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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
COASTAL HEARING ROOM
1001 I STREET
SECOND FLOOR
SACRAMENTO, CALIFORNIA

PART 1B

Tuesday, December 13, 2016

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Reported by: Elizabeth A. Willis-Lewis, RPR, CCRR, CLR
CSR No. 12155
Certified Shorthand Reporter

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Felicia Marcus, Chair & Co-Hearing Officer

6 Staff Present:

7 Dana Heinrich, Senior Staff Attorney

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Jason Baker

9 Thaddeus Emanuel

10 PART I

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9 Bogle Vineyards/Delta Watershed Landowner Coalition,
10 Diablo Vineyards and Brad Lange/Delta Watershed
11 Landowner Coalition, Stillwater Orchards/Delta Watershed
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20
21
22
23
24
25

I N D E X

PROTESTANTS' WITNESSES

PAGE

SUZANNE MOORE-WOMACK

Opening statement by Ms. Moore-Womack7
Cross-examination by Ms. Meserve27
Cross-examination by Ms. Des Jardins36

PATRICIA SCHIFFERLE

Opening statement by Mr. Volker43
Direct examination by Mr. Volker52
Cross-examination by Ms. Ansley67
Cross examination by Mr. Williams87
Cross-examination by Ms. Meserve100

DEIRDRE DES JARDINS (For PCFFA)

Direct examination by Mr. Volker54
Cross-examination by Ms. Ansley68
Cross examination by Mr. Williams87
Cross-examination by Mr. Keeling90
Cross-examination by Ms. Meserve95
Cross-examination by Mr. Jackson109
Redirect examination by Mr. Volker121
Re-cross-examination by Mr. Williams124

	PAGE
1	PROTESTANTS' WITNESSES
2	
3	DEIRDRE DES JARDINS
4	Opening statement by Ms. Des Jardins132
5	Direct examination by Mr. Volker133
6	Cross-examination by Ms. Ansley146
7	Cross-examination by Ms. Meserve152
8	Cross-examination by Ms. Suard159
9	
10	BARBARA DALY
11	Direct examination by Mr. Brodsky173
12	Cross-examination by Mr. Mizell208
13	Redirect examination by Mr. Brodsky230
14	
15	MARK PRUNER
16	Direct examination by Mr. Brodsky191
17	Cross-examination by Mr. Mizell206
18	Cross-examination by Ms. Meserve222
19	Redirect examination by Mr. Brodsky231
20	
21	
22	
23	
24	
25	

1 DECEMBER 13, 2016 - TUESDAY 9:01 A.M.

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

3 --oOo--

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5 HEARING OFFICER DODUC: Good morning, everyone.

6 Welcome back to this Water Rights Hearing on the Change

7 Petition for the California WaterFix Project. I am Tam

8 Doduc. To my right is Board Chair Felicia Marcus. To

9 my left are Dana Heinrich and Kyle Ochendusko. We're

10 also being assisted today by Mr. Baker and Mr. Emanuel.

11 Some general announcements. I think I might

12 switch the order just for variety. This meeting is

13 being web casted and recorded. We have a court reporter

14 with us here today. When providing your comments today

15 or your testimony, your questions or whatever, please

16 speak into the microphone and begin by identifying your

17 name and your affiliation.

18 Secondly, please take a moment right now and

19 identify the exit closest to you. In the event of an

20 emergency, an alarm will go off. We will evacuate this

21 building by taking the stairs down to the first floor

22 and exit to regroup in the park across the street. If

23 you are not able to use the stairs, please flag down one

24 of us or anyone wearing an orange-colored vest or cap

25 and you will be directed into a protective area.

1 And as always, most importantly, please take a
2 moment and put all noise-making devices to silent or
3 vibrate. That includes not only your cell phone but
4 tablets, laptops, any noise-making devices.

5 All right. With that, are there any
6 housekeeping items to go over at this time? Not seeing
7 any, we will now turn to Group No. 43. Ms. Womack and
8 Mr. Moore, may I ask you both to please stand and raise
9 your right hand?

10 Do you swear or affirm that the testimony you
11 are about to give is the truth? If so, answer, "Yes, I
12 do."

13 MS. WOMACK: Yes, I do.

14 MR. MOORE: Yes, I do.

15 HEARING OFFICER DODUC: Thank you very much.
16 Welcome, Ms. Womack, Mr. Moore. You may begin.

17 MS. WOMACK: Thank you. Good morning. I am
18 Suzanne Moore-Womack, and this is my father, Sheldon
19 Moore. I have to say that the last time we were here,
20 this did not work well. And so my father is not very
21 comfortable speaking, so I'm going to speak for us. How
22 long do I have?

23 HEARING OFFICER DODUC: You have 20 minutes for
24 an opening/policy statement and then 20 minutes to
25 summarize your testimony. So 40 minutes in all.

1 MS. WOMACK: Okay. And when you say
2 summarizing, because I've never done -- I'm not a
3 lawyer. You know that. I am supposed to --

4 HEARING OFFICER DODUC: You're a teacher, even
5 better.

6 MS. WOMACK: I am a retired teacher. I have
7 retired just so I can be here because I can't do two
8 things well. Anyway, is it okay -- you said -- so I'm
9 supposed -- so I'm not supposed to read my testimony?

10 HEARING OFFICER DODUC: You should not be
11 reading your testimony. I have read your testimony. It
12 is quite excellent and quite succinct. So I believe you
13 can briefly go through the outlines. Actually, your
14 testimony is already in that kind of a format. So it
15 briefly touched upon the topics that you covered in your
16 testimony.

17 MS. WOMACK: I have done that. I have spent a
18 lot of sleepless nights trying to condense it. So I
19 apologize if I don't know what I'm doing, but I'm doing
20 my best. I have one other kind of silly question, but I
21 don't know how these things go. I've noticed that when
22 DWR's people gave their testimony, they weren't
23 interrupted. They gave their full testimony, and then
24 afterwards, we -- we -- we asked questions is what I
25 noticed. And I'm noticing that when other -- when we're

1 giving our testimony or the people I've noticed giving
2 testimony were interrupted from time to time by DWR or
3 whoever. Is that -- is that what happens?

4 HEARING OFFICER DODUC: It is what happens.
5 And I -- you may not have noticed, but when DWR
6 witnesses were presenting their testimony, there was
7 quite a bit of objections stated and voiced by other
8 parties as well. It is a common --

9 MS. WOMACK: Okay.

10 HEARING OFFICER DODUC: It's our procedure that
11 if there are objections that they be voiced during that
12 time.

13 MS. WOMACK: Okay. Okay. I'll do my best not
14 to get flustered. I'm just trying to do my best. So
15 thank you.

16 Okay. So I want to give our qualifications.
17 My father grew up on a farm in California during the
18 Great Depression. He has been a part of five successful
19 farms. He is a very successful farmer in his lifetime.
20 He worked his way through UC Berkeley earning a BS in ag
21 econ. And to fulfill his ROTC obligation, which was
22 required in the '50s, he became a pilot in the Air Force
23 flying B-36s at Travis. He was in the Strategic Air
24 Command. He's quite -- quite -- should be quite honored
25 for that. Anyway, he lost his hearing flying that's --

1 in serving his country.

2 I grew up on the farm in Clifton Court, and I
3 earned money hoeing sugar beats and working on the
4 tomato harvester as a kid. I retired this past year as
5 a second grade teacher just so I could do this because
6 as I said, I can't be in charge of children and do a
7 good job and try to help this along. So my father and I
8 are both general partners at Clifton Court, LP.

9 So the Petitioners say moving three diversion
10 points will cause no injury to the legal users of water
11 and we disagree. I'd like to have map DWR 66 -- 616, so
12 that we can kind of orient. I want to make sure it is
13 clear where our farm sits. There we go. If we raise it
14 up.

15 So I don't have any sort of pointer. That nice
16 and big is great because our farm is directly south of
17 Clifton Court. But basically, you see at the top where
18 the intake is for the Forebay. That's there right now.
19 And then all the -- along all the levees that go all the
20 way down and they stop at the Tracy fish facility, which
21 is -- the Tracy fish facility is south. There is a mile
22 of levees that are our levees. And then part of our
23 ranch was taken in the '50s for the Tracy fish facility.
24 Basically, a fish green that is directly in front of the
25 Delta-Mendota Canal.

1 So basically, our farm is the entire checkered
2 area up -- not quite to Herdland Road. It's 635 acres
3 is what it's been measured by Cal Fed.

4 So the Petitioners claim that if they take our
5 land through condemnation, we'll not be injured because
6 we will be justly compensated. Based on our past
7 experiences, we disagree. Here's our facts. In 1961,
8 our family bought an 1100-acre farm at Clifton Court,
9 which was part of a 3,000-acre court. If you could put
10 up CCLP-12, and you're going to need to rotate it to
11 make it not look wonky.

12 So if you could -- I rotated it last night, but
13 it still needs to rotate again. There we go. Okay. So
14 that is the actual court in 1947 before -- before any --
15 there was Herdland Canal, which is the canal to the
16 left. And it was before there was any Delta-Mendota
17 Canal. Before there was any Tracy fish facility, there
18 was a 3,000-acre court. Our farm is basically in the
19 middle square, and it -- the farmyard has been there
20 since the 1870s. We had two flood gates to start with
21 for the entire Clifton Court area. And from the 1870s,
22 we ran without any electricity. And so when we moved
23 in, in 1961, the State had already taken Mrs. Richy's
24 land for the Tracy fish facility, which we used to call
25 the fish green. And they had taken out one flood gate

1 and had us put in another pump which was a siphon pump
2 at that point.

3 A siphon pump means you start it and it runs.
4 So you use just a teeny bit of electricity to run.
5 We -- the entire 3,000 acres of Clifton Court drained
6 into Italian Slough, with just the little pump that
7 everybody shared. It was just -- you know, didn't take
8 much. Occasionally, there would be a little pump to
9 move things along, but basically this ran without any
10 electricity. It was a wonderful, wonderful thing. It
11 was very successful. I'm getting off -- sorry.

12 And -- okay. So okay. So in 1961, our family
13 bought the 11-acre farm at Clifton Court. It was made
14 up of eight to ten farms in the area, and ours was
15 probably one of the biggest. Although our farm was run
16 down, it had a flood gate, a siphon pump, and senior
17 riparian rights from the 1870s with a 1920s water
18 license.

19 For five years, my father put his heart and
20 soul and money into creating a thriving farm. Then in
21 the mid 1960s, the entire 1,100-acre farm was condemned
22 for the State. We ended up with 635 acres of land.
23 Proof that if our land is condemned, it doesn't mean it
24 will all be taken.

25 We also know from firsthand experience that the

1 Petitioners can change their mind. In 2001, our final
2 negotiations with Cal Fed to sell our farm ended
3 abruptly when 9/11 happened. Yet another example of
4 changes.

5 Could I have CCLP-14? I'm sorry. I swear they
6 were the right way when we put them on. Anyway, this is
7 our farm in 1907 when it flooded. This farmhouse was
8 barged in. So if the seat -- the California WaterFix
9 takes our farm, we will lose our historic Victorian home
10 that was barged to Clifton Court and rolled into place
11 in 1892. This was before the levees were increased.
12 The large two-story home was proof that the farm was
13 doing well in the 1880s. This was in 1889 that it
14 was -- I'm sorry. Not '92 -- '89. We had a young -- we
15 had an old, old man in the 1960s tell us, "I remember
16 when it was barged in." It was really -- I mean, I love
17 the history of our farm. It's been there. It was very
18 successful. I have read books from 1917 that talked
19 about Clifton Court and their ways and how they're
20 advanced, you know, they are leading the way.

21 So if the CWF succeeds in taking our farm, our
22 55 years of knowledge gained from growing millions of
23 dollars' worth of various crops and from employing over
24 100 people will be lost. The history of our family is
25 woven with this farm. Where can we buy land to replace

1 our 635-acre farm with the licensed senior water rights
2 and over a mile of river front? We know of no land like
3 this for sale in the legal Delta.

4 The Petitioners say the change of diversion
5 point will cause legal users of water no injury. Last
6 year, after our farmer went out of business, it was hard
7 times without water. We considered selling our water,
8 but we were told we couldn't sell our water long-term
9 because of the threat of the California WaterFix taking
10 our land. Already there is a cloud on our water rights,
11 our senior water rights. If our land is taken we will
12 lose valuable senior water rights that may -- that many
13 say are worth more than our land. If the California
14 WaterFix succeeds in taking our farm, we will be at the
15 very least left with our 3.7-acre island where we will
16 be forced -- and I will do it -- to move or farming
17 operations. Whatever remaining land we have we will be
18 affected by the Petitioners' proposed change in
19 diversion points.

20 According to the Petitioners' testimony, the
21 CVP and SWP will continue to pump at times at Clifton
22 Court. Currently, when the CVP and SWP pump water
23 south, the water quality suffers. Old River turns
24 brown. The filthy water paints our concrete ditches and
25 pumps causing havoc. We get our farmyard and household

1 water from Old River, just like we've always done.

2 The pumps also pull up the water hyacinth to
3 the Tracy fish facility where the water hyacinth is
4 removed. Sometimes Old River is chock full of water
5 hyacinth for over a mile, well past our island. Just as
6 we didn't know 55 years ago that pumping 15,000 cubic
7 feet per second would turn Old River brown, today we
8 don't really know how taking 9,000 cubic feet per
9 second -- cubic feet per second just below Sacramento
10 will affect the quality and salinity of our drinking
11 water and our irrigation water.

12 As members of the Water Control Board, you have
13 an important job to decide if you should allow the
14 change in diversion point that will change how the SWP
15 and CVP operate. This change is purported to be a
16 WaterFix. You allow DWR to go to great length to
17 present overviews of the whole project, as well as
18 looking at the engineering, the water rights, modeling,
19 and operations. All of their testimony is designed to
20 convince you that their thoughtful plan will injure no
21 legal users of water. In second grade, we say, "Actions
22 speak louder than words."

23 The Petitioners should use our farm at Clifton
24 Court as a model case to trumpet and celebrate and show
25 how well they have taken care of legal users of water

1 and how they have caused no injuries for the past 55
2 years. But they can't. Our levees were designed in the
3 1910s; should take about -- well, about 50 cubic feet
4 per second of water for the whole entire Clifton Court.
5 50 cubic feet per second. To withstand pumping 10,000
6 cubic feet per second and then when it was raised to
7 15,000 cubic feet per second of pumping water to the
8 south, we had to re-engineer and rock our levees in the
9 1970s. You remember where I showed you our mile of
10 levees. You would think that someone would have said,
11 "Hey, this needs to be part of the design. This farm is
12 between two pumping points. We need to fix these
13 levees." No one has ever offered.

14 Due to CVP and SWP pumping, we needed to
15 re-rock in the 1980s and 1999. We've spent over
16 \$550,000 total to maintain our mile of levee that runs
17 from the Tracy fish green to the mouth of the Clifton
18 Court Forebay. Why weren't our levees regularly
19 maintained when rock was added to Clifton Court? To
20 start with, Clifton Court didn't have rock. In the
21 1960s, when the SWP took our floodgate diversion, they
22 told us to replace it with a pump. We went from having
23 an irrigation system that used a floodgate and a siphon
24 pump and very little electricity to a system now today
25 that has three intake pumps and two discharge pumps and

1 high electricity bills. In 1980, we had to add a third
2 pump at the cost of \$40,000 in 1980 because the water
3 level dropped -- drops in the DMC were so drastic. And
4 they weren't dropping because of -- of -- sorry. They
5 were dropping because there was trash on the racks at
6 the fish green. So in the middle of the night, it would
7 drop 8 to 10 feet. Our pumps would cavitate, sometimes
8 burn-out. We have had several burnt out pumps. That's
9 why since 1984, when we really started keeping records,
10 keeping our bills, we have spent over 255,000 on pump
11 repair and replacements. This is an unusually high
12 amount of money caused by filthy water and drastic water
13 level changes. That is the only thing we can know.

14 Remember, when both the State and the Federal
15 and us started, we were all -- you know, I used to work
16 for Virgin -- virgins. Nobody knew how this was going
17 to happen. Nobody had ever done anything like this. So
18 that's where we're coming from. We didn't know. We
19 didn't know that we should be -- that -- we didn't know
20 electricity would go up from half a cent to -- what is
21 it -- 25 cents. Go up 50 times. We knew nothing.
22 Neither did the State or the Federal, I mean, to be
23 honest.

24 According to DWR-212, 14.2.3, the existing
25 South Clifton Court embankment will have steel sheets to

1 facilitate a positive seepage cutoff because there is
2 problems with seepage. Despite us spending 112,000 in
3 the 1960s to revise the farm's irrigation and pump
4 system and put in a tile drainage system and a discharge
5 pump into the Forebay, we had to do all of that, for a
6 year we couldn't farm. The fact that the SWP refused to
7 put in a water cutoff wall, though my dad requested it,
8 has cost us dearly. They just refused to. So a
9 bureaucrat said, "Oh, no, we don't need that," and we've
10 had to suffer.

11 This isn't in the testimony, so I don't know if
12 I should bring it up later. But, Tam, you asked that
13 the State meet with us. And I met with Diana Gillis,
14 who is -- who runs the Clifton Court, the maintenance.
15 And she is a dynamo. She's fabulous. She just sent me
16 pictures of -- well, the -- but the pictures clearly
17 show the seepage. We -- we think we've lost about 5
18 percent of our farmland. It is unusable. Our farmer
19 this year, I just spoke with him, tried to put in -- I
20 spoke with him yesterday. He tried to put in safflower,
21 and it wouldn't grow. So we have -- I don't know the
22 exact acreage. I can't, you know, begin to. But we
23 have a portion of our land that we can't use.

24 So also, my farmer says, "Tell them I spend
25 thousands of dollars pumping the Forebay water back into

1 the Forebay." So again, what's happened is the State's
2 poor decision hasn't cost them a dime, but it's cost us
3 a great deal of money.

4 So I'll move on from that. Finally, because of
5 you, we were able to work on security with Diana Gillis.
6 Our farm is plagued almost daily by fishermen who
7 trespass across our property to fish on the banks of the
8 Clifton Court Forebay off -- or fish off our pump in the
9 Delta-Mendota Canal. And unfortunately -- excuse me --
10 they also vandalize our property.

11 For the past year, we have had a gaping 20-foot
12 hole in the state fence surrounding Clifton Court
13 Forebay, an attractive nuisance. And I showed you that
14 earlier in the proceedings. Unfortunately, nothing has
15 happened to really change the fences until Diana Gillis
16 came along. She came on the scene. She is honest and
17 forthright. And she admitted the Forebay was a mess
18 when she got there, but she was going to fix it. In the
19 past year, she has had people -- she's removed the berry
20 bushes that obscure the fences. I mean, we're talking
21 huge berry bushes. She's repaired the fences and put in
22 a road next to the fence, so that after years of
23 neglect, the fence can easily be checked.

24 Yesterday, I got her report. Our very first
25 report in 50 years on the Clifton Court Forebay fences

1 and what they've done all year. It shows the fences
2 were breached and fixed 30 times in this past year. It
3 is amazing the work that she's done. In the last month,
4 I've been told that there is this huge \$7 million fix in
5 the Forebay going on. I don't know. I'm sure you-all
6 know what's going on. But they have put a road in
7 next -- I guess there's that much room -- next to the
8 fence so they can actually check it. They used to have
9 a security guy go around the top and go, "Boop, it looks
10 good." Now, they actually fix it. I'd like to say they
11 are not breaking the fence anymore, but they still are.
12 The last month, November, I think had four breaches.
13 So -- and they can be 30 feet. It can be 1 foot. It's
14 huge.

15 So let's see where I am. Unfortunately, I was
16 going to say Diana Gillis is going to be moving on soon
17 because that's what happens. We find every time there
18 is somebody good, they move on. They get promoted. But
19 it's worse than that. She is retiring in December, just
20 at the end of this month, two weeks. She will be sorely
21 missed by us because we find about every four to six
22 years, there's a new chief in charge at both the CVP and
23 SWP. There's new phone numbers. I tried to call Diana
24 Gillis yesterday by their web site, and there was the
25 old guy on it with the past person in charge. I don't

1 know. It is very hard, as a layman, to get in touch
2 with -- get in touch with the CVP and the SWP. There is
3 not exactly a hotline you can call and say, "Hey, we've
4 been breached. Hey, we're having trespassers all the
5 time." It is very difficult.

6 So finally, in farming, you work together with
7 your neighbors and take care of your problems when they
8 are small. Farmers that don't, quickly go out of
9 business, and you don't have to deal with them. Someone
10 who can do it comes in.

11 We never had a squirrel problem at Clifton
12 Court until the Forebay was put in. We've written what
13 we call "squirrel letters" since the 1990s because -- we
14 call them "squirrel letters." We have a squirrel file.
15 You know, it is appropriate. And it is for -- there are
16 squirrels eating our crops, there are squirrels
17 overrunning. It is for our fences. It is for the
18 maintenance basically. It is the problems that are
19 going on. And my father religiously wrote them. And I
20 have been writing them with him since the 1990s. Gosh,
21 I'm old. So and we've been asking -- every few years,
22 you get a good person like Diana and all is great. And
23 you think oh, great, we're done. We've solved it. And
24 then four years later, there's like thousands of
25 squirrels eating our crops again.

1 There -- Diana said she's put in place a
2 protocol. Now, in 45 years, this is the first time we
3 have ever heard of a protocol being put in place to
4 actually take care of things on a regular basis. We
5 don't know if it will continue. Our experience is every
6 four years or so, either the CVP or the SWP don't take
7 care of squirrels or don't patrol for trespassers,
8 different things that cause us damage.

9 So we have our squirrel letters. And most of
10 the squirrels live in the banks of the Forebay beyond
11 the fence. About 100 feet back on that, they have their
12 water and they come over and eat from our crops. It is
13 a great little system. They go back and forth. It
14 costs us thousands of dollars in squirrel bait, labor;
15 thousands of dollars repairing damages to fields;
16 thousands of dollars in lost crops. We have written
17 since the 90s and we have asked for help and we've never
18 received a dime.

19 The Petitioners have said that they will make
20 whole anyone who has a change in diversion point or
21 experiences any damages by this project. According to
22 DWR and even Mr. Berliner, there is a claims process for
23 compensation. Here was our experience. In 2012, we
24 attended a Water Commission hearing on the test drilling
25 that was to take place on our property for the -- I

1 think it was the BDCP back then, but it might have been
2 the California WaterFix. They wanted our property to
3 drill. We actually allowed them to because we've been
4 drilled all over the place.

5 Sue Sims was in charge. And we'd just recently
6 given our tenant a check for \$30,000 to fix what turned
7 out to be \$60,000 worth of squirrel damage. And we
8 asked Sue Sims why the State wasn't accountable for
9 damages. And Sue Sims was very surprised. And she
10 asked Alan Davis. Why are -- you know, he was there --
11 he is the -- you know him. He explained that we just
12 had to fill out a claims form. And he sent us the form,
13 and we filed the claims form with the California Victims
14 Compensation Government Claims Board. That is quite a
15 mouthful, the CVCGCB. Our claim was denied. We were
16 told we could attend a hearing, which we did.

17 At the hearing, we were told that we would have
18 to sue the State since our claim was complex and
19 involved a lot of money, \$30,000. Later, the CVCGCB
20 executive officer, Julie Nellman, even wrote a letter to
21 DWR director Mark Cowin and asked him to take care of
22 our squirrel problem and compensate us. That was in
23 2012. I can pull up the letter. I'm sure it is part of
24 my squirrels. The squirrels are all our complaint
25 letters. But he never replied.

1 So DWR has a claims process that even they
2 ignore. Who at DWR makes people whole? In my meeting
3 that Tam arranged, everyone told me to sue the State.
4 That's how you get compensated. I asked who had an
5 extra 30,000 to hire a lawyer. I sure don't. How can
6 you be made whole if you constantly have to sue to be
7 compensated for your injuries? Since the people in
8 charge change frequently, how do you even know who to
9 sue or ask for damages? There is no office that
10 receives damage or injury claims, and I'm not saying you
11 need a whole new office. But for goodness' sake, it
12 should be very easy for us who live next door to get
13 injuries paid for. You know, we're paying money. We
14 are spending thousands of dollars every year. And the
15 State Water Contractors -- well, let me go back to my
16 reading. I get upset.

17 There is no incentive for the CVP or the SWP to
18 pay damages. If they drag their feet and don't respond,
19 like Director Cowin did, they win. After six months'
20 time, it's kind of, "Oh, you're out of time." Who
21 decides if the SWP should spend \$7 million or --
22 revitalizing the Forebay or 30,000 paying for squirrel
23 damage or -- let's see. In -- in -- they have spent 8
24 million in 1992 dredging the Forebay or 3.159 million in
25 2002 dredging the marina that is right next to us that

1 had silted up. Who decides where you're going to spend
2 the money? And who is in charge of these decisions.
3 There is nobody that we know of.

4 Finally, how will the new larger undertaking of
5 the CWF get different resorts for the adjoining
6 landowners who are victimized as we have been? There
7 has been no change to the claims process. They think it
8 works.

9 In conclusion, the farm we bought in 1961 had
10 none of the problems I have addressed. We have lost
11 time and money due to these problems caused by the CVP
12 and the SWP. We didn't choose to spend this money. My
13 father didn't choose to spend time. I haven't chosen to
14 be here for hundreds of hours. It's not a choice we
15 have made.

16 We had -- we've had to defend ourselves. As
17 far as when there is a problem, you can't wait a year
18 for money to fix a pump. Your crops die. When your
19 levee springs a leak, you have to fix it right then and
20 there or you have no farm. You can't wait a year for
21 somebody to decide to do something. The SWP and CVP
22 don't have a hotline for immediate repairs. There is
23 nothing. We are on our own.

24 Our past change in diversion points cost -- has
25 cost us well over a million dollars in injuries at old

1 prices. We're not even saying -- and we're not
2 accounting for our time. I don't know anybody that
3 works for free. We've never been made whole or received
4 even a dime for injuries. In effect, we have been taxed
5 without representation.

6 Is this how DWR and the Feds eventually get
7 senior water rights? Is that what they're going for? I
8 don't know. The change in diversion points requested by
9 the Petitioners will cause Clifton Court serious
10 injuries. From past experience, we doubt we will be
11 made whole. DWR and Reclamations' ongoing lack of
12 diligence in dealing with the issues addressed above is
13 a sign of concern for the massive undertaking that they
14 propose. It leads us to wonder if when they undertake
15 and complete the California WaterFix, will they exercise
16 the same lack of due care and harm on more landowners as
17 we have been harmed for the past half century. Thank
18 you very much. Thank you for not interrupting, DWR.

19 HEARING OFFICER DODUC: Thank you, Ms. Womack.
20 Cross-examination? All right. With that, I thank you.

21 MS. WOMACK: Thank you very much.

22 MS. MESERVE: I have cross.

23 HEARING OFFICER DODUC: I was opening it up for
24 cross-examination. Ms. Meserve. Anyone else? All
25 right. Ms. Meserve.

1 MS. MESERVE: Osha Meserve for Local Agencies
2 of the North Delta and other protestants. Sorry. I
3 missed the first part where I guess DWR said they didn't
4 have cross. I just have a couple of questions just
5 mostly about the history of responsiveness to what we
6 would look at, in this context, as injury to water
7 rights. So I have about five or six questions along
8 those lines.

9 CROSS-EXAMINATION BY MS. MESERVE:

10 Q. Good morning, Ms. Womack.

11 A. Good morning.

12 Q. And, Mr. Moore.

13 MS. WOMACK: If you -- do you want to respond
14 as well to Osha? It's very hard.

15 MR. MOORE: I have to. I have no choice.

16 MS. WOMACK: Okay. So she's going to ask
17 questions.

18 BY MS. MESERVE:

19 Q. Okay. Thank you. All right. Let's see. Now,
20 if we could just look quickly at DWR-2, around page 20.
21 There's pictures of diversion points that DWR's
22 case-in-chief noted would be impacted by the WaterFix
23 project. And I think we went over this earlier, perhaps
24 in cross of DWR, Ms. Womack. But are you aware of your
25 points of diversion being shown in DWR's case-in-chief

1 with respect to water rights that could potentially be
2 injured?

3 A. No. I was very -- I was concerned. I've had
4 some health issues with my mother that I've had to deal
5 with, but I haven't been able to be here as much. But I
6 was -- I was very surprised that our whole farm was not
7 listed anywhere. When I --

8 Q. Hold on, Ms. Womack.

9 A. The diversion points weren't listed.

10 Q. Hold on. It's about page 20, I believe, of
11 DWR-2. Sorry. Just so we can see the picture at the
12 same time.

13 A. Sure.

14 Q. And make sure we are correct about this. Okay.

15 So DWR-20 shows here that they would relocate
16 or maybe provide a new turnout. And then if we scroll
17 down to page 21, it shows maps of where the diversions
18 up north are. So just to clarify, you didn't see your
19 diversions in this presentation?

20 A. No.

21 Q. Or elsewhere?

22 A. No, I've never seen them.

23 Q. Okay. Do you know why your diversions wouldn't
24 have been included? Because we -- you testified just
25 now that you had diversions that would be impacted,

1 right?

2 A. I have three, yeah.

3 Q. Okay.

4 A. I have no idea. Like I said, it's almost as if
5 my ranch -- like they already owned it somehow. I don't
6 know.

7 Q. And now, has there been any other -- you said
8 you had a meeting with DWR that was made possible by the
9 Hearing Officer's suggestion.

10 A. Yes.

11 Q. Did you have any discussion regarding
12 replacement water supplies in those meetings?

13 A. Oh, no. No. We talked nothing about -- we
14 talked about, you know, kind of fixing up what's going
15 on right now. Because as a farmer, you can only deal
16 with what's happening right now. You can look a little
17 in the future; but, you know, got to deal with problems.

18 Q. Okay. Now, if you saw a mitigation measure or
19 condition that said Petitioners would provide a
20 replacement water supply such as we saw with these other
21 diversions, would you believe it?

22 A. I -- I don't -- well, it's not on their plan.
23 And this is a plan -- I mean, yeah. No, I wouldn't
24 believe it.

25 Q. Okay. And if you saw a mitigation measure or

1 condition that said that DWR and the Bureau, the
2 Petitioners, would work with diverters on water quality
3 issues that might occur, would you believe that?

4 A. I have brown water. I wouldn't believe it.

5 Q. Are you aware of anything in the case-in-chief
6 of Petitioners that would require the kind of
7 maintenance activities that was just done on -- at
8 Clifton Court with respect to the fences and whatnot?
9 Are you aware of anything that's forward looking for
10 this project in the case-in-chief?

11 A. No. I find it very odd because the maintenance
12 they are doing is maintenance probably they should have
13 been doing for our farm. But if they're going to put in
14 the -- this is in the middle of where the Forebay is
15 going to be. So that's -- you know, I -- that's a good
16 question. You know, I really appreciate it happening,
17 but I can see 7 million -- well, you know, 7 million.
18 It's a lot of money.

19 Q. So just to be clear, you're not aware of
20 anything in their case-in-chief that discusses doing
21 these kinds of activities for the future project that's
22 under consideration by this Board?

23 A. I -- I don't know of any because -- yeah, I
24 just don't know.

25 Q. Okay.

1 A. I just know how we've been treated.

2 Q. Now, if you were told that an entity other than
3 DWR and the Bureau was going to operate this new tunnels
4 project, would that make you more or less concerned
5 about the extent to which landowner and water users'
6 concerns would be addressed?

7 A. I'm very concerned because at least with DWR
8 and the Feds, there was an entity. You know, I don't
9 know what will happen with -- if the Water Contractors
10 would, say, take over like they're supposed to be doing.

11 Q. Correct. Are you aware that the current
12 proposal, as at least I understand it, is that the Water
13 Contractors would form their own entity to be in charge
14 of this construction project?

15 A. That's what I've been told. In fact, the Water
16 Contractors met with us in 2012 and wanted to buy our
17 property and said we had to -- they'd just condemn us
18 otherwise. I mean, they -- they were bullies.

19 HEARING OFFICER DODUC: All right. Hold on,
20 Ms. Womack. Mr. Mizell?

21 MR. MIZELL: I'm going to object to this line
22 of questioning. The -- Ms. Meserve has not presented
23 any evidence about any organization being formed by the
24 Contractors to run the project that hasn't been
25 presented to this Board. And absent her single

1 assertion here, it's not ever been presented in this
2 hearing. So I object to this line of questioning, and
3 I'd like that last question and answer be stricken from
4 the record.

5 HEARING OFFICER DODUC: Ms. Meserve?

6 MS. MESERVE: I think it's generally known and
7 within the project proponents' materials and including
8 in the DWR/Bureau 2015 environmental documents that are
9 part of this record that the Design Construction
10 Enterprise has been formed and would operate this
11 project. So I don't see why there is any dispute.
12 Should there be a necessity to, I can bring forth
13 evidence in cross of later witnesses to that effect.
14 But I really don't think there is any question.

15 MR. MIZELL: Well, there is clearly a question
16 because I'm up here. But the fact is we have not
17 presented any evidence that anyone besides the
18 Department will run the projects. The DCE may be a
19 separate entity with regard to construction, but that's
20 not operations. We've presented plenty of evidence that
21 the Department continues to believe it will operate the
22 project. And absent statutory amendments, that will
23 continue to be the case. And yes, I would expect that
24 if we're going to hear assertions like this, they would
25 be supported by evidence in the record.

1 HEARING OFFICER DODUC: All right.

2 Mr. Keeling?

3 MR. KEELING: Thank you. Tom Keeling for the
4 San Joaquin County Protestants. I'd point out that
5 throughout the proceeding, in fact, last week, when
6 Mr. Berliner was cross-examining Protestants' witnesses,
7 a number of those questions were prefaced by, "Are you
8 aware that," and then what follows that phrase is
9 something nobody has heard in this proceeding as a way
10 of questioning.

11 HEARING OFFICER DODUC: I was here. I
12 remember.

13 MR. KEELING: All right. And I assumed that
14 since the words of an attorney asking a question are not
15 evidence and cannot be cited to you or to any later
16 tribunal as evidence, what counts is not Mr. Berliner's
17 question or the premise, true or not, but the response.
18 It's the answer that's the evidence. And I see nothing
19 improper or inconsistent about Ms. Meserve's questioning
20 of this witness.

21 HEARING OFFICER DODUC: Thank you, Mr. Keeling.
22 Mr. Mizell, I'm going to allow this line of questioning
23 and allow the information in the record; but I will
24 consider your objection in weighing the evidence.

25 Ms. Meserve, please continue.

1 MS. MESERVE: Thank you. I just have a couple
2 more questions.

3 BY MS. MESERVE:

4 Q. Ms. Womack, why do you think that DWR finally
5 did something about the fence at Clifton Court?

6 A. Because of the Chair. I -- you know, I've had
7 years of asking, years of -- the photos I showed you
8 were recent, but I had other photos of equal fence
9 things that prove nothing. I -- you can see in my
10 squirrel letters, I have pictures and broken fences. I
11 started doing that since about 2012, but it goes back to
12 the '90s. Nothing has happened.

13 Q. So in the future, with respect to the injuries
14 you have claimed, would you be concerned about whether
15 there would be any response without some kind of
16 intervention by a government entity such as occurred
17 here?

18 A. Yes. It really bothers me that it takes the
19 Water Control Board to -- to -- or Sue Sims of the Water
20 Commission to get any action. It's like they're their
21 own entity.

22 Q. Now, based on your experience at Clifton Court
23 and knowing that there would be new -- major new
24 facilities in the North Delta under this proposal, would
25 you be concerned about the maintenance of security and

1 other measures around those new facilities?

2 A. Absolutely. I tried to bring that up when --
3 during the maintenance because of the security issues.
4 It's -- it's -- our place has not been secure for years.
5 I have a picture of children going across our concrete
6 ditch with their parents to go fishing and fishing in
7 the -- in the Clifton Court. I wouldn't take my
8 children fishing there. I'm very concerned about
9 security.

10 Q. And would you also be concerned about the
11 health and safety of such people that you were just
12 mentioning?

13 A. Oh, absolutely. And myself. I worry every
14 night, "Do I need to put a well in? Do I need to spend
15 another 25,000 for water quality?" I -- I worry
16 constantly about my people and the people that trespass.
17 Frankly, my farmer said last night, "All they have to
18 do -- they go in the middle of the night. All they have
19 to do is stumble over something and then they're going
20 to sue us." I've asked to be indemnified. I just don't
21 know what else to do. That's why I'm here.

22 MS. MESERVE: Thank you, Ms. Womack. I have
23 nothing further.

24 HEARING OFFICER DODUC: Thank you, Ms. Meserve.
25 I think the only two people who were not in the room

1 when I previously asked about cross-examination were
2 Mr. Jackson and Mr. Herrick. Does either of you have
3 cross-examination?

4 MR. JACKSON: No.

5 MR. HERRICK: No.

6 HEARING OFFICER DODUC: Ms. Des Jardins?

7 MS. DES JARDINS: I actually have one question.

8 HEARING OFFICER DODUC: You did not voice your
9 intent earlier, but go ahead and ask your one question.

10 MS. DES JARDINS: I also was not in the room.

11 CROSS-EXAMINATION BY MS. DES JARDINS:

12 Q. I'm Deirdre Des Jardins. Ms. Womack, I just
13 wanted to ask you if after the joint point of diversion
14 was approved in 2000, if you noticed any effect on
15 either the flows by your farm or the levees on your
16 farm?

17 A. When you say the "joint point of diversion,"
18 you're talking about the increase?

19 Q. Yes.

20 A. Oh, absolutely. Absolutely. In fact, we wrote
21 letters. It's gotten worse. Our pumps -- we've lost a
22 couple pumps since then. They're \$50,000 now; they were
23 1,500 when we started. It's just -- and it takes
24 special machinery. Yes, we've -- and our water
25 quality -- there is cakes of dirt in the concrete

1 ditches that you can see. It's just horrible, and it
2 wrecks all of our -- all of our mechanical things.
3 Pumps burn out because of the extra dirt. The water, I
4 have two filtration systems for our houses. Like I
5 said, I am considering putting in a well because I worry
6 about the safety of my people that use the water.
7 That's another 25, 30,000. I just -- I lay awake at
8 night literally worrying about my farm and my people and
9 my water quality. And I have no idea what's going to
10 happen.

11 Q. So you're saying --

12 A. I just know that it's increased. It has gotten
13 worse. I'm sorry.

14 Q. So you are saying that sedimentation --
15 sediment in the water increased after --

16 A. Well, you're sucking more -- yeah. Well, and
17 it -- it goes with it. Our -- our levees, we have to
18 keep re-rocking so -- because they're -- all the dirt in
19 the levees is being pulled away and from the levees all
20 the way up. We have huge sedimentation problems.

21 Q. Did you notice any change in the velocity of
22 the water going past your farm?

23 A. Oh, it changes directions. It depends on who
24 is pumping. The natural flow of the river changes at
25 our house. Our levels of water, we had to put our third

1 pump in because the levels of water change so much. We
2 couldn't depend on one pump to be able to use because
3 the water levels. The velocity, sure. Just all of
4 that. It's just a nightmare.

5 Q. Do -- do the water levels change between the
6 day and the night or over a period of days?

7 A. You know, there's the natural occurring, you
8 know.

9 Q. Tidal variations.

10 A. Tidal. Yeah. That is just natural. We -- you
11 know, you farm, that's how you -- you're used to that.
12 But yeah, there's huge changes. When you're pumping
13 10,000 cubic feet per second, it just sucks things in.
14 It's -- I don't -- I've never seen anything like it.

15 Q. And so did the level changes get worse after
16 the joint point of diversion, the change in water levels
17 with pumping?

18 MS. WOMACK: Dad, did the change in levels --
19 yeah. Once --

20 MR. MOORE: Oh, sure.

21 MS. WOMACK: Yeah. Huge. Yeah.

22 BY MS. DES JARDINS:

23 Q. What about --

24 HEARING OFFICER DODUC: I guess that's a
25 six-part one question.

1 MS. DES JARDINS: Sorry. Just one final thing.

2 Apologies.

3 BY MS. DES JARDINS:

4 Q. What about the salinity? Did the salinity of
5 the water change?

6 A. Well, right now, actually, you know, the
7 salinity is not too bad because it is -- it's coming --
8 the water that they are powering south is coming to us.
9 So our salinity isn't bad right now. It's just the
10 turbidity right now.

11 MS. WOMACK: Am I right with that, Dad, the
12 salinity?

13 MR. MOORE: There's other things, too.

14 MS. WOMACK: He says there's -- he's my
15 scientist. There is a lot of things involved. But
16 overall, it is mainly -- we call it "turbidity." But
17 the salinity -- but we don't know what will happen when
18 you take 9,000 cubic feet. We just know that, you know,
19 all the stuff that has happened here, we never could
20 have dreamt of in 1967 when we settled.

21 MS. DES JARDINS: Thank you.

22 MS. WOMACK: Thank you.

23 MS. DES JARDINS: Thank you, Ms. Doduc.

24 HEARING OFFICER DODUC: Ms. Womack, at this
25 point, I would ask if you have any re-direct? That

1 means do you have anything to add based on the questions
2 asked of you by Ms. Meserve and Ms. Des Jardins, just
3 based on those questions?

4 MS. WOMACK: I don't believe I do. Thank you
5 so much. It was easier than I thought.

6 HEARING OFFICER DODUC: Thank you for taking
7 the time. Thank you for really preparing a really
8 concise testimony. And thank you to you and your father
9 for appearing.

10 MS. WOMACK: Thank you. Now, what is the next
11 part? What do I do next?

12 HEARING OFFICER DODUC: The next part,
13 actually, we have your list of exhibits. Do you have
14 any changes to that?

15 MS. WOMACK: I don't believe so.

16 HEARING OFFICER DODUC: All right. Does she
17 have to formally? All right. In that case you are done
18 for now.

19 MS. WOMACK: Okay. Great. It's always such a
20 hassle to try to get the -- oh, my gosh. I get my kids
21 in. Thank you so much.

22 HEARING OFFICER DODUC: Thank you very much.

23 Let's go ahead and get the next group up, which
24 is Group No. 38, PCFFA. And actually, Mr. Volker, as
25 your witnesses are moving up, I actually have some

1 questions for you. So if you could go ahead and take a
2 seat.

3 Actually, I have a question -- oh, good.
4 Ms. Des Jardins is -- will be sitting near a microphone
5 because I have questions for both of you.

6 MR. VOLKER: Madam Chair --

7 HEARING OFFICER DODUC: Over here, Mr. Volker.

8 Ms. Womack, if your father is staying and would
9 like to stay in that seat and use the monitor --

10 MR. WOMACK: Oh, I appreciate that. My
11 mother -- we need to get back to my mother. But thank
12 you so much. I really appreciate your kindness. Thank
13 you.

14 HEARING OFFICER DODUC: Thank you for coming.

15 So, Mr. Volker, a couple things to start with.
16 First, I was a bit confused by your opening statement.

17 MR. VOLKER: Yes.

18 HEARING OFFICER DODUC: The opening statement
19 is intended to provide an overview of the case-in-chief
20 that you will be conducting. And as I read your opening
21 statement, it appears to me to be more like a policy
22 statement or, as Ms. Heinrich advised me, more like a
23 closing brief. What is your intention with respect to
24 that statement?

25 MR. VOLKER: Thanks for asking.

1 HEARING OFFICER DODUC: Is your microphone on?

2 Microphone on?

3 MR. VOLKER: It is now. Thanks.

4 My intention was to present an overarching
5 policy statement and opening statement that reflected
6 the position of PCFFA and IFR with regard to the primary
7 issues before the Board as we believe they will be
8 presented in both Part 1B and have been presented in
9 Part 1A. We participated both in cross-examination in
10 Part 1A and are now about to present direct testimony in
11 Part 1B, which we believe supports the policy statement
12 or opening statement that we have presented.

13 HEARING OFFICER DODUC: All right. I will go
14 ahead and allow you your 20 minutes to make such a
15 statement. My next question is both for and
16 Ms. Des Jardins. Ms. Des Jardins is Group No. 37, which
17 will follow your case-in-chief. However, her testimony
18 for -- for her party, meaning for No. 37, overlaps
19 somewhat with 38 in that I believe your last two points
20 in your testimony, Ms. Des Jardins, for PCFFA actually
21 is very similar to your testimony for Group No. 37
22 representing yourself.

23 So my question for both of you is for a matter
24 of efficiency, would you like to combine that and
25 present that as a joint case-in-chief?

1 MS. DES JARDINS: No. I believe that I would
2 like to present my case-in-chief separately. And I'd
3 actually thought of -- for the -- just for the case of
4 clarity, just talking about climate change here.

5 HEARING OFFICER DODUC: All right. So you will
6 not be touching upon those other additional points in
7 your testimony for PCFFA and reserving that for your
8 testimony on your own case-in-chief?

9 MS. DES JARDINS: I don't intend to testify on
10 it twice. Those are just very important central points,
11 and PCFFA also included them in my testimony.

12 HEARING OFFICER DODUC: All right. Okay.
13 That's clearly enough for me. Let me ask DWR then or
14 other parties, based on what Ms. Des Jardins has
15 answered, I would ask that any questions on
16 cross-examination that you have for her beyond the
17 climate change testimony that she will provide in PCFFA
18 be held until she presents her case-in-chief as part of
19 Group 37. Is there any objections to that? I'm hearing
20 none. Okay. Let's go ahead and do that then.

21 Mr. Volker, let me ask your witnesses to please
22 stand and raise their right hands.

23 Do you swear or affirm that the testimony you
24 are about to give is the truth? If so answer, "Yes, I
25 do."

1 MS. DES JARDINS: I do.

2 MS. SCHIFFERLE: I do.

3 HEARING OFFICER DODUC: Thank you. Mr. Volker,
4 you have 20 minutes for your statement and 20 minutes
5 for your witnesses to summarize their testimony.

6 MR. VOLKER: Thank you very much, Madam
7 Chairwoman. Good morning. It's an honor to be before
8 this Board today, and I appreciate the Board's
9 flexibility in adjusting its hearing schedule to
10 accommodate the unavailability of my office and our
11 witnesses from time to time.

12 As we outlined in our Exhibit 83, which we
13 entitled, "Part 1 Opening Statement," et cetera, there
14 are a number of vital concerns we have with regard to
15 the -- both the procedural issues that confront this
16 Board and the substantive conflicts in the evidence that
17 we believe the Board must address. The water quality
18 protections that are required for this Board's approval
19 of the WaterFix don't presently exist. So this Board
20 has been asked to take action in what is tantamount to a
21 regulatory vacuum.

22 As we indicated repeatedly in the submissions
23 to see this Board, we believe there are four primary
24 defects procedurally that prevent the Board from making
25 an informed decision with regard to the WaterFix

1 Petition. The first is that the 1995 Bay Delta Plan has
2 not been updated, as the law requires. Under both state
3 and federal law, the Water Quality Plan should be
4 re-visited at least every three years to assure that it
5 adequately protects the designated beneficial uses in
6 the Bay Delta system. The Water Quality Control Plan,
7 known as Water Rights Decision 1641 or Decision -- or
8 D-1641, was adopted over 20 years ago in 1995. Although
9 it was amended in 2006, those amendments were not
10 substantive. And basically, we have in place today the
11 same deficient water quality protections that have
12 caused the Bay Delta ecosystem to spiral into near
13 collapse.

14 The WaterFix Petition relies primarily for its
15 compliance with the state and federal water quality
16 standards, the premise that it will cause no deviation
17 from D-1641 water quality standards. That assertion
18 rings hollow in view of the fact that, number 1, those
19 very water quality protections have been the subject to
20 numerous revisions at times of water shortage, releasing
21 the diverters from the very constraints that are
22 required to protect the resource.

23 And secondly, and moreover, those protections
24 are meaningless in light of the fact that even had they
25 be complied with, the Bay Delta would still be on the

1 verge of ecologic collapse. Every agency, both state
2 and federal, with expertise in fisheries protection that
3 has examined this issue has concluded that the existing
4 water quality standards in the Bay Delta are
5 insufficient to protect beneficial uses. And we have
6 nothing in place currently that leads us to deviate from
7 that authoritative conclusion by our scientists.

8 To the contrary, the other three primary
9 regulatory measures to protect Bay Delta water quality
10 have likewise been proven either to be out of date or
11 unlawful. We have, for example, the Bay Delta Water --
12 or Delta Plan adopted by the Delta Stewardship Council
13 several years ago that has been set aside by the
14 Sacramento Superior Court, specifically upon a finding
15 that it failed to contain sufficiently specific measures
16 intended to preserve natural flows and to restore
17 natural flows and to reduce reliance on diversions from
18 the Delta, which as we have seen, are the primary cause
19 of its steadily declining water quality and
20 substantially reduced water flows as essential for
21 restoration of its ecosystem.

22 We have seen the listing of a number of
23 species, both anadromous species and inland species of
24 fish, including the winter run and spring run of Chinook
25 Salmon, the Delta Smelt, the Green Sturgeon. And we

1 have seen a number of other species nearing listing
2 because of threats to their survival.

3 This context has led both the Federal Fish and
4 Wildlife Service and the Federal National Marine
5 Fisheries Service to conclude over a decade ago that the
6 state and federal water projects are being operated in a
7 manner which jeopardizes the survival of those fish
8 species along with others.

9 So we have a wholesale failure, both in terms
10 of adequacy of the water quality plan and adequacy of
11 the Delta plan adopted by the Stewardship Council to
12 provide protections as needed to restore the Delta, and
13 we have the state and federal fisheries agencies
14 agreeing that the Delta is collapsing. And we have the
15 expert federal agencies charged with protecting
16 endangered species and preventing the listing of those
17 clinging to survival, concluding that the ongoing
18 operation of the state and federal water quality --
19 water diversion projects poses jeopardy to listed fish
20 species.

21 And then, finally, we have a wholesale failure
22 on the part of the state and federal agencies who are
23 proposing the WaterFix to comply with the state and
24 federal environmental policy and reporting acts; namely,
25 the National Environmental Policy Act and the California

1 Environmental Quality Act. As EPA noted in its comments
2 on the recirculated draft EIS/EIR for the WaterFix, the
3 environmental analysis is incomplete. It is inadequate.
4 And accordingly, was given a failing grade of 3 under
5 the EPA's authoritative review.

6 So in summary, we have four comprehensive
7 statutory regulatory schemes intended to protect and
8 restore the Bay Delta. First, we have the Federal Clean
9 Water Act and the California statutes intended to
10 implement that act, which require adoption of adequate
11 water quality plans. And we have a plan that's over two
12 decades obsolete and by the agreement of all expert
13 agencies, inadequate to protect water quality and to
14 restore the Bay Delta to its once vibrant ecological
15 health.

16 Second, we -- secondly, we have a failure of
17 the Delta Stewardship Council's Delta Plan to provide
18 for restoration of the Delta to restore natural flows,
19 to reduce needless and excessively harmful reliance upon
20 diversions of water from the Delta.

21 Thirdly, we have a failure thus far to complete
22 the biological opinions required to assess the impact of
23 the WaterFix on listed fisheries' species. And then,
24 finally, we have a failure on the part of both state and
25 federal agencies to develop an adequate environmental

1 review that identifies the impacts associated with the
2 WaterFix, assesses appropriate alternatives that would
3 reduce those impacts to insignificance, and otherwise
4 assures, consistent with the other statutory demands,
5 that every measure available to restore and protect the
6 Bay Delta's ecosystem is examined carefully and the
7 fruits of that examination applied to inform this
8 Board's decision-making with respect to the WaterFix.

9 So those are the primary grounds for PCFFA and
10 IFR's concerns in this regard. They are documented
11 further in the exhibits that we have marked for
12 identification and about which we have conducted
13 cross-examination and for which today's two experts will
14 be presenting testimony. I'd like now to move from the
15 opening statement portion of our presentation to
16 introducing our two experts and asking that they
17 summarize their testimony and authenticate the exhibits
18 which reflect both their testimony and their
19 qualifications. I turn first to --

20 HEARING OFFICER DODUC: Hold on, Mr. Volker.
21 While we're resetting the clock, Mr. Mizell?

22 MR. MIZELL: Yes. I recognize that the opening
23 statement is not testimony. However, it is meant to
24 provide a road map as to what testimony will follow.
25 And the issues that I just heard discussed have all been

1 objected to in the past and ruled upon. What were
2 listed by Mr. Volker were challenges to the Water
3 Quality Control Plan Update, discussions about fish and
4 the protections to fish, which is clearly in Part 2,
5 challenges to the Delta Stewardship Council Delta Plan
6 and CEQA challenges. We have dealt with these many
7 times, and I believe it's been quite clear that those
8 aren't before us in Part 1.

9 So to the extent that their testimony is
10 different than what the outline that was just provided
11 by Mr. Volker is, I suppose we will wait and see. But
12 it might be helpful for maybe additional direction that
13 the issues just outlined are not really before us today.

14 HEARING OFFICER DODUC: Thank you, Mr. Mizell.
15 As I stated in my questioning of Mr. Volker before he
16 began, his statement was somewhat not quite an opening
17 statement. I regard it as more of a policy statement.
18 And in which case, I will regard it as such. All right.

19 Seeing no other comment, Mr. Volker, you may
20 now go to your witnesses.

21 MR. VOLKER: Thank you very much, Madam Chair.
22 I didn't want to belabor the summarization of their
23 testimony by summarizing their testimony before the
24 witnesses were afforded an opportunity to do that. So
25 it was simply out of respect for the Board's time and

1 schedule and the need to avoid needless repetition.

2 HEARING OFFICER DODUC: So now you have respect
3 for our time and schedule. Thank you, Mr. Volker.

4 MR. VOLKER: Yes. Okay. I would first ask
5 that our first witness, Ms. Patty Schifferle, summarize
6 her qualifications and her testimony, which is primarily
7 simply to authenticate a number of documents. Before I
8 introduce that topic, I wanted to make a number of
9 corrections which I think will help streamline this
10 process.

11 First of all, we would like to withdraw
12 Exhibits 58 and 59, which were notes prepared by
13 Ms. Schifferle to guide her understanding of some of the
14 documents that we have listed as exhibits. And second,
15 I would like to correct the title of Exhibit 52. 52 is
16 currently entitled in the -- in summary manner in the
17 list of exhibits as, "Letter from DWR to Cook, December
18 9, 2014." That is in error. It should read "Letter
19 From the Kern County Water Agency to DWR (Cook),
20 December 9, 2014." I apologize for the oversight in
21 that error.

22 And the last exhibit I wish to correct is PCFFA
23 Exhibit 61, which is currently entitled, "USA CE, i.e.,
24 Army Corps of Engineers Responses to Comments, July 2,
25 2013." It should read more accurately, "Summary of USA

1 CE Response to Comments, July 2, 2013, Prepared By Emily
2 Setzer," S-e-t-z-e-r, "Senior Associate ICF."

3 And as further authentication, as
4 Ms. Schifferle will explain, this was obtained from the
5 Fish and Wildlife Services Bay Delta office, Mike Hooper
6 of that office, which released this document to
7 Ms. Schifferle. And as part of a folder entitled,
8 "FWS-2014-00367," bearing a date of March 24, 2014.

9 Now, if I might, Madam Chair, I'd like to turn
10 to the examination of Ms. Schifferle.

11 DIRECT EXAMINATION BY MR. VOLKER:

12 Q. Ms. Schifferle, would you state your full name
13 for the record?

14 A. It is Patricia Schifferle.

15 Q. Did you prepare the document which has been
16 marked as your testimony in this proceeding?

17 A. Yes, with the corrections in mind. There is
18 one additional correction. It's Mike Hoover,
19 H-o-o-v-e-r, as the author -- or who was passed through
20 in U.S. Fish and Wildlife, SPFFA 61.

21 Q. And, Ms. Schifferle, did you also -- strike
22 that.

23 Would you please summarize your qualifications
24 to provide the testimony that you will offer today?

25 A. Yes. I've had approximately more than 30 years

1 in resource policy, and I was a principal consultant for
2 a number of years with the State Legislature, both for
3 the Assembly and the Senate, as well as the Western
4 Regional Director for the Wilderness Society, and a
5 consultant to a number of the NGOs and government
6 agencies for the last 10 or 15 years.

7 Q. Ms. Schifferle, you have prepared in your
8 testimony a list of documents which have been marked as
9 Exhibits, respectively, PCFFA 23 through PCFFA 61.

10 Would you tell us how you obtained those documents?

11 A. I filed a series of public record requests of
12 the state agencies and a series of FOIA requests to the
13 federal agencies and proceeded to obtain these documents
14 through that process. And all are true and correct as I
15 received them and can provide you additional information
16 if needed.

17 Q. Thank you. And with the exception of the two
18 documents, Exhibits 58 and 59, that we have withdrawn
19 and the corrections to the titles of Exhibits 52 and 61,
20 are the balance of the descriptions of these exhibits
21 correct to the best of your knowledge?

22 A. Yes, they are correct.

23 Q. Thank you.

24 MR. VOLKER: Madam Chair, I'll open up then to
25 any questions from the Board. And if none, then we will

1 move on to our next panel witness.

2 HEARING OFFICER DODUC: Please move on.

3 MR. VOLKER: Thank you. Our second expert
4 witness for today is an expert in modeling, well known
5 to this Board, whose testimony appears in Exhibit 81.
6 And I'd like to turn my attention to Ms. Deirdre
7 Des Jardins.

8 DIRECT EXAMINATION BY MR. VOLKER:

9 Q. Ms. Des Jardins, did you prepare Exhibit 81?

10 A. I think you want PCFFA 81 Errata. And yes, I
11 prepared both the original and the errata.

12 Q. And by reference to errata, you are referring
13 to some corrections to your testimony submitted on
14 December 9 of this year?

15 A. Yeah. There was an error that said there were
16 2 meters of sea level as by 2030, which DWR kindly
17 brought to our attention. And it's 2 meters by 2100.
18 It was a typo.

19 HEARING OFFICER DODUC: Ms. Des Jardins, I will
20 ask that you move the microphone closer.

21 MS. DES JARDINS: I apologize.

22 BY MR. VOLKER:

23 Q. Ms. Des Jardins, did you prepare a statement of
24 your qualifications which has been marked as PCFFA
25 Exhibit 75?

1 A. Yes, I did.

2 Q. And does Exhibit 75 accurately summarize your
3 qualifications to provide the testimony that you have
4 offered as Exhibit 81?

5 A. Yes.

6 Q. Would you please summarize your testimony in
7 Exhibit 81, starting with the issues that you addressed
8 and then following with the conclusions you have drawn
9 with regard to those issues?

10 A. Yeah. I wanted to say during the time period
11 of this permit, which could be 50 to 100 years, there
12 are really significant risks to water supply and water
13 quality from sea level rise and shifts in hydrology due
14 to climate change. We could also see shifts in climate
15 like we've seen in historical times and it's in the tree
16 record.

17 For this reason, I think these risks must be
18 adequately assessed. And I have specific
19 recommendations that the Board require that DWR submit
20 model operations using the drier, warmer scenario, which
21 is used for the biological assessment but which has not
22 been provided for this hearing. And also, that they
23 submit results using 18 inches of sea level rise, which
24 is close to the 14.8 inches that the National Oceanic
25 and Atmospheric Association's high sea level rise

1 projections plan could occur in the early long-term.

2 And I also, because of the risk of severe
3 drought, I believe that simply providing long-term
4 averages is not sufficient. And that the Board should
5 require that DWR submit analyses for a repeat of the
6 droughts from 1928 to '34 and 1987 to '92.

7 I will provide -- David Amico, who DWR hired to
8 do tree ring data, said that the two six-year droughts
9 in this century, those two droughts were as severe as
10 anything seen in the -- in the tree ring record. And I
11 believe that we should be prepared for a repeat.

12 So to -- climate change is a fairly complex
13 topic. So I did prepare a Power Point, if we could go
14 to that. It is Exhibit PCFFA 77. And I wanted to say
15 that my analysis -- can we go to page 2, please? This
16 is a quote from the Independent Science Board. I'm not
17 alone in this assessment. The Independent Science Board
18 told DWR in 2014 that the potential effects of climate
19 change and sea level rise are underestimated. And they
20 said, "We believe that it is dangerously unrealistic."
21 And, you know, I think this same criticisms they had
22 about the CEQA document also apply to this hearing.

23 Can we go to the next page, please? So the
24 history of the sea level rise assumption in the
25 WaterFix, we do not know as much as we know in 2007,

1 when this -- first started to analyze this project as we
2 know now. The DWR asked the Independent Science Board
3 what their recommendations were. They said they could
4 use estimates of 1 meter by 2100, but they cautioned
5 that we didn't understand very much about the melting of
6 ice sheets and that that could cause up to 2 meters of
7 sea level rise by 2100.

8 And unfortunately, that is what we've seen is
9 happening. There is satellite data, and I cited a very
10 comprehensive and authoritative analysis. Shows the
11 rate of sea level rise is accelerating just
12 dramatically. And so our estimates of sea level rise
13 have increased greatly.

14 I cite in specific, the National Oceanic and
15 Atmospheric Association-issued guidelines as part of the
16 National Climate Risk Assessment. And their high
17 estimate is 2 meters by 2100. They recommended that
18 that be used for all new infrastructure with a long
19 expected lifetime.

20 And finally, DWR -- this has vanished, but I do
21 reference it in my testimony. DWR produced their own
22 analysis in 2009 where they thought that there would
23 just be 1.8 to 3.1 feet by 2100, and that's just not
24 true anymore. And this was brought to the attention of
25 DWR. And in the BDCP draft EIR, which I quote, they

1 said, "We've already done the analysis." And I don't
2 think that's an appropriate way to look at this. You
3 know, the project was started before we knew enough
4 about climate change. And I think not just for
5 planning, you know, this \$17 billion concrete structure
6 but also for planning processes like this one, sea level
7 rise affects everything.

8 Can we go to the next slide, please? This
9 shows the dramatic loss in sea ice and it's continuing.
10 Let's keep going. I'm going to skip over these graphs.
11 Keep going. Keep going. Keep going. Stop. Go up one.

12 So this is graph of sea level rise in 2035.
13 And I ran it out to 2135 because that's the 100-year
14 lifetime of the project. And we could see almost 12
15 feet of sea level rise at Port Chicago within the
16 lifetime of the project, and they're designing it for 18
17 inches. This is not good engineering.

18 So next slide, please. Next, I wanted to talk
19 about there's issues with their projected changes of
20 runoff. This is very much still an active area of
21 research. And the problem is that also there's a known
22 issue in that the ensemble of global circulation models
23 they used for the WaterFix does well in the eastern
24 North America, Europe and the Mediterranean but it does
25 a poor job in western North America.

1 Next slide, please. Next slide. Next slide.
2 Next slide. Next slide. So this is actually -- there
3 is a global climate model database, which I describe.
4 They used one that's older now. It's called CMIP-3.
5 And this is -- it actually compares the climate model
6 outputs for different things. Western North America is
7 up on the left, and there is a significant variation.
8 You can look and see eastern North America is just to
9 the right of it. It matches fairly well. But I want to
10 go down and let's focus on -- the next slide focuses on
11 the bias in western North America. Go down.

12 So if you look at this, there is -- it is just
13 western North America, the model is just project
14 significantly more rainfall than is -- than is seen. Go
15 down one more. So this is actually another error
16 analysis. This is the whole graph.

17 Let's go down. I want to zoom in on western
18 North America. So where it says WNA, that's western
19 North America. CMIP-3 is on the left. The red X
20 shows -- I would say that is about -- it's at least 30
21 percent more. The 50 percent exceedance is 30 percent
22 more than is actually seen. And the 95 percent
23 exceedance is over -- it looks like at least 60 percent
24 more than is seen. So the models under -- greatly under
25 predict dry conditions in western North America. That's

1 what the 95 percent exceedance there shows. And this is
2 an issue, although the models are bias corrected, the
3 problem is the further a model is from what you are
4 actually modeling, the more you just start modeling the
5 bias correction.

6 So I want to -- let's go down. One more. One
7 more. One more. Keep going. Keep going. Keep going.
8 Keep going. Keep going. Keep going. Keep going.
9 Okay. Go up. There it is. So I'm skipping over a lot
10 of my slides to try to stay within 20 minutes.

11 This shows the change in runoff in the Bay
12 Delta Conservation Plan. And the green line is the
13 central tendency scenario, which is used for this
14 proceeding. The red line is the warm and dry -- drier
15 scenario. And you can see that there's -- under that
16 scenario, which is a drier subset of the climate models
17 which may model our -- our Mediterranean climate better,
18 they show a really significant reduction in runoff, even
19 by early long-term. And this is the risk that we have.
20 And the Fish and Wildlife Service required that the
21 Petitioners produce the output of the drier models for
22 the biological assessment.

23 What I'm recommending is that it also --
24 they've done the modeling. All they need to do is
25 produce it for this thing. In this proceeding, there

1 should be an analysis of exports, deliveries, and flows,
2 and salinity under these drier scenarios. Because we
3 don't know if what we saw in the last few years, if that
4 was a shift in climate. We won't know for a while. But
5 if we see an increased frequency and severity of
6 droughts like that, we -- you know. And there is an
7 increase in the frequency of dry and critically dry
8 years. And I'll just point you to the non-stationary
9 section of my testimony to say there is some modeling
10 that shows we could see an increase in the frequency of
11 dry and critically dry years.

12 If that happens, then there will be the kind of
13 conflicts we saw in the last couple years, we'll
14 continue to see. And this diversion in the north part
15 of the Delta will just make that worse. So that
16 summarizes my testimony.

17 HEARING OFFICER DODUC: I was going to ask if
18 you needed a few more minutes to wrap up.

19 WITNESS DES JARDINS: Actually, I would like,
20 if I could just have just a minute or two more, I just
21 wanted to go to -- it's just a complex subject.

22 So let me go back up -- go back up just a
23 little to -- one more. There we go. Okay. So I just
24 wanted to explain a little more. This is a graph from
25 the BDCP DEIR/DEIS. And all these little dots are

1 climate model projections, and what they've done is
2 plotted. Some of them project no change in
3 precipitation. Some of them project a reduction. Some
4 of them project an increase.

5 HEARING OFFICER DODUC: Hold on. Could we blow
6 this up? It's kind of difficult to see.

7 WITNESS DES JARDINS: I apologize.

8 HEARING OFFICER DODUC: Much better.

9 WITNESS DES JARDINS: So this is just -- this
10 is an important technical detail for you to understand.
11 So the central tendency scenario actually cuts off the
12 driest scenarios and the wettest scenarios. And so all
13 the models project warming. Some of them project less
14 warming. Some of them project more warming. So that is
15 the graph.

16 So the central tendency scenario is just for a
17 subset of the models. The other issue with it is some
18 of the models that they throw out may be the very ones
19 that projected this -- the kind of drought that we just
20 saw, not only in California, but in New Mexico and
21 Texas. So you can see there is these regional -- they
22 have these subsets in the originally proposed uses to
23 look at sort of this uncertainty in climate models, and
24 I think that was an excellent choice.

25 So let's go down a little more to another

1 slide. Keep going. Keep going. Keep going. Okay.
2 Up. Okay. Zoom in on this, please. So this is what
3 their own analysts originally projected -- originally
4 recommended was that for the draft EIR and EIS that they
5 produce outputs for all of these scenarios, the drier
6 scenarios and the wetter scenarios, as well as the
7 central tendency for both 6 inches, 15 centimeters in
8 sea level rise, and 45 centimeters of sea level rise,
9 which is 18 inches. And if they had done that for this
10 proceeding, I would have said that the analysis was
11 sufficient, but they did not.

12 HEARING OFFICER DODUC: Thank you,
13 Ms. Des Jardins. Let me get an estimate of
14 cross-examination. The Department, you had initially, I
15 believe, projected 30 minutes. Is that still the case?

16 MS. ANSLEY: We're about 20 minutes, possibly
17 30.

18 HEARING OFFICER DODUC: All right. Hold on a
19 second. I also have a request from Mr. Williams for
20 Westlands to cross first. Is that a matter of a time
21 restraint, Mr. Williams?

22 MR. WILLIAMS: It no longer is, ma'am, but I'd
23 still like to go first unless the parties object.

24 HEARING OFFICER DODUC: I would prefer we stay
25 in order, if it's no longer a time issue. And how much

1 time do you anticipate needing?

2 MR. WILLIAMS: About 10 minutes, ma'am.

3 HEARING OFFICER DODUC: All right. Anyone
4 else?

5 MR. BRODSKY: Yes. I -- we're not going to
6 have any questions for this panel, but I just wanted to
7 check in on time. North Delta CARES is here.

8 HEARING OFFICER DODUC: That's what I'm trying
9 to do, Mr. Brodsky.

10 MR. BRODSKY: North Delta CARES is here. We
11 are prepared to go ahead today. We have two witnesses,
12 Ms. Daly and Mr. Pruner. Ms. Daly is here standing by
13 in the audience. Mr. Pruner is close by. And I made an
14 estimate and told him to come back at 1:30 p.m., or he
15 can be available to get over here within 20 minutes if I
16 send him a text message. So do you have any guidance on
17 anything on that?

18 HEARING OFFICER DODUC: I'm trying to do that.

19 MR. BRODSKY: Okay. So that's our situation.

20 HEARING OFFICER DODUC: Okay. Mr. Keeling?

21 MR. KEELING: Thank you. I have Ms. Meserve's
22 proxy. She needs about 15 minutes with this witness;
23 and I need about five, depending on the questions asked
24 before I get up.

25 HEARING OFFICER DODUC: All right. Anyone

1 else? Oh, Mr. Jackson?

2 MR. JACKSON: I would like to reserve 15
3 minutes; but since I am behind the rest of these people,
4 it may be shorter than that.

5 HEARING OFFICER DODUC: Right. So we're
6 looking at about an hour of cross-examination for this
7 group. And then we're expecting, I'd say, about maybe
8 half an hour in all for Ms. Des Jardins to present her
9 case-in-chief.

10 Cross-examination for Ms. Des Jardins? This is
11 separate from PCFFA. Come on up and give me a time
12 estimate, please.

13 MS. ANSLEY: No more than 20 minutes, possibly
14 less.

15 HEARING OFFICER DODUC: Anyone else? This is
16 cross-examination of Ms. Des Jardins based on her
17 testimony regarding CalSim.

18 MS. MESERVE: If I had any questions, it would
19 probably be five minutes, but I will reserve. Thank
20 you.

21 HEARING OFFICER DODUC: All right. Anyone
22 else?

23 MR. JACKSON: Between 10 and 15 minutes.

24 HEARING OFFICER DODUC: Okay.

25 MR. JACKSON: Michael Jackson for California

1 Sports and Fish Protection, et al.

2 HEARING OFFICER DODUC: Ms. Suard?

3 MS. SUARD: Nicki Suard, Snug Harbor. 5 to 10
4 minutes specifically on CalSim.

5 HEARING OFFICER DODUC: All right. So I'm
6 guessing here. And again, don't hold me to these
7 guesses. But we're expecting about an hour for
8 cross-examination and then another hour or so for
9 Ms. Des Jardins' case-in-chief and cross-examination.
10 That would take us to about 12:30, which would be about
11 the lunch break. So yes, North Delta CARES, we will not
12 get to you until after our lunch break. All right?

13 MR. BRODSKY: Thank you.

14 HEARING OFFICER DODUC: Let me ask the court
15 reporter, is now a good time for a break or can you wait
16 20 minutes?

17 COURT REPORTER: I can wait.

18 HEARING OFFICER DODUC: All right. The
19 Department will conduct its cross-examination, and then
20 we will take a break.

21 MS. ANSLEY: Good morning. Jolie-Anne Ansley
22 for the Department of Water Resources. Clearly, all my
23 questions are on climate change and pretty much
24 specifically towards her direct testimony. No far
25 afield. Oh, and I believe I have a question for -- or a

1 question or two for Ms. Schifferle really fast. I'm
2 sorry about that.

3 CROSS-EXAMINATION BY MS. ANSLEY:

4 Q. Ms. Schifferle, did I pronounce that correctly?

5 A. Yes.

6 Q. So you have submitted testimony here today that
7 authenticates PCFFA 23 through 61; is that correct?

8 A. Yes. Except for, I believe that items 58 and
9 59 were removed.

10 Q. Yes. Thank you for the correction.

11 Other than authenticating documents, you
12 provide no testimony today explaining the relevance of
13 these documents to the Cal WaterFix program, do you?

14 A. That is for the various public agencies and
15 NGOs to use the documents. They are publicly released.

16 Q. Does -- to your understanding -- and this is my
17 last question -- do any of the witnesses here today for
18 Pacific Coast Federation of Fisherman's Association and
19 Institute for Fisheries Resources cite to any of these
20 exhibits that you authenticate?

21 A. I believe they do.

22 Q. Can you tell me whose testimony cites to these
23 exhibits?

24 A. Well, clearly, Mr. Volker's.

25 Q. Mr. Volker's testimony or Mr. Volker's opening

1 statement?

2 A. You know, you would have to ask him.

3 Q. So you are not aware?

4 A. I -- I have not studied the complete record in
5 all of the hearings that I have come forward here
6 regarding these documents to see which NGOs and which
7 nonprofit or government agencies are citing these
8 documents. Because they are public, I have released
9 them and made them available to them. And so I would
10 need additional time to go back through the record to
11 see which ones have been cited and which ones have not.

12 MS. ANSLEY: Okay. Then moving to
13 Ms. Des Jardins.

14 CROSS-EXAMINATION BY MS. ANSLEY:

15 Q. My first question is: Do you cite to any of
16 the exhibits marked as PCFFA 23 through 61?

17 A. No, I don't. I believe my testimony does cite
18 to some of those documents. And particularly, without
19 looking at the exhibit list, I can't state specifically.
20 But there is a mass loss of the embankment, which is in
21 the Scientific Journal article. There is also a --
22 excuse me. Let me look at this testimony. I cite to
23 documents from the Army Corps of Engineers sea level
24 rise calculator, including both graphs and tables of sea
25 level rise.

1 Q. Pardon me, Ms. Des Jardins. Are you speaking
2 to documents on the exhibit list for PCFFA as a whole,
3 or are you talking about documents attested to by
4 Ms. Schifferle specifically?

5 A. I do not cite to the documents attested to by
6 Ms. Schifferle. But I do know that this is a very
7 complex case and that DWR has introduced a 48,000-page
8 EIR/EIS and a 40,000-page revised draft EIR/EIS. So I
9 don't see what the issue is with introducing those
10 documents.

11 Q. That answered my question. Thank you.

12 Moving to your testimony now on climate change.
13 So it is your testimony here today that -- that it is
14 your opinion that the sea level estimate rise used in
15 the Cal WaterFix modeling no longer reflect -- or you
16 feel that they are underestimated; is that correct?

17 A. I believe that they significantly underestimate
18 the risk from both sea level rise and shifts in
19 hydrology. These are both active areas of research.
20 And sea level rise, in particular, we are seeing a
21 dramatic increase in sea ice loss in the west Antarctic
22 and Greenland. And we are now, you know, changing the
23 models. So yes, I believe that.

24 Q. Okay. And isn't it true that the sea level
25 rise estimates in the recirculated EIR/SDIS are within

1 the 2013 guidelines issued by the Ocean Protection
2 Council, which are based on the 2012 National Research
3 Council Sea Level Report for the West Coast for the 2030
4 early long-term scenario?

5 A. I believe they -- there was a specific
6 discussion in the 2013 draft EIR/EIS, and they cited the
7 National Research Council guidelines. And they said --
8 that was where they said, "We -- we don't -- we know
9 that this shows potentially higher sea level rise, but
10 we don't want to redo it because we've already done the
11 analysis."

12 Q. If you don't mind, I'll ask my question again.
13 I'll rephrase it a different way. Are you familiar with
14 the 2013 guidelines issued by the Ocean Protection
15 Council?

16 A. Yes. And I think they are out of date.

17 Q. And are you -- is it your understanding that
18 those are based on the 2012 National Research Council
19 Sea Level Report for the West Coast?

20 A. I think that you should go directly to the
21 National Research Council Report.

22 Q. So you are aware that the Ocean Protection
23 Council's guidelines are based on the National Research
24 Council's 2012 report. That's simply my question.

25 A. You know, I think that if we are going to look

1 at this in detail, why don't you bring up those
2 recommendations and I will tell you what I think about
3 them. Did you bring them?

4 HEARING OFFICER DODUC: Ms. Des Jardins, please
5 just answer the question asked of you.

6 WITNESS DES JARDINS: So I didn't look
7 specifically at the 2013 Ocean Protection guidelines for
8 this testimony.

9 HEARING OFFICER DODUC: Thank you.

10 BY MS. ANSLEY:

11 Q. Okay.

12 A. And I'm not sure the draft EIR/EIS cites that
13 actually. They just cited the National Research Council
14 that I saw.

15 Q. Now, on page 5 of your testimony -- and I
16 apologize. I try to get the page numbers to her
17 testimony correct, but there was a recently submitted
18 redline version. I believe I am citing page numbers
19 from the non-redlined PCFFA 81 Errata version.

20 A. Yes.

21 Q. So you cite to a 2007 letter from the Cal Fed
22 ISB to the lead scientist for the Cal Fed Bay Delta
23 program. Do you recall that?

24 A. Yes.

25 Q. And you state that this letter cautioned that

1 ice sheet melting could result in as much as 2 meters of
2 sea level rise by 2100, correct?

3 A. Yes.

4 Q. That would be at -- and I believe this is the
5 testimony you might have corrected. This would be at
6 lines 20 through 22, is that correct, on page 5?

7 A. Yes.

8 Q. And to be clear, the letter you are citing
9 stated that, "Under usual emission scenarios, dynamical
10 instability of the ice sheets may add as much as 1 meter
11 to the then-estimated sea level rise by 2100," correct?

12 A. Yes, it does. And our knowledge of that has
13 changed. It may add -- you know. But the issue is that
14 we are now seeing that the higher sensitivity warming
15 scenarios that show more warming for a given amount of
16 CO2 are correct. In fact, the lower sensitivity climate
17 models are just now seen as -- as not realistic. And
18 that's -- I actually cite that as well. And that is one
19 of the things that is driving the kind of mass loss we
20 are seeing. There is a very significant anomaly in the
21 temperatures in the Arctic right now. And sea level --
22 sea level ice just isn't recovering this year.

23 Q. Ms. Des Jardins, I believe you answered my
24 question.

25 MS. ANSLEY: May I move to strike the remaining

1 answer after that point?

2 HEARING OFFICER DODUC: Let's just leave it and
3 move on please.

4 BY MS. ANSLEY:

5 Q. Okay. Didn't the same letter also mention that
6 though this suggestion existed, that they note, "There
7 was also a poor understanding of and current inability
8 to model the response of the Greenland and Antarctic ice
9 sheets to atmospheric and oceanic warming"?

10 A. As of 2007 that was true. There is continuing
11 advances in climate change science.

12 Q. So on page 6 of your testimony, you criticized
13 the BDCP's WaterFix estimates for sea level rise based
14 on the 12 global climate models selected which produced
15 a range of sea level rise estimates lower than the
16 values that you attribute to the ISB 2007 letter; is
17 that correct, in your testimony?

18 A. Yes.

19 Q. Okay. Isn't it true, as you note in your
20 testimony, that the DWR's analysis based on those 12
21 global climate projections were based on guidance from
22 the State's Climate Action Team?

23 A. That's not what the Climate Action Team is
24 saying now.

25 Q. Okay. But in your testimony, you note that

1 those choice of 12 global climate change projections
2 were based on guidance from the State's Climate Action
3 Team; is that correct?

4 A. The climate action -- I'm not sure I agree with
5 the premise of this question. The Climate Action Team
6 used the method of Ramsdorf in their own document. And
7 the method of Ramsdorf -- it's on slide -- projected 55
8 inches by 2100 as the high sea level rise scenario.
9 That was much higher than -- than 3.1 feet.

10 So I -- that was -- that's in -- the State
11 Climate Action Team, that was what they used for the
12 State Climate Risk Assessment. It's my understanding
13 that DWR did their own analysis. And to the extent that
14 they said the highest temperature changes are -- we
15 think are unlikely, that's not what the science is
16 showing. The science is showing those are now the most
17 likely.

18 Q. All right. Let's move on. So on page 3 of
19 your testimony, you, again, quote and cite the
20 Independent Science Board. Here, the 2014 review of the
21 BDCP EIR/EIS, correct?

22 A. Yes.

23 Q. And I believe you showed a slide of a bullet
24 point from their summary, showing that they had a
25 conclusion that the potential effects of climate change

1 and sea level rise are underestimated, correct?

2 A. Yes.

3 Q. And you have submitted that ISB review as
4 PCFFA 9; is that correct?

5 A. Yes.

6 Q. So in that review, is it your understanding
7 that the ISB provides its conclusions and concerns
8 regarding climate change modeling for the BDCP in
9 Appendix B, Chapter 29?

10 A. I believe -- I believe that it was a review of
11 the entire EIR/EIS. And I would have to look at the
12 letter to see what specific parts of the EIR/EIS they
13 were citing. But I believe that was a concern about the
14 entire draft EIR/EIS, and these were provided as
15 comments about the entire draft EIR/EIS.

16 Q. Did you review the entire document?

17 A. The entire letter, yes, I did. But I no longer
18 have the eidetic memory that I had in my 20s, so I would
19 have to have my memory refreshed.

20 Q. And do you recall there was a chapter on
21 climate change?

22 A. There was a chapter on climate change in which
23 document? In the Independent Science Board comments?

24 Q. Yes, in ISB. And which you submit as PCFFA
25 Exhibit 9.

1 A. Yes. There was a section on climate change. I
2 wouldn't call it a chapter.

3 Q. And that's the document that you're citing for
4 their summary conclusion about underestimates; is that
5 correct?

6 A. Yes.

7 Q. Okay. Didn't the ISB state in Chapter 29 that
8 the climate modeling approach taken by the BDCP for the
9 DEIR/EIS was robust and appropriate and that the
10 criteria used to select the climate change scenario for
11 analysis seemed sensible?

12 A. They -- they may have said that. As I said, I
13 think the original choice to use Q1 through Q4 as well
14 as Q5 was robust. I think present -- using only the
15 central tendency scenario, given the uncertainties, is
16 not robust.

17 Q. I'm asking you now about your use of their
18 conclusion that the sea level or that the climate change
19 modeling was underestimated. Do you recall that
20 statement by the ISB that their conclusion was that this
21 modeling was robust and sensible?

22 A. I think that may be --

23 Q. I'm happy to call it up if you like.

24 HEARING OFFICER DODUC: One at a time, please.

25 WITNESS DES JARDINS: I think -- if you'd like

1 to call it up, I think a concern is that if you take
2 statements -- cherry pick statements in a document that
3 you don't reach -- these were the -- in the summary
4 conclusions. And the summary conclusions were that the
5 potential effects of climate change and sea level rise
6 are underestimated.

7 I do think that the general approach of using
8 the ensemble of models is correct, of using the kind of
9 down-scaling. But you really have to take into account
10 the fact that the model -- the ensemble of models
11 doesn't accurately represent our western climate. And
12 that's --

13 BY MS. ANSLEY:

14 Q. I'd like to focus right now on the ISB report
15 first before we get to that.

16 A. Why don't we go to that. Yeah.

17 Q. So this is the 2014 document that you submitted
18 that you reference one of their summary bullet points.
19 And I'm talking about Chapter 29. And for the record, I
20 will state that the information that I just cited, the
21 conclusion is on page B-85 of Appendix B.

22 Wasn't it also the ISB's overall assessment of
23 the climate change analysis that the potential effects
24 of climate change and sea level rise were treated
25 comprehensively and in considerable detail and that the

1 models were carefully reasoned and used effectively to
2 explore both the consequences of climate change, as well
3 as important areas of uncertainty. Isn't that true as
4 well?

5 A. How about if I go review the document for a
6 minute? Because I'm not -- I'm not sure if that's --
7 that's there. I don't have a perfect recollection. If
8 you'd like to bring this up, we can look at it.

9 Q. Sure.

10 HEARING OFFICER DODUC: Hold on. Do you have
11 further questions on this particular document?

12 MS. ANSLEY: I have two more questions on this
13 document, and I'm happy to give page numbers for the
14 record and move on.

15 HEARING OFFICER DODUC: Okay. Ms. Des Jardins
16 has requested time to read the document. I'm going to
17 allow her that time while we take a break because this
18 is --

19 MS. ANSLEY: Sure. And I'm happy to give the
20 page reference for that chapter.

21 HEARING OFFICER DODUC: All right.

22 MS. ANSLEY: Okay. So that chapter is in her
23 document, PCFFA 9. It begins at B-82 in Appendix B.
24 And it runs through -- it runs through -- hold on.
25 There is more than one document that was attached. It

1 runs through B-88. The things that I am citing are
2 primarily on -- the overall assessment is listed on B-85
3 and 86. So it's not a very long chapter.

4 HEARING OFFICER DODUC: All right.

5 Ms. Meserve?

6 MS. MESERVE: Yes. Just to -- I believe that
7 when this kind of cross-exam should -- she should be
8 putting up the documents for the witness. Otherwise, it
9 makes it very difficult for the witness.

10 HEARING OFFICER DODUC: I believe it is the
11 witness' own document. But let's go ahead and take our
12 break so that Ms. Des Jardins may read the document so
13 that Mr. Baker can find the document and we will resume
14 at 11:05.

15 (Off the record.)

16 HEARING OFFICER DODUC: It is 11:05. We are
17 back in session. Mr. Volker is on his way.

18 Ms. Des Jardins, have you had a chance to
19 review the document?

20 MS. DES JARDINS: Yes. And --

21 HEARING OFFICER DODUC: Let's go ahead -- I'm
22 sorry. Let's go ahead and put it up on the screen and
23 let Ms. Ansley repeat her question.

24 MS. ANSLEY: Great.

25 BY MS. ANSLEY:

1 Q. So my --

2 HEARING OFFICER DODUC: I'm sorry. What
3 specifically are we looking at on this page?

4 MS. ANSLEY: So if you could go to the top half
5 of the page, please? This is PDF page 128 in PCFFA
6 Exhibit 9. And the carried-over paragraph from the
7 previous page is explaining the modeling approach taken.
8 And if you look at the sentence about halfway down the
9 first paragraph there, it says, "This is a robust and
10 appropriate approach. The criteria used to select the
11 set of climate change scenarios for the analysis seems
12 sensible and the analysis approach used to define the
13 boundaries for ensemble predictions" -- and then there's
14 a cite. "It's canonical, especially in incorporating
15 the effects of different starting points for the
16 simulations." And that was the first quote that I was
17 referring to in terms of their assessment of the BDCP
18 modeling.

19 HEARING OFFICER DODUC: And your question?

20 MS. ANSLEY: My question was: Didn't the ISB
21 state that the climate modeling approach taken by the
22 BDCP was robust and appropriate and that the criteria
23 used to select the climate change scenarios for analysis
24 was sensible?

25 HEARING OFFICER DODUC: And Ms. Des Jardins'

1 response, as I recall it, was one sentence picked out of
2 context may not adequately reflect the entire analysis
3 and her concern regarding its adequacy.

4 MS. ANSLEY: Sure.

5 WITNESS DES JARDINS: I'm not entirely sure.
6 I'm actually trying to pull up the -- that page 5A-A64
7 and see if they're not actually referring to the Q1
8 through Q4 scenarios. Because the boundaries of the
9 ensemble predictions is exactly that graph that I had up
10 in my presentation, but I do not remember the exact
11 page.

12 HEARING OFFICER DODUC: So hold on. Hold on,
13 Ms. Des Jardins. So you see the statement to which
14 Ms. Ansley is referring and you disagree with that
15 statement?

16 WITNESS DES JARDINS: I think that it may be
17 referring to the -- the analyses that bound the ensemble
18 predictions is exactly the warmer, drier -- drier, more
19 warming, drier, less warming, wetter analysis.

20 BY MS. ANSLEY:

21 Q. Can I follow up? Is it your understanding that
22 this chapter is not reviewing the climate assessment
23 done for the BDCP?

24 A. I believe it is. But I think they -- just a
25 minute. I think they may be referring to exactly the

1 same analysis I was discussing. I believe that the --
2 some ensembles do a good job of bounding it. But they
3 need to be used more. They are discussed some in -- I
4 believe in Appendix 5A.

5 MS. ANSLEY: Madam Chair, this can be done on
6 redirect or rebuttal. I just simply was trying to point
7 out their assessment of the analysis. I have pointed to
8 the page number where I think this is, and I'm happy to
9 let the record stand and move on.

10 HEARING OFFICER DODUC: All right. Let's move
11 on.

12 BY MS. ANSLEY:

13 Q. The next page -- turning to the next page.
14 This would have been my second question. This is a
15 section overall titled, "Assessment Effects." And I was
16 quoting -- and my second question was: Wasn't it the
17 ISB's overall assessment that the potential effects of
18 climate change and sea level rise were treated
19 comprehensively and in considerable detail and that the
20 models were carefully reasoned and used effectively to
21 explore both the consequences of climate change, as well
22 as important areas of uncertainty? And you can see here
23 on this page, I get that from the concluding paragraph
24 at the top that says, "Overall." And I'm just pointing
25 that out. And so is it your understanding that this is

1 not the overall assessment of the ISB?

2 A. I'm looking at that paragraph. And it says at
3 the end, "That said, however, there are several areas in
4 which the presentation and analyses could be improved."

5 Q. Sure. But you see the statement I'm
6 referencing? Yes? And then I'm happy to talk about
7 concerns. Is that a "yes"?

8 HEARING OFFICER DODUC: Yes, she sees that
9 statement. And you see the statement that she's
10 referring.

11 MS. ANSLEY: Right.

12 HEARING OFFICER DODUC: Let's move on.

13 BY MS. ANSLEY:

14 Q. Isn't it true -- and this is my final two
15 questions regarding this chapter. Isn't it true that
16 the concerns expressed by the ISB in this Chapter 29 did
17 not involve an underestimate of sea level rise? The
18 concerns stated in this chapter?

19 A. I do not agree with that. In fact, if you look
20 at -- at the first paragraph in Chapter 29, it says,
21 "Despite these efforts, climate change and sea level
22 rise" -- it's page B-82 -- "and their associated
23 uncertainties will remain. The likelihood and magnitude
24 of these uncertainties are not clearly stated or
25 addressed." And I agree with that, and I agree with the

1 ISB's statement in the beginning.

2 There are parts of this analysis that are
3 robust. But as I have said, I think using the central
4 tendency scenario using 18 inches and 6 inches
5 exclusively is -- is not a good idea. Chapter -- the
6 appendix 5A of the draft EIR/EIS lays out more --

7 MS. ANSLEY: Madam Chair, this is not an answer
8 to my question.

9 WITNESS DES JARDINS: -- and I think this is --

10 HEARING OFFICER DODUC: Enough. Enough.
11 Enough. Ms. Ansley, your 20 minutes has run out.

12 MS. ANSLEY: I'm sorry. Yes.

13 HEARING OFFICER DODUC: How much additional
14 questions do you anticipate for Ms. Des Jardins?

15 MS. ANSLEY: 5 to 10.

16 HEARING OFFICER DODUC: All right. Let's go
17 ahead and give you those 10 minutes. Ms. Des Jardins, I
18 would ask you to answer directly Ms. Ansley's question
19 and reserve any explanation for Mr. Volker on his
20 redirect.

21 MS. DES JARDINS: Thank you.

22 BY MS. ANSLEY:

23 Q. So to close this out, in the areas of concern
24 listed here, is it your understanding that the ISB did
25 not point to underestimated sea level rise as one of

1 their areas of concern in Chapter 29?

2 A. No, it's not my understanding.

3 Q. Okay. On page 10 of your testimony, you
4 mention that the CMIP-3 database shows a bias for wet
5 conditions in western North America; is that correct?

6 A. Yes.

7 Q. And I believe you actually showed a slide and
8 testified more to it today; is that correct?

9 A. Yes.

10 Q. But it is your understanding that the
11 Petitioners' analysis did use bias-corrected, down-scale
12 data; is that correct?

13 A. Yes.

14 Q. Is it your understanding that bias correcting
15 the data is an accepted standard of practice among
16 climatologists or climate scientists?

17 A. Yes.

18 Q. I'm asking for your understanding.

19 A. Yes. But they do that with some conditions,
20 which I explained in my testimony.

21 Q. On page 12 then, you refer to a study by Null
22 and Viers stating that their study shows the difference
23 between the Climate Action Team's subset of six global
24 climate models in the entire CMIP-3 ensemble; is that
25 correct?

1 A. Yes.

2 Q. Does their study make an expressed comparison,
3 or was that a comparison that you drew from the results
4 of their study?

5 A. I -- I chose that as an illustration of how the
6 subset of models that was chosen by Daniel Cayan and the
7 Climate Action Team for -- for this -- for the climate
8 scenario models and how that differed from the
9 projections of the entire ensemble. They didn't do it
10 expressly themselves. I just compared it.

11 Q. Okay. And you also stated that the Null -- as
12 part of support for your use of the culled models
13 without bias correction, I believe you cited that they
14 employed direct use of the model outputs without bias
15 correction; is that correct?

16 A. Yeah. And they did ANOVA and t-tests to show
17 this. They ran it. You can run the models unforced and
18 that projects -- you get a set of climate projections.
19 And they did that. Did ANOVA and t-tests and found it
20 was not statistically different. So yes, they did. And
21 yes, it was a valid way to do --

22 Q. I think my question was whether that you stated
23 they did not use bias corrections.

24 A. Yeah.

25 Q. Isn't it true that on page 5 of that study,

1 they stated that the data used was down-scaled using
2 bias correction and spatial down-scaling?

3 A. Let's see. Let me go look.

4 Q. That was my last question. So we will close on
5 that.

6 A. Let's see. Yeah. Maybe -- what they didn't do
7 was map on to the historic record.

8 MS. ANSLEY: I have no further questions for
9 Ms. Des Jardins. Thank you very much.

10 HEARING OFFICER DODUC: Thank you, Ms. Ansley.
11 Mr. Williams?

12 Mr. Williams had requested 10 minutes.

13 MR. WILLIAMS: Good morning, Madam Chair. My
14 name is Phillip Williams for Westlands Water District.
15 Ms. Schifferle, Ms. Des Jardins, good morning. I am
16 just going to ask you a few questions. Madam Chair, my
17 questions will mostly revolve around understanding the
18 extent or existence of an injury to a legal user of
19 water as presented by PCFFA.

20 HEARING OFFICER DODUC: Okay.

21 CROSS EXAMINATION BY MR. WILLIAMS:

22 MR. WILLIAMS: Ms. Schifferle and
23 Ms. Des Jardins -- I'm sorry. Des Jardins?

24 WITNESS DES JARDINS: Des Jardins. It's
25 French.

1 MR. WILLIAMS: Yes, ma'am. Thank you. My
2 questions will be directed generally at both of you. If
3 you don't know the answer, then please feel free to say,
4 "I don't know."

5 I understand that the Pacific Coast Federation
6 of Fisherman's Association is a federation of
7 subordinate associations; is that correct,
8 Ms. Des Jardins?

9 MR. VOLKER: Objection. This is not within the
10 scope of the witness' direct testimony.

11 HEARING OFFICER DODUC: Cross-examination may
12 go outside the scope, but Ms. Des Jardins and
13 Ms. Schifferle may answer that they do not know.

14 WITNESS DES JARDINS: I have collaborated with
15 PCFFA for a number of years. And I -- I don't know
16 exactly how they are structured. I know that they
17 represent salmon fishermen on the West Coast.

18 MR. WILLIAMS: Okay. But you do not know,
19 ma'am, whether or not -- whether PCFFA is a
20 conglomeration of subordinate agencies or associations.
21 You don't know that?

22 MS. DES JARDINS: That's not a question that I
23 ever asked CEQA (sic) or Tim Sloan, no.

24 MR. WILLIAMS: Ms. Schifferle, would you know,
25 ma'am?

1 WITNESS SCHIFFERLE: Yes, I believe that's
2 correct.

3 MR. WILLIAMS: I'm sorry. It's correct that
4 they are -- that you would understand that they're a
5 conglomeration of subordinate associations.

6 WITNESS SCHIFFERLE: I wouldn't use the term
7 "subordinate." But they are a group of associations and
8 fishermen individuals, as well as -- as they include
9 individuals as well as groups.

10 MR. WILLIAMS: Ma'am, Ms. Schifferle, this may
11 be more properly directed to you. Do you understand if
12 any of those associations or individuals or groups hold
13 a license to divert water?

14 WITNESS SCHIFFERLE: I believe you would have
15 to ask them that question.

16 MR. WILLIAMS: But you do not know, ma'am?

17 WITNESS SCHIFFERLE: No. I don't know that
18 specifically.

19 MR. WILLIAMS: Do you know whether any of these
20 associations have a patent to land that is adjacent to
21 the Sacramento River or the San Joaquin River?

22 WITNESS SCHIFFERLE: I do not know the answer
23 to that question either.

24 MR. WILLIAMS: Have any of these associations
25 or members or groups, to your knowledge, put any of

1 those waters to beneficial use?

2 MR. VOLKER: Objection. Calls for a legal
3 conclusion.

4 HEARING OFFICER DODUC: And she may answer she
5 does not know.

6 WITNESS SCHIFFERLE: I do not know the answer
7 to that question.

8 MR. WILLIAMS: That's the extent of my
9 questions. Thank you, ma'am. Thank you, ladies.

10 HEARING OFFICER DODUC: Thank you,
11 Mr. Williams. Mr. Meserve, do you prefer that
12 Mr. Keeling precede you? All right. You did a very
13 good job last time because your cross-examination was
14 excellent. So let's see if we can repeat that
15 experience.

16 Mr. Keeling has requested five minutes to pave
17 the way for Ms. Meserve's excellent cross-examination.

18 MR. KEELING: You are very perceptive. I have
19 only one question with possible follow-up for
20 Ms. Des Jardins. Tom Keeling on behalf of the county --
21 San Joaquin County Protestants.

22 CROSS-EXAMINATION BY MR. KEELING:

23 Q. Ms. Des Jardins, do you recall earlier when you
24 were being cross-examined, you were asked about the 2013
25 Ocean Protection Guidelines. Do you recall that

1 testimony?

2 A. Yes, I do.

3 Q. And correct me if I misunderstood. I believe
4 you testified you did not rely on the text about which
5 you were being asked; is that correct?

6 A. I didn't rely on that. And I wasn't sure that
7 it was even in the BDCP draft EIR/EIS. The section I
8 reviewed just referred to the National Research Council
9 Guidelines.

10 HEARING OFFICER DODUC: Ms. Des Jardins, please
11 pull the microphone closer.

12 WITNESS DES JARDINS: Apologies.

13 BY MR. KEELING:

14 Q. But as I recall, you were familiar with the
15 document?

16 A. I am familiar. I am --

17 HEARING OFFICER DODUC: Closer,
18 Ms. Des Jardins.

19 MR. KEELING: Turn that on.

20 WITNESS DES JARDINS: Oh, that's the problem.

21 I do not -- I have read the document. I don't
22 recall it. I didn't review it for this proceeding or
23 use it in my testimony.

24 BY MR. KEELING:

25 Q. I was wondering were there any particular

1 reasons you had as to why you did not use that document?

2 A. Well, my memory of the Ocean Protection Council
3 Guidelines was -- looking at them -- was that in light
4 of recent research that they needed to be updated and to
5 use the more recent empirical estimates of sea level
6 rise.

7 Q. I know you don't have it in front of you. Do
8 you recall any of the inadequacies of the document that
9 led you to the conclusion that they needed to be
10 updated?

11 A. It's just that -- so the old IPCC guidelines --
12 IPCC analysis didn't have this information that -- we
13 didn't know about this kind of non-linear disintegration
14 of the ice sheets. That's something that is developing.
15 It's something that wasn't in the older models. In the
16 IPCC some scientists fought harder for it to be included
17 in the older IPCC things. It is -- if you look at the
18 more current IPCC guidance that's coming out, it's just
19 generally that's behind the research.

20 So my understanding is that 2013 Ocean
21 Protection Council Guidelines were based on IPCC. The
22 empirical method of Ramsdorf, which is what the
23 California Climate Action Team used, was 55 inches by
24 2100. That was an empirical method. That was pretty
25 reasonable for that time. Like I said, the higher

1 estimate has increased to 2 meters. And, in fact, NOAA
2 is now saying that we could see 2 meters by mid-century.
3 It is that dramatic. And that hasn't been published.
4 It hasn't come out.

5 But that's a big reason why I'm advocating for
6 it to be used in this proceeding, is the -- the rate of
7 acceleration has tripled in the west Antarctic. And
8 it's just everything we're seeing is indicating some
9 kind of non-linear acceleration. And it is right out of
10 my Ph.D. research on tipping points and basis of
11 attraction. We could be seeing a shift in climate right
12 now. If you look at the way sea level ice isn't
13 recovering right now, this year, and in the way the
14 Arctic is, you know, 30 degrees warmer than average, it
15 is just staggering.

16 Q. Ms. Des Jardins, the next question is a little
17 bit broader and not technical. If you are not
18 comfortable answering it, that's fine. But do I
19 understand you correctly, first, to believe that it is
20 important that the Petitioners use the best available
21 and most current science regarding climate change.

22 A. Not only do I -- I think that is absolutely
23 essential if you're designing a project with this kind
24 of lifetime. And I do not understand why they're
25 considering to use 18 inches. I --

1 HEARING OFFICER DODUC: Thank you. Your answer
2 is yes.

3 MS. DES JARDINS: Yes. All right. Apologies.

4 BY MR. KEELING:

5 Q. Thank you. Given that your answer is yes, in
6 your view, what are the consequences of the Petitioners
7 getting it wrong with respect to climate change?

8 A. You could see much greater -- with greater sea
9 level rise in early long-term you could see much greater
10 salinity intrusion that's projected. You could see --
11 that would require increased outflow to repel it. It
12 would see much greater conflict with uses in the Delta.
13 You could see -- over the long-term, you could see the
14 diversions themselves -- if you're taking flows that
15 large on the Sacramento River -- Army Corps of Engineers
16 has a projection that salinity can intrude as far as Rio
17 Vista. And I don't know if you're taking a lot of flows
18 from the Sacramento River that it's not going to start
19 to intrude further. And eventually, you'll only be able
20 to pump, even at Hood, on -- on the right tidal cycle.
21 And then it will get saline there as well.

22 So I think just even looking at is this far
23 enough north, you know, to withstand it? What kind of
24 impacts does it have? What kind of impacts does it have
25 on the infrastructure. Clifton Court Forebay isn't

1 designed and the existing pumping facilities aren't
2 designed to withstand sea level rise. So yeah, it's --
3 it affects everything.

4 MR. KEELING: Thank you very much,
5 Ms. Des Jardins. And that concludes my cross.

6 HEARING OFFICER DODUC: Thank you, Mr. Keeling.
7 Ms. Meserve?

8 MS. MESERVE: Good morning. Osha Meserve for
9 Local Agencies of the North Delta. I have a couple of
10 questions for Ms. Des Jardins on the -- following up on
11 sea level rise assumptions in the documents and the
12 implications for this proceeding. And then I had a
13 couple of questions for Ms. Schifferle regarding the
14 PCFFA 57 letter from the legislature and follow-up from
15 that. So I think 15 minutes should suffice I think
16 that's what I said before.

17 CROSS-EXAMINATION BY MS. MESERVE:

18 Q. First, Ms. Des Jardins, just to continue with
19 you. Now, is it your testimony that sea level rise may
20 be much greater than was assumed in the Petitioners'
21 documents that are submitted with their case-in-chief?

22 A. Yes.

23 Q. And would this be -- have you heard the
24 explanation by Petitioners here or elsewhere that sea
25 level rise and climate change is a reason that the

1 project should be constructed that's being discussed in
2 this proceeding?

3 A. Yes, I have. And the sea level -- they have
4 mentioned not just sea level rise but seismic risk. And
5 you -- the -- they have not submitted for this
6 proceeding any kind of simulation of the project
7 operations under -- under those kind of scenarios. And
8 it should be -- it should be submitted and it should be
9 considered.

10 Q. So in your opinion, based on your review of the
11 project documents, do you think that sea level rise or
12 climate change is a reason that this project should be
13 constructed?

14 A. I actually was at a meeting with them and I --
15 about this. And I was working with Friends of the
16 River. And I went in and I brought these concerns to
17 their attention in 2013. And I was told that it is just
18 a way to deal with the Endangered Species Act, and I
19 was -- I was stunned.

20 I mean, with the Endangered Species Act
21 restrictions, this is not -- to the extent -- it is not
22 just whether it is going to deal with sea level rise or
23 not. It is that for a 50 to 100-year lifetime project,
24 you have to look at this. And you have to get it right,
25 you know. And it needs to be at least a 95 percent

1 exceedance scenario, I believe.

2 Q. Now, would the usefulness of the analysis --
3 I'm sorry. Strike that.

4 Would the -- would the approach to sea level
5 rise used in the documents you reviewed, does that
6 relate to the outcomes of water quality modeling for
7 salinity in your experience?

8 A. It -- it would absolutely affect salinity and
9 both salinity intrusion and the conflicts with needing
10 more outflow. There was -- there -- estimated that you
11 needed another 475,000 acre feet a year without -- or
12 just at 1 foot of sea level rise. And I believe there
13 is about 483,000 acre feet of increased demand in the
14 areas of origin and future. And that's almost a million
15 acre feet of extra demand and increased outflow. It's
16 got to come from somewhere. And to the extent the early
17 BDCP operations showed it just draining the reservoirs
18 to debt storage, I have huge concerns that this is not
19 being looked at and they are just looking at the
20 near-term scenarios.

21 Q. In your testimony, you talked about the use of
22 the 18 inches and your disagreement with that. In your
23 experience, is the sea level rise the same at the
24 current pumps in the South Delta -- would it be the same
25 as the sea level rise predicted out at the Golden Gate?

1 A. So the -- what I was able to assess was sea
2 level rise at Port Chicago, which is a bit west of the
3 pumps. But that's the closest gauge that's available on
4 the Army Corps of Engineers calculator. And I did
5 provide those graphs and a table of sea level rise.

6 The Army Corps of Engineers calculators shows
7 14.8 inches by -- I believe it's by 2035, which is when
8 they are now forecasting the project could start
9 operating. That's almost 18 inches. So that's why I
10 know they have the ability to model 18 inches of sea
11 level rise. They have got those components. And that's
12 why I recommended just using that. I think it will
13 show -- at least that was originally proposed for the
14 long-term. But given that, you know, what we're seeing
15 with the science, I think it is something to look at
16 because we may see it much sooner.

17 Q. I am not sure -- just to maybe ask the question
18 more clearly. Is the sea level -- would the sea level
19 rise be less at the -- at the South Delta pumps than it
20 would be at the Golden Gate in future years?

21 A. I haven't done the analysis for that far into
22 the Delta. There is an equation for rivers which DWR
23 used, but that would require further -- further
24 analysis. I have just done it as far as Port Chicago.

25 Q. And based on what you've reviewed for this

1 process, do you think that sea level rise would be as
2 high at the new North Delta diversions as it would be at
3 the Golden Gate in future years?

4 A. It has less effect the further you go up the
5 river, and there is an equation for that that they used.
6 But you have to plug in the right sea level rise values.
7 And I think as far -- as far upriver as Hood, salinity
8 intrusion is more an issue than sea level rise. But I
9 think as far as the western and central Delta, I think
10 it is going to be a huge issue and -- yeah.

11 Q. In your --

12 A. And that's part of the documents I've reviewed.

13 Q. Now, would a more scientifically robust sea
14 level rise analysis, in your opinion, lead to the
15 development of different mitigation measures and
16 conditions than -- than if the analysis here was used?

17 A. Yes. I think it absolutely would affect those.
18 I think it would show that there were serious tradeoffs
19 between exports of the North Delta pumps and water
20 quality in the Delta, as well as issues of water levels.
21 And the testimony of the South Delta Water Agency showed
22 that there could be significant reductions in river
23 stage below the North Delta diversions. Again, if you
24 have that kind of sea level rise, it's really going
25 to -- it's really going to affect the -- the salinity

1 intrusion.

2 MS. MESERVE: Thank you. And just a couple of
3 questions for Ms. Schifferle. And I will note for the
4 record that I did have a discussion with Ms. Schifferle
5 over the course of the break, but it wasn't about these
6 questions, just for clarity. I'd like to pull up, if
7 you would, please, PCFFA 57. And this is the letter
8 from the Legislature to DWR and the Bureau. This was
9 one of the documents you had submitted.

10 CROSS-EXAMINATION BY MS. MESERVE:

11 Q. I wonder if -- Ms. Schifferle, if you could
12 explain the significance of this letter briefly.

13 A. Well, I believe the letter speaks for itself --

14 HEARING OFFICER DODUC: Hold on one second.

15 Mr. Mizell, did you -- you were just getting ready. All
16 right. Please continue.

17 WITNESS SCHIFFERLE: I believe the letter
18 speaks for itself. It discusses the Legislature's
19 opinion that that there is -- that DWR was proceeding
20 with a land acquisition plan that was, in their opinion,
21 to be pre-positional.

22 BY MS. MESERVE:

23 Q. And if we could go to page 2 of the letter just
24 for my next question. But following up first, are you
25 aware of whether there ever was a response from DWR

1 and/or the Bureau to this letter?

2 A. In all the documents that I requested that
3 would have covered a response, I saw no response.

4 Q. And when you say it was "pre-positional," can
5 you explain a little bit more what you mean by that?

6 A. The letter itself --

7 HEARING OFFICER DODUC: Hold on, please.

8 Mr. Mizell?

9 MR. MIZELL: I'm going to object to this
10 witness describing or explaining. The letter itself was
11 offered. This witness is to authenticate how these
12 documents came into their possession and to submit them
13 into evidence or put them on their exhibit list, anyhow.
14 She hasn't provided any testimony as to analysis or
15 observations about these letters. So at this point,
16 this would all constitute surprise opinion on the part
17 of this witness.

18 HEARING OFFICER DODUC: Thank you, Mr. Mizell.
19 We will consider your objection in weighing the
20 evidence, but I am interested in Ms. Schifferle's
21 background and her understanding of this letter. Please
22 proceed.

23 WITNESS SCHIFFERLE: I believe that the letter,
24 again, speaks for itself. It is an opinion by these
25 legislators that proceeding with an acquisition program

1 for -- for this project would -- they're raising
2 questions as to whether it would constitute a decision
3 prior to -- to final CEQA and NEQA and NEEPA analysis on
4 this project. And they ask the Department and also USBR
5 to -- to respond to their questions as to whether or not
6 this is pre-positional and whether or not proceeding
7 with an acquisition plan would lend it to the fact that
8 they've already selected an alternative.

9 BY MS. MESERVE:

10 Q. So in your opinion, would the pre-positional
11 problem be that alternatives and mitigation measures
12 weren't being fully considered?

13 A. I think the letter addresses that. Basically,
14 what happens is that when you decide to only look at an
15 acquisition plan, land acquisition plan, for one
16 alternative, without looking at the acquisition plan for
17 all the alternatives that that is prejudicial.

18 HEARING OFFICER DODUC: Thank you. Mr. Mizell?

19 MR. MIZELL: I'd also like to lodge an
20 objection for the record that Ms. Schifferle was not
21 presented as an expert witness. So at this point,
22 providing her expert opinion apparently on the
23 interpretation of this letter and what it -- what it
24 purports to do is not within what she was listed on her
25 NOI to provide at this hearing.

1 HEARING OFFICER DODUC: So noted. And will go
2 to weight of evidence. Please continue, Ms. Meserve.

3 MS. MESERVE: Yes. I would just note also that
4 if I was to bring a copy of this letter on
5 cross-examination, I would be free to ask Ms. Schifferle
6 whatever I wanted to about the letter, I believe.

7 HEARING OFFICER DODUC: I am allowing you to
8 ask your question, Ms. Meserve.

9 MS. MESERVE: Just for clarification. Thank
10 you. I won't have much more here. I wonder if we
11 could, please, show Land 69, please. And just for the
12 witness, Land 69 is a copy of, I believe, the property
13 acquisition plan that is referenced in the Legislature's
14 September 10th, 2015, letter.

15 BY MS. MESERVE:

16 Q. Ms. Schifferle, does this document look
17 familiar to you?

18 A. Yes. It's a document that was provided under a
19 Public Records Request.

20 Q. And who is that Public Records Act Request to?

21 A. Department of Water Resources. And I believe
22 it also -- would you scroll down, please? Also, you can
23 see the reference there, MWD. It was provided to me
24 through Metropolitan Water District. And those
25 references on the bottom are an indication of the code

1 and number of the document.

2 Q. And as you said, you recall this document
3 because you were able to obtain it. Does this
4 acquisition plan just talk about one route or one
5 alternative?

6 A. Yes, it does.

7 Q. And is there anything else notable that you can
8 recall about this document in terms of what is contained
9 within it? Maybe I could go ahead.

10 A. You know, it has been a while since I reviewed
11 this document. And if -- I think that -- I think what I
12 have stated for the record is -- where I would leave it
13 is that it selected -- it looked at property acquisition
14 only for one alternative and one route.

15 Q. And did it lay out detailed plans for how the
16 property would actually be acquired?

17 A. It did. And I believe it also talked about
18 eminent domain. I mean, taking the properties, yes.

19 Q. And do you know, Ms. Schifferle, who the
20 eminent domain would be taken by? Would it be, for
21 instance, DWR and the Bureau or would it be a different
22 entity?

23 A. You know, that is unclear at this point. In
24 this document, it appeared that it would be DWR who
25 would be taking that action. Other documents support

1 that. But that is -- is -- I don't know that for -- it
2 may be that other entities would come into play.

3 Q. Have you heard of a different entity besides
4 DWR and the Bureau that would potentially be in charge
5 of this stage of the project?

6 A. There have been a number of documents that
7 indicate that various associations of water agencies,
8 districts, and irrigation districts, would form together
9 to become a joint powers agreement. Whether or not they
10 would have sufficient authority to -- to go ahead and
11 take property by eminent domain is not clear unless I
12 saw the documents -- governing documents. But I don't
13 believe so.

14 Q. And in terms of -- and I'm almost done. Thank
15 you.

16 In terms of operation of the project, is it
17 your understanding based on documents you have reviewed
18 that the Bureau would be able to operate this facility?

19 A. That's a broad question. I don't -- I don't
20 think I know the answer to it.

21 Q. Do you believe the Bureau has the federal
22 authorization to operate this new diversion and
23 conveyance facility?

24 A. No, I do not.

25 Q. So would that leave, as the option, either DWR

1 or some new entity comprised of the contractors, in your
2 opinion?

3 A. It's not clear to me until the ends of this
4 project -- this -- this hearing whether DWR has the
5 authority to operate this project. But no, it's not a
6 federally authorized project. And so it's unclear at
7 this point whether or not the authority exists as it is
8 today, whether they would have that authority.

9 Q. Okay. And one quick question about the -- you
10 had attached several e-mails which are within between
11 PCFFA 23 to 61. And many of these include e-mails from
12 federal agencies, scientists, and others. Do these
13 e-mails express concerns or problems with the analysis
14 that they were seeing in the documents for the proposed
15 Petition?

16 A. In general, these documents are from either the
17 U.S. Fish and Wildlife Service or National Marine and
18 Fishery Service. And they raise objections around three
19 to four different areas. One is adequate modeling, as
20 to whether they include the full range of -- of impacts
21 due to this project. They raise issues around whether
22 all impacts, including upstream diversions, and the
23 impacts of the diversions would have on upstream
24 critical habitat. And they also raise objections or
25 concerns around whether or not land or terrestrial

1 animals and wildlife were adequately considered. And
2 finally, they look at a variety of other issues,
3 including transportation, power lines, barging, various
4 and sundry operations that are tied to the construction
5 of the project that would also have impacts.

6 Q. And now, you understand that a lot of these
7 e-mails may have predated the change in the project that
8 jettisoned the HCP entities' approach; is that correct?

9 A. Yes.

10 Q. Would you think that these -- in your opinion,
11 would these comments still be relevant to a project such
12 as is being considered in this proceeding that only
13 includes the conveyance portion of the prior project?

14 A. The concerns and conditions -- the concerns and
15 mitigation requests and various concerns raised in the
16 documents have to do with the diversion or increased
17 exports proposed and the location of the exports and how
18 those might dewater the Delta and also have impacts
19 upstream.

20 So given the current definition of the project,
21 I think it actually exacerbates the problem because you
22 have taken away potentially some of the mitigation
23 measures and put those in some sideline project and
24 you're continuing the export or conveyance portion of
25 the project.

1 MS. MESERVE: Thank you. I have nothing
2 further.

3 HEARING OFFICER DODUC: Thank you, Ms. Meserve.
4 Mr. Jackson? Ms. Ansley?

5 MS. ANSLEY: Hi. We were trying not to
6 interrupt. We'd like to lodge just a couple of
7 objections for the record to Ms. Schifferle's testimony
8 to make sure that the record is clear. We object to
9 Ms. Schifferle's testimony on the basis of her
10 qualifications as an expert, which is paired with her
11 not being designated as an expert and testifying beyond
12 the scope of a lay witness' testimony. We also
13 object -- since obviously, we are not going to have
14 further cross, we object that this testimony from an
15 authenticating witness lacks foundation -- that it lacks
16 foundation. Thank you.

17 HEARING OFFICER DODUC: Thank you. So noted.
18 All that will go into weight of evidence. Mr. Jackson?

19 MR. JACKSON: Thank you. Michael Jackson on
20 behalf of the California Sports Fishing Protection
21 Alliance, CWIN, and AquAlliance. These questions are
22 for Ms. Des Jardins.

23 HEARING OFFICER DODUC: And, Mr. Jackson, you
24 had estimated 15 minutes.

25 MR. JACKSON: I had. They -- my areas of

1 inquiry had to do -- have to do with global warming --
2 excuse me -- climate change as differentiated and from
3 purely sea level rise. But some of the sea level rise
4 questions as a symptom of global warming will be
5 addressed. And then how those could relate to the
6 analysis done by the Petitioners in terms of CalSim and
7 DSM2. I do understand that there will be a time in
8 which I can ask questions about those issues as
9 Ms. Des Jardins testifies, but I believe there are
10 linkages between them.

11 HEARING OFFICER DODUC: As long as you explore
12 the linkages and not the actual models themselves.

13 MR. JACKSON: Yes. I am not.

14 HEARING OFFICER DODUC: Please proceed.

15 CROSS-EXAMINATION BY MR. JACKSON:

16 Q. Ms. Des Jardins, you indicated that in your
17 review of the information filed by Petitioners and the
18 various environmental documents that were placed into
19 the record that the analysis uses a 2030 early long-term
20 time period.

21 A. I think it is actually 2025, and there is an
22 issue that the projected start date I understand has
23 shifted to at least 2035. I think they still have a
24 couple years of design to do and then once they start
25 construction. So that -- yeah, I think the early

1 long-term for this project has also shifted and that
2 means increased warming.

3 Q. So the early long -- given -- did you hear the
4 testimony of -- I believe it was Mr. Benarski from the
5 Metropolitan?

6 A. Yes.

7 Q. As he described the engineering part of the
8 program?

9 A. Yes.

10 Q. So assuming that it will take them four years
11 to finish the 90 percent of the design that isn't
12 finished yet and 15 years to build the project, so we're
13 now out -- this is will be 2017 very quickly. So we are
14 now out to 2037 or so.

15 A. Yes.

16 Q. So does the early long-term tell us anything
17 about what the conditions are going to be like for this
18 project?

19 A. I would certainly be looking at the first 20
20 years, which is now potentially 2035 to 2055. And
21 that's assuming no -- no further delays in the project.

22 Q. So the environmental documents -- is it fair to
23 say that the environmental documents are based upon a
24 potential 18 inches of sea level rise and that the --
25 that number is no longer within the time period that

1 this project is supposed to operate?

2 A. Well, it's the 6 inches of sea level rise by
3 2025 that is an issue. And, you know, by -- if in,
4 like, 2035 to 2055, you're going to see a different
5 number. Particularly if you look at the higher sea
6 level rise scenarios, you're going to see a very
7 different number.

8 Q. Where did the number 55 inches come into the
9 discussion of the WaterFix, if you know?

10 A. So I put up the chart. So the -- they
11 recommended that they do a sensitivity analysis with the
12 55 inches and -- of sea level rise. And I have seen
13 that. And I -- it shows extensive salinity intrusion in
14 the Delta. I think it was 2,000 microsiemens south of
15 Hood. And I was concerned that that -- that assumed
16 that -- that the operating conditions that might
17 conflict with rights in -- water rights. And so, you
18 know, yeah, there is a sensitivity analysis. They were
19 supposed to do it. They are required by the Delta
20 Reform Act.

21 I also recommended that that be presented for
22 this proceeding as something -- 1.4 meters is 55 inches.
23 And you could hit that -- I don't remember exactly. But
24 I think it is now between 2070 or so, 2070 or 2080 under
25 the high sea level rise scenario, under NOAA's high sea

1 level rise estimates. And as I have said, the science
2 is showing that we could see that even sooner.

3 So it is a huge issue. And I think looking at
4 how those tunnels are proposed to be implemented to deal
5 with these really high levels of sea level rise should
6 be part of the consideration given. You know, I've
7 looked back at the permits that were -- that were issued
8 in 2060 for the Bureau and in -- or not 2060 -- 1960
9 and, I believe, also in 1967 or 1968 for DWR. And we
10 are 50 years later, and it's clear there were things
11 that weren't sufficiently addressed when those permits
12 are issued and are being an issue now. And to the
13 extent that the Board -- this permit has no time
14 limitations. This is not just being sought for early
15 long-term. This is a permit with an indefinite time
16 period, and I think it should be looked at as that.

17 Q. So calling your -- for those reasons, I'm going
18 to ask you a set of questions. Using a 55-inch number
19 that you say is halfway or less through the life of this
20 project, would this recent data -- this change
21 potentially change the CalSim and the DSM2
22 determinations about potential injury?

23 A. Well, so, sea level rise comes into account in
24 CalSim because that determines the amount of outflow
25 that you need. And the shifts in hydrology change the

1 inflows to the reservoirs that are inputs to CalSim.
2 And so that changes how the model operates. And going
3 into it, to the extent that the model doesn't do a good
4 job of representing operations under stressed water
5 conditions that we may see more often, there is an
6 issue.

7 Q. And --

8 A. Particularly with -- with the modeling with
9 climate change.

10 Q. Would that -- would that difference potentially
11 affect the water quality determinations that were made
12 by the Petitioners' experts that they could meet the
13 1641 at all times?

14 A. I sent the Department of Water Resources, in
15 2012, a report. And I note -- I had noted these kind of
16 projections of climate change -- the climate change
17 projections that we could see increased frequency and
18 severity of droughts. I had noted that we had had a
19 once-in-a-thousand-year drought in Texas; a
20 once-in-a-thousand-year drought in New Mexico. I said
21 it could come to California. In the next year, it did.
22 And I urged DWR to start looking at this. I believe it
23 is absolutely essential for climate change. We can see
24 an increased frequency in severity of droughts. It is
25 not just in western North America. It is all over the

1 world. We had a once-in-a-thousand-year drought in
2 Australia. There's been ones in Russia. I mean, it is
3 everywhere.

4 Q. So the answer was yes, it could change water
5 quality?

6 A. It could.

7 Q. From what was modeled?

8 A. It could absolutely change water quality. It
9 could change water levels. It could change whether the
10 reservoirs get drained to dead pool. It could change
11 everything.

12 Q. Which took care of my questions about water
13 supply. It could change water supply?

14 A. Yes.

15 Q. For all users in the system?

16 A. Yeah. It has a potentially really profound
17 effect on the areas of origin. And I think for this
18 reason that it is really important to look at the
19 requirement that watersheds not be deprived of water
20 required for their beneficial needs. Is that going to
21 happen with this project? That's one of the things the
22 55-inch scenario will show if they provided it for this
23 hearing.

24 Q. In regard to -- you mentioned water supply
25 upstream. Did you -- are -- are you aware that it is --

1 that potentially climate change is going to change the
2 inflow to the reservoirs?

3 A. Yeah. There is two ways it does this. One is
4 reduce precipitation. Even if the precipitation stays
5 the same, when it gets hotter, you get more evaporation,
6 more transpiration by the plants and trees. And you get
7 a reduction in runoff. And that's what we've seen.
8 That's what the models have predicted -- the droughts in
9 the southwest show. Richard Seiger projected that we
10 were -- that the southwest was seeing a climate shift.
11 And we're going to shift from grassland-type rainfall to
12 desert.

13 And we may be seeing some kind of shift now,
14 but we won't know for a while whether this is just our
15 natural climate variability or the beginnings of a real
16 climate shift. I will say runoff in the basin is down
17 over the long-term average for this century, runoff in
18 the Sac Valley.

19 Q. Did you, in your review of the -- of dealing
20 with climate change and its -- one of its symptoms, sea
21 level rise, take a look at whether or not they are
22 expecting there to be from the changes caused by climate
23 change, longer growing seasons upstream that would
24 increase the amount of water that was evapotranspired?

25 A. Generally -- I have looked at crop demands.

1 Generally, the hotter it gets, the more water crops
2 take. Every crop in the Central Valley will take more
3 water. And then at some point, when it gets hot enough
4 as it could get, we could see peak average daily
5 temperatures in the southern San Joaquin Valley and
6 inland Southern California of 120 degrees.

7 And I think at that point, they've shown
8 like -- I think it is with cotton, just the respiration
9 shuts down at -- once the temperature is high enough and
10 the plant just stops growing. So it will start -- there
11 will be all -- you know, where the temperature shifts
12 are greatest. And generally, that is more inland.
13 There is some moderation with the closer you are to the
14 ocean. But generally, the crops just start taking more
15 water. And, you know, it is -- you know, water
16 evaporates that you're trying to irrigate with and the
17 plants need more. So yes.

18 Q. Would the same thing likely happen that you're
19 talking about with crops, mostly on the floor of the
20 Sacramento Valley, also be happening in the forested
21 watersheds above the reservoirs?

22 A. Yes. So that's the evapotranspiration, and
23 that's what increases. And yeah, trees absolutely
24 transpire more water when it is hotter. And the VIC
25 model, the variable infiltration model that they use,

1 actually represents different kind of vegetation and the
2 amount of water that it needs.

3 But yes, as temperature increases that's one of
4 the things that you feed to the model. And I believe
5 that, you know, you -- they transpire more water and it
6 just evaporates.

7 Q. I'm running out of time. So --

8 A. Yeah.

9 Q. -- in that regard, is that a reason for doing a
10 full water availability analysis, in your opinion,
11 before we build this project?

12 A. I think it is absolutely clear that with tables
13 of water availability that were used in Decision 990 and
14 it is absolutely clear that those tables are going to be
15 outdated. And also, the demand levels, they only
16 projected through 20 -- 2010 or 2015. You know, when
17 they first built the projects. So yeah, there is less
18 water available than when these permits were done that
19 the -- both in terms of future demand. We're getting
20 out beyond where they forecasted. And in terms of, you
21 know, the potential reductions in runoff in -- in the
22 Sacramento River and changes in -- in salinity
23 requirements. All of that has changed.

24 MR. JACKSON: May I --

25 HEARING OFFICER DODUC: Mr. Jackson?

1 MR. JACKSON: One more question.

2 HEARING OFFICER DODUC: A seven-part question?

3 MR. JACKSON: No. And I don't know whether I
4 need a seven-part answer.

5 BY MR. JACKSON:

6 Q. The -- the -- you've referenced a term or an
7 amount of water of 1 million acre feet that would be
8 needed in additional outflow because of the -- what I'm
9 calling the sea level rise symptom to global warming.
10 Does that 1 million acre feet in additional outflow
11 needed -- do you have any idea whether that -- in light
12 of global warming, do you have any idea where this
13 project is going to find that water to carry out their
14 duty for salinity control?

15 A. Let me correct that. So it's 475,000 extra
16 acre feet at 1 foot of sea level rise. That's my
17 understanding. I really would have liked to have seen
18 an analysis of this for this proceeding. And then
19 483,000 acre feet in increased demand north of the
20 Delta, which is water that just isn't there. So yeah --
21 to get there.

22 So that the total is that much less water
23 that's available for -- for export. And yeah, I think
24 there is a huge conflict with assuming that you're going
25 to have 3 to 4 million acre feet of exports,

1 particularly when DWR's own engineers projected in 1982
2 that they had 2.3 million acre feet of firm yield of the
3 project and that that was likely to go down in the area
4 of origin to, like, I think it was 1.6 to 1.8 million
5 acre feet. So the water supply for this diversion, you
6 know, it is really important to not use overly rosy
7 scenarios.

8 MR. JACKSON: Thank you.

9 WITNESS DES JARDINS: And to look at the real
10 conflicts.

11 HEARING OFFICER DODUC: Thank you.

12 MR. JACKSON: I have no further questions.

13 HEARING OFFICER DODUC: Thank you, Mr. Jackson.
14 Mr. Williams and then Ms. Ansley.

15 MR. WILLIAMS: Phillip Williams for Westlands
16 Water District. I have a few objections I wanted to
17 note but did not want to interrupt Mr. Jackson. First,
18 an objection as to assuming facts not in evidence
19 regarding Mr. Jackson's question which indicated that
20 the projects have a responsibility in a scenario of
21 climate change to continue to provide water for a
22 theoretical potential affected water user in the Delta.
23 So first objection assumes facts not in evidence.

24 My second objection, Ms. Des Jardins, at some
25 point, made the statement -- I may not state it

1 precisely, so forgive me -- but that the impacts of
2 climate change will be -- will cause an injury to water
3 rights. That's the first time I have heard that.
4 That's the first time I have read it or that assertion
5 has been made. So I would object on grounds that it
6 lacks a foundation.

7 And finally, ma'am, that an objection to
8 lacking foundation that that hypothetical impact is the
9 product and the consequence of the project and not the
10 product and consequence of climate change. Thank you.

11 HEARING OFFICER DODUC: Ms. Ansley?

12 MS. ANSLEY: I also have just a couple of
13 objections for the record. We didn't want to interrupt
14 the flow. We will object on the grounds of lacks expert
15 qualifications regarding operations of water systems, of
16 course, the SWP CVP, agricultural crop demand and
17 forestry or, you know, forest demand.

18 We also object that the -- she provided some
19 testimony regarding water availability under historic
20 and current conditions under the water right permits.
21 We would say lacks foundation, assumes facts not in
22 evidence. And then finally, we would like to lodge a
23 final objection. She provided some recent testimony
24 regarding shortfall of water under climate change, I
25 believe. And we will also say that that lacks

1 foundation, assumes facts not in evidence. Thank you.

2 HEARING OFFICER DODUC: Mr. Jackson, you're not
3 resuming cross-examination, I hope.

4 MR. JACKSON: I am not.

5 HEARING OFFICER DODUC: You are sitting down
6 because you have a long list of objections and you want
7 to be comfortable.

8 MR. JACKSON: Yes. I guess that is the easiest
9 way to do it, and also there was someone else standing
10 at that microphone. The -- first of all, I believe the
11 questions are relevant. I believe the questions are
12 questions that this witness is, by her review, by her
13 education, by her training, by her skill, all are within
14 the area of her expertise. I believe that it is
15 relatively clear that the -- the -- that the questions
16 and the responses are -- are worthy of consideration in
17 terms of the weight of the evidence for this tribunal.

18 HEARING OFFICER DODUC: Thank you, Mr. Jackson.
19 I will agree. Again, all objections are noted and will
20 go towards weight of evidence.

21 Mr. Volker, do you have redirect?

22 MR. VOLKER: Very few questions.

23 HEARING OFFICER DODUC: All right.

24 MR. VOLKER: Thank you.

25 REDIRECT EXAMINATION BY MR. VOLKER:

1 Q. Ms. Des Jardins, in response to questions this
2 morning, you have opined that the WaterFix will have
3 operational complications due to sea level rise and
4 climate change. Would you explain for the Board your
5 background with and familiarity with operations of the
6 state and federal water projects.

7 HEARING OFFICER DODUC: And, Ms. Des Jardins,
8 since we already have your statement of qualifications,
9 please be succinct.

10 WITNESS DES JARDINS: So I just wanted to say
11 that I have studied operations of the water project for
12 six years. I have looked closely at the projected
13 operations. I have looked at things like their runoff
14 forecasts and how they actually operate the projects.
15 So while I don't operate the system, I -- I have studied
16 it and I have also studied how other water systems are
17 operated.

18 BY MR. VOLKER:

19 Q. Thank you. And during the course of your
20 review of the operations of the state and federal water
21 projects, have you gained an understanding of the
22 parameters that affect operational stability and
23 foreseeability and, in particular, those bearing on
24 factors influenced by climate change and sea level rise?

25 A. I have looked closely at how they are operating

1 the project, and I actually have major concerns about
2 how the project is being operated. I did introduce in
3 the exhibit, on cross-examination, the operations panel,
4 which showed that there had been a shift in operations
5 in around 1982 from operating for repeat of the 1928 to
6 '34 drought, to taking water much more aggressively
7 early in dry years, knowing that the reservoirs could
8 run dry.

9 And to the extent that operations are
10 aggressive -- and I noticed that we ended this year with
11 Oroville lower than it was in 2013. They are not taking
12 into account the possibility of -- of a severe drought.
13 It's -- it's just a huge issue. It is an issue under
14 our variable climate, but it is even more of an issue
15 under climate change. So I wouldn't say I'm not
16 qualified. I actually have experience. I worked with
17 the non-linear dynamics research group at Los Alamos on
18 non-linear forecasting, and I'm very familiar with
19 forecasting.

20 MR. VOLKER: Thank you. I have nothing
21 further.

22 HEARING OFFICER DODUC: Thank you, Mr. Volker.
23 Any re-cross? All right. Mr. Williams?

24 MS. ANSLEY: We actually might. Sorry.

25 HEARING OFFICER DODUC: Going once. Going

1 twice. Mr. Williams?

2 MR. WILLIAMS: Thank you, ma'am. I just had
3 one -- a couple -- one point and hopefully --

4 HEARING OFFICER DODUC: In response to
5 redirect?

6 MR. WILLIAMS: In response directly to
7 redirect. Specifically, operational complications.

8 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

9 Q. Ms. Des Jardins, in the use of that term, did
10 you -- do you understand "operational complications" to
11 mean, for example, holding water back in upstream
12 reservoirs for cold water pool management?

13 A. I believe it's complications -- I interpreted
14 it as complications such as those that led DWR and USBR
15 to need to come before this Board in January of 2014 and
16 ask for a temporary urgency Change Petition. And I'm
17 aware that there are cold water requirements from the
18 BiOp for Shasta Reservoir. And there was a lot of
19 concerns about whether they -- whether they could
20 actually do that in an effective way and meet the
21 temperature requirements. So complications is not being
22 able to meet the mandated requirements.

23 Q. I'm sorry, ma'am. So I understood that your
24 answer to be yes, but it's a qualified yes.

25 A. It's not the cold water -- it is not the cold

1 water pool itself. It's whether it's not being able
2 to -- potentially not being able to meet it. That's a
3 complication.

4 Q. Would that complication, ma'am, also include
5 meeting outflow requirements of the Delta?

6 A. Yes.

7 Q. Would that complication also include meeting
8 water for senior right diverters?

9 A. Yes.

10 Q. In your analysis, ma'am, regarding senior water
11 rights diverters and the implications on climate change
12 and the project's impacts on their ability to divert,
13 did you do any analysis at all on specific diverters or
14 water right holders who may be impacted by your
15 analysis.

16 A. For a previous hearing -- it wasn't a formal
17 hearing. A previous workshop by the Board, I built a
18 spreadsheet model of the Sacramento Valley hydrology.
19 And I -- it was in the 2014 drought, and it was done
20 because Ron Milligan said that Sac Valley was a black
21 box and he didn't know where the water was going. So I
22 mapped depletions on every stretch of the Sacramento
23 River between Keswick and Freeport, as well as the
24 American and Yuba River and Feather River. And I also
25 looked at inflows and stored water releases. And I

1 also, once I found where the depletions were happening,
2 I had a complete -- I looked at a map of all of the
3 various Sac Valley diverters and I started researching
4 what their diversion rates were and where. So I have
5 done a fairly -- it is geographical, but I have -- do
6 have some basis for that analysis.

7 Q. And that analysis was done in 2015, you said,
8 ma'am?

9 A. It was -- yeah. I think I provided it to the
10 Board in 2015.

11 Q. Do you know whether it is a document of record
12 in this matter?

13 A. It was not submitted for this matter. I -- it
14 was not submitted for this matter. I just used that
15 experience to inform my analysis when answering the
16 questions on cross.

17 Q. And I understand that your conclusion there, as
18 you just stated, was a -- is a geographic-level
19 analysis, but not an individual water right user
20 analysis; is that correct?

21 A. I did not get into a specific individual --
22 actually, that's not true. When I did that analysis,
23 what I needed to do, because it wasn't on public record
24 anywhere, I needed to go into the Egrams (sic) database
25 and I needed to pull every -- pull all the diversions.

1 And the Board made it easy for me because they
2 produced -- they mandated -- they mandated disclosure of
3 everybody in the Sac Valley and San Joaquin Valley. And
4 they gave me this wonderful spreadsheet. So I just
5 cross-checked. So I did know what the water rights were
6 at least in that database.

7 Q. For this proceeding, ma'am, though, with
8 analysis that is before this body right now, can you
9 point to --

10 A. I didn't do that for this body, no.

11 Q. So you do not have analysis that points to
12 possible injury of water rights users due to climate
13 change that is presently before this body?

14 MR. VOLKER: Objection. Asks for a legal
15 conclusion.

16 WITNESS DES JARDINS: I believe I testified --

17 MR. WILLIAMS: I'm sorry. I'm going to respond
18 just for the record.

19 HEARING OFFICER DODUC: One at a time.
20 Ms. Des Jardins, are you able to answer the question?

21 MS. DES JARDINS: I was more -- I believe
22 Mr. Jackson asked me more questions about impacts on
23 water quality and impacts on diverters. I'm not -- you
24 know, I can see things that would affect the conclusions
25 about injury, but I was trying to testify about the

1 factors that I see that are relevant to that.

2 BY MR. WILLIAMS:

3 Q. Okay. Ma'am, and partly in response to
4 Mr. Volker's objection. Earlier, I heard you make a
5 statement, an assertion, about injury to water rights.
6 My understanding -- and please affirm or deny this
7 understanding. My understanding is that you cannot
8 point to a specific water right currently before this
9 proceeding that would be injured, as you used the term
10 earlier. Is that understanding correct?

11 MR. VOLKER: Same objection.

12 WITNESS DES JARDINS: I think that may
13 mischaracterize what I said.

14 HEARING OFFICER DODUC: I think we're straying
15 beyond the scope of redirect.

16 MR. WILLIAMS: Then I yield. Thank you.

17 HEARING OFFICER DODUC: Thank you,
18 Mr. Williams. Mr. Volker, that concludes your
19 case-in-chief. You have until noon next Tuesday to
20 submit your exhibits into evidence making all the
21 corrections that you noted at the beginning of your
22 case-in-chief.

23 MR. VOLKER: We will do so. Thank you.

24 HEARING OFFICER DODUC: All right. We will
25 take our lunch break until 1:30. Let me let Ms. Daly

1 and Mr. Brodsky know that we expect at least about an
2 hour for Ms. Des Jardins to present her case-in-chief.
3 And so we will not get to you until 2:30 at the
4 earliest. All right. With that, we will reconvene at
5 1:30.

6 MR. BRODSKY: We'll get on today, I'm pretty
7 sure.

8 HEARING OFFICER DODUC: Yes.

9 (Off the record.)

10 HEARING OFFICER DODUC: Good afternoon.
11 Welcome back. We are one minute late, but a hearing
12 officer without Peet's Coffee is not a good thing. Now
13 that I have coffee in hand, Mr. Herrick.

14 MR. HERRICK: Yes. Thank you. John Herrick
15 for Central Delta Parties. I just -- I don't want to
16 waste too much time. But the issue of rebuttal,
17 everybody sent in letters. I just thought it would be
18 beneficial to say I think there's going to be arguments
19 about the scope. And if it doesn't delay your time
20 frame too much, I think using one of the days in January
21 that would have been a hearing date, if we just have
22 a -- maybe an hour or two of discussion/argument about
23 the scope of rebuttal that might be beneficial. Because
24 I foresee these arguments about -- you know, no offense
25 to the other side -- but the -- you know, this should

1 have been in the original case and then they may argue
2 about us, this should have been in your case-in-chief.
3 So I think there will be those arguments. Perhaps two
4 hours on one of our originally scheduled days in January
5 may allow us to hash some of that out. It may not.
6 Thank you.

7 HEARING OFFICER DODUC: All right. Thank you
8 for that suggestion, Mr. Herrick. We have received
9 other suggestions with respect to rebuttal. We are
10 conferring on that, Hearing Officer Marcus and I. We
11 expect to be issuing some directions next week. Yeah.
12 All right. Thank you.

13 With that, we will now turn to Ms. Des Jardins
14 with Mr. Volker, I guess, assisting on her direct for
15 your case-in-chief. You have already taken the oath.
16 So please begin.

17 WITNESS DES JARDINS: If it's all right, I just
18 wanted to present a few minutes of an opening statement
19 as well.

20 HEARING OFFICER DODUC: Okay.

21 WITNESS DES JARDINS: Thank you. It is just
22 addressing -- I wanted to address the issue of model
23 reliability for this proceeding. And it's been argued
24 that it is not relevant. But decision 1641, there was
25 an issue that the modeling showed 50 instances of

1 exceedance salinity at Vernalis. And the South Delta
2 Water Agency argued that that meant there could be
3 impacts. There was also testimony that it was -- it was
4 just rounding errors. The Board cited this in saying,
5 "We don't think there is going to be any impacts." And
6 to the extent that five or six years later, there is a
7 cease and desist order hearing for salinity violations
8 at Vernalis in the South Delta, I think you need to look
9 at that.

10 And more specifically, you know, I'm arguing
11 for adoption -- looking at objective criteria for
12 acceptance of this model. You know, looking at the
13 testing and calibration information and validation
14 information that's been provided and is that sufficient.

15 Mr. Volker has provided some legal arguments in
16 his filing for why that's required. I just wanted to
17 address, you know, so there is evidence -- a Government
18 Code 11513B that says, you know, you can accept any
19 evidence as long as it is the sort of evidence on which
20 responsible persons are accustomed to rely in the
21 conduct of serious affairs. But there is an issue in
22 that this criteria could be circular and could be used
23 to accept any modeling by the Department of Resources or
24 the Bureau of Reclamation, no matter how experimental it
25 is or how unvalidated, uncalibrated, untested, because

1 of their status as these, you know, water agencies, the
2 state and federal water agency and their operation of
3 these huge projects. So I just urge you to consider
4 that, you know, that the -- maybe it's -- this criteria
5 shouldn't be circular for them.

6 And I did refer earlier to the Board had an
7 excellent scientific panel in 2012 that looked at use of
8 hydrodynamic models in the proceeding. And I know it
9 wasn't accepted for official notice. It was a panel.
10 But this is the only -- this is one of the reviews by
11 the Board's own panel of independent experts. And to
12 the extent that there isn't an independent peer review
13 of the model results for this proceeding, I think it is
14 good to refer to that. And they had very specific
15 recommendations for the kind of testing and calibration
16 information that should be provided for all Board
17 proceedings, not just for the Bay Delta plan, but for
18 all Board proceedings. And I am requesting that the
19 Board, you know, consider that. I have included it --
20 submitted it as an exhibit and also consider my
21 testimony on this.

22 So that's it. Thank you.

23 HEARING OFFICER DODUC: Thank you. You may now
24 present your case-in-chief.

25 MR. VOLKER: Thank you, Madam Chairwoman.

1 HEARING OFFICER DODUC: Mr. Volker, is your
2 microphone on?

3 MR. VOLKER: It is now. Thanks.

4 DIRECT EXAMINATION BY MR. VOLKER:

5 Q. Ms. Des Jardins, I want to show you an exhibit
6 marked as DDJ-108 and ask you if this is your testimony
7 for this proceeding?

8 A. Yeah. I believe it says Errata 12-9-2016. And
9 yes, that is.

10 Q. Thank you. And did you prepare this testimony?

11 A. Yes, I did.

12 Q. Did you prepare a document marked as Exhibit
13 DDJ-108, which purports to be your statement of
14 qualifications?

15 A. I think it is DDJ-100.

16 Q. I'm sorry. I got this backwards. Yes. 100.

17 A. Yes, I did. And there is also some discussion
18 of my qualifications in my testimony.

19 Q. And that accurately presents or summarizes your
20 qualifications to --

21 A. Yes.

22 Q. -- to present the testimony today?

23 A. Yes, it does. And I have quite a bit of
24 experience in development and application of models in
25 the physical sciences, which is in my statement of

1 qualifications.

2 Q. During the course of this proceeding, you have
3 engaged in cross-examination of a number of witnesses.
4 You have also provided this Board with a list of
5 exhibits commencing with the number DDJ-1 and continuing
6 through today's witness exhibits. To the extent those
7 exhibits marked in this list were used by you in
8 cross-examination, are the exhibits demarcated in your
9 exhibit list true and correct copies of the documents
10 with the same names that you have employed in your
11 cross-examination?

12 A. Yes, they are. And if you look at them, it's
13 obvious they are what they say they are. I did not
14 alter them in any way.

15 Q. Would you please summarize your testimony,
16 directing your attention first to the issues that you
17 sought to address and thereafter, explaining the
18 conclusions you reached?

19 A. Yes. I wanted to address -- first of all, I
20 addressed -- there were some specific key assertions
21 about the model and the testimony -- written testimony
22 of Armin Munevar, who was the lead engineer on --
23 integration lead for the modeling. One of them was the
24 CalSim model had been peer reviewed. But if you look
25 closely at the peer review, it states that the peer

1 review panel was not given the technical information
2 needed to actually do a technical review and that of
3 necessity, their review was more strategic. And for
4 this reason, they call it a strategic review. That
5 level of review, I wouldn't even call a peer review. It
6 essentially was a review of the development processes of
7 the model and of the general conceptual approach to the
8 modeling. So this is a model that has never had a full
9 external review.

10 There was one review of one component of the
11 San Joaquin River module. That was done in 2006. And
12 that panel had serious concerns, and they recommended
13 that an error analysis be done. And they particularly
14 said, you know, we can't tell -- what's the uncertainty?
15 Is it, you know, one acre feet? Is it -- I believe it
16 was in acre feet. Is it 500 acre feet? You know, we
17 can't tell. And that's critical for this proceeding,
18 for example, with inflows at Freeport in critically dry
19 years.

20 So, you know, even the Board did -- the DWR and
21 SPR did do an error analysis for -- in response to that
22 review. But it was never submitted for another external
23 review; hasn't been provided for this proceeding. So
24 out of necessity and due to, you know, time resources
25 and the resources of my clients, it would have been

1 great if we could have hired a team to pull the data and
2 compare everything. I really tried to get what the
3 existing calibration reports were. I could not get
4 those, but I did look at what the peer reviewers looked
5 at.

6 And I did look at -- so there was a 2003
7 historical validation study. And so the issue is that
8 the modeling data for CalSim only goes through 2003. It
9 could be produced for later years, but it hasn't been.
10 So to validate the operations of the model, you have to
11 produce a historical version that models historical
12 operations. It models it under decision 1485, for
13 instance. They did that in 2003, but it was for -- they
14 used the 2002 model to validate it. And the issue there
15 was that even that validation study, the peer review
16 panel found significant issues with it and they said it
17 needed to be redone. And I concur. I looked at that
18 study as well.

19 And also, you just can't use a validation study
20 for a 2002 version of the model to validate the results
21 for the 2015 model presented for the proceeding. I
22 said -- you know, I assume there is a lot of changes
23 that have been made since then, and it just is not
24 standard engineering practice to do that.

25 The other thing I say is it's not just me

1 saying that a technical review needs to be done or that
2 they need to produce testing and calibration data. This
3 is a standard practice in systems engineering. It is
4 part of competent development of a model as complex as
5 this one. And the National Research Council noted this
6 in a review of the CalSim use, and I cite this in my
7 testimony. Testing and calibration is a standard
8 engineering practice. And that's why I asked for, you
9 know -- you know, where are those testing and
10 calibration reports?

11 And, you know, another issue is Mr. Munevar
12 says this model is state-of-the-art. So the approach of
13 using a linear solver is state-of-the-art, of using this
14 linear optimization. The general conceptual approach is
15 good, but you can't say a model is state-of-the-art if
16 you aren't demonstrably using standard engineering
17 development practices. And I include quotes. You know,
18 the 2003 peer review panel said, "Better quality control
19 is needed both for the model in its current version and
20 the input data procedures for model calibration and
21 verification are needed. Currently, many users are not
22 sure of the accuracy of these results."

23 I can't tell from any evidence presented in
24 this proceeding what the error rate of this model is,
25 what the error rate is for input of Freeport, what the

1 error rate is for flow splits in the Delta, what the
2 error rate is for the Sac Valley hydrology. I -- you
3 know, and I've looked closely at that everything's been
4 presented.

5 The other thing Mr. Munevar states that it is a
6 well-accepted model and it's been used in multiple
7 planning and regulatory processes, including the 2008
8 Fish and Wildlife Service and 2009 National Marine
9 Fisheries ESA consultation. But when I go and went and
10 looked closely at it, I found that the biologists found
11 that the models were too inaccurate to use. They
12 stated, "The inaccuracies in CalSim lead us to use
13 actual data to develop an empirical baseline. We also
14 developed historical time series data for hydrologic
15 variables used in this effects analysis based on the
16 DAYFLOW database and OMR obtained from USGS. We
17 calculated monthly or multiple month averages or medians
18 based on these daily hydrology data sets."

19 And, you know, I wanted to argue that at least
20 producing -- you know, producing an actual baseline for,
21 you know, what the current operations are is a good
22 idea. And that's what the biologists did in the BiOp
23 and they did not believe that the CalSim baseline was
24 sufficient.

25 The other issue is Mr. Munevar stated, "CalSim

1 2 cannot be calibrated and therefore should not be used
2 in a predictive manner." And it is just -- it is
3 inconsistent with recommendations by peer reviewers and
4 also with their own statements. So the 2004 peer review
5 response, as far as -- there is a fundamental issue with
6 calibration of the overall simulation of operations
7 data. And they say specifically, well, it -- you know,
8 it just doesn't represent what happens under stressed
9 water conditions. But they, you know, need to either
10 produce a historical version and rerun it for what they
11 have and see how well it works or else produce -- as
12 they promised in the peer review response, produce a
13 modeling input data set for recent wet, normal, and dry
14 year. And I think that would be an excellent idea. And
15 then they could not only use that input data set to
16 calibrate this model, they could use it to calibrate and
17 validate the delivery reliability report and it would
18 improve the model representation, you know.

19 So these are the sort of things that I noticed.
20 I particularly wanted to say, you know, as far as
21 relying on these references to peer reviews as if it had
22 validated the model, the 2006 peer reviewers of the San
23 Joaquin River component said, "We do not in any way
24 certify or endorse the model presented. We don't
25 disapprove of or discourage its use by knowledgeable

1 users, but users must take responsibility for model
2 selection and application. They must accept
3 responsibility for decisions that they make with
4 information produced by the model." And I argue this
5 Board must accept responsibility for information
6 produced by the model.

7 There is no independent -- independent
8 verification of this model by an independent --
9 independent group of reviewers. And the -- you know,
10 the 2006 peer review model said that, you know, if -- if
11 decision-makers place responsibility on general model
12 reviews remote from a particular application, "it opens
13 the door to intentional or unintentional abuse,
14 negligence or complacency by model users and developers
15 or their managers." And to the extent that DWR has been
16 relying on that statement for years, this model has been
17 peer reviewed, it's like -- is there negligence and
18 complacency here? I really hope they can, you know,
19 produce some more recent information.

20 Other things I want to know on page 4, the 2003
21 peer review, "Most successful applications of
22 optimization attempt to simulate the behavior of a
23 system have calibrated their objective function so that
24 the model results correspond to what actually happens or
25 what would happen under a particular hydrologic and

1 demand scenario." I totally agree. That's standard
2 practice.

3 You know, the National Research Council Review
4 noted that. And this 2003 historical validation study
5 doesn't do that for this current model. And to the
6 extent that it doesn't correspond to what we think would
7 happen in dry years, it argues that they need to do that
8 exercise.

9 The other issue -- this was covered on
10 cross-examination -- I wanted to address is relative use
11 of the model. So they have asserted they can just use
12 the model in relative mode. But the peer review panel
13 was skeptical of this use and they said, "It would have
14 to be documented, rather than merely subsumed." It was
15 on page 6 of the 2003 peer review panel. And it says,
16 "It relies on the assumptions that model errors which
17 render an absolute forecast unreliable are sufficiently
18 independent of or orthogonal to the change being modeled
19 so they don't similarly affect the forecast of change in
20 outcome." And the extent that you've got too much water
21 flowing into Freeport in critically dry years, you're
22 miss -- miss -- unmodeling flow splits in the Delta
23 and -- in low-flow conditions, and, you know, other
24 things, those are not orthogonal to the changes being
25 modeled. And you have to have this kind of

1 documentation of the model errors to even document that
2 the model can be used in relative mode.

3 You know, the 2006 peer review panel said, you
4 know, again, yeah -- oh, yeah, we don't know "whether
5 differences of 1,000 acre feet, 50,000 acre feet,
6 100,000 acre feet, or 500,000 acre feet are significant
7 enough to rise above the level of error and noise
8 inherent in the model." That was on page 15.

9 So, "At a minimum, error analyses should be
10 conducted, combining a sensitivity analysis of critical
11 model results to some of the largest and least well
12 supported model assumptions with an assessment of the
13 likely range of error of these major model parameters
14 and assumptions." That is on page 13.

15 You know, yes, this is absolutely the kind of
16 thing that I would look at as a modeler if I was
17 developing the model. You know, what are the
18 assumptions? How well do they fit the data? You know,
19 what is the error rate? And we're just not getting any
20 of that kind of information.

21 I did want to point out, too, that the Board's
22 own panel on Analytical Tools for Evaluating Water
23 Supply, Hydrodynamic and Hydropower Effects in the Bay
24 Delta Plan, very specific recommendations with respect
25 to what was required for model representations of the

1 Delta. And the matching point observations -- this is
2 on page 5. Matching point observations of stage, flow,
3 and salinity on tidal and tidally averaged basis.
4 Matching key interior net-flow splits Sacramento River
5 to Sutter and Steamboat Sloughs; Sacramento River to
6 Delta Cross Channel and Georgiana Slough; San Joaquin
7 River to Old River at Head; San Joaquin River to Old and
8 Middle River; net flows around Franks tract; flow
9 between the Sacramento River and San Joaquin through
10 Threemile Slough. This is all critical, not just for
11 the model representation of flows, but because these are
12 input to the fish models in their input to DSM2. To the
13 extent these are inaccurate, then the DSM2 models and
14 the fish models are also inaccurate.

15 They also say, "Representing Delta exports,
16 representing Delta Island consumptive use." This --
17 this is, you know, potentially an issue in the drought
18 when that use goes up. And they also said,
19 "Representing the gate/barrier operations," including
20 the Delta Cross Channel Gates and the Clifton Court
21 Gates.

22 So, you know, this is all important. And the
23 only testimony in the entire proceeding is Mr. Munevar's
24 testimony about this 2003 historical operations study.
25 And he says that that shows that the -- you know, the

1 Delta inflows were reasonably close fit. The net Delta
2 outflow index was a close fit. And that simulated
3 values are close during the '87 to '92 drought. Looks
4 at long-term average deliveries. But again, this is for
5 the 2002 version of the model, and the model has been
6 changed since that time.

7 This is the kind of information -- and the peer
8 reviewers said themselves this isn't enough. You can't
9 just look at long-term averages. You need to look at
10 monthly averages. You need to look -- and particularly
11 that's important for water quality analyses. Are those
12 close? You need to look at dry periods and droughts,
13 you know.

14 So my recommendation is the Board require DWR
15 to provide this information for this proceeding. So if
16 I can conclude with just one -- the other thing is that
17 with respect to climate change, the sensitivity analyses
18 for the San Joaquin River component of the model only
19 tested the model change sensitivity for inflows of plus
20 or minus 3 percent. And we could see the San Joaquin
21 River inflows get changed by a lot more than that under
22 climate change. Thank you. That concludes my direct.

23 HEARING OFFICER DODUC: Thank you,
24 Ms. Des Jardins. And thank you for reminding me of that
25 2012 report from the panel. That was quite an excellent

1 report. Let me impose upon you and ask: Are you aware
2 whether or not there was a final report made? Because
3 this was a draft.

4 WITNESS DES JARDINS: That was what you have up
5 on your web site under there. I didn't see a more
6 recent one. I thought it was an excellent panel.

7 HEARING OFFICER DODUC: I agree.

8 WITNESS DES JARDINS: They're very familiar
9 with the model and its application. And I thought their
10 recommendations for Board proceedings were excellent.
11 I'm here advocating that you adopt these for this
12 proceeding.

13 HEARING OFFICER DODUC: I'm actually reading
14 their recommendations for both the short-term and
15 long-term and wondering why we didn't follow through.
16 But anyway, thank you for that presentation and for this
17 document.

18 WITNESS DES JARDINS: Thank you.

19 HEARING OFFICER DODUC: With that, I will now
20 turn to cross-examination. And I believe the Department
21 of Water Resources has cross-examination, along with
22 Ms. Meserve. Did you want Mr. Keeling to precede you?
23 No. Okay. Mr. Jackson and Ms. Suard, right? All
24 right. Please come up.

25 MS. ANSLEY: Good afternoon. Jolie-Anne Ansley

1 for the Department of Water Resources. I only have
2 about ten questions, which I hope are fairly "yes" or
3 "no" questions. And just going to testimony regarding
4 DSM2. Some quick questions about the Independent Review
5 Panel report in 2016 regarding CalSim. And then the
6 reference to the 2012 panel on Analytical Tools For
7 Evaluating Water Supply that Ms. Des Jardins referenced
8 in her testimony. So that's the only topics.

9 CROSS-EXAMINATION BY MS. ANSLEY:

10 Q. Ms. Des Jardins, on page 5 of your testimony --
11 and I hope that's correct with your most recent 12-9
12 version -- you state that, "A report documenting the
13 validation of the hydrodynamic model DSM2 has not been
14 submitted in this proceeding," correct?

15 A. Yes, I did.

16 Q. And these are meant to be just short "yes" or
17 "no" questions. Are you a participant in the DSM2 user
18 group?

19 A. No.

20 Q. Have you attended any of their meetings?

21 A. No.

22 Q. Are you on their e-mail distribution list?

23 A. No.

24 Q. Are you familiar with the online postings for
25 the DSM2 model?

1 A. Yes.

2 Q. Are you aware that the DSM2 model has been
3 calibrated and validated?

4 HEARING OFFICER DODUC: Do you want to specify
5 a date with that question?

6 WITNESS DES JARDINS: Yeah. I -- I think
7 that's an oversimplification. And specifically, there
8 is a report that was referred to in Mr. Munevar's
9 testimony that said a numerical calibration had not yet
10 been done.

11 MS. ANSLEY: I'm happy to back that up a
12 little.

13 BY MS. ANSLEY:

14 Q. Were you aware that the 2013 BDCP DEIR/EIS,
15 Appendix 5A, which is SWRCB 4 in this proceeding, and as
16 well as the WaterFix BA, Appendix 5B, which is SWRCB 104
17 in this proceeding, both included the DSM2 calibration
18 and validation information?

19 A. Information is not the same as the actual
20 report.

21 Q. But are you aware of that material in those two
22 appendices?

23 A. I have looked at those appendices, and the
24 information that I saw was at a very general level.

25 Q. And are you aware of the 2003 and 2009 and 2013

1 calibrations that are posted on the
2 baydelta.water.california.gov and the DSM2 user group
3 online web sites?

4 A. I believe -- yeah. There was something called
5 a circle calibration. I am not a DSM2 modeler. I just
6 noticed that these had not been presented for this
7 proceeding.

8 Q. Okay. Just as a clarifying question, you are
9 aware that this sort of material is available online to
10 the public?

11 A. I didn't rely on it for my report. I relied on
12 what Mr. Munevar referenced in his testimony. And I
13 looked closely at the testimony of Mr. Parviz
14 Nader-Tehrani for any reference to calibration. I
15 didn't see it. I looked through all of the exhibits
16 provided, and I didn't see them. So what I stated was
17 that there wasn't anything presented for this
18 proceeding.

19 Q. Okay.

20 A. So --

21 Q. I apologize.

22 A. Yeah.

23 Q. Okay. Moving on. Are you familiar with the
24 Independent Review Panel Report for the 2016 California
25 WaterFix Aquatic Science Peer Review?

1 A. Yes.

2 Q. And you have reviewed that report?

3 A. Yes.

4 Q. So you're aware that that report stated that
5 the best available models were currently being used to
6 simulate water transport throughout the Delta and its
7 watershed?

8 A. And they also noted in that same sentence with
9 some concerns about reliability. This is why I think
10 you need to include the full paragraph when you ask
11 those kind of questions.

12 Q. I understand those were some of their concerns.
13 But do you agree that they also characterized it as the
14 best available models?

15 A. Yeah. Considering that CalSim 3 has not been
16 publicly released, yes.

17 Q. And then, finally, looking at your testimony
18 again, you cite the 2012 Scientific Panel on Analytical
19 Tools for Evaluating Water Supply, Hydrodynamic and
20 Hydropower Effects in the Bay Delta Plan; is that
21 correct?

22 A. Yes.

23 Q. I have that on page 15 through 16 of your
24 testimony, but I believe in the redline version it might
25 actually be 17. The one that was just -- let's see.

1 A. Yeah. I tried to make the redline version
2 match exactly the original lines.

3 Q. Can you scroll up a little to make sure I have
4 the right -- oh, it is right there on the top of page --
5 I think it is 16. Let me put my glasses on.

6 A. Yeah.

7 Q. Oh, I see. And the top of page 17 there, you
8 are actually saying, "The error analyses presented by
9 Petitioners do not meet the recommendations in the 2012
10 Scientific Panel." Do you see that?

11 A. Yes.

12 Q. And is it your testimony that CalSim 2 should
13 be tested and calibrated based on these recommendations?

14 A. I -- I -- yeah.

15 Q. Isn't it true that CalSim is a hydrologic but
16 not a hydrodynamic or water quality model?

17 A. This Board -- that panel -- that charge to that
18 panel specifically included CalSim 2 and they
19 specifically addressed it in those recommendations.
20 They included CalSim 2 as a Delta hydrodynamics model.

21 Q. So it's your understanding that that was
22 intended to apply to all models, not just hydrodynamic
23 models?

24 A. Yeah. To some -- some aspects of it. So
25 CalSim 2 and DSM2 are used jointly. To the extent that

1 CalSim 2 flow inputs are inaccurate, it affects DSM2
2 results as well. So you're using them jointly in this
3 proceeding. I believe they were looking at that. Some
4 of it mentioned specifically CalSim outputs. Some of it
5 mentions DSM2 outputs. CalSim is an input into DSM2.

6 Q. I understand that. Is it your understanding
7 that DSM2 -- I think you testified that you were aware
8 that DSM2 has been calibrated and validated.

9 A. I wouldn't say it's been validated for use in
10 this proceeding. Validation is the process of ensuring
11 that a model is -- is good enough for its intended use.
12 And so there's two steps to validation; one is
13 calibration and producing the actual calibration. Then
14 the second step for validation is reviewing the
15 calibration reports and looking at the intended use and
16 saying, "Is this good enough for this use?"

17 Q. And it's your testimony that DSM2 has not had
18 that type of validation and calibration consistent with
19 these recommendations?

20 A. My testimony is that the information needed to
21 assess DSM2 calibration has not been provided for this
22 proceeding, so there is no way to assess whether it's
23 acceptable for use in this proceeding with regard to the
24 error rate.

25 And I would like to say, I asked a number of

1 the DSM2 modelers, "Do you have any idea of the error
2 rate of this model," and none of them knew. They were
3 experts, all of them who had worked with it. One of
4 them had participated in -- Dr. Shakar had participated
5 in DWR calibration exercises. None of them knew the
6 error rate of this model, and that's an issue.

7 MS. ANSLEY: I -- I would like to move to
8 strike as non-responsive. Assumes facts not in evidence
9 and lacks foundation as to what she is even talking
10 about. But I believe I have an answer to my question,
11 and that is the end of my questions.

12 HEARING OFFICER DODUC: Thank you, Ms. Ansley.
13 She answered based on her knowledge, expanding on her
14 response to you, so we will allow that.

15 All right. Next. Ms. Meserve.

16 MS. MESERVE: Good afternoon. Osha Meserve for
17 Land and Other Protestants. I just have a couple of
18 questions about the modeling advice that's being
19 provided here in this proceeding, as compared to other
20 proceedings. And it should be probably only about five
21 minutes.

22 CROSS-EXAMINATION BY MS. MESERVE:

23 Q. Good afternoon, Ms. Des Jardins. First, are
24 you aware of whether the State Water Resources Control
25 Board, where we are now, has professional water modeling

1 staff on staff?

2 A. Yeah. I have met Rich Sukowski at a claim
3 forum. I actually attended a talk of his. I know that
4 he is retiring and there's other modelers.

5 HEARING OFFICER DODUC: Ms. Des Jardins, if you
6 could pull the microphone closer to you.

7 WITNESS DES JARDINS: Sorry about that.

8 BY MS. MESERVE:

9 Q. And do you know what the Water Board staff that
10 you're aware of that are professional modelers in this
11 area, what they are working on here at the Water Board?

12 A. They have produced a -- I believe it's called
13 SacWAM, which is their own model of -- first, they
14 produced a draft SED and they have an analysis for it.
15 And they moved away from using CalSim to using more
16 information, which I thought was a great idea. And then
17 SacWAM is their own model for the Bay Delta Water
18 Quality Plan update and they are having a full peer
19 review. They had two workshops. I think that's an
20 excellent development. And -- and I think they are
21 doing everything right.

22 I also want to say SacWAM, as far as best
23 available model, there is WEAP, that was developed by
24 the Stockholm Environmental Institute. David Perkey,
25 who worked on it did some great peer reviewed studies on

1 climate change early on. And WEAP offered to -- the
2 Stockholm Institute offered to work with the Board.
3 SacWAM is based on WEAP and I think that's a very
4 promising development. WEAP is also excellent for
5 looking at climate change impacts.

6 Q. And just for the record, does weep stand for
7 something that you know of?

8 A. I don't remember. I just remember the acronym.

9 Q. Yes. Okay. Is it W-e-e-p?

10 A. W-e-a-p. And it does have, you know, like a
11 complete representation of Sac Valley hydrology and
12 other things.

13 Q. Thank you. And to your knowledge -- so you've
14 just said that these professional modeling staff are
15 assisting with the Water Quality Control Plan update.
16 To your knowledge, are these staff assisting in this
17 proceeding regarding the petition for change in water
18 rights?

19 A. So the -- to answer your question more
20 specifically, I did look into this. And the -- in the
21 development of this, the State Water Board was an ex
22 officio member of the Bay Delta Conservation Plan
23 Steering Committee. You know, Tom Howard, the executive
24 director, went to those meetings, presented some of the
25 concerns about the State Board. But Mr. Howard is not a

1 modeler. And I don't know when the Board got the
2 modeling that was done. For example, DWR offered as
3 part of BDCP to do the modeling mandated under 85086. I
4 don't know the level of review that was done of that
5 modeling or, indeed, of that -- it's actually a question
6 to me if the State Board or other agencies that are
7 secondary on CEQA for this document have actually
8 looked -- ever looked closely at the underlying modeling
9 or if they just relied on DWR to do it.

10 Q. Are you aware of any requirements with respect
11 to independent review of modeling for this project?

12 A. So with respect to the Board, there is a Health
13 and Safety Code requirement that I believe it has to do
14 with either regulations or policies of the Board. There
15 is a question whether -- and this is more of a legal
16 question that I think CSPA has argued -- that the Health
17 and Safety Code section on peer reviews does apply to
18 85086. And that would trigger an extensive peer review.

19 As far as -- I did also find that with respect
20 to the 2010 SED, they did rely on CalSim. And there was
21 an error in that one of the peer reviewers, a
22 hydrologist at UC Davis, stated that the model had been
23 peer reviewed -- had been peer reviewed in 2003 and had
24 been thoroughly vetted. And that was just -- I was kind
25 of stunned. It's like no, this is a fundamental

1 misunderstanding of the technical level of the 2003 peer
2 review.

3 So to the extent that CalSim is used in the
4 South Delta Plan or the South Delta Update or the Bay
5 Water Update, I believe that code does require complete
6 analysis, not only of the CalSim model, but of the
7 inputs. So they have this revision. And to the extent
8 they have used CalSim in the revision, it may be
9 required. I believe it's required, yeah. For this
10 proceeding, it's somewhat unclear. That's why I am
11 advocating for looking at what the independent panel in
12 2012 said. They made very good recommendations.

13 Q. Just now you referred to 85086. Can you
14 provide the -- is that in the Water Code?

15 A. Yes. Water Code 85086 mandates that they look
16 at, you know, the needs for flows. And there is a
17 mandate that the Board produce an interim flow criteria.
18 So there was a 2010 report that was done, and it
19 documented the needs for an initial -- documented the
20 needs.

21 And the issue was that in concert with
22 Mr. Howard, there -- it is documented in Appendix 3I, I
23 believe, of BDCP. Literally states that DWR came to the
24 conclusion that they couldn't do that because of impacts
25 on Oroville Reservoir. And I -- you know, that's why I

1 am concerned that that's kind of a pre-decisional
2 analysis and I am concerned. That was why I asked for
3 the sensitivity analyses, and particularly sensitivity
4 analyses of reservoir parameters early in this
5 proceeding, was that to the extent that relied on models
6 that were -- produced that analysis that you couldn't
7 meet those 2010 flow criteria. And it is in the BDCP
8 EIR/EIS. To the extent that the modeling presented for
9 this proceeding is a result of a series of analyses that
10 were done completely outside of either any hearing, any
11 way for people to refer parties -- that are parties to
12 this proceeding to review and completely outside of any
13 independent reviewer analysis and were procured by, not
14 just DWR and USBR, but by Metropolitan Water District
15 and the other BDCP parties. I think it is an issue.

16 Q. So just to summarize, is it your testimony and
17 opinion that the Water Board decision-makers here would
18 benefit from receiving unbiased assistance on modeling
19 from their own staff?

20 A. Yeah. And the other thing about 85086 is there
21 is a section that says -- it didn't say that the water
22 export agencies in DWR would do the analysis for 85086.
23 It said that the Board would get funding for the
24 analysis for 85086. And the Board did pass a resolution
25 asking -- saying that they would ask the water agencies

1 for up to \$600,000. And I haven't been able to find
2 out -- I did actually ask in this proceeding if that had
3 ever been collected. But if there was \$600,000, it
4 would pay for a peer review.

5 MS. MESERVE: Thank you. I have nothing
6 further.

7 HEARING OFFICER DODUC: Thank you, Ms. Meserve.
8 Mr. Jackson?

9 MR. JACKSON: I had questions, but they were
10 ably asked by someone else.

11 HEARING OFFICER DODUC: Thank you, Mr. Jackson.
12 Ms. Suard? I regret to tell you, Mr. Keeling, that
13 Ms. Meserve did quite well without your lead in.

14 MR. KEELING: She always does.

15 MS. SUARD: I'm going to have --

16 HEARING OFFICER DODUC: Is your microphone on,
17 Ms. Suard?

18 MS. SUARD: Now it is on.

19 HEARING OFFICER DODUC: Much better.

20 MS. SUARD: Thank you. Could I refer to SHR --
21 let's see if we can get the right number this time. I
22 believe it is 102, page 18. I'm going to go to it too
23 while we're at it.

24 So I'm asking some basic questions about
25 CalSim, and then I'll refer to that.

1 WITNESS DES JARDINS: My distance glasses.

2 Okay.

3 CROSS-EXAMINATION BY MS. SUARD:

4 Q. I'm not going to ask -- you can look at me for
5 now because I'm going to go to that afterwards.

6 So my understanding about CalSim and what
7 you -- you brought this up throughout this whole
8 process -- is that the last scientific calibration of it
9 was in 2003; is that correct, was peer reviewed?

10 A. That's the last externally released
11 calibration. I did work with PCFFA and IFR to subpoena
12 any more recent information, and they just provided us
13 cyber links to that review. So I assume that -- you
14 know, I don't know for sure that that's the last one
15 that's been done. But that was the one that was
16 referenced in Munevar's testimony. That was the one
17 that was provided in response to very specific request
18 for, you know, what's the most recent information.

19 Q. So do you -- thank you for that. Do you assume
20 then the numbers -- that the averages and all that are
21 based on numbers produced before 2003?

22 A. So the history of this Sac Valley hydrology
23 model is it is based on models developed in the 1950s
24 and '60s. And there was an issue during Decision 990,
25 the Bureau produced some models that they initially

1 weren't going to allow any diversions during the summer.
2 And -- and I think it was July, August, and September,
3 they felt there wasn't good supply for direct
4 diversions. And the Bureau said, "No. There's going to
5 be lots of runoff from the rice farms," and they
6 produced a study.

7 And then similarly, in Decision 1275, there was
8 the same issue that there is no water for direct
9 diversion in the Delta in July, August, and September.
10 And DWR produced a study saying there's going to be
11 200,000 acre feet of runoff -- it is literally in
12 Decision 1275 -- of runoff.

13 And to the extent that there has been -- there
14 was no runoff from the Colusa Basin during 2014. So
15 those might be off. And that is one of the issues is,
16 yes, please -- I haven't seen the Sac Valley hydrology
17 calibration. The other issue is the rice farms
18 themselves. They used to use 7 to 8 acre feet per acre
19 of water in Glen Colusa irrigation district. And now I
20 think the average is more like 4.4 acre feet. So the
21 question is, you know, is there still this kind of
22 runoff. And that flows into -- down and through
23 Freeport and into Steamboat Slough.

24 Q. Okay. So I'm going to be -- thank you. Going
25 more down into the Delta, instead of upper Sacramento

1 and all that?

2 A. Yeah.

3 Q. To your knowledge, does CalSim adequately
4 calculate what happens during extreme drought or extreme
5 low flow into the Delta region?

6 A. I looked specifically at the calibration at the
7 flow split in the Delta Cross Channel, and it doesn't.
8 It actually, I think, significantly understates the
9 amount that's diverted. And I haven't looked at
10 Steamboat Slough. But again, this is something --
11 it's -- it's difficult and time-consuming to try to redo
12 the kind of calibration that should have been done. And
13 I don't think should be a burden on people such as
14 yourselves or me to have to pull the data and try and
15 redo what's essentially required to show that the
16 modeling does what it says it does.

17 Q. Thank you. So to summarize, in your opinion,
18 DWR/USBR did not provide adequate data regarding the
19 issues of flow splits and the impacts from those flow
20 splits?

21 A. Yeah. For example, in Steamboat Slough, if you
22 wanted to know what impact would be there, it would be
23 really important that the flow split be accurate. High
24 flows, during, you know, wet seasons like we've had and
25 in critically dry years, like we had in 2014.

1 And, you know, it would be -- you know, there
2 should be gauge data. They have flow sensors. And, you
3 know, you look at the actual flow splits, and then you
4 look at what happens in CalSim. And I want to say that
5 kind of physical process is not dependent on operations.
6 It is just a process of how the flow splits. It is time
7 independent. You can look at it for future versions of
8 the model. You can look at it for historical. You can
9 look at it for current operations. It should all be the
10 same. And the code I saw was the same for different
11 time periods.

12 Q. So it was averaging?

13 A. Well, no, it's -- it's not that. It's that --
14 that you can take those -- what the model representation
15 in the component that represents the flow split isn't
16 dependent on the time period for operations. Because
17 the flow split is just what percentage of the flow gets
18 diverted. And as I understand it, that is how the model
19 represents it. What percentage of the flow is coming in
20 is diverted?

21 Q. Okay. So I'm going to -- so if we were looking
22 at the last calibration was around 2003. And there --

23 A. Yeah. Yeah. The 2003 historical validation
24 study didn't even look at flow splits in the Delta.

25 Q. Okay.

1 A. So it wasn't -- it wasn't -- it wasn't that
2 kind of calibration, and I have never seen a report that
3 really looked at those.

4 Q. Okay. So I -- I just want to bring up some
5 changes in flow that have happened since 2003. And I
6 wonder if you would know if they were included in any
7 recalibration of CalSim. And there are a number of
8 intakes that were -- have been constructed since 2003
9 north of the Delta or in the Delta and that affects flow
10 through the Delta, into the Delta. And do you know if
11 any of the -- those new intakes were calibrated in the
12 new models?

13 A. Let me address the more general issue of your
14 question because I don't know specifically. But one of
15 the issues with models like these that have been in use
16 for a while -- and CalSim was evolved out of DWR similar
17 and, you know, which is an older model. That yes, the
18 water use has been changing. We have had increased
19 diversions; and, you know, sometimes there is reduced
20 runoff. There is more groundwater pumping, which might
21 affect it. And so I believe AquAlliance presented a lot
22 of testimony in this proceeding about groundwater. That
23 affects groundwater inflows. CalSim assumes a certain
24 level of groundwater inflow. And in critically dry
25 years, the Sacramento River, the lower Sacramento River

1 becomes a losing stretch. In fact, it can lose 7
2 percent of the river flow, and that doesn't normally
3 happen.

4 Normally, it is a gaining stretch in
5 groundwater, creeks. So to the extents there is changes
6 in either divert -- more diversions, direct diversions
7 or more groundwater pumping in the area, it greatly
8 affects it. And it is a need to update the model and
9 also have transparent documentation about the
10 assumptions and when -- you know, when was your last
11 calibration. You know, when was -- what runoff -- you
12 know, when did you look at that? And that's just not
13 there. I can't tell for any period whatsoever.

14 I mean, there is a discussion in the BDCP EIRS
15 and it did update the Sac Valley representation, which
16 had some real significant known errors. But it just
17 provides a map of the depletion study errors. It
18 doesn't go into any real detail. And we did request
19 that information, and I wasn't able to get it.

20 Q. Okay. So to summarize -- sorry. To summarize,
21 you're saying it just wasn't there in the modeling that
22 you could see?

23 A. Yeah. So there is sort of two components to
24 the model. And there's the code, which has been
25 publicly distributed. But the other part of it is this

1 calibration information where you can assess how -- and
2 that's really, you know, more than half of what this
3 model is. And that doesn't seem to be publicly
4 distributed.

5 Q. Did you download the code that was -- you know,
6 that DWR said we could download the code and try and do
7 review?

8 A. Oh, yeah.

9 Q. Did you --

10 A. I looked at it. Actually, I worked with PCF --
11 no, Friends of the River in 2013 and started to do
12 really in-depth look at the code. But the issue was the
13 code versions were changing. And so -- you know, so I
14 needed to update the analysis.

15 Q. So what date was -- there's a date timestamp of
16 the timing of that code that you can download. Do you
17 recall the dates of that?

18 A. So they -- we got the code on May 31st. I did
19 ask for more time to look at it because it takes time
20 just to extract the information. And it is just
21 provided in a raw data format that is extremely
22 time-consuming. I actually -- you know, they do review
23 the code using spreadsheet models. And I actually
24 really hoped that they might consider providing such a
25 spreadsheet model with more of the information so that

1 people aren't forced to try to extract it from the raw
2 data.

3 Q. Thank you. Just one other question. Did you
4 see any flow data for 2008 through 2015 in any of the
5 models?

6 A. So what they use is 2000 -- through 2003, I
7 think it might start -- it's 82 years through 2003. And
8 what they do is they perturb that based on climate
9 change.

10 Q. Okay. So all of the changes in flow that we
11 have been experiencing, you can look at from the CDC and
12 all that -- none of that is included in the model that
13 we have all been discussing?

14 A. Well, this, again -- that gets to the accuracy
15 of the model. So you introduce this perturbation to
16 what you think your base is; and if your baseline is
17 changed, then the perturbation isn't that helpful.

18 Q. I think that's what I was trying to point out.
19 This is a graphic that shows changes since 2003. There
20 has been a lot of different models -- or projects,
21 construction projects. And I call them intakes. If it
22 takes water off the river, it is an intake. There might
23 be different purposes for it. It could be for fish
24 greens. It could be for municipal water. But there
25 have been a lot of projects north of the Delta and in

1 the Delta that have changed flow. And I was wondering
2 can you see those?

3 A. I can see those. I am aware that DWR does
4 periodically update the model to include new intake
5 facilities. I don't know which of these have been
6 included in the current model.

7 Q. Do you think Freeport has been? It probably
8 has.

9 A. I just -- I wouldn't know. I would have to go
10 look at the code. I have looked at significant chunks
11 of the code, but I don't remember about that one.

12 Q. So the baseline is based on 2003 or earlier and
13 not on extremes, correct?

14 A. Yeah. 2003 or earlier. There are some --
15 there are two significant drought stretches in there,
16 two six-year drought stretches. And I have advocated
17 for this proceeding, even if you don't produce the
18 current inputs, if you can just produce what it looks
19 like for those six-year droughts because that's when the
20 highest conflicts happen. And if you get it right for
21 that, then you will -- then I think things will be a lot
22 better. But just producing 82-year averages is not that
23 informative, especially given the other limitations on
24 the model.

25 MS. SUARD: Okay. Thank you very much.

1 WITNESS DES JARDINS: Sure.

2 HEARING OFFICER DODUC: Thank you, Ms. Suard.

3 And by the way, I am extremely impressed that you
4 conducted your entire cross-examination using only your
5 phone. Mr. Volker, any re-direct?

6 MR. VOLKER: No.

7 HEARING OFFICER DODUC: All right. Thank you.

8 And again, we will expect -- well, unless you have --
9 unless you have submitted already, your exhibits to be
10 submitted into evidence with any necessary corrections
11 by noon next Tuesday. All right.

12 MR. VOLKER: We will do that.

13 HEARING OFFICER DODUC: Thank you,
14 Ms. Des Jardins. Thank you, Mr. Volker, for assisting.
15 With that, we will take a 15-minute break. And I will
16 ask Ms. Daly and, oh, Mr. Brodsky, who just stepped out
17 I guess, to set up because when we resume, we will get
18 to your case-in-chief. And we will continue at 2:50.

19 (Off the record.)

20 HEARING OFFICER DODUC: It is 2:50, and we are
21 back in session. Mr. -- actually, let me ask, is
22 Mr. Pruner here?

23 MR. BRODSKY: He is.

24 HEARING OFFICER DODUC: If I could ask both of
25 you -- oh, before I do, I guess, Mr. Berliner?

1 MR. BERLINER: Yes. I'm not sure if this is an
2 objection or a point of clarification. But I understand
3 that some of the witnesses who were slated to testify
4 are not going to be testifying on behalf of this group.

5 HEARING OFFICER DODUC: Actually, I believe
6 Ms. Daly has actually withdrawn the testimony of
7 Mr. Hayes and Ms. Suard.

8 MR. BERLINER: That was my understanding as
9 well.

10 HEARING OFFICER DODUC: Correct.

11 MR. BERLINER: But my question/objection is
12 Ms. Daly is a percipient witness, not an expert witness.
13 And what is not clear is whether she will be testifying
14 on their behalf or from her own knowledge. And all I
15 wanted to clarify is if she is testifying from her own
16 knowledge, I have no objection. If she is giving the
17 testimony that they would have given, then I have an
18 objection.

19 HEARING OFFICER DODUC: I see.

20 WITNESS DALY: I'm not here to do that.

21 MR. BRODSKY: No. She is staying within her
22 own written testimony.

23 MR. BERLINER: Based on her on knowledge,
24 correct?

25 MR. BRODSKY: Yes.

1 MR. BERLINER: Then I have no objection.

2 MR. BRODSKY: Okay.

3 HEARING OFFICER DODUC: Any other points of
4 clarification, Mr. Berliner?

5 MR. BERLINER: Well, the only point was that
6 her testimony summarized their testimony. But since
7 they are not going to be testifying and if she is only
8 testifying about her own knowledge, then I take it she
9 won't be testifying -- she won't be summarizing
10 testimony that is not being given.

11 HEARING OFFICER DODUC: That is correct.

12 MR. BRODSKY: That is correct.

13 MR. BERLINER: That's what I'm taking your
14 answer to be.

15 HEARING OFFICER DODUC: All right.

16 MR. BRODSKY: We are trying to make things
17 easier, not trick you.

18 HEARING OFFICER DODUC: And if Mr. Pruner and
19 Ms. Daly would both stand up and raise your right hand.

20 Do you swear or affirm that the testimony you
21 are about to give is the truth? If so answer, "Yes, I
22 do."

23 WITNESS PRUNER: Yes, I do.

24 WITNESS DALY: Yes, I do.

25 HEARING OFFICER DODUC: Thank you. Please be

1 seated. And do you have an opening/policy statement to
2 provide?

3 MR. BRODSKY: I'll just give a brief overview
4 of the testimony we're about to give. So we have
5 Ms. Barbara Daly and Mr. Mark Pruner on behalf of North
6 Delta CARES. Ms. Daly is the co-chair of North Delta
7 CARES and a long-term Clarksburg and Delta resident.
8 Mr. Pruner is long-term Clarksburg resident and chair of
9 the Clarksburg Fire Protection District Board.

10 Ms. Daly will offer testimony about impacts to
11 her as a legal user of water. She has a water well that
12 is directly across the river from the construction site
13 for intake number 2. She will also offer testimony as
14 to impacts on human uses of Clarksburg, essentially
15 being ground zero of the construction of the entire
16 tunnel project.

17 Mr. Pruner, in his capacity as chair of the
18 Clarksburg Fire Protection District, the district also
19 operates a well. And so they, as legal users of water,
20 will be impacted by the WaterFix effects on their -- on
21 their water well, their drinking water well. Mr. Pruner
22 will testify about that. And he will also testify about
23 the impacts on the community of increased demands for
24 first responder services that are going to be brought
25 about by thousands of construction workers descending on

1 the small town of Clarksburg.

2 HEARING OFFICER DODUC: All right.

3 MR. BRODSKY: So that's basically an overview
4 of what we're about to do.

5 HEARING OFFICER DODUC: My understanding is
6 your third witness, Mr. Marshal, will appear on December
7 15th, should the hearing extend to that date.

8 MR. BRODSKY: That is correct.

9 HEARING OFFICER DODUC: All right.

10 MR. BRODSKY: And -- yes.

11 HEARING OFFICER DODUC: And do you want to
12 state for the record, since you're doing the opening
13 statement, what Mr. Marshal will be testifying to?

14 MR. BRODSKY: I --

15 HEARING OFFICER DODUC: If he appears.

16 MR. BRODSKY: I'm actually not prepared to do
17 that at this time. I overlooked that.

18 HEARING OFFICER DODUC: All right.

19 MR. BRODSKY: Okay.

20 HEARING OFFICER DODUC: Then we will begin with
21 your direct --

22 MR. BRODSKY: Yes.

23 HEARING OFFICER DODUC: -- of Ms. Daly.

24 MR. BRODSKY: By the way, my name is Michael
25 Brodsky, appearing on behalf of North Delta CARES today.

1 Okay.

2 DIRECT EXAMINATION BY MR. BRODSKY:

3 Q. Good afternoon, Ms. Daly.

4 A. Good afternoon.

5 Q. And you submitted written testimony in this
6 matter.

7 A. Yes.

8 Q. And do you affirm that your written testimony
9 is true?

10 A. Yes.

11 Q. Okay. And you also prepared and submitted
12 exhibits on behalf of North Delta CARES?

13 A. Yes.

14 Q. And those are Exhibits 1 to 29. And do you
15 affirm that those are true and correct copies of the
16 documents as you listed them on your exhibit index?

17 A. Yes.

18 Q. Okay. Where do you live?

19 A. I live just south of Clarksburg on South River
20 Road, right on the river.

21 Q. Okay. And how long have you lived there?

22 A. Since 1992. About 25 years.

23 Q. Okay. Let me just back up for a minute. Can
24 you just tell us a little bit about North Delta CARES
25 and what the group is and what it does?

1 A. North Delta CARES is a group of local residents
2 that come together regularly to meet about water issues,
3 the water challenges going on out in the Delta. We have
4 done various types of things, everything from going to
5 the capitol to protest the legislation that was done in
6 2010 and to give our comments. We have commented on the
7 EIR/EIS twice. We put binders together of comments.
8 We -- we've had speakers come to tell us -- from the
9 Delta Stewardship Council to the Delta Conservancy.
10 We've had Senators, Congressmen, people running for
11 office. We've had county supervisors come to talk about
12 the water issues, give them our input, ask them what
13 their status is on the water. We have -- we did a
14 million boat float at one point in time and -- along
15 with the people from Antioch.

16 Mark is also part of North Delta CARES. Would
17 you like to add anything that we do? We -- one of the
18 really important things I think that I'd like to add
19 that we do is that we have people come to talk about
20 alternatives to the twin tunnels and to the California
21 WaterFix. We've had a lot of good input with Power
22 Point presentations, information, meeting them, being
23 able to ask them more questions about their thoughts and
24 their ideas. We've probably had at least six that we've
25 had come and do that. And sorry, Mark, I talked right

1 over you. Anything you'd like to say?

2 WITNESS PRUNER: I will reserve comment.

3 HEARING OFFICER DODUC: I don't believe your
4 microphone is on. And actually --

5 WITNESS PRUNER: I don't think I can comment.
6 Yes, ma'am.

7 HEARING OFFICER DODUC: Before you do, though,
8 if we could pull up -- I think you have it already,
9 Mr. Long -- NDC-4 Errata-1. I want to make sure that
10 the two paragraphs referencing the testimony from
11 Ms. Suard and Mr. Hayes are, indeed, deleted from your
12 testimony.

13 WITNESS DALY: Yes, that's fine. They're not
14 deleted yet, but they will be.

15 HEARING OFFICER DODUC: Okay. So they are not
16 deleted in the -- even in the errata sheet?

17 WITNESS DALY: Yes. Because this was a very
18 recent decision.

19 HEARING OFFICER DODUC: Okay.

20 WITNESS DALY: Especially to help save time. I
21 know you're trying to wrap things up this week.

22 HEARING OFFICER DODUC: I do. But not at the
23 sacrifice of valuable information.

24 WITNESS DALY: I appreciate that as well. We
25 are trying to make it all work.

1 HEARING OFFICER DODUC: All right. Great. So
2 we will note then for the record that when you submit
3 your exhibits to please delete the two paragraphs in
4 your testimony that reference the testimony by Ms. Suard
5 and Mr. Hayes.

6 WITNESS DALY: Mr. Brodsky, do you agree with
7 that?

8 MR. BRODSKY: Yes.

9 HEARING OFFICER DODUC: All right. With that,
10 please continue.

11 WITNESS DALY: I would just like to also say
12 what North Delta CARES stands for. And it -- CARES is
13 the acronym. And it stands for Community Area Residents
14 for Environmental Stability. And when we have our
15 meetings, we invite people from the -- mostly, the
16 primary zone of the Delta. There is a primary zone and
17 a secondary zone. So we invite people from the smaller
18 towns and the communities and the outlying areas from
19 Rio Vista, the Delta Loop, although that's in the south,
20 all the way up the river up to Freeport.

21 BY MR. BRODSKY:

22 Q. Okay. Thank you.

23 A. You're welcome.

24 Q. And so you mentioned that your home, you live
25 on South River Road just south of the town of

1 Clarksburg, correct?

2 A. Correct, yes.

3 Q. And what is the source of the drinking water
4 for your home?

5 A. I have a well.

6 Q. And the well is on your property at your home?

7 A. Yes. Where I live, yes.

8 Q. Okay. Could we take a look at SWRCB 3? And in
9 Appendix A, there is a table of figures and there is a
10 Figure 7-27. Okay.

11 Ms. Daly, so do you recognize this map?

12 A. Yes, I recognize it.

13 Q. Okay. And so we see the town of Clarksburg
14 there. And then we see the three proposed intakes and
15 the northernmost intake is intake number 2; is that
16 correct?

17 A. Yes.

18 Q. And so you live across the river from intake
19 number 2?

20 A. Proposed intake number 2, yes.

21 Q. And so when there's a colored zone there, which
22 down at the bottom is a zone of influence on groundwater
23 that's expected from the construction, your home is
24 within that colored area; is that correct?

25 A. Yes.

1 Q. Okay. Thank you. And I'd like to turn then to
2 SWRCB 3, Appendix A in Chapter 7, page 7-9.

3 A. Mr. Brodsky, could I add one comment. My home
4 and many other homes with -- of North Delta CARES'
5 members and people that live in the area, not only mine.

6 Q. Okay. Thank you.

7 A. You're welcome. What happened? Something
8 happened.

9 Q. Okay. So 7-9 is -- page 7-9 is from the 2015
10 EIRS and Section 7.3.3.9 is discussing Alternative 4, we
11 see there on page 7-9. And then if we continue to page
12 7-11. And beginning at line 32 there.

13 A. 7-12, Michael.

14 Q. On 7-11?

15 A. It is on both pages. You're right.

16 Q. So I am starting at line 32 on page 7-11. It
17 says, "The horizontal distance from the boundary of the
18 excavation to locations where forecast groundwater
19 levels are 5 feet below the static groundwater level is
20 defined as the 'radius of influence' herein. The radius
21 of influence is forecasted to extend approximately 2,600
22 feet from the Byron tract Forebay excavation and from
23 intake 2, 3, and 5 excavations." Do you see that there?

24 A. Yes.

25 Q. And so your home is located within that sphere

1 of influence as it is described there.

2 A. Yes.

3 Q. And your well.

4 A. Yes.

5 Q. And then at the bottom of page 7-11, it says,

6 "The sustainable yield of some wells might temporarily
7 be affected by the lower water levels such that they are
8 not able to support existing land uses." Do you see
9 that?

10 A. Um-hum.

11 Q. So are you concerned from the information
12 that's disclosed in this document and the location of
13 your home that your drinking water supply may be
14 interrupted by the construction of WaterFix?

15 A. Yes. I am very concerned about that.
16 Absolutely. That and other effects, but the drinking
17 water is one of the major ones.

18 Q. And are you concerned that other -- other North
19 Delta CARES members, also their drinking water wells may
20 be affected?

21 A. Absolutely.

22 Q. And to the best of your knowledge, are all the
23 homes in Clarksburg on well water?

24 A. Yes.

25 Q. Okay. So there is not a municipal distribution

1 system?

2 A. No. And --

3 Q. Okay.

4 A. -- not only in Clarksburg, but in the
5 surrounding area as well, up and down the river.

6 Q. Okay. And then if we could take a look at
7 SWRCB 3, Appendix A, page 7-12. That's where we are.

8 A. Next page.

9 Q. Next page. And there is a mitigation measure
10 listed there. Mitigation measure GW-1, "Maintain water
11 supplies in areas affected by construction dewatering."
12 And basically, what this says, to paraphrase, is that
13 DWR promises to monitor nearby wells and if their
14 construction creates a problem, to offer you some
15 alternative source of water. Do you believe that? I
16 mean, why are you concerned since DWR is basically
17 saying they have your back on this?

18 A. Well, two reasons. One is I don't have reason
19 to believe that. Even just listening to Mrs. Suzanne
20 Womack today where mitigation is hard to find. You
21 don't know where to call. If you don't -- you don't
22 know what the process is. The process isn't necessarily
23 set up well. So there's -- there's that. And then
24 there's also the compound of the noise and the
25 vibrations to our homes in the area, to my home, to my

1 neighbors' homes. The noise we will be -- in fact,
2 there is information in the EIR/EIS about the noise that
3 says that people will abandon their homes because of the
4 noise. So I don't know if you want me to say more about
5 that.

6 Q. I was going to turn to that topic in a minute.

7 HEARING OFFICER DODUC: Let's hold on.

8 Ms. Ansley?

9 MS. ANSLEY: Just an objection for the record
10 Ms. Daly's testimony, while it does state that she is
11 concerned about the water quality in the well, in no
12 place goes through any evidence or analysis or cites to
13 the -- I believe this is the RD EIR/S. I believe it is
14 just literally two sentences where it says she is merely
15 concerned about her well. It doesn't go into zone of
16 impacts. I'm sure you get the point. So we'd like to
17 lodge an objection that this is outside the scope of her
18 direct testimony. Thank you.

19 HEARING OFFICER DODUC: Objection noted for
20 now. Mr. Brodsky, your response?

21 MR. BRODSKY: Yes. Her written testimony does
22 discuss the well and the impact in some detail on
23 page 3. This is from NDC-4 Errata. "I live on property
24 which is on the west side of the Sacramento River
25 directly across from where intake number 2 is currently

1 designed to be built. I believe that water quality of
2 the well through which we obtain potable water for
3 drinking, showering, and daily needs will be seriously
4 compromised during at least the construction phase."

5 And up at the top, the top paragraph says, "I am
6 personally a legal user of water in the Delta for the
7 last 25 years. And myself and my" --

8 HEARING OFFICER DODUC: Mr. Brodsky, let me
9 interrupt and ask NDC-4 Errata was provided rather late.
10 And NDC-4 is actually what I have.

11 MR. BRODSKY: Yeah.

12 HEARING OFFICER DODUC: So perhaps you can
13 reference that for me in terms of where that is in
14 NDC-4.

15 MR. BRODSKY: I believe those two paragraphs
16 are in the same place at the top of page 3 on NDC-4.
17 But I would have to take a look at it. I don't have it
18 in front of me.

19 HEARING OFFICER DODUC: Mr. Mizell? Actually,
20 you are correct. It is.

21 MR. BRODSKY: Okay.

22 MR. MIZELL: And the Department is not
23 objecting to the statement as Mr. Brodsky has read it.
24 What we are objecting to is the fact that her testimony
25 is wholly absent of any citation. And to now, through

1 the course of direct testimony questioning by
2 Mr. Brodsky, we are just now learning about the
3 connections between the documents that she apparently
4 relied upon for the assertions that she provided no
5 citations for. So we would believe that this
6 constitutes fairly substantial surprise testimony at
7 this point, as we were unable to know of the train of
8 thought and the logic behind the statements made that
9 were just summarized in her written testimony.

10 MR. BRODSKY: Well, let me see. If we could
11 take a look just at NDC-11.

12 HEARING OFFICER DODUC: And NDC-11 is?

13 MR. BRODSKY: This is an exhibit that Ms. Daly
14 made, taking pages from the EIR and photocopying them
15 and showing the relationship of her house to the
16 construction. She notes down there EIRS. And so she
17 was trying to make a connection.

18 I want to note that these Protestants were pro
19 se at the time that their evidence was submitted and are
20 not attorneys. And although, she didn't cite the EIR,
21 that that's obviously the source of the information; and
22 it was -- was and is a public document. And I don't see
23 the problem in pointing out to Petitioners the contents
24 of their own documents. If we had commissioned some
25 kind of report by a hydrologist and were springing it on

1 them at this point that might be one thing. But this is
2 their own publicly disclosed document --

3 HEARING OFFICER DODUC: All right.

4 MR. BRODSKY: -- that they've offered.

5 HEARING OFFICER DODUC: Thank you, Mr. Brodsky.
6 I recognize that the linkage was not expressly made, but
7 the linkage is there. I will allow the testimony.
8 However, I will allow Petitioners, also, the option of
9 requesting Ms. Daly's return on the 15th for
10 cross-examination if you feel you need additional time
11 to prepare for what you have described as surprise
12 testimony.

13 MR. MIZELL: Thank you very much.

14 HEARING OFFICER DODUC: All right. Please
15 continue, Mr. Brodsky.

16 BY MR. BRODSKY:

17 Q. Okay. So let's turn now to the impacts on the
18 community. We have discussed the impacts as a legal
19 user of water. And if we could take a look at SWRCB 3,
20 Appendix A, page 16-31. And --

21 HEARING OFFICER DODUC: I cannot read that.

22 WITNESS DALY: I can't either. Help.

23 MR. OCHENDUSZKO: Mr. Brodsky, do you have a
24 line citation that might help us focus in?

25 MR. BRODSKY: Yes. If we could take a look at

1 line 13.

2 BY MR. BRODSKY:

3 Q. And it says, "Legacy communities in the Delta,
4 which are those identified as containing distinct
5 historical and cultural character, include Locke, Bethel
6 Island, Clarksburg, Courtland, Freeport, Hood, Isleton,
7 et cetera." And so do you agree that Clarksburg
8 contains that historic character and should be
9 considered as a legacy community in the Delta?

10 A. Clarksburg was established in 1850, the same
11 year that California became a state. So yes, I would.

12 Q. Okay. And then if we could scroll down to
13 lines 41 to 46. And this says here, "For instance,
14 negative visual or noise-related effects on residential
15 property could lead to localized abandonment of
16 buildings, while water conveyance construction could
17 result in beneficial effects relating to economic
18 welfare of a community. Adverse social effects could
19 also arise as a result of declining economic stability
20 in communities closest to construction effects and in
21 those most heavily influenced by agricultural and
22 recreational activities."

23 And let's see. Could we go back up to page --
24 let's see. This is 16-31, line 41. Yeah. So I missed
25 the point I wanted to read there. "Property values may

1 decline in areas that become less desirable in which to
2 live, work, shop, or participate in recreational
3 activities. For instance, negative visual or
4 noise-related effects on residential property could lead
5 to localized abandonment of buildings." That was the
6 part I was looking for.

7 So you live -- you're right across the river,
8 looking at this huge construction site every morning
9 when you wake up. How is that going to feel?

10 A. Well, me and my husband -- my husband is a what
11 the EIR/EIS calls a sensitive receptor because of his
12 age. He is 78. And the children are sensitive
13 receptors that live in Clarksburg. Autistic people are
14 considered sensitive receptors. So waking up to the
15 pounding and the air quality and the trucks back and
16 forth 24 hours a day, 7 days a week, just does not sound
17 like a place that people would want to live. Not only
18 me, but my neighbors as well.

19 Q. Okay. Could we take a look at SWRCB 3,
20 Appendix A? Under the map books there is a figure M3-4.
21 Could we --

22 MR. OCHENDUSZKO: Which sheet?

23 MR. BRODSKY: I'm looking at page 1. Okay.
24 Then page 2. And then could we blow that up a little
25 bit? Okay.

1 BY MR. BRODSKY:

2 Q. So, Ms. Daly, do you see there, Clarksburg is
3 located near the top of the page, the town of Clarksburg
4 in the aerial photograph?

5 A. I see it, yes.

6 Q. And then on the other side of the river, we see
7 the construction site for intake number 2. And we've
8 got the black hashed area is a zone of construction.
9 And then the yellow hashed area is a muck dump or what
10 is being referred to as "reusable tunnel material" now.

11 And that legend is down at the bottom of the
12 page. So the yellow hashed is "Proposed Reusable Tunnel
13 Material Area." In earlier versions of the EIR, was
14 called "tunnel muck," and its name got rehabilitated
15 somewhere along the line. So that's when they dig the
16 tunnels, the stuff that comes out of there, they've got
17 to pile it up somewhere.

18 A. Right.

19 Q. Okay. Then if we go back -- scroll up back to
20 the top. Then there is that gray area there. It looks
21 like a staging area. There's a road going into it, some
22 part of the construction activities. So that whole --
23 that one construction site there looks to be about twice
24 as big as the town of Clarksburg, would you say?

25 A. Yes. And it's about 600 feet across the river.

1 You know, it's right there. Right.

2 Q. Okay. And then what -- how do you envision
3 something like that impacting a town when you look at it
4 at that scale there?

5 A. Well, I think everybody can pretty much imagine
6 how that would play out. It's -- it's just going to be
7 a water industry zone. And people will be injured.
8 People will -- by the air quality. There are three
9 schools in Clarksburg. There's a church. It's a place
10 where people enjoy living right now, and we have built
11 our lives around it. I won't be able to get back and
12 forth to my home easily. People will come down our side
13 of the river because they won't be able to get down the
14 other side of the river.

15 It's just going to be -- air quality from the
16 diesel trucks would be unbreathable, cancer-causing,
17 diesel inhalation. I just can't see the health and
18 safety being something that you would want to stick
19 around and find out what the results would be. I don't
20 know. It just -- it's a huge area, and it's really a
21 lot closer even than it looks on the map. I mean,
22 it's -- you drive there. I drive up and down this road
23 every day, and you're there within -- from one end of
24 this map to the other in a couple of minutes very
25 quickly. It's a short area.

1 Q. Okay. And then could we scroll down to the
2 next page? So then here's at the top that's intake
3 number 5. If we can scroll down just a little bit.

4 A. That's Courtland, yes.

5 Q. Or other way.

6 A. Um-hum.

7 Q. And then there's another -- looks like another
8 staging area. And the town of Hood there, I think you
9 can barely see above the staging area. Am I seeing that
10 right? Is that Hood there?

11 A. Hood, you can't -- yes. That's Hood right
12 above that staging area where the tunnel goes right
13 straight through it or -- I guess that's what the gold
14 line is. That would just divide that little legacy
15 town.

16 Q. Hood was also listed as a legacy town?

17 A. Yes. They all are. There is nine legacy towns
18 there up and down the river.

19 Q. And this stretch of the river where intakes 2,
20 3, and 5 are, the farmland, the river, I mean, how would
21 you characterize that, you know, in relationship to the
22 rest of the Delta and the rest of basically Northern
23 California?

24 A. It is unique. It has a unique position in
25 California, as far as California. It was settled by the

1 people that came to discover gold. Many of them did
2 come over the mountains, but about half of them came
3 from San Francisco Bay. They came from other countries.
4 Left their boats in San Francisco Bay, came up the
5 Sacramento River. And they settled these nine legacy
6 towns. And then they found that the farming was so rich
7 out here in the Delta from this bottom soil from the
8 river that those -- especially those that didn't make it
9 in the coal -- not coal -- the gold mines, they would
10 come back and they would farm this land. As well as the
11 Chinese, who after we finished building the levees and
12 after the clamshell digger was invented, they also
13 stayed and settled. The Chans came and gave their
14 policy statement. There's many families, fifth, sixth
15 generation out here in these legacy towns that are still
16 farming. And it is very quaint. It's a wonderful place
17 to live. It truly is.

18 Q. Okay. So we're short on time. We need to wrap
19 up. I don't want to cut you off. But is it fair to say
20 that this -- somehow that they chose the most scenic
21 area of the Delta to build this thing in?

22 A. Yes.

23 Q. All right. I think we should move on to
24 Mr. Pruner here, just given time considerations. I
25 don't want to cut you off, but we do have a time limit.

1 A. I have a lot more to say, but okay, I will give
2 you a turn.

3 DIRECT EXAMINATION BY MR. BRODSKY:

4 Q. Okay. Mr. Pruner, good afternoon.

5 A. Good afternoon.

6 Q. And you submitted a written testimony in this
7 matter?

8 A. Yes.

9 Q. And do you affirm that your written testimony
10 is the truth?

11 A. Yes.

12 Q. And you are -- have a position at the
13 Clarksburg Fire Protection District; is that correct?

14 A. Yes.

15 Q. And what is your position there?

16 A. Sorry. Yes. I am the chair of the Board of
17 Commissioners for the Clarksburg Fire Protection
18 District.

19 Q. And that District is a public agency that
20 provides emergency services; is that correct?

21 A. Yes.

22 Q. Okay. And you heard Ms. Daly's testimony and
23 saw the exhibits regarding impacts on nearby wells. The
24 Fire District has its own water well; is that correct?

25 A. Yes.

1 Q. And what is your assessment of the likely
2 impact of the WaterFix on your well?

3 A. We -- our well is approximately at this current
4 point in time, 105 feet deep. It is in the middle layer
5 of the layers of aquifers underneath that region. I
6 don't know if that's -- hopefully, that is helpful
7 information. I can add more information if it would be
8 helpful to the hearing officers. So we're at a level
9 that would be affected by this proposed slurry wall that
10 the Department of Water Resources proposes to use as a
11 primary tool to dewater not only the construction site
12 but the surrounding area.

13 Q. Okay.

14 A. Our assessment is we're within that -- clearly
15 within that zone of impact.

16 Q. Okay. And do you share Ms. Daly's concern
17 about DWR's promises of keeping an eye on you and making
18 sure everything stays good as construction progresses?

19 A. Well, I share her concerns and the District
20 shares her concern, but I think we can go a little
21 farther. As the public agency charged as the first
22 responder for fire suppression and medical emergency
23 response and other emergencies that come up, whether
24 generated by flood or other catastrophe or just simply
25 human error or accident, it is our job to be first on

1 the scene to perform services I think that all of you
2 would experience in, you know, whatever part of the
3 state you live in.

4 And for us, as the primary people that our
5 neighbors hold responsible for the delivery of those
6 services for decades now and we hope for decades in the
7 future, the reality is that when the State comes along
8 and says, "We have an agreement to agree," which is
9 exactly the language that was placed on the screen
10 earlier. Page -- I think it's 16-31. We treat that
11 with the legal import that the State of California
12 treats that. And the courts of California have said
13 that an agreement to agree is not enforceable.
14 Agreement to agree is not enforceable. And so our job,
15 as providing those services, if we rely on the State of
16 California promising to make a promise, an agreement to
17 agree, then we have failed in our duty to our neighbors.
18 And we have failed in our duty to provide emergency
19 response services to the visitors that also pass through
20 our district. The people come to spend money, whether
21 they are buying agricultural products, whether they are
22 buying wine, whether they are enjoying events that our
23 neighbors put on with the wineries and other folks. And
24 I think that concern that those facts are expressed and
25 duplicated up and down the path of the project in the

1 towns of Courtland and Hood and Walnut Grove.

2 Q. Okay. Thank you. Let's turn to the subject of
3 emergency services. If we could have SWRCB 3, Appendix
4 A, page 20-8, please. And this is Alternative 4. And
5 at line 12 there, it says, "Construction of the proposed
6 water conveyance" -- do you want me to stop? Okay.
7 "Construction of the proposed water conveyance facility
8 under Alternative 4 could affect law enforcement, fire
9 protection, and emergency services and facilities
10 through increased demand for services and direct and
11 indirect effects on nearby facilities."

12 HEARING OFFICER DODUC: Mr. Mizell?

13 MR. MIZELL: Since this is the first time that
14 we have been made aware that this document is also
15 linked to the testimony, we would like to also be
16 allowed to call back Mr. Pruner, if it becomes
17 necessary, on Friday for further cross-examination.

18 HEARING OFFICER DODUC: My preference would be
19 you either conduct your cross-examination today or you
20 defer until the 15th because I expect it will be
21 somewhat confusing to determine what aspect of his
22 testimony you are cross-examining today versus the 15th.

23 MR. MIZELL: We're prepared to cross-examine
24 based upon their written testimony today. The documents
25 that are being shown here are not contained in that

1 written testimony. So we would ask to be able to
2 cross-examine based upon any references to external
3 documentation on the 15th.

4 MR. BRODSKY: I mean, we could just simply
5 agree to strike the EIR from evidence in its entirety,
6 and that will solve this whole issue.

7 HEARING OFFICER DODUC: Thank you for such an
8 innovative suggestion, Mr. Brodsky. Go ahead and
9 continue with your cross-examination, and I will take
10 into consideration the Department's request.

11 MR. BRODSKY: Okay. Thank you.

12 HEARING OFFICER DODUC: The Department's
13 request. Not Mr. Brodsky.

14 MR. MIZELL: Just for the record purposes, it
15 will be -- I have the same objection based upon the lack
16 of citation.

17 HEARING OFFICER DODUC: So noted.

18 MR. BRODSKY: Okay. Thank you.

19 BY MR. BRODSKY:

20 Q. All right. In the next sentence, "Increased
21 service demands would be experienced in the communities
22 in which new construction workers relocate and in the
23 areas in which construction would take place." So
24 that's just pretty much common sense. If you move
25 thousands of construction workers into an area, there is

1 going to be increased demand on emergency services; is
2 that correct?

3 A. That is absolutely correct. And the document
4 that you now have on the screen -- I'm sorry, I didn't
5 memorize the exhibit number -- has been -- is generated
6 by the Petitioners quite some time ago. They have been
7 well aware of it for over a year. And I think it goes
8 without saying that any statement -- and the statements,
9 by the way, are very minor in the recirculated EIR/EIS
10 when it comes to fire protection. They are just found
11 in, like, three places, I want to say. I don't have
12 each of those memorized. Very limited. So I would be
13 very concerned if our friends at the State are surprised
14 at three places that those ideas might not be linked to
15 my testimony today.

16 Let me just say in direct answer to the
17 comments that, for example, I think we all hopefully
18 know that recently, the Consumnes River Boulevard
19 interchange was completed over Interstate 5 just south
20 of Pocket Road, just between Sacramento and Elk Grove.
21 Technically, it is within the City of Sacramento at the
22 very edge.

23 Our District experience when that interchange
24 was completed, folks driving up 5 from the -- from San
25 Joaquin County and Elk Grove, started to take off on

1 that exit. Exit the freeway there. Cross the bridge at
2 Freeport and drive up the river into West Sacramento,
3 apparently to bypass traffic around the central core of
4 Sacramento. That increase in traffic along a two-lane
5 Crown Levee Road, not designed for people that want to
6 go along and try to traverse at freeway speeds. No
7 guard rails. We have linked, through our efforts in
8 coordination with CHP, to at least two serious
9 accidents, one a fatality. And we've responded to those
10 in the ordinary course. We have also experienced, in
11 general, an increase in load -- a response load to our
12 District from that increased travel flow.

13 So we know, A, that when the Consumnes River
14 College interchange was installed, people being normal,
15 looking at their GPS programs on their phones, saw that
16 there is an alternate route around traffic jams and
17 stops and accidents on Interstate 5 between Elk Grove and
18 downtown Sacramento, chose an alternate route. And a
19 very scenic route.

20 Second, we also know that when Highway 84 was
21 recently closed for approximately three weeks south of
22 the City of West Sacramento for reconstruction of the
23 surface area in what we call the Glide District, just
24 south of the city line, that folks also diverted to the
25 River Road. So we had two diversions happening for a

1 period of time, which also increased the load, traffic,
2 et cetera.

3 Anecdotally, I can say that when I come home in
4 the evening and cross the Freeport Bridge, the folks
5 that -- on the reverse commute -- and I described first
6 of all, people getting off 5 heading north. That is in
7 the morning. In the evening, of course, that flow
8 reverses. And I now may have to wait several minutes to
9 turn left because of traffic which has the right-of-way
10 turning -- they turn left onto the bridge going in an
11 opposite direction. Those are relatively minor
12 projects. When you think about what is being proposed
13 by the State here with Cal WaterFix --

14 Q. Let me just interrupt you for one second.

15 MR. BRODSKY: So we have about four minutes
16 left on the clock. Could I go over about five minutes
17 so a total of about another 9 or 10 minutes?

18 HEARING OFFICER DODUC: Since you're doing a
19 good job of this, I will allow it. However, I have to
20 say that I am not pleased about this expansion of
21 testimony based on the bare minimal information that is
22 presented in the testimony. So just please be on the
23 alert for future testimony by North Delta CARES, as I
24 believe Ms. Suard did the same when you conducted her
25 direct, where one sentence in the testimony is then

1 expanded through direct to pull in other exhibits and
2 extra information. While it is helpful, I do appreciate
3 that it does come as surprise testimony to the
4 Petitioners and to other parties. So I am not in the
5 habit of encouraging that. Though I appreciate that we
6 do have some -- some new participants in this process.
7 So I am therefore giving you a little bit of leeway.
8 But just please note that for future presentation and
9 testimony, please be more inclusive in your testimony.

10 MR. BRODSKY: I will take that to heart, and I
11 think those are legitimate criticisms. I, just in my
12 defense, would just remind again that these folks were
13 pro se and I came into this very late and I'm doing the
14 best I can.

15 HEARING OFFICER DODUC: I appreciate that,
16 Mr. Brodsky.

17 MR. BRODSKY: All right. Thank you.

18 BY MR. BRODSKY:

19 Q. Okay. Mr. Pruner, let me direct your attention
20 to the next page, 20-9. And then there are three bullet
21 points there on the center of the page that are
22 Petitioners' approach to mitigating the demands on
23 emergency services. They're going to have a hazardous
24 materials management plan. They're going to have -- a
25 SPCC plan will be developed and implemented to minimize

1 effects from spills of oil or oil-containing products.
2 And then they are going to have, finally, a fire
3 prevention and control plan.

4 And then at line 26, they conclude, "Based on
5 putting those measures in place, in summary, the
6 potential for Alternative 4 to result in an effect on
7 law enforcement, fire protection, and emergency response
8 services because of increased demand from new workers in
9 the plan area during construction of the proposed water
10 conveyance facilities is low." So, in other words, they
11 are concluding that the possibility of an increased
12 demand on emergency services is low. Would you agree
13 with that?

14 A. No. I just -- if you look at line 26 you
15 referred to, I just think that is simply a false
16 statement in a number of ways. Number 1, the statement
17 and three bullet points above are confined to an
18 analysis of the plan area only. The plan area only.
19 And as I hope the hearing officers held with the two
20 recent examples that I cited have occurred in the last
21 60 days. That -- and it's common sense I would submit
22 that the impacts for fire suppression and emergency
23 response will extend far beyond just the physical
24 footprint of the plan area unless there is something
25 that I missed in the documents submitted by the State

1 saying that all the workers are going to live on-site
2 and conduct all of their lives on-site. Of course, they
3 are going to go off. And that will have a significant
4 impact on our District and the service and the demand
5 load that we experience.

6 Q. Okay. Thank you, Mr. Pruner. In your written
7 testimony, you went into some detail in analyzing the
8 increased demand on emergency services to your
9 department. And I believe you estimated that it would
10 generate an additional hundred 911 calls per year. Do I
11 understand that correctly?

12 A. Yes.

13 Q. And you estimated that you would need some
14 additional personnel and possibly some additional
15 equipment to handle the demand; is that correct?

16 A. Yes.

17 Q. And then could we have that map book page
18 again? That was map books Appendix A, Figure M3-4.
19 Yes, right there.

20 So here again, we looked at this with
21 Mrs. Daly. The most immediate construction site, twice
22 as big as the town. I mean, you're a small department
23 there. Wouldn't you think that DWR having their workers
24 on that site over many years during construction would
25 want you to have adequate equipment and adequate

1 personnel to show up when they call 911?

2 A. I would hope so. We pay our money like
3 everybody else in the State. And we -- the State has
4 sworn and has taken an oath, in essence, to protect us
5 as citizens like everybody else. And we would hope that
6 they would honor that, but we don't know based on the
7 current documentation. They've just said, "We're going
8 to agree to agree. We hope we're going to come up with
9 something." And that means in real-life terms maybe we
10 will, maybe we won't.

11 Mr. Brodsky, there's another map I think
12 that --

13 Q. Please.

14 A. -- depicts. If I could ask Figure M15-4, sheet
15 1 to be placed up on the screen. I believe it is in
16 evidence already. These are documents submitted by the
17 Department.

18 HEARING OFFICER DODUC: Hold on, Mr. Pruner.
19 Please repeat that.

20 WITNESS PRUNER: It's part of SWRCB 3. And
21 this is in the map section. I have identified it
22 previously with the gentleman over there. This is a map
23 M15-4, sheet 1. There you go. Then we go to sheet 1.
24 There we go. Now, if we scroll up, please.

25 Now, our understanding from the State's own

1 evidence, looking at that brown line, I think that is a
2 dot-dash-dot line. You'll see that is the admitted
3 sphere of influence for outtake -- intake number 2 and
4 the construction zone around it. And I think you will
5 see that that line as it impacts the town -- the town
6 area, not just the District of Clarksburg, but the town
7 area is materially different than the other map. And
8 I'm sorry. I don't have these exhibits right off the
9 top of my head. Mr. Brodsky, if you can perhaps help me
10 refer to the map.

11 BY MR. BRODSKY:

12 Q. You're referring to 7-27 that shows -- yeah.

13 A. Yes. So I just want to point out to the
14 hearing officers that we use a map like this, part of
15 the State's evidence, to show the impact as much closer
16 to the urban area, as opposed to the other map. And I
17 just want to say that this is an illustration of our
18 takeaway. One of our takeaways here is that when the
19 State, on such a basic question of where we're going to
20 impact and who we're going to impact, that the State
21 shows in this map a zone of impact that is materially
22 different than the other map. The other map is a much
23 smaller bubble. This is a much larger bubble in the
24 zone of impact. So I just, anyway, think it is
25 important. If I can bring that to the attention of the

1 hearing officers and what we rely on in helping us to
2 analyze the impact on the Fire Protection District.

3 Q. And, Mr. Pruner, the concerns you're expressing
4 today, did you pretty much include those in comments
5 that you submitted to the State on the EIR?

6 A. Yes. I -- these -- these concerns, I think
7 even in somewhat more detail, were submitted in 2015.
8 We've heard no response from the State thus far to our
9 concerns, and we're quite a ways down the road.

10 Q. Okay. I think that wraps up our planned
11 presentation. I'll just ask if either one of you have
12 anything you'd like to add.

13 A. I just want to add that the Water Code Section
14 85054 is one of four places where the State -- the
15 policy of the State of California is for dual -- for the
16 conveyance and water reliability and habitat. But that
17 section is specifically -- the second sentence of that
18 section -- and, again, is expressed in numerous other
19 places in California law -- says that the State cannot
20 accomplish its restoration, eco-restoration, nor its
21 water conveyance without protecting Delta's place. And
22 I'm just summarizing the words. They are much more
23 specific.

24 I think that statutory mandate guides all of us
25 in everything we do, no matter who we are, Department of

1 Water Resources or the Board or anybody else. And I
2 think it's just helpful to revisit that essential
3 touchstone of the statutory scheme is -- for instruction
4 for all of us at all points possible.

5 MR. BRODSKY: Thank you, Mr. Pruner. Let me
6 just ask Ms. Daly. Do you think, in light of that
7 concept of Delta's place, would it be fair to say that
8 Clarksburg, as a place, will be obliterated by this
9 project?

10 WITNESS DALY: Yes. I see certainly everything
11 between Courtland and Clarksburg obliterated and
12 probably more further up and further down because it is
13 a ripple effect. So yes, I do.

14 MR. BRODSKY: Okay. Thank you. That concludes
15 our presentation.

16 HEARING OFFICER DODUC: Thank you. Thank you
17 Ms. Daly, Mr. Pruner, and Mr. Brodsky.

18 And, Mr. Brodsky, for failure to silence your
19 device, please be prepared to provide the three general
20 announcement on Thursday.

21 MR. BRODSKY: Yes, ma'am.

22 HEARING OFFICER DODUC: All right. Do you need
23 a short break?

24 COURT REPORTER: I am okay.

25 HEARING OFFICER DODUC: Are you okay? Okay.

1 Department of Water Resources, you may begin your
2 cross-examination. You are not done yet, Ms. Daly. And
3 given the extensive detour upon which Mr. Pruner and
4 Ms. Daly took us, I will grant your request, if
5 necessary, to continue your cross-examination of these
6 two witnesses on Thursday, just based on the new
7 exhibits that they pulled up today as part of their
8 direct.

9 MR. MIZELL: Thank you very much.

10 HEARING OFFICER DODUC: And before you begin,
11 who else planned to conduct cross-examination of
12 Ms. Daly and Mr. Pruner?

13 MS. MESERVE: Good afternoon. I had about
14 probably 10 or 15 minutes for Mr. Pruner, mostly, I
15 believe.

16 HEARING OFFICER DODUC: All right. Thank you.
17 Mr. Mizell, how much time and what are your topic areas?

18 MR. MIZELL: I anticipate no more than 20
19 minutes. And I will only be going into the basis of the
20 claims made in their written testimony.

21 HEARING OFFICER DODUC: All right. I believe
22 Mr. Mizell said 20 minutes.

23 MR. MIZELL: 20 minutes.

24 CROSS-EXAMINATION BY MR. MIZELL:

25 MR. MIZELL: I'd like to start with you,

1 Mr. Pruner, if that's all right.

2 WITNESS PRUNER: It is all right.

3 MR. MIZELL: Excellent. Are you listed --

4 WITNESS PRUNER: I was going to move this so we
5 don't have a barrier between us. Yes. Your first
6 question, please.

7 MR. MIZELL: You are listed as a percipient
8 witness and not an expert witness today, correct?

9 WITNESS PRUNER: I don't recall. To what are
10 you referring? I don't have the piece of paper that
11 you're referring to that lists me. Could you please
12 show me that?

13 MR. MIZELL: Certainly. Can we bring up North
14 Delta CARES Second Revised Witness Statement on their
15 NOI, please?

16 HEARING OFFICER DODUC: No. I think you wanted
17 the revised NOI.

18 MR. MIZELL: Yes. Thank you very much,
19 Chair Doduc. I think it's the First Revised Witness
20 Statement. It was a link directly above the first one
21 you clicked on. If we go back to the index. And then
22 witness amendment. Just -- there you go. Okay.

23 WITNESS PRUNER: I read the word "percipient"
24 under the category or the column heading Expert Witness.

25 MR. MIZELL: Okay. And the same question to

1 you, Ms. Daly. Were you listed as a percipient witness?

2 WITNESS DALY: Yes, it is shown there, yes.

3 MR. MIZELL: Okay. Mr. Pruner, have you
4 provided any citations to support the facts you allege
5 in your written testimony?

6 WITNESS PRUNER: Yes.

7 MR. MIZELL: Can you please identify those
8 citations for me?

9 WITNESS PRUNER: Yes. I refer you to my sworn
10 testimony, which I think you've had for three months.

11 MR. MIZELL: That's correct. If --

12 WITNESS PRUNER: You need me to go through the
13 documents you've had for three months, I'd be glad to do
14 that if that would be helpful to you.

15 MR. MIZELL: I --

16 HEARING OFFICER DODUC: Mr. Mizell, one at a
17 time. Mr. Mizell?

18 MR. MIZELL: I'm asking the witness if he could
19 identify any citations in his written testimony. If
20 we're going to do this roundabout way of questioning
21 where I'm asked to handhold him all the way through the
22 document, I will need more than 20 minutes for this
23 cross-examination.

24 HEARING OFFICER DODUC: Mr. Pruner, this is to
25 assist the hearing team, as well as to answer

1 Mr. Mizell's question. And that is -- and I have read
2 your written testimony. Are there any specific
3 citations in your testimony per Mr. Mizell's question?

4 WITNESS PRUNER: May I ask a question? I am
5 not sure what I understand by Mr. Mizell's use of the
6 word "citations." If he means a court case citation,
7 then I think that -- I'm not -- Mr. Mizell can read it
8 just as well as I can. There is no court citations
9 here. There is no statutory citations.

10 HEARING OFFICER DODUC: Are there any citations
11 to exhibits, to information in the record, analysis that
12 you have conducted, analysis that you've submitted to
13 substantiate the claims that you make in your testimony?

14 WITNESS PRUNER: I now understand what he meant
15 by that statement. The answer is no. Thank you very
16 much.

17 MR. MIZELL: Thank you. Same question to
18 Ms. Daly.

19 WITNESS DALY: Citations? Just by my
20 attachments. That was my intent.

21 MR. MIZELL: And which documents were attached
22 to your written testimony?

23 WITNESS DALY: The exhibits. That's what I
24 meant by attachments was my exhibits.

25 MR. MIZELL: But specifically, they were not

1 referenced in your written testimony.

2 WITNESS DALY: No. I didn't know how to do
3 that.

4 MR. MIZELL: Very good. Mr. Pruner, did you
5 rely upon the documents that Mr. Brodsky walked you
6 through today in your oral testimony when you were
7 preparing your written testimony?

8 WITNESS PRUNER: Let me answer the question
9 this way. All of the pages that you saw on the screen
10 today I was aware of, having reviewed, I'm going to say,
11 over -- well over 1,000 pages of information throughout
12 this process.

13 Did the District rely on those pages
14 specifically, as opposed to the exclusion of hundreds of
15 other pages? The answer would be no. Can we -- it's
16 hard to identify specific pages when you have looked at
17 so many documents. So we -- we did rely on them, in
18 part, certainly. Because those -- all of those were
19 familiar to me at the time the letter was written and my
20 Board took action on this letter approving it. Does
21 that answer your question?

22 MR. MIZELL: In part. Although, today you did
23 rely on specific pages, did you not?

24 WITNESS PRUNER: As they were placed in front
25 of the -- on the screen, certainly, for clarification of

1 my testimony, yes, to assist the State in understanding
2 what I'm trying to say.

3 MR. MIZELL: So those citations were actually
4 provided by Mr. Brodsky?

5 WITNESS PRUNER: No. Those citations were in
6 my mind and in my Board's mind when we wrote the letter.

7 MR. MIZELL: At what point were you planning to
8 provide references to the documents you reviewed today
9 in your oral testimony --

10 WITNESS PRUNER: Today.

11 MR. MIZELL: -- to the public?

12 WITNESS PRUNER: We believed that we covered
13 all the information that's set forth in what you saw on
14 the screen in my comments and in my written testimony,
15 supplemented by what I said today. We weren't planning
16 on supplementing it any further.

17 MR. MIZELL: Okay. Same question to you,
18 Ms. Daly. Did you rely upon the documents discussed
19 with you by Mr. Brodsky today when you were preparing
20 your written testimony?

21 WITNESS DALY: Say that again, please.

22 MR. MIZELL: When you were writing your written
23 testimony, did you rely upon the documents that
24 Mr. Brodsky walked you through today?

25 WITNESS DALY: When I wrote my written

1 testimony, I believe I was relying on my experience and
2 my experience with the EIR/EIS and the comments that I
3 made for that and the experience I've had with North
4 Delta CARES and all of the people and where I live. I
5 wasn't relying on Mr. Brodsky to provide anything for
6 me, no, not really, except to be here and help us
7 through this process.

8 MR. MIZELL: So until today, you had no
9 intention on referencing the documents that Mr. Brodsky
10 put forth before the Board?

11 WITNESS DALY: Well, we -- we talked about how
12 we were going to --

13 MR. BRODSKY: Objection. I mean, some of the
14 documents are included as exhibits attached to her
15 testimony. Pages of the EIR are there in the exhibit
16 index and were submitted.

17 WITNESS DALY: Right. I'm not sure what you're
18 trying to ask me.

19 HEARING OFFICER DODUC: Mr. Mizell?

20 WITNESS DALY: I am not trying to trick you.

21 MR. MIZELL: We were provided your written
22 testimony with a long list of documents without any
23 references to which documents she relied upon or which
24 documents others within North Delta CARES relied upon.

25 HEARING OFFICER DODUC: Of which I am aware.

1 MR. MIZELL: And I am trying to ascertain which
2 of the documents provided by North Delta CARES Ms. Daly
3 relied upon in crafting her written testimony. And my
4 understanding, based on her answer, was that she didn't
5 rely upon the documents but Mr. Brodsky, however, walked
6 her through several of them. It was then my
7 understanding --

8 HEARING OFFICER DODUC: Let's -- let's let
9 Ms. Daly answer that question again. Which of the --

10 WITNESS DALY: My written testimony --

11 HEARING OFFICER DODUC: Which of the documents
12 submitted as exhibits did you rely upon in preparing
13 your written testimony?

14 WITNESS DALY: I relied on the documents in the
15 EIR/EIS for my written testimony. Those are written
16 documents, yes.

17 MR. MIZELL: Okay. Mr. Pruner, I'd like to
18 discuss the claims about the Fire District's well.

19 Where is the Fire District's well?

20 WITNESS PRUNER: It's in the fire station.

21 MR. MIZELL: And is the fire station in the
22 town of Clarksburg?

23 WITNESS PRUNER: I need to ask you a
24 clarification. What do you mean? Are you referring to
25 the urban limit line when you say the town of

1 Clarksburg, or are you referring to another line of
2 demarcation?

3 MR. MIZELL: I'm simply trying to ascertain
4 where your fire station is and where the well is more
5 particularly.

6 WITNESS PRUNER: Our fire station is located at
7 529 -- I believe it is 52910 Clarksburg Road.

8 MR. MIZELL: And is that on the what I will
9 call the west side of the river? Could be considered
10 the north side of the river?

11 WITNESS PRUNER: Well, the -- let me help you.
12 It is on the Yolo County side of the river.

13 MR. MIZELL: Yes. Thank you.

14 WITNESS PRUNER: That is a much better way to
15 refer to it. The river meanders there, so it is not
16 north. The question was a little bit misleading, I
17 think.

18 MR. MIZELL: Thank you for correcting it.

19 WITNESS PRUNER: You're welcome.

20 MR. MIZELL: Do you present any analysis, other
21 than your personal opinion, that the slurry walls will
22 impact the Fire District well?

23 WITNESS PRUNER: Yes.

24 MR. MIZELL: And is that the map you referenced
25 on SWRCB 3M-15-481?

1 WITNESS PRUNER: Not only the map. But the --
2 you heard the other parts of my testimony support the
3 analysis.

4 MR. MIZELL: Specifically, which portions of
5 the EIR/EIS were you relying on when you made that
6 claim?

7 WITNESS PRUNER: Your first question asked what
8 did I rely on -- what did my board rely on in writing
9 this and presenting testimony as statements submitted.
10 We relied on the portions of SWRCB 3, the places that
11 referred to fire protection and the State's promise to
12 come up with a plan, one of which was shown on the
13 screen -- I don't recall the exhibit number -- saying
14 the State would do something, but they weren't sure
15 what. And the second place, also on the screen, which
16 indicated that the fire -- the fire prevention plan is
17 limited just to the plan area and did not extend beyond
18 the plan area. We relied on those two groups of
19 references within the exhibit that I cited for you.

20 MR. MIZELL: And so the fire prevention plan
21 gives you the basis for the claim that the slurry walls
22 will impact the Fire District's well; is that correct?

23 WITNESS PRUNER: No.

24 MR. MIZELL: Then please provide the citation
25 for that particular claim because that's what my

1 question was aimed at.

2 WITNESS PRUNER: I want to say it was 16-31.

3 Mr. Brodsky, help me out with the exhibit number.

4 The -- Counsel, I'm sorry. Your name is turned, so I

5 can't see it. I don't know if that is intentional,

6 Mr. Mizell. Your client has represented that an

7 approximate radial zone of 2,600 square feet is what you

8 so far have admitted will be the area or the scope or

9 the area within which groundwater wells will be

10 negatively impacted. We know that's an approximation

11 from SWRCB 3. And, for example, one of the pages was

12 put up there says that.

13 MR. BRODSKY: Do you want the citation of that

14 page?

15 WITNESS PRUNER: That would be helpful because

16 Mr. Mizell is not sure what I'm referring to.

17 MR. BRODSKY: The 2,600-foot figure appears at

18 SWRCB 3, Appendix A, Chapter 7 at page 7-11.

19 WITNESS PRUNER: Thank you.

20 MR. MIZELL: It's my understanding that that

21 page was brought up during the questioning of Ms. Daly.

22 So I'm assuming -- and I guess the question goes to you,

23 Ms. Daly. Is that the same -- is that the same citation

24 you're using for your assessment of groundwater impacts?

25 MR. BRODSKY: I'm going to object to this line

1 of questioning. I mean, the witness, Ms. Daly, has
2 testified that she was aware of the EIR and had read the
3 EIR prior to preparing her testimony and she does not
4 know which specific pages and which citations go with
5 what sentence. She is not an attorney. She was
6 generally informed by reading the EIR and testified on
7 that basis. And she is not going to be able to provide
8 exactly what page she had in mind when she wrote this
9 sentence or that sentence.

10 HEARING OFFICER DODUC: Is that correct,
11 Ms. Daly?

12 WITNESS DALY: Sometimes.

13 HEARING OFFICER DODUC: So there are times when
14 you can recall the page number?

15 WITNESS DALY: Once in a while. Only when I
16 made a note of it.

17 HEARING OFFICER DODUC: All right. On that
18 basis, then please answer Mr. Mizell's questions to the
19 best of your ability.

20 WITNESS DALY: This happens probably to be one
21 of the few. But Chapter 6, page 59 says that there will
22 be a loss of homes -- on the county side of the river,
23 possible loss of homes on the Yolo side, as well.
24 Chapter 6, page 59, lines 3 through 13, describe how
25 cofferdams need to build the intakes -- needed to build

1 the intakes will restrict the river's flow and that
2 setback levees or other measures will be needed to
3 maintain flow capacity. If setback levees are installed
4 across from the intakes, homes on the Yolo side will
5 likely be lost.

6 MR. MIZELL: Okay. That is not responsive to
7 my question. My question was about groundwater impacts.

8 WITNESS DALY: Oh, I thought you said slurry
9 walls or -- which is groundwater impacts. So sorry. I
10 don't have that one. And yes, Mr. Brodsky is correct.

11 WITNESS PRUNER: Well, you're not asking me a
12 question. It just seems obvious to me as part of the
13 Fire District that when you affect somebody's well, you
14 affect the structure because you can't have a structure
15 in a home --

16 HEARING OFFICER DODUC: I'm sorry. Are you
17 responding to a question or are you testifying?

18 WITNESS PRUNER: I'm sorry. I'm just trying to
19 be helpful.

20 HEARING OFFICER DODUC: Was there a question,
21 Mr. Mizell, for Mr. Pruner?

22 MR. MIZELL: There was not.

23 HEARING OFFICER DODUC: All right. Thank you.

24 MR. MIZELL: Mr. Pruner, are you aware of the
25 testimony of Gwen Buchholz for the Department that

1 indicated that slurry walls being used in the
2 groundwater dewatering impacts would not go beyond the
3 extent of the slurry walls?

4 WITNESS PRUNER: I'm aware that she testified.
5 I have not reviewed the contents of her testimony prior
6 to today, so the answer is yes and no.

7 MR. MIZELL: Same question to you, Ms. Daly.

8 WITNESS DALY: It says in the EIR/EIS that the
9 slurry walls have been suggested, but they have not been
10 analyzed, at least in two places for the CEQA and the --

11 MR. MIZELL: Are you aware of the testimony
12 that has occurred since the EIR/EIS that Gwen Buchholz
13 provided as well as the memo that was written from her
14 to the Department indicating that slurry walls would be
15 used and the groundwater impacts would be isolated to
16 the area within the slurry walls?

17 WITNESS DALY: Does that mean she analyzed it?

18 MR. MIZELL: I'm asking if you're aware of that
19 additional revision?

20 WITNESS DALY: Well, you can say that, but if
21 it hasn't been analyzed, it doesn't reassure me.

22 MR. MIZELL: Are you aware or are you not aware
23 of the testimony by Gwen Buchholz?

24 WITNESS DALY: I'm not sure. I have watched a
25 lot of this, and I'm not sure.

1 MR. MIZELL: Okay. Mr. Pruner, can you provide
2 any citations to supporting your allegation of \$1.675
3 million in increased costs to the Fire District?

4 WITNESS DALY: The only citation I can point to
5 in the record is my testimony, which -- which reflects
6 deliberation with a public body in open session and
7 analysis of a rather detailed report and is part of our
8 official record is now part of your record through my
9 testimony. I'm not sure. This -- this testimony that I
10 submitted is the citation that I would rely on, yes.

11 MR. MIZELL: Where in your testimony is this
12 alleged report referenced, and did you provide it to the
13 Board?

14 WITNESS PRUNER: I did not provide it to the
15 Board. It was my -- the reference that you are
16 referring to is at the bottom of page 3 and top of page
17 4 of my statement.

18 MR. MIZELL: And, Ms. Daly, there's no evidence
19 cited to support your allegation that the California
20 WaterFix will increase velocities and scours in the
21 Sacramento River; is that correct?

22 WITNESS DALY: Well, what I just read said it
23 would, from the earlier answer.

24 MR. MIZELL: Your testimony --

25 WITNESS DALY: Well, like I -- you asked me

1 this earlier. And I was supposed to connect this in my
2 testimony, and I didn't know to do that. But this is
3 what my testimony is built on.

4 MR. MIZELL: May we have one minute to confer?

5 HEARING OFFICER DODUC: I'm sorry?

6 MR. MIZELL: May we have one minute to confer?

7 We may be able to wrap this up and not bring them back
8 on Thursday.

9 HEARING OFFICER DODUC: You may have two
10 minutes.

11 MR. MIZELL: So I only have one final question,
12 but it may just be procedural and might be addressed to
13 Mr. Brodsky at this point in time. With the withdrawal
14 of Ms. Suard and Mr. Hayes, which exhibits are being
15 withdrawn at this point since the testimonies themselves
16 don't indicate which exhibits are relied upon by which
17 witnesses?

18 MR. BRODSKY: That is a fair question. I don't
19 have that information off the top of my head. What I
20 had suggested was that when we moved into evidence the
21 exhibits that we would delete anything that is no longer
22 appropriate to be there. I'm not prepared to go through
23 it sitting here right now. It is a fair question.

24 MR. MIZELL: We will face that hurdle, I guess,
25 when we get to it. That concludes our cross-examination

1 of these witnesses. At this point in time, I do not
2 foresee needing to have them return.

3 HEARING OFFICER DODUC: Thank you, Mr. Mizell.
4 Ms. Meserve?

5 MS. MESERVE: Good afternoon. I just had a
6 couple of follow-up questions, mostly regarding the
7 concerns regarding groundwater impacts as that relates
8 to the construction operation of the project for
9 Mr. Pruner. 20 minutes should be more than enough time.
10 Thank you.

11 CROSS-EXAMINATION BY MS. MESERVE:

12 Q. If we could bring up an exhibit, please, that I
13 think might assist in this. It is DWR-220. And I am --
14 Mr. Pruner, I just wanted to ask you a couple of
15 questions. Just as background, you and I have discussed
16 some of the concerns regarding the groundwater impacts
17 in the Clarksburg area before; is that correct?

18 A. Yes.

19 Q. And in general, the concerns regarding other
20 wells in the area, in addition to the Fire District
21 wells.

22 A. Yes.

23 Q. And you, in fact, helped assist me in pointing
24 me towards wells that were used for domestic use in that
25 area when I was concerned about locating them for

1 purposes of the Land case-in-chief?

2 A. Yes.

3 MS. MESERVE: And it looks like the screen is
4 not up but -- oh, thank you. Let's see. I might have
5 written down the wrong -- I'm thinking of the Gwen
6 Buchholz memo. Is that DWR-221? I'm sorry. I don't
7 have the index with me. I wrote that down. 218.

8 MR. BAKER: It appears to be DWR-218.

9 MS. MESERVE: I'm sorry about that. 218. And
10 maybe if we could go to page 8 of this memo quickly.

11 BY MS. MESERVE:

12 Q. I just wondered, Mr. Pruner, if -- is this memo
13 something that you had looked at before? That is about
14 the slurry walls currently being proposed in this
15 Petition proceeding.

16 A. It is hard to say just looking at this single
17 partial page image on the screen. I'm going to say I
18 don't recall that I have.

19 Q. I guess we could show him page 1, also. I'm
20 not trying to lead him astray. I just wanted to, just
21 for the record, reflect whether he has seen this. Okay.

22 A. I'm sorry. Can I read IT? This is hard to
23 read the way it is presented here. There we go. Thank
24 you. May 1916. Okay.

25 Q. And just we can look at the pictures. It may

1 be helpful. But I was wondering, Mr. Pruner, do you
2 realize that the slurry walls that have been more
3 recently added to DWR and the Bureau's case-in-chief is
4 actually a permanent structure that's being proposed,
5 not a temporary one?

6 A. Yes, I do know that.

7 Q. And on page 3 of your testimony, you say that
8 during construction, you're concerned that the fire
9 department's well might be interfered with. Wouldn't it
10 be true that it would be also during the entire
11 operation of the proposed project that you would be
12 concerned, given that these are permanent features?

13 A. Yes. And I'm going to -- yes.

14 Q. Okay. And then in your experience as a -- how
15 long have you lived in the Clarksburg area?

16 A. 17 years and 11 months.

17 Q. So in your experience, are there a lot of
18 people that rely on groundwater for a portion of their
19 water supplies in the area?

20 A. I would say it is more accurate to say that all
21 of the people in the Clarksburg District, which includes
22 all the outlying area, of course, not just the town,
23 rely on groundwater for their domestic use and some
24 agricultural use.

25 Q. And if we could pull up Land 58, which is a map

1 of some of the groundwater wells that we had mapped
2 earlier. And I don't know if Mr. Pruner has seen this
3 before. But just based on your experience with the
4 wells in the area and, like you said, people relying on
5 groundwater for domestic in particular, would you think
6 that this map shows all of the wells in the area?

7 HEARING OFFICER DODUC: Before you answer,
8 Mr. Berliner?

9 MR. BERLINER: I'm going to object to this
10 question for lack of foundation. It's not been
11 established that this witness has any personal
12 familiarity with wells in this area. So unless that can
13 be established, I object to this.

14 HEARING OFFICER DODUC: Ms. Meserve, go ahead
15 and establish that, please.

16 MS. MESERVE: I think I asked whether he was
17 aware as a resident of the area of the groundwater use
18 in the area. And he just answered that almost every
19 house has a groundwater well, and he's lived in the area
20 for 17 years.

21 HEARING OFFICER DODUC: Go ahead and continue.

22 MS. MESERVE: I don't know what further
23 foundation you would like.

24 HEARING OFFICER DODUC: Go ahead and continue,
25 Ms. Meserve.

1 BY MS. MESERVE:

2 Q. Okay. Anyway, back to the question. So this
3 shows some groundwater wells in the vicinity of the
4 proposed construction and operation of the diversions.
5 In your experience, do you think this shows all of the
6 groundwater wells in the area?

7 A. No, not -- not at all.

8 Q. Does it show the Fire District well?

9 A. No. Are you asking me all the wells that are
10 on the page -- for all properties on the page, or are
11 you asking me about the wells within any set of red
12 lines? Or something else?

13 Q. I think I'm just asking whether this is a
14 complete reflection of the groundwater wells on this
15 frame of the map?

16 A. Absolutely not.

17 Q. Okay. And if we could look quickly --

18 MR. BRODSKY: What exhibit is that?

19 MS. MESERVE: This is Land 58.

20 HEARING OFFICER DODUC: Mr. Pruner, when you
21 answer "absolutely not," are you referring to all the
22 areas on this map or the areas within the red lines?

23 WITNESS PRUNER: Thank you, Hearing Officer.

24 That was exactly the reason I asked the question that I
25 did was to try to ferret out what the scope of the

1 question is. The answer is absolutely not whether the
2 question is framed either way. In other words, the
3 whole area depicted or just referencing line -- areas
4 within some configuration of red lines.

5 HEARING OFFICER DODUC: And you are basing that
6 answer from having lived in the area?

7 WITNESS PRUNER: No, not only that. I'm so
8 glad you asked that question. That is a really good
9 question. I have walked -- I'm looking at -- when I see
10 a map like this, ma'am, just like you do in your
11 neighborhood, if you see an aerial map, you think about,
12 "There's John's house and there's Fred's house." I have
13 been in their living room and I've been in somebody
14 else's and I've been on people's property, whether it's
15 for official business or not. And I can identify, off
16 the top of my head, maybe 50 of these areas that are
17 properties, structures that I can see that I personally
18 know of that do have wells where whoever drew this map
19 didn't put a designation by where that well is.

20 HEARING OFFICER DODUC: All right. Thank you.

21 MS. MESERVE: And this would be --

22 MR. BRODSKY: May I ask for clarification?

23 HEARING OFFICER DODUC: Mr. Brodsky, let's let
24 Ms. Meserve complete her cross-examination, and you may
25 conduct redirect.

1 MR. BRODSKY: Well, it was actually of
2 Ms. Meserve about the exhibit that I wanted to ask.

3 HEARING OFFICER DODUC: Okay. What is your
4 question?

5 MR. BRODSKY: Is that purporting to show wells
6 on both sides of the river or just one side of the
7 river?

8 MS. MESERVE: It was a representative sample.

9 HEARING OFFICER DODUC: Let's move on.

10 BY MS. MESERVE:

11 Q. Okay. Sorry. So and, Mr. Pruner, just to
12 clarify. This would be based on your experience in
13 talking with and visiting neighbors over the course of
14 time that you would know where they get their water?

15 A. More than that. I mean, looking at reports and
16 interacting with different community groups. So I have
17 both direct and indirect knowledge. It's all
18 intermingled. It's all personal and built up over a
19 long period of time, yes.

20 Q. And are you aware that the red lines are
21 like -- are they a construction zone area, more
22 specifically? Does that make sense to you based on your
23 experience with the --

24 A. That's a very -- for me, personally, that is a
25 term of art to say a construction zone. I see that

1 it's -- "project features" is what the map calls these
2 and that seems vague to me. But I'm sorry.
3 Construction zone, plus more, yes.

4 Q. Okay. And then just last -- let's see. And
5 could we look at S -- Sacramento County Water Agency 10,
6 please? And this is a map of the groundwater wells in
7 the Hood area. Mr. Pruner, are you aware that Hood gets
8 its water supply from groundwater wells?

9 A. Yes.

10 Q. And are you aware that those groundwater wells
11 are within a couple of hundred feet of the proposed
12 tunnels?

13 A. Yes. And in many cases, they are inches away.

14 Q. Maybe I gave you the wrong -- in any case. And
15 would you, based on your review of the EIR for -- with a
16 focus on Clarksburg in this case, but would you also be
17 concerned about domestic groundwater wells in the Hood
18 area?

19 A. Yes. And do you mean my review of the EIR/EIS
20 or the recirculated document or both?

21 Q. I would say both, yes.

22 A. The answer is yes.

23 MS. MESERVE: Well, we didn't quite get to the
24 picture, but I am not sure that matters. Looks like it
25 is having a hard time loading. But I think it's the

1 correct exhibit, as far as I know. I'll just
2 double-check. It's not marked.

3 HEARING OFFICER DODUC: If you no longer need
4 it, let's stop before the computer dies.

5 MS. MESERVE: Okay. It's actually SCWA-1. It
6 looks like I had read it wrong.

7 HEARING OFFICER DODUC: It is actually trying
8 to load the wrong document.

9 MS. MESERVE: I'm very sorry. It -- yes. This
10 was the picture I meant to show Mr. Pruner of the wells.
11 But I believe that concludes my questioning. Thank you.

12 HEARING OFFICER DODUC: Thank you, Ms. Meserve.
13 Any redirect?

14 MR. BRODSKY: Yes.

15 REDIRECT EXAMINATION BY MR. BRODSKY:

16 Q. Ms. Daly, you have taken the lead and put in
17 the most time in terms of preparing North Delta CARES'
18 case before the Water Board; is that correct?

19 A. Yes.

20 Q. And are you an attorney?

21 A. No.

22 Q. Do you have any legal training?

23 A. No.

24 Q. Have you ever put together any kind of case to
25 present to an administrative agency or a court before?

1 A. No.

2 MR. BRODSKY: Okay. Thank you.

3 REDIRECT-EXAMINATION BY MR. BRODSKY:

4 Q. Mr. Pruner, Mr. Mizell represented to you that
5 subsequent to the publication of the EIR, they've come
6 up with a quote, unquote, solution to the groundwater
7 problem of installing slurry walls. Do you take
8 their -- their promises and assertions at face value?

9 A. No. I think Mr. Mizell would know that the
10 public in my district were asked to look at the EIR when
11 it came out, then the recirculated EIR. That was -- we
12 had a chance to do that, and we did. And then after
13 that, we have the whole new set of solutions that,
14 again, came out. We were not informed of those or given
15 a chance to comment on those. And based on the history
16 that we have with the Department, the answer is no. And
17 I just -- I would add --

18 HEARING OFFICER DODUC: And the answer is no.

19 Thank you.

20 WITNESS PRUNER: Thank you.

21 MR. BRODSKY: That's it. Thank you.

22 HEARING OFFICER DODUC: Re-cross, Ms. Meserve?

23 All right. Thank you. We will see -- well, if we
24 continue on Thursday -- actually, now that I know that
25 Mr. Brodsky will be giving the three general

1 announcements, I think we will continue on Thursday.

2 MR. BRODSKY: And that will be when Antioch and
3 Brentwood starting off.

4 HEARING OFFICER DODUC: Actually, they are
5 starting tomorrow. I'd just like to say that since you
6 have requested that Mr. Marshal return on Thursday -- I
7 believe, is when his next availability is. It was you
8 who made that request, right?

9 MR. BRODSKY: Well, actually, it was Ms. Daly
10 who put in the availability. And I'm going to confer
11 with my client about Mr. Marshal's testimony as soon as
12 we close up here.

13 HEARING OFFICER DODUC: Are you suggesting that
14 you may no longer need Mr. Marshal's testimony?

15 MR. BRODSKY: Well, I don't want to make that
16 statement right now before conferring.

17 HEARING OFFICER DODUC: Is this only because
18 I'm making you do general announcements?

19 MR. BRODSKY: I would do the announcements
20 anyway for free.

21 HEARING OFFICER DODUC: All right. Please
22 confer.

23 MR. BRODSKY: Okay.

24 HEARING OFFICER DODUC: Before we adjourn for
25 the day, though, I do see Mr. Porgans in the back. And

1 he is actually the next group even though he is not
2 presenting a case-in-chief in this part. I understand
3 you have a request to make.

4 MR. PORGANS: I have two and a point of
5 clarification.

6 HEARING OFFICER DODUC: If I could get you to
7 move closer to the microphone.

8 MR. PORGANS: I am Patrick Porgans. Can you
9 hear me now?

10 HEARING OFFICER DODUC: Barely.

11 MR. PORGANS: I'm having this issue with
12 everyone, so it must be me. Can't be everybody else,
13 huh? Anyway, my point to -- is that I have two issues.
14 One, I'd like to introduce my exhibits into the record.
15 And you have them already, and I sent them today along
16 with my --

17 HEARING OFFICER DODUC: All right. Hold that
18 thought. Mr. Porgans, are these exhibits that you've
19 used to date in your cross-examination?

20 MR. PORGANS: Yes.

21 HEARING OFFICER DODUC: All right. Hold onto
22 that. We are going to set a deadline. There are some
23 outstanding exhibits for many parties that need to be
24 introduced into the record. So we will set a deadline
25 for all of that to be moved. If you have already

1 submitted it to us, then you have -- you have met that
2 requirement.

3 MR. PORGANS: I hope I did it correctly; but,
4 you know, I'm not familiar with the process. Anyway,
5 the exhibits are in. And if there is any questions, I'm
6 available.

7 Now, there was one other thing that I was
8 concerned about. And I have to take the Board's time to
9 get this through to everybody. I'm here for one purpose
10 only, to try to get the solution that we've been waiting
11 for 90 years. Delta salinity protections were brought
12 up in 1927 under those assignments that the Department
13 of Finance had. And it said --

14 HEARING OFFICER DODUC: Mr. Porgans.

15 MR. PORGANS: Excuse me.

16 HEARING OFFICER DODUC: In the context of the
17 proceeding that is before us, you are not here to
18 present a case-in-chief because we have made that
19 ruling. So --

20 MR. PORGANS: May I ask another question?

21 HEARING OFFICER DODUC: My understanding is in
22 your Notice of Intent, you have requested to present
23 rebuttal testimony. And that will -- that will follow
24 shortly. This is not the time and place for presenting
25 rebuttals. So I need to put the context -- into context

1 what you want to say right now in terms of the
2 proceeding that is ongoing.

3 So what is it that you are requesting? Are you
4 requesting time to make a policy statement, an opening
5 statement?

6 MR. PORGANS: Yes, that's correct. That was my
7 next question, and I needed clarification on that from
8 the Board.

9 HEARING OFFICER DODUC: All right.

10 MR. PORGANS: From the hearing officer.

11 HEARING OFFICER DODUC: So because you are a
12 party and because you'll be presenting a rebuttal per
13 designated in your Notice of Intent, you have the right
14 to present an opening statement as part of that rebuttal
15 case. Since you are here today, I will allow you to
16 make that statement today, if you wish, out of order.
17 But keep in mind that your opening statement should be
18 summarizing for us the case that you intend to present
19 as part of your rebuttal.

20 MR. PORGANS: Well, that was very gracious of
21 you to allow me to do that; but I will wait and then --
22 until rebuttal phase and we can do it all at one time.

23 HEARING OFFICER DODUC: That's up to you. I'll
24 give you that option.

25 MR. PORGANS: No. You gave me an option. I

1 appreciate it. That was thoughtful, and I can wait
2 because we're not going anywhere. I just would like to
3 say one thing, though. I'm hopeful that this Board is
4 going to be able to remedy this almost 100 year in the
5 process Delta decline. I've got faith in you. I really
6 do. And I'm hopeful because they kicked the can all the
7 way from '27 down to now.

8 HEARING OFFICER DODUC: Thank you. I will take
9 that under advisement as word of encouragement.

10 MR. PORGANS: Thank you very much. I
11 appreciate that. Thank you for your time.

12 HEARING OFFICER DODUC: Thank you, Mr. Porgans.
13 And we will see you back here for rebuttal.

14 Are there any other housekeeping items?
15 Mr. Berliner?

16 MR. BERLINER: Yes. Thank you very much.

17 HEARING OFFICER DODUC: Could you move the
18 microphone down? Thank you.

19 MR. BERLINER: Yes. Thank you. We are getting
20 close to the end with the last cases-in-chief, and all
21 of the parties are in the process or have already
22 submitted their exhibits. So by the end of this week,
23 we expect all exhibits will have been submitted. And
24 we're wondering -- we're going to have objections. The
25 department will have objections to various exhibits.

1 When do you expect you'd like to receive those
2 objections?

3 HEARING OFFICER DODUC: We have already
4 received objections, a lot of objections to which we are
5 trying to prepare rulings. Let me refer to counsel. At
6 this time we've also received objections during the
7 course of the hearing as part of cross-examination.
8 What further objections could you possibly make,
9 Mr. Berliner?

10 MR. BERLINER: So, for example, earlier today,
11 one of the witnesses had a whole list of documents, many
12 of which did not pertain to any testimony that she
13 offered. We might be objecting to those as to the
14 relevance of a given document, just by way of example.
15 Or they may have been authenticated, maybe it isn't
16 actually the right document. We're going through all of
17 the documents that have been submitted. And to the
18 extent -- I mean, we've objected to testimony. We've
19 objected to various other things. But there has not
20 been a last review of proffered evidence in the case
21 which has come in week-by-week or party-by-party to
22 which we've responded because we've been waiting until
23 everything comes in.

24 HEARING OFFICER DODUC: All right.

25 MR. BERLINER: And we're thinking that by a

1 week from Thursday, we'll be done and everything will be
2 in, assuming there is a witness on Thursday. Otherwise,
3 it will be Wednesday.

4 HEARING OFFICER DODUC: All right.

5 Mr. Berliner, I'm not going to give you an answer today.
6 I will take that under advisement. I will consult with
7 my co-hearing officer. We will give some additional
8 direction on Thursday, and we will follow it up with
9 something in writing.

10 MR. BERLINER: Very good. Thank you very much.

11 HEARING OFFICER DODUC: And that also goes to
12 all the comments and suggestions we've received with
13 respect to rebuttals as well.

14 MR. BERLINER: You're going to give that on
15 Thursday? Is that what I heard?

16 HEARING OFFICER DODUC: I will give some
17 direction.

18 MR. BERLINER: Some direction. Okay.

19 HEARING OFFICER DODUC: Or at least some
20 inclination by Thursday. But more importantly, a
21 written ruling with respect to rebuttals. And a written
22 ruling with respect to the various objections that have
23 been filed will follow after the completion of -- well,
24 obviously, hopefully, this week's presentation of
25 cases-in-chief.

1 MR. BERLINER: Okay.

2 HEARING OFFICER DODUC: Ms. Meserve?

3 MS. MESERVE: Just briefly following up on the
4 statement by Mr. Berliner just now. Because I -- I
5 wouldn't think it would be appropriate for the
6 Department or any other party to lodge objections which
7 could have been lodged at the time that objections were
8 due based on the testimony that was submitted. I think
9 I heard him say they were going to re-review what we had
10 submitted, Protestants that is, to see if there were new
11 and different objections. And just with respect to the
12 example given, perhaps with Ms. Patricia Schifferle's
13 testimony and exhibits, that all was right in front of
14 Petitioners, you know, months ago. So anyway, just my
15 two cents. And of course, I wouldn't be rushing the
16 Board on making any decisions.

17 HEARING OFFICER DODUC: Thank you, Ms. Meserve.
18 I would love to have had a deadline for filing of all
19 objections, though I don't believe that is the case.

20 Ms. Des Jardins?

21 MS. DES JARDINS: Yeah. I just wanted to ask
22 if the Department does file further objections that
23 people have a chance to respond to them. Because
24 obviously, Protestants may not have seen -- wouldn't
25 have seen them and wouldn't have had a chance to respond

1 to them in detail.

2 HEARING OFFICER DODUC: Thank you,
3 Ms. Des Jardins. We'll take that under advisement as
4 well. Anything else? Look what you started,
5 Mr. Berliner. All right. If there is nothing else,
6 then we will adjourn for today. We will resume at 9:00
7 o'clock tomorrow to hear from the City of Brentwood and
8 Antioch.

9 (Whereupon, the hearing was closed at
10 4:27 p.m.)

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CERTIFICATE OF REPORTER

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I, Elizabeth A. Willis-Lewis, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said proceedings, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: December 20, 2016

ELIZABETH A. WILLIS-LEWIS, CCRR, RPR
Certified Shorthand Reporter
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