if you might ask the question that you
19 want to ask of these witnesses --

20 MR. PORGANS: Okay.

21 CO-HEARING OFFICER DODUC: -- regarding that,
22 while Mr. Baker or Mr. Long's looking for it.

23 MR. PORGANS: My question is are you familiar
24 with water rights permit --

25 MR. LONG: Mr. Porgans, the permit that you're

1 looking for, the original permit, is at the back of
2 this 145-page pdf.

3 MR. PORGANS: Yes.

4 MR. LONG: And then on top of it are amending
5 others over the years, '70s, '80s, '90s. And then at
6 the very, very top is the latest amending order
7 approving the latest TUCP.

8 CO-HEARING OFFICER DODUC: Thank you,
9 Mr. Long.

10 I'm going to ask Mr. Porgans to state his
11 specific questions to these witnesses. If we need to
12 pull the document up, we will. But let's see first,
13 Mr. Porgans, what is your question?

14 MR. PORGANS: My question is are you familiar
15 with the Water Permits 12722?

16 WITNESS SAHLBERG: Yes.

17 MR. PORGANS: And do you know what exhibit
18 that would be? Is it a DOI exhibit? Would it be a
19 State Board exhibit?

20 CO-HEARING OFFICER DODUC: Let me ask you,
21 Mr. Porgans, to get to the substance of your question.
22 I'd rather we not spend time doing a document search.
23 I am more interested in the substance of your question.

24 MR. PORGANS: Okay. So under those -- under
25 that permit, 12722, do you have any idea how much water

1 the Bureau is allowed to export under the terms and
2 conditions of its permits? That would be on Table 1,
3 D990, Page 1.

4 WITNESS SAHLBERG: I'm sorry, he's asked me
5 about a permit, but then he's referring to a water
6 rights decision. I --

7 CO-HEARING OFFICER DODUC: What is your
8 understanding of the Bureau's allowed diversion under
9 your permits?

10 WITNESS SAHLBERG: Okay. Permit 12722 allows
11 us to divert 1000 cfs and store 310,000 acre-feet. The
12 season of diversion for direct diversion is from the
13 1st of September through the -- 30th of June with
14 year-round diversion rights in the Delta and below
15 Shasta. The total storage under this permit and
16 Permits 12721 and 12723 is not to exceed 4.493 million
17 acre-feet.

18 CO-HEARING OFFICER DODUC: And all that is in
19 the record, Mr. Porgans. So your question again is?

20 MR. PORGANS: To your knowledge, have we
21 exceeded the requirements or have we been compliant
22 with the requirements that are listed in 12722 and
23 12723?

24 WITNESS SAHLBERG: My knowledge, we have
25 complied with the terms and conditions of this water

1 right permit.

2 MR. PORGANS: And what is the capacity of the
3 Delta Cross Channel in terms of the amount of water it
4 can move through there?

5 WITNESS SAHLBERG: I don't know that.

6 MR. PORGANS: Does anyone here know that?

7 (No response)

8 MR. PORGANS: Thank you. You know, I want to
9 go to -- I have a question about does the Bureau of
10 Reclamation continues to request -- or do DOI continue
11 to request postponements for the total amount of water
12 that it ultimately will use under the terms and
13 conditions of its existing permits? Are you familiar
14 with that, any one of you?

15 WITNESS SAHLBERG: When you refer to a
16 postponement, I assume you're referring to a petition
17 for extension of time?

18 MR. PORGANS: Correct.

19 WITNESS SAHLBERG: Yes, I'm familiar that we
20 currently have one pending in front of the Board.

21 MR. PORGANS: Can you explain to us what that
22 is?

23 WITNESS SAHLBERG: It's -- we have asked the
24 Board for an extension of time to put water to maximum
25 beneficial use.

1 MR. PORGANS: And that's pertaining to your
2 water rights for the Bureau and --

3 WITNESS SAHLBERG: For the water rights listed
4 in the petition, yes.

5 MR. PORGANS: I'm having a problem with these
6 lights in here.

7 So what is the status of that particular
8 request by the Bureau?

9 WITNESS SAHLBERG: It is still pending before
10 the Board.

11 MR. PORGANS: How long has it been pending?

12 WITNESS SAHLBERG: I don't know exactly.

13 MR. PORGANS: Does anyone know?

14 (No response)

15 MR. PORGANS: Okay. No one knows. Okay. Now
16 I -- I would like to know how much water rights or does
17 the Bureau profess to hold here in the State of
18 California?

19 MR. MIZELL: Objection, as to relevance.

20 CO-HEARING OFFICER DODUC: Mr. Porgans?

21 MR. PORGANS: The relevance is if they have
22 much more than they have in use now, we're asking
23 questions about where that water ultimately is going to
24 be used for and when that decision's going to be made.
25 It's been 20 years.

1 CO-HEARING OFFICER DODUC: We're focused on
2 the petition pertaining to the WaterFix that's before
3 us. So I'm going to direct you to keep your focus on
4 that unless you can tie the relevance of your line of
5 questioning to it.

6 MR. PORGANS: Okay. I'll just have to skip
7 that one too.

8 So are you aware that there were provisions
9 contained in that order 990 that the Board left the
10 opportunity to exercise specific discretion over the
11 permits, which is a standard procedure? Are you
12 familiar with that?

13 WITNESS SAHLBERG: Yes.

14 MR. PORGANS: On No. 27 on 990, on Page 86 and
15 87, it states, "Upon the request of the Board, the
16 permittee shall make measurements and maintain and
17 furnish to the Board such records information as may be
18 necessary to determine compliance with the terms and
19 conditions of this order, including the recognition of
20 the vested rights" --

21 (Reporter interruption)

22 MR. PORGANS: -- "rights and for the further
23 purpose of determining the quantities of water placed
24 to beneficial use under the permits both by direct
25 diversion and storage."

1 The question was, to your knowledge, has
2 Reclamation been required to provide the compliance --
3 any compliance information referenced in the terms and
4 conditions of 27?

5 WITNESS SAHLBERG: The Bureau files yearly
6 permitting reports for all its water rights with the
7 State Board.

8 MR. PORGANS: That's not my question. I'm
9 asking you specifically, did you file one on 27? Did
10 you ever have to file any information on what's stated
11 on 27 of the D990?

12 WITNESS SAHLBERG: I believe filing the
13 permittee the reports complies with the term -- the
14 condition -- the Term 27.

15 MR. PORGANS: Okay. I'll let that one go.
16 I really don't know how to put this one here
17 to you. But has any one of you gone back and looked at
18 historical violations of the Vernalis standard in your
19 work?

20 WITNESS SAHLBERG: First of all, I don't agree
21 with that characterization of "violations."

22 CO-HEARING OFFICER DODUC: Mr. Sahlberg, I'm
23 well aware that this was discussed as part of the
24 operations testimony. Was there any evaluation that
25 you personally conducted that you could testify to?

1 WITNESS SAHLBERG: No, I have not done that.

2 MR. PORGANS: Has any one of you done that?

3 WITNESS SAHLBERG: I'm not aware of it.

4 MR. PORGANS: Okay. Now I have a question
5 Chair Person, but you have to help me out because they
6 don't know how many violations occurred. And I can
7 understand that; they weren't there.

8 But my point is I'm going to be submitting
9 another exhibit, 123, that's going to say -- not 100,
10 not 200, not 300, not 400 -- more than 400 violations
11 of the Vernalis standards before 1990.

12 So I can tell you now, this is my point, so
13 you're sticking with the fact that you're going to be
14 compliant no matter what; is that correct? That's what
15 it says here.

16 WITNESS SAHLBERG: Yes.

17 MR. PORGANS: Thank you. That pretty much
18 concludes my testimony and Chair Person and
19 Co-Chairpersons, forgive me. I've never been this bad
20 in my life. Thank you so much. Have a good day. And
21 I want that submitted into the record for you to
22 consider it. Thank you. And on the procedural matter,
23 I'm still pending the answers to some questions about
24 my situation.

25 CO-HEARING OFFICER DODUC: Thank you. Yes,

1 we're aware of your request.

2 MR. PORGANS: Thank you so much.

3 CO-HEARING OFFICER DODUC: All right. Thank
4 you, Mr. Porgans.

5 Group No. 42?

6 (No response)

7 CO-HEARING OFFICER DODUC: Not here. And
8 Ms. Womack had conducted her cross-examination earlier,
9 so that concludes the list of cross examiners.

10 Mr. Mizell, Ms. Aufdemberg, do you have
11 redirect?

12 MR. MIZELL: Not at this time, thank you.

13 MS. AUFDEMBERG: Me neither.

14 CO-HEARING OFFICER DODUC: All right. So at
15 this time, do you wish to offer your exhibits into
16 evidence?

17 MR. MIZELL: Certainly. I can offer our
18 exhibits into evidence verbally if you wish. We will
19 be offering in all the exhibits listed on our revised
20 notice of intent to appear and exhibit list that was
21 submitted on -- I believe it was in June -- on
22 June 21st, with the replacements that were submitted
23 later for DWR-1 Errata corrected, DWR-2 Errata, DWR-4
24 Errata, DWR-5 Errata.

25 We will also be submitting into evidence the

1 modeling input-output files submitted to the State
2 Water Board on May 25th, 2016 that consist of modeling
3 runs for H3, H4, Boundary 1, Boundary 2, the no-action
4 alternative for CalSim, and the no-action alternative
5 for DSM2.

6 Attached to the revised exhibit list, State
7 Water Resources Control Board's Exhibits 1, 2, 3, 4, 5,
8 6, 7, 8, 9, 21, 23, 27, 30, 65, 83, 84, and 87.

9 CO-HEARING OFFICER DODUC: Ms. Aufdemberg?

10 MS. AUFDEMBERG: Yes, so we will be -- we
11 would offer into evidence all of DOI's exhibits. Do
12 you want me to go through each number? It's -- they're
13 consecutive, DOI-1 through DOI-31 with a DOI-5 Errata
14 or DOI-5A.

15 At this time we would offer all of those into
16 evidence and including -- did you want the State Water
17 Resources Control Board exhibits as well?

18 CO-HEARING OFFICER DODUC: Yes, please.

19 MS. AUFDEMBERG: I'm going to need two seconds
20 to pull it up.

21 Looks like we have State Water Resources
22 Control Board 1 and 2, 21, 87, 84, State Water
23 Resources Control Board 10, 11, 12, 13, 14, 15, 16, 17,
24 18, 19, and 20. And that looks like it's it.

25 MS. HEINRICH: Mr. Mizell and Ms. Aufdemberg,

1 are these Board exhibits that you just listed the same
2 ones that are listed on your index? Because I missed
3 some of them, but if you've got --

4 MR. MIZELL: For my purposes, they are.

5 MS. AUFDEMBERG: I don't remember, because I
6 don't have my computer, whether we put those on our
7 index or not. So if you could look at it, I could tell
8 you. But anyway, they're referenced in Mr. Sahlberg's.

9 MR. OCHENDUSZKO: Ms. Aufdemberg, would you
10 please take a look at the monitor in front of you as
11 we're displaying what's on the Web right now as we've
12 reflected the exhibit index for DOI. Can you please
13 review the State Water Resources Control Board exhibits
14 that you identified and let us know if how we have them
15 reflected on the website is correct as to how you want
16 to enter them into the record?

17 CO-HEARING OFFICER DODUC: Hold on a second.
18 Since we are only taking them under submission at this
19 point and are not yet ruling on admissibility, I'm
20 going to request that Mr. Mizell and Ms. Aufdemberg
21 submit in writing to us the list of all the exhibits
22 that you are moving into evidence. And please do that
23 by noon tomorrow.

24 And I'm going to, in response to Mr. Bezerra's
25 question earlier, allow any supplemental objections --

1 and that would be objections to petitioner's exhibits
2 that are based on new information solicited during
3 cross-examination -- we will allow you until noon
4 Friday of next week to submit those supplemental
5 objections.

6 And we will review everything, and we will
7 issue a written ruling on the admissibility of the
8 exhibits being moved into the record by petitioners.

9 Mr. Bezerra?

10 MR. BEZERRA: Yes, thank you very much. Brian
11 Bezerra for a number of protestants.

12 Just -- I very much appreciate the
13 clarification on the procedures. We will submit
14 whatever supplemental objections we have by next
15 Friday.

16 I do have one question. And perhaps it will
17 be cleared up by what petitioners submit tomorrow.

18 Mr. Mizell offered into evidence modeling
19 files that the petitioners have made available on the
20 website. There has been some confusion about this as
21 to the exact status of those.

22 Those were never marked as exhibits. And I
23 don't believe that there was any testimony presented by
24 Mr. Munevar to authenticate them. So I need to
25 understand, are those now being presented as exhibits

1 with all of the massive amount of information that is
2 contained in those modeling files, even though they
3 were not previously marked as exhibits prior to the
4 May 31st exhibit submission deadline? Thank you.

5 CO-HEARING OFFICER DODUC: Thank you. And
6 Mr. Mizell, please address that in your submission by
7 noon tomorrow.

8 All right. At this point. I think I'm going
9 to request that parties submit into evidence the
10 documents they used for cross-examination at the end of
11 Part 1B just for -- just for clarity. Let's everyone
12 wait until the end of 1B to move all of your exhibits
13 as part of your case in chief, if you're presenting a
14 case in chief -- or even if you're not, you may move
15 your exhibits from cross-examination into the record at
16 that time.

17 Then, one final reminder, just to reiterate
18 something I said earlier. With respect to objections
19 for 1B, parties who would like to file responses to
20 objections pertaining to the scope, just to the scope
21 of Part 1B exhibits and testimony, please do that by
22 noon this Friday.

23 As far as responses to objections regarding
24 other matters pertaining to 1B, you may do that at any
25 time before we conclude with Part 1B. But any

1 objection -- any responses to objections pertaining to
2 the scope of what may be presented in Part 1, those
3 responses should be provided to us by noon this Friday.

4 Mr. Bezerra?

5 MR. BEZERRA: Thank you very much. Just one
6 request for clarification. If everything you just said
7 could be put in an e-mail, that, I think, would save
8 everyone a lot of time and possible confusion about
9 what -- how we'll be proceeding. So that's just a
10 blank request.

11 CO-HEARING OFFICER DODUC: Do you promise me
12 that you will not then provide a response to the
13 e-mail?

14 MR. BEZERRA: I personally promise you that I
15 will not respond to that e-mail.

16 MS. RIDDLE: Just to be clear, I think we will
17 probably want to establish a deadline for responses for
18 1B, but we'll establish it at a later date. I don't
19 think any time in 1B indicates that we want to act on
20 those before the end of 1B So we'll let you know, but
21 it will be in the future.

22 MR. BEZERRA: Thank you very much.

23 CO-HEARING OFFICER DODUC: All right. Have I
24 forgotten anything?

25 Mr. Mizell?

1 MR. MIZELL: Yes, I'd like to make one
2 clarifying point to my response to Ms. Meserve's
3 concerns that were raised earlier.

4 It's been brought to my attention that the
5 pdfs that were actually attached to the e-mail
6 reflected a revised date stamp; however, we do have the
7 originals that were date stamped as 11:22 a.m.

8 I can provide those to the State Water Board
9 along with an affidavit that they are the originals.
10 The manner in which she saved them on her desktop prior
11 to attaching them to the e-mail resulted in a change in
12 the date stamp.

13 CO-HEARING OFFICER DODUC: Please do so.

14 All right. With that, we are concluding
15 Part 1A of the WaterFix Petition Hearing. I thank you
16 all for your very efficient participation in this
17 process. And there will be forthcoming e-mails and
18 rulings from the hearing team. And I look forward to
19 you seeing all of you in October. Thank you.

20 (Whereupon, the proceedings recess
21 at 12:11 p.m.)
22
23
24
25

1 STATE OF CALIFORNIA)
2 COUNTY OF MARIN) ss.

3 I, DEBORAH FUQUA, a Certified Shorthand
4 Reporter of the State of California, do hereby certify
5 that the foregoing proceedings were reported by me, a
6 disinterested person, and thereafter transcribed under
7 my direction into typewriting and is a true and correct
8 transcription of said proceedings.

9 I further certify that I am not of counsel or
10 attorney for either or any of the parties in the
11 foregoing proceeding and caption named, nor in any way
12 interested in the outcome of the cause named in said
13 caption.

14 Dated the 3rd day of October, 2016.

15
16 *Deborah Fuqua*
17 DEBORAH FUQUA

18 CSR NO. 12948
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