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BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER )  
RIGHT CHANGE PETITION )  
HEARING )

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

Friday, May 12, 2017  
9:30 A.M.

VOLUME 44  
Pages 1 - 220

Reported By: Deborah Fuqua, CSR No. 1248

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1 APPEARANCES:

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present

5 Tam Doduc, Co-Hearing Officer:

6 Felicia Marcus, Chair and Co-Hearing Officer:

7 Dorene D'Adamo, Board Member

8 Staff Present

9 Dana Heinrich, Senior Staff Attorney

10 Conny Mitterhofer, Senior Water Resources Control Engr.

11 Kyle Ochenduzsko, Senior Water Resources Control Engr.

12

13 For California Department of Water Resources

14 Mark Cowin, Director

15 Robin McGinnis, Senior Attorney

16 Cathy Crothers, Assistant Chief Counsel

17 Ken Bogdan, Senior Attorney

18

19 Duane Morris, LLP

20 By: Thomas Martin Berliner, Attorney at Law

21

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

23 Amy Aufdemberge, Assistant Regional Solicitor

24

25 State Water Contractors

26 Stefanie Morris

27 Adam Kear

28 Becky Sheehan

29

30

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1	<u>APPEARANCES (continued)</u>
2	<u>Cities of Folsom and Roseville, San Juan Water</u>
3	<u>District, and Sacramento Suburban Water District</u> Ryan Bezerra
4	<u>City of Sacramento and The Water Forum</u> Wesley Miliband
5	<u>Glenn-Colusa Irrigation District; Biggs-West Gridley</u>
6	<u>Water District</u> Andrew M. Hitchings
7	<u>City of Brentwood</u>
8	David Aladjem
9	<u>East Bay MUD</u> Jonathan Salmon
10	<u>San Joaquin Tributaries Authority</u>
11	Timothy Wasiewski
12	<u>California Sportfishing Protection Alliance, California</u>
13	<u>Water Impact Network, AquAlliance</u> Michael Jackson
14	<u>Delta Agencies, and other parties</u> John Herrick
15	<u>Tehama-Colusa Canal Authority &amp; water service</u>
16	<u>contractors in its area</u> Meredith Nikkel
17	<u>County of San Joaquin, San Joaquin County Flood Control</u>
18	<u>and Water Conservation District and Mokelumne River</u>
19	<u>Water and Power Authority</u> Thomas H. Keeling
20	<u>San Luis and Delta-Mendota Water Authority</u> Daniel J. O'Hanlon
21	<u>Deirdre Des Jardins</u>
22	Deirdre Des Jardins
23	<u>Sacramento Valley Water Users group</u> Kevin O'Brien
24	
25	

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REBUTTAL WITNESSES CALLED BY PROTESTANTS SACRAMENTO  
VALLEY WATER USERS GROUP - GROUP 7 (with the exception  
of Sacramento Valley Group as represented by Downey  
Brand)

GROUP 7 PANEL 2: KEITH DURKIN, MARCUS YASUTAKE,  
JIM PEIFER, and TOM GOHRING

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1 Friday, May 12, 2017

9:30 a.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: Good morning,  
5 everyone. Welcome back to the casual Friday edition of  
6 the Water Right Change Petition Hearing for California  
7 WaterFix project.

8 I am Tam Doduc. With me to my right are  
9 Co-Hearing Officer and Board Chair Felicia Marcus, and  
10 to the Chair's right, Board Member DeeDee D'Adamo; to  
11 my left, our staff, Dana Heinrich, Conny Miterhofer,  
12 and Kyle Ochenduszkowski. We'll be assisted also by  
13 Mr. Long and Mr. Baker.

14 Three usual announcements. If you don't know  
15 what they are by now, ask Mr. Jackson, who is sitting  
16 right there in the middle of the room and who has been  
17 attentive to every day of this hearing so far, I'm  
18 sure.

19 But the most important announcement that I 20 will  
make, as always, is please take a moment and put 21 your  
noise-making devices on silent, vibrate, do not  
22 disturb; otherwise, I will pick on you for the rest of  
23 this hearing.

24 All right. With that, are there any  
25 housekeeping matters we need to discuss?

1 (No response)

2 CO-HEARING OFFICER DODUC: Not seeing any.

3 Do we have EB MUD joining us today for  
4 cross-examination of this panel?

5 (Mr. Salmon indicating)

6 CO-HEARING OFFICER DODUC: All right. Then I  
7 will now turn to Mr. Aladjem for his -- actually not  
8 cross but recross of this panel.

9 RECROSS-EXAMINATION BY MR. ALADJEM

10 MR. ALADJEM: Good morning, Hearing Officer  
11 Doduc, Chair Marcus, Member D'Adamo, staff. David  
12 Aladjem here for the City of Brentwood.

13 Chair Doduc, I'd indicated five to ten minutes  
14 yesterday. Ms. Nikkel asked several of my questions,  
15 so I'll try to even be briefer. And my questions are  
16 for Dr. Nader-Tehrani.

17 Dr. Nader-Tehrani, good morning.

18 WITNESS NADER-TEHRANI: Good morning.

19 MR. ALADJEM: You said yesterday that using a  
20 probability of exceedance curve was the best way to  
21 determine whether or not the WaterFix project would  
22 meet the 1641 standards, correct?

23 WITNESS NADER-TEHRANI: The best way I know  
24 how, yes.

25 MR. ALADJEM: Is that the only way to make

1 that evaluation?

2 WITNESS NADER-TEHRANI: I cannot say that, no.

3 MR. ALADJEM: Okay. Thank you for that  
4 clarification.

5 CO-HEARING OFFICER DODUC: Sorry. You cannot  
6 say that it's the only way, or you cannot answer the  
7 question?

8 WITNESS NADER-TEHRANI: I cannot say it's the  
9 only way.

10 MR. ALADJEM: Thank you for that  
11 clarification.

12 Dr. Nader-Tehrani, you testified that the  
13 Water Board should assess the WaterFix project by  
14 comparing a model run for the no action alternative to  
15 a project run using the probability of exceedance  
16 curve; is that correct?

17 WITNESS NADER-TEHRANI: I think, in relation  
18 to compliance to water quality objective, that would be  
19 the best way to use the models; that's correct.

20 MR. ALADJEM: Okay. And that was my  
21 understanding. Thank you, sir.

22 And that comparison, those probability of  
23 exceedance curves should be done using the full 16-year  
24 period of data for DSM-2?

25 WITNESS NADER-TEHRANI: I guess, yeah, in



1 general, that's the best way to do it. Yes.

2 MR. ALADJEM: And in that comparison,  
3 Dr. Nader-Tehrani, there were exceedances with the  
4 project run as compared to the no action run.

5 It's your testimony, sir, that those are  
6 either modeling anomalies or conditions that could be  
7 addressed in realtime by the operators; is that  
8 correct?

9 WITNESS NADER-TEHRANI: For the most part.

10 MR. ALADJEM: Is there any condition that  
11 would not fall into one of those to categories, sir?

12 WITNESS NADER-TEHRANI: Well, we know -- I've  
13 heard the testimony of the operators, and we know in  
14 fact there have been exceedances in the past due to  
15 unusual circumstances. And I believe those will occur  
16 with or without the projects.

17 MR. ALADJEM: Chair Doduc, no further  
18 questions.

19 CO-HEARING OFFICER DODUC: Thank you,  
20 Mr. Aladjem.

21 Mr. Salmon? Mr. Salmon, your estimated time?

22 MR. SALMON: Perhaps 15 minutes.

23 CO-HEARING OFFICER DODUC: Thank you.

24 RECROSS-EXAMINATION BY MR. SALMON

25 MR. SALMON: I'm Jonathan Salmon for East Bay

1 Municipal Utility District. I have some recross  
2 questions for Dr. Nader-Tehrani.

3 Dr. Nader-Tehrani, yesterday you testified  
4 that you didn't have enough information to fully  
5 understand how Dr. Bray modified the DSM-2 results; is  
6 that correct?

7 WITNESS NADER-TEHRANI: I just want to be  
8 clear. I didn't have all the information I needed to  
9 -- specifically that the two things I mentioned were  
10 the time periods that were used and which version of  
11 the model was used.

12 MR. SALMON: Okay. I understand.

13 So because those -- because you testified  
14 those aspects were unclear to you, therefore you didn't  
15 have enough information to understand how he modified  
16 the DSM-2 results. Is that a fair statement?

17 WITNESS NADER-TEHRANI: No.

18 MR. SALMON: No. Okay.

19 So you didn't -- yesterday, you testified that  
20 you did not have adequate information to fully  
21 understand how Dr. Bray modified the DSM-2 results?

22 MS. MCGINNIS: Objection, asked and answered.

23 MR. SALMON: And you --

24 CO-HEARING OFFICER DODUC: Hang on. Hold on.  
25 I think he's trying to get clarification, as I

1 am. So, overruled.

2 MR. SALMON: And the reason for that, as I  
3 understand it, is -- has to do with your lack of  
4 understanding of the version information of the model  
5 that was used and your lack of understanding of the  
6 time period that was used for the bias correction. Is  
7 that a fair statement?

8 WITNESS NADER-TEHRANI: Yes.

9 MR. SALMON: Did you attempt to replicate Dr.  
10 Bray' analysis and found that you didn't have enough  
11 information to do so?

12 WITNESS NADER-TEHRANI: I did not.

13 MR. SALMON: You did not attempt to replicate  
14 it?

15 WITNESS NADER-TEHRANI: I did not, no.

16 MR. SALMON: As you mentioned, you testified  
17 that you didn't know what time period Dr. Bray  
18 considered for his bias correction; is that correct?

19 WITNESS NADER-TEHRANI: That's correct.

20 MR. SALMON: Can you explain what you meant by  
21 the time period that he considered when you said that?  
22 Were you referring to the time period that he simulated  
23 or to something else?

24 WITNESS NADER-TEHRANI: Well, yes, I can  
25 clarify that.

1           So in his testimony, what I do see is an  
2 eight-day time window, and that's in the '90s. In  
3 order to do the bias correction as he did -- and I  
4 think he explained he used the root mean square  
5 approach, in that terminology -- basically you would  
6 choose a time period and you do your analysis and you  
7 find what the bias would be.

8           And that's the key point that I don't think I  
9 understood based on his testimony, what time period.  
10 And I explained yesterday why that is important.

11           MR. SALMON: So then by "time period," were  
12 you referring to the time period that Dr. Bray looked  
13 at to calculate the bias-correction offset?

14           WITNESS NADER-TEHRANI: The time period  
15 simulated with DSM-2 that would have been used in his  
16 approach to come up with that bias correction.

17           MR. SALMON: Okay. Thank you. That's  
18 helpful.

19           And yesterday you also testified that it's  
20 significant which version of the model is used?

21           WITNESS NADER-TEHRANI: That is absolutely  
22 significant, yes.

23           MR. SALMON: And you also testified that it  
24 would be important to perform bias correction on the  
25 same version of the model that petitioners used for

1 this hearing; is that correct?

2 WITNESS NADER-TEHRANI: Yes, that's correct.

3 MR. SALMON: And did you say that you don't  
4 know whether Dr. Bray used the same version?

5 WITNESS NADER-TEHRANI: I'm not sure.

6 MR. SALMON: You're not sure, meaning you  
7 don't know whether he did?

8 WITNESS NADER-TEHRANI: That's correct.

9 MR. SALMON: I'd like to make sure the  
10 record's clear as to which version of DSM-2 the  
11 petitioners used for this hearing.

12 WITNESS NADER-TEHRANI: And I want to make  
13 sure what we're talking about. We're talking about the  
14 2009 version of the -- calibrated version of DSM-2,  
15 which had to be consistent when you run all the  
16 California WaterFix scenarios.

17 MR. SALMON: Yeah. You mentioned yesterday  
18 that there was a 2009 version used for this hearing.

19 WITNESS NADER-TEHRANI: That's correct.

20 MR. SALMON: Do you know what version number  
21 of DSM-2 that was?

22 WITNESS NADER-TEHRANI: I don't offhand. I  
23 don't remember.

24 MR. SALMON: You don't remember which version?

25 WITNESS NADER-TEHRANI: That's correct.

1 MR. SALMON: Do you know roughly which version  
2 it was?

3 WITNESS NADER-TEHRANI: No, I don't.

4 MR. SALMON: Okay. Can we please display  
5 Exhibit East Bay MUD, EBMUD-X3.

6 X3 is an exhibit that I used on  
7 cross-examination, direct cross-examination of  
8 Dr. Nader-Tehrani. It was admitted into the record. I'm  
9 bringing this up just to, hopefully, refresh the  
10 witness's recollection.

11 Do you recall this screen shot of the DSM-2  
12 model files? Do you recall when we showed this?

13 WITNESS NADER-TEHRANI: I can't say I do.

14 MR. SALMON: Okay. I'll represent to you, as  
15 I did on the direct cross-examination, that this is a  
16 screen shot of the modeling software that is -- has an  
17 open version of the model files provided for this  
18 hearing, the DSM-2 model files in particular. So I'll  
19 represent that to you.

20 WITNESS NADER-TEHRANI: That's fine.

21 MR. SALMON: Do you see on the left side where  
22 there's a column that says "QUAL8.0.6"?

23 WITNESS NADER-TEHRANI: Yes, I do see that.

24 MR. SALMON: Does that sound right to you?  
25 Does that sound like the version of DSM-2 that was used

1 for the modeling for this hearing?

2 WITNESS NADER-TEHRANI: Honestly, I don't  
3 believe -- I don't remember the specific version  
4 number, but I take your word that that's what it is.

5 MR. SALMON: Okay. I'm just asking because I  
6 want to make sure that it's the same version as well.  
7 That's helpful.

8 Yesterday, you also testified about the  
9 frequency of SRFE events.

10 WITNESS NADER-TEHRANI: Yes.

11 MR. SALMON: Yesterday, on redirect  
12 examination, Mr. Berliner asked you whether you  
13 analyzed four SRFE events during the recent operating  
14 period of the Freeport project, and you said that you  
15 had. Do you recall that?

16 MR. BERLINER: Objection. That's not the  
17 question that I asked Mr. Nader-Tehrani. Misstates the  
18 testimony.

19 CO-HEARING OFFICER DODUC: Refresh my memory,  
20 Mr. Berliner.

21 MR. BERLINER: The question that Mr. Salmon  
22 just asked was whether I asked Dr. Nader-Tehrani  
23 whether he analyzed four SRFE events. That's not what  
24 I asked him.

25 MR. SALMON: I believe that it is. I reviewed

1 the video of yesterday carefully. We recorded that  
2 video. I reviewed it. So I'm just asking a question  
3 to clarify the record on that point.

4 So let's assume that that was the question  
5 that was asked. Can I --

6 CO-HEARING OFFICER DODUC: Hold on a second.  
7 There's an objection.

8 Mr. Berliner, what was -- what was the  
9 question you asked Dr. Nader-Tehrani?

10 MR. BERLINER: So I'm not trying to make a  
11 mountain out of a molehill here.

12 Dr. Nader -- if I could have just a sec.  
13 Dr. Nader-Tehrani had concluded that there 14  
14 were four SRFE events. East Bay MUD contended  
15 Ms. White had introduced evidence that there were eight  
16 such events.

17 I then asked Dr. Nader-Tehrani a series of  
18 questions related to that. I did not ask him the  
19 question that Mr. Salmon is suggesting I'm asking him  
20 now. We're not very far apart, but I just wanted the  
21 record clear that that is not actually the question I  
22 asked.

23 So if we have that understanding and  
24 Mr. Salmon wants to continue, I'm perfectly fine with  
25 that. I just want the record to be clear.



1 CO-HEARING OFFICER DODUC: So noted, then.

2 MR. SALMON: Perhaps I can put this issue to  
3 bed with a different question.

4 CO-HEARING OFFICER DODUC: Please.

5 MR. SALMON: Just to clarify for the record,  
6 Dr. Nader-Tehrani, is it correct that you did not  
7 actually perform any independent analysis of your own  
8 to identify the number of SRFEs that occurred during  
9 the recent operational period of the Freeport project?

10 WITNESS NADER-TEHRANI: That would be correct.

11 MR. SALMON: Thank you.

12 I'd like to see Exhibit East Bay MUD-152.  
13 That's Dr. Bray's direct written testimony. And the  
14 figures and tables that accompany this exhibit were  
15 discussed yesterday in your -- your redirect. I'd like  
16 to ask you about those.

17 Can we see Page 31 of this pdf file? Thank  
18 you.

19 Do you recall discussing this Figure 4  
20 yesterday?

21 WITNESS NADER-TEHRANI: Yes, that's correct.

22 MR. SALMON: You used this figure to show that  
23 there were a total of 39 SRFEs over the 29-year period  
24 shown in this figure, which you equated to an average  
25 of 1.4 SRFEs per year; is that correct?

1 WITNESS NADER-TEHRANI: Yes, that's correct.

2 MR. SALMON: And this figure includes gauge  
3 data from 1987 through 2016; is that right?

4 WITNESS NADER-TEHRANI: That's correct.

5 MR. SALMON: You said yesterday that there  
6 were plenty of dry years during this period, but isn't  
7 it also true that there were a number of wet years  
8 during this period?

9 WITNESS NADER-TEHRANI: That's correct.

10 MR. SALMON: Let's take 1997 as an example of 11a wet  
11 year. Do you know if there were any SRFEs in  
12 1997?

13 WITNESS NADER-TEHRANI: This figure does not  
14 show the specifics of which years those SRFE events  
15 would have occurred.

16 MR. SALMON: So do you know whether there  
17 would have been any SRFEs?

18 WITNESS NADER-TEHRANI: I don't know.

19 MR. SALMON: Did you say you don't know?

20 WITNESS NADER-TEHRANI: I don't know.

21 MR. SALMON: Okay. Let's assume that there  
22 were zero that year.

23 Isn't the SRFE probability of 1.4 per year  
24 that you calculated yesterday affected by the inclusion  
25 of wet and above-normal years in this data set?

1                   WITNESS NADER-TEHRANI: I need to clarify that  
2 this period, I believe, contained a number of wet and  
3 dry events. So does the 16 years that was included in  
4 the DSM-2.

5                   MR. SALMON: So is it fair to say that, when  
6 you calculate an average or a probability as you did  
7 yesterday -- yesterday, I recall you said 1.4 based on  
8 this particular figure.

9 Is it fair to say that, if you include wet 10 years  
in that data period for purposes of calculating  
11 the average, that the average would be affected by the  
12 inclusion of those wet years?

13                   WITNESS NADER-TEHRANI: Absolutely.

14                   MR. SALMON: Would it be possible in a  
15 critically dry year to have many SRFES in a single  
16 year? For example, could you have ten SRFES in a  
17 single critically dry year?

18                   WITNESS NADER-TEHRANI: Well, if the --  
19 knowing that in this 29-year period there were a number  
20 of very dry years, I mean, technically, yes. But, I  
21 mean, they -- the information is clear that over the  
22 course of 29 years there were 39 events. And in this  
23 period there's -- you know, so -- so yes, technically  
24 it is possible.

25                   But I would say -- technically it's possible,

1 but based on this information, I was illustrating over  
2 the course of 29 years, where it includes a number of  
3 very dry periods including the recent 2014-2015 period  
4 where there was extreme dry period, that's what it  
5 illustrates.

6 MR. SALMON: So if it's possible to have many  
7 SRFES in a single dry year -- let's assume we have a  
8 critically dry year with ten SRFES followed by nine wet  
9 years with zero SRFES.

10 By your estimation, your method of estimating 11  
11 probability, you would calculate under those  
12 circumstances a probability of one SRFE per year given  
13 that data set, correct?

14 MR. BERLINER: Objection. Assumes facts not  
15 in evidence.

16 The questioner is conflating year types with  
17 flows that may occur in a given year. We've already  
18 had testimony, I believe from Mr. Leahigh, about how  
19 you could have a wet year with low flow times and a dry  
20 year with high flow times. And the questioner's -- the  
21 question asked omits that important aspect of flow.

22 CO-HEARING OFFICER DODUC: Mr. Salmon.

23 MR. SALMON: I don't believe I'm conflating  
24 anything. What I'm asking here is maybe something a  
25 little different. I'm trying to understand the

1 implications of Dr. Nader-Tehrani's method of  
2 calculating probability and how that would work or how  
3 that would vary based on the data set that you happen  
4 to consider when you do the calculation. And I assure  
5 you I'm going somewhere with this.

6 CO-HEARING OFFICER DODUC: All right. I'll  
7 give you a little bit of leeway. Overruled.

8 MR. SALMON: So again, assuming that we have a  
9 critically dry year with ten SRFEs followed by nine wet  
10 years, by your method of estimating probability, that  
11 would result in a probability of one per year for that  
12 period, correct?

13 WITNESS NADER-TEHRANI: In that example you  
14 just provided, assuming that's the case, that would be  
15 correct, yes.

16 MR. SALMON: So if East Bay MUD only operates  
17 the Freeport project in that single critically dry  
18 year, given the Freeport project is a dry-year project  
19 as previous testimony has established, if East Bay MUD  
20 only operates the project in that dry year and does  
21 not operate it in the subsequent nine wet years,  
22 wouldn't an estimated SRFE frequency of one per year be  
23 quite low when compared to the actual conditions when  
24 the project operated?

25 WITNESS NADER-TEHRANI: Just want to make sure

1 I'm clear. I'm not comparing probabilities of SRFEs  
2 versus those that would actually occur when the project  
3 is operating. I was trying to compare two things, and  
4 that is the probability of SRFE events over a long  
5 enough time horizon based on the observed data versus  
6 what DSM-2 showed.

7 If you ask me whether this 29-year period that  
8 was used for observed data, whether it's hydrologically  
9 similar to the period that was using the 16-year, I 10  
would say yes, it's similar. They're not exactly the  
11 same, obviously, but there is a number of mix of wet  
12 and dry period.

13 So as one analysis shows 1.4 based on  
14 long-term results and one analysis shows 37 probability  
15 of SRFEs per year over the course of long-term -- I'm  
16 not making any estimates provided to you what would the  
17 SRFE be in an extreme dry-year period. I'm just  
18 saying, over the course of this long enough term  
19 period, I would expect those two to be in the same  
20 ballpark.

21 Now, if the one says two, one says three, as I  
22 explained yesterday, I would think it's inappropriate  
23 to use those model results versus a historical period,  
24 given all the differences.

25 But because one number is 26 times bigger than

1 the other, to me, as a person who is very familiar with  
2 how the Delta works, that seems very unusual. And that  
3 would make me believe that the analysis was done is  
4 questionable.

5 And again, I did not make any estimate in my  
6 redirect about what the frequency of SRFE would be in  
7 extreme dry period.

8 MR. SALMON: Finally, I'd like to ask you  
9 about the tables that you discussed yesterday in your  
10 redirect.

11 Can we please display Page 46 of this same  
12 exhibit? That's Exhibit 152, East Bay MUD-152.

13 So this is Table 4 attached to the Bray  
14 testimony. This table shows bias-corrected model  
15 output data; is that correct?

16 WITNESS NADER-TEHRANI: Yes, that's correct.

17 MR. SALMON: And you discussed the October  
18 1977 results on this table specifically yesterday,  
19 correct?

20 WITNESS NADER-TEHRANI: That's correct.

21 MR. SALMON: And did you testify that you  
22 believed the modeled frequency of SRFEs during that  
23 month is out of line with historical observations?

24 WITNESS NADER-TEHRANI: I was making the point  
25 that, on one hand, Dr. Bray showed over the course of

1 29 years based on observed data, he observed 39 events.  
2 Now, in his DSM-2 bias-corrected, he shows 35 events  
3 occurred in a single month. That's what's unusual  
4 about it. That implies that there would be at least  
5 four days with two SRFE events. If you have 35 events  
6 over the course of 31 days, that implies there are four  
7 days that actually have two SRFEs events, and that's  
8 what's unusual about it.

9 MR. SALMON: Do you see the column in this  
10 table that lists the corresponding monthly average flow  
11 from CalSim II for the no action alternative?

12 WITNESS NADER-TEHRANI: Yes, I see that.

13 MR. SALMON: And do you see what it reads for  
14 October 1977?

15 WITNESS NADER-TEHRANI: Yes. That's -- I see  
16 that.

17 MR. SALMON: What is that flow?

18 WITNESS NADER-TEHRANI: Under no action, I  
19 read 6,085. Is that what you're referring to?

20 MR. SALMON: Yes.

21 WITNESS NADER-TEHRANI: Yes, I see that.

22 MR. SALMON: Okay. Thanks. And are you aware  
23 of any October in the historical record of Freeport  
24 gauge data where the actual flows at Freeport were as  
25 low as 6,085 cfs?



1                   WITNESS NADER-TEHRANI: I believe in 2014-'15  
2 there were plenty of times, a number of days that the  
3 flows went below that number.

4                   MR. SALMON: I asked about monthly average  
5 flow and specifically the month of October.

6                   WITNESS NADER-TEHRANI: I can't specify, no; I  
7 don't know that.

8                   MR. SALMON: You're not aware of any October?

9                   WITNESS NADER-TEHRANI: I'm not aware of any  
10 specific numbers, yeah. No.

11                   MR. SALMON: And finally, let's display  
12 Table 3 on Page 45 of this exhibit. You discussed this  
13 table as well yesterday.

14                   This table contains bias-corrected data,  
15 doesn't it?

16                   WITNESS NADER-TEHRANI: That's correct.

17                   MR. SALMON: Do you believe that the number of  
18 SRFEs on Table 3 is quite large compared with  
19 historical observed data?

20                   WITNESS NADER-TEHRANI: Yeah. I -- that's  
21 correct. And the way I described it, I just divided  
22 the 596 number you see under no action, divide by 16.  
23 That's the probability over a long-term, you know, mix  
24 of wet and dry periods.

25                   MR. SALMON: And do you attribute this higher

1 rate of SRFEs in the modeled results compared with  
2 historical observations, do you attribute that  
3 difference to a flaw in the bias correction?

4 WITNESS NADER-TEHRANI: I think I explained  
5 that there are certainly differences in those time  
6 periods, including climate change, six inches of sea  
7 level rise and all that.

8 But still I would say the large discrepancy  
9 between those two numbers, the probabilities, 37 versus  
10 1.4, I would have to attribute it to the  
11 bias-correction approach.

12 MR. SALMON: Okay. I would like to know,  
13 however, whether the same phenomenon of modeled  
14 frequency exceeding historical record data, whether  
15 that same phenomenon also appears in the uncorrected  
16 model output that petitioners provided.

17 Could we show Table 2 on Page 44?  
18 Do you see that Table 2 shows the results from 19 the  
uncorrected DSM-2 model results?

20 WITNESS NADER-TEHRANI: Yes. I see that 113.  
21 That's about 5- -- about a reduction of about  
22 80 percent, you know, when you compare it to the other  
23 number. The other number is 596. This one is 113,  
24 just for -- yeah.

25 MR. SALMON: Under the no action alternative

1 for the --

2 WITNESS NADER-TEHRANI: Yes, that's correct.

3 MR. SALMON: Right, correct.

4 Let's look at the '76-'77 drought as an  
5 example. There we find from this table that there were  
6 31 SRFES identified from petitioners' uncorrected model  
7 results; is that correct?

8 WITNESS NADER-TEHRANI: Yes, I see that.

9 MR. SALMON: So using your method of  
10 calculating probability, simple division, the  
11 uncorrected DSM-2 results for this extreme two-year  
12 drought period, using your method of calculating  
13 provability would be calculated as 31 SRFES divided by  
14 2 years equals 15.5 SRFES per year; is that correct?

15 WITNESS NADER-TEHRANI: That would be correct,  
16 yes.

17 MR. SALMON: And let's look at the full  
18 16-year period, which includes wet years with no SRFES.  
19 Looking at the full period that was modeled, 20 '76 to  
'91, the SRFE probability would be calculated as 21 113  
SRFES divided by 16 years equals 7 SRFES per year; 22 is that  
correct?

23 WITNESS NADER-TEHRANI: That's correct.

24 MR. SALMON: So even if you look at the full  
25 DSM-2 time period including the wetter years, isn't it

1 true the petitioners' own modeling without any bias  
2 correction shows that SRFEs are modeled to occur at a  
3 higher probability than your low estimate of 1.4 SRFEs  
4 per year based on historical data?

5 WITNESS NADER-TEHRANI: That would be correct.  
6 But still, when the numbers are that different, that  
7 does say something about the analysis.

8 So I'm not necessarily saying that the  
9 uncorrected DSM-2 is correct. What I testified  
10 yesterday, my testimony was that certainly what I can  
11 say clearly is that the bias-corrected DSM-2 shows an  
12 extremely -- gives an extremely high estimate with  
13 respect to the observed data. I'm not making any  
14 claims that the uncorrected DSM-2 necessarily predicts  
15 SRFEs at a correct rate.

16 MR. SALMON: Thank you. I have no further  
17 questions.

18 CO-HEARING OFFICER DODUC: Thank you,  
19 Mr. Salmon.  
20 Next up is the Group No. 18, the San Joaquin 21  
21 Tributaries Authority.

22 RECROSS-EXAMINATION BY MR. WASIEWSKI

23 MR. WASIEWSKI: Good morning. Tim Wasiewski  
24 for the San Joaquin Tributaries Authority. These  
25 questions will be for Mr. Leahigh, and this has to do

1 with the negative SWP export numbers and DWR-905.

2 So, Mr. Baker, if you could please pull up  
3 DWR-850 and DWR-905. That should be all we need.

4 Let's go to 905 first, please. If you could  
5 scroll down to July, the months of July in 905, which I  
6 think is on the second page.

7 Mr. Leahigh, yesterday you testified on  
8 redirect that the negative numbers shown in the SWP  
9 export column -- and you can't tell what it is exactly  
10 from here, but just for point of reference, it's the  
11 one right next to -- it's the one right to the left of  
12 the end, the column with all of the N's.

13 You told us yesterday on redirect that the SWP  
14 export number is negative in these columns in July  
15 because it was reduced to account for a water transfer;  
16 is that -- is that correct?

17 WITNESS LEAHIGH: Yes. What I testified was  
18 that these numbers are erroneous, and that was part of  
19 the reason that these are negative.

20 MR. WASIEWSKI: Okay. I don't know if I heard  
21 your whole testimony correct.

22 But if we could scroll down to August of that  
23 same graph -- I don't know if we need to scroll down or  
24 not.

25 But there are also negative numbers in August.

1 For instance, on August 2nd, there's a negative number.  
2 Is that -- and I thought I heard you say that it was  
3 for July, but did you also mean for August that there  
4 was a water transfer and that was the reason for the  
5 reduction that resulted in the negative?

6 WITNESS LEAHIGH: Yes. If I did, I believe I  
7 testified it was the entire summer. So yes, it  
8 included August as well.

9 MR. WASIEWSKI: Well, I've also noticed that  
10 there's -- there are negative numbers in the month of  
11 October, for instance, October 21st.

12 MR. OCHENDUSZKO: Mr. Wasiewski, do you mind  
13 if we just pause for one second?

14 MR. WASIEWSKI: Yes.

15 MR. OCHENDUSZKO: We're trying to bring up  
16 this exhibit while showing the columns at the top as  
17 well.

18 MR. WASIEWSKI: Okay. That would be helpful.  
19 Thank you.

20 Are we set up? Okay. We'll go with that.  
21 So if we look at -- I think October 21st, but 22 there  
22 actually may be several days before that also  
23 where there are negative numbers in the SWP export  
24 column.

25 Is your explanation the same for those

1 negative numbers in October, that they were the result  
2 of a water transfer?

3 WITNESS LEAHIGH: Yes, I believe so. There  
4 was no movement in water transfer in October, but there  
5 was water being released as part of a transfer.

6 But bottom line is the -- the totaled number  
7 of -- the error in the -- in the total in the sum of  
8 that column is 24,000 acre-feet, which was equivalent  
9 to the Yuba Court C1 water. So that matches up --  
10 taking into account carriage water reductions.

11 So that matches up with what was known to be a  
12 transfer that was occurring that year, and it was  
13 erroneously affecting that export, those export  
14 numbers.

15 MR. WASIEWSKI: Okay. So in any occasion  
16 where there's a negative number listed in the SWP  
17 export column, it was erroneously listed as negative to  
18 account for that transfer? Is that --

19 WITNESS LEAHIGH: Yeah. It was  
20 inappropriately accounting for the transfer, and that's  
21 why it's an error.

22 MR. WASIEWSKI: Okay.

23 WITNESS LEAHIGH: Yeah.

24 MR. WASIEWSKI: If we were to correct it,  
25 would we turn it into a positive number, or would we

1 just make it zero or some other?

2 WITNESS LEAHIGH: No. It would be a positive  
3 number. So the total export column, the sum of that,  
4 if you go to the very bottom, is 24,000 acre-feet less  
5 than it should be. So if you compare the sum for that  
6 column with the total on the stacked bar chart on  
7 Exhibit 850, it's 24,000 acre-feet short of what's  
8 presented in that stacked bar chart.

9 MR. WASIEWSKI: Okay. So that accounts for  
10 every negative in that year.

11 So are you saying, then, that if you flip  
12 those numbers to positive -- well, let me just ask this  
13 question because this may set it up better.

14 If you could pull up DWR-850, please.  
15 So I see in the 2015 year -- that's the third 16 one on  
16 the right, the smallest one -- it says that  
17 total exports were 0.81 million acre-feet, right?

18 WITNESS LEAHIGH: Correct.

19 MR. WASIEWSKI: So if we went back to DWR-905,  
20 is there a column in here which you would just simply  
21 add up to reach that 0.81-million acre-feet number, or  
22 is it more complicated than that?

23 WITNESS LEAHIGH: Yeah. There are three  
24 columns that add up to that number.

25 MR. WASIEWSKI: Which columns are those?



1           WITNESS LEAHIGH:    Okay.    So that would be the  
2 third column from the left.

3           MR. WASIEWSKI:    Can you give us the title?

4           WITNESS LEAHIGH:    Yeah.    The title would be --  
5 it's under the "Instream Requirements" and "Exports."

6           MR. WASIEWSKI:    So "Exports (2nd)"?

7           WITNESS LEAHIGH:    "(2nd)," right.

8           MR. WASIEWSKI:    All right.

9           WITNESS LEAHIGH:    And it would also be, then, 10  
10 the -- let's see. One, two, three, four, five, six,  
11 seven, eight -- eighth column from the left, which is  
12 the "Release To Support" exports.

13           MR. WASIEWSKI:    Okay.

14           WITNESS LEAHIGH:    And then the column on the  
15 far right which is "Exported Unstored Flow."

16           MR. WASIEWSKI:    Okay.    So when I try to  
17 interpret this graph or this table, at least in certain  
18 years, if you add up the three columns that you just  
19 referenced, that gives you the number in the SWP export  
20 column; is that right?

21           WITNESS LEAHIGH:    That's right.    It gives --  
22 in this particular year, it gives you that .81-million  
23 acre-feet.

24           MR. WASIEWSKI:    Okay.    So then if just -- if  
25 you just added the entire column of SWP export, you

1 would get the .81-million acre-feet?

2 WITNESS LEAHIGH: So, yeah. So the three that  
3 we just discussed, if you add those three together, you  
4 get the 0.81. If the -- the column that had the  
5 negatives in that we were discussing previously is  
6 24,000 acre-feet short of that number.

7 MR. WASIEWSKI: Okay. So the way to get to  
8 the .81-million acre-feet is to add together the three  
9 columns that you referenced -- "Exports (2nd),"  
10 "Releases to Support, Export," and "Exported Unstored  
11 Flow" -- and that will get you the 0.81?

12 WITNESS LEAHIGH: Correct.

13 MR. WASIEWSKI: Okay. I guess, then, I need a  
14 little bit of a further explanation, then.

15 If we could go down to July, really any day in  
16 July, I think.

17 So it looks like the numbers in the  
18 "Exports (2nd)" column are exactly the same as the  
19 numbers in the SWP export column. In other words,  
20 they're both negative and the values are the same.  
21 So --

22 WITNESS LEAHIGH: Yeah. So the other effect  
23 of this error is that it's showing 24,000 acre-feet --  
24 it's short on the column third from the left, which is  
25 the export of in-stream flows, and it's also

1 erroneously showing -- it's 24,000 acre-feet too high  
2 for the export of unstored flow, the far right-hand  
3 column. So those two are incorrectly shown in the  
4 stacked bar chart in Exhibit 850. There's a -- there  
5 should be a shift of 24,000 acre-feet between those two  
6 sources of the water.

7 But as I testified, that 24,000 acre-feet out  
8 of well over 800,000 acre-feet is not significant in  
9 terms of the results of that.

10 MR. WASIEWSKI: Okay. I understand that part.  
11 I want to understand how you got to -- what the error  
12 is, I guess.

13 So is the -- you may have already said this.  
14 Is the .81-million acre-feet too high by 24,000  
15 acre-feet or too low?

16 WITNESS LEAHIGH: No. The .81-million  
17 acre-feet is correct. The column that has just SWP  
18 export separately on this table is 24,000 acre-feet too  
19 low. But the part that's incorrect on the Exhibit 850  
20 is there's 24,000 acre-feet of what is listed as  
21 unstored flow should be in the category of export of  
22 in-stream flow.

23 MR. WASIEWSKI: Okay. So then, in order to  
24 get the .81-million acre-feet, if you add the export  
25 second column -- these are the three that you just told

1 me: the "Exports (2nd)" column, the "Releases to  
2 Support, Export," and the "Exported Unstored Flow" --  
3 you'll get the 0.81 number; is that right?

4 WITNESS LEAHIGH: Yes.

5 MR. WASIEWSKI: Okay. But if you simply sum  
6 up everything in the SWP export column, it's off by  
7 24,000 acre-feet, right?

8 WITNESS LEAHIGH: Correct.

9 MR. WASIEWSKI: Okay. So --

10 CO-HEARING OFFICER DODUC: I think that was a  
11 total of 20 minutes so far, right?

12 MR. WASIEWSKI: I might just need five or ten.

13 CO-HEARING OFFICER DODUC: All right. Just  
14 give him another five to finish up, please.

15 MR. WASIEWSKI: The other day when you were  
16 being cross-examined I think by Ms. Spaletta, she asked  
17 you which of these columns were measured values and  
18 which of the columns were calculated values.

19 And I don't have the transcript, but I have in 20 my

notes -- so you can correct me if I'm wrong -- that 21

the measured values were the "FRSA Deliveries" column

22 which is the first, the "SWP Export" column, and the

23 "Total Oroville Releases" column.

24 Is that still your testimony after you had a 25

chance to go back and look at these -- look at the

1 error that occurred from the negative numbers?

2 MS. MCGINNIS: Objection. Now we're talking  
3 about Spaletta's cross-exam, not Mr. Leahigh's  
4 redirect.

5 MR. WASIEWSKI: I'm -- well, I'm --

6 CO-HEARING OFFICER DODUC: Hold on.

7 The question was whether or not, as part of  
8 the correction that Mr. Leahigh has made to his  
9 testimony with respect to this table, if there were any  
10 other errors. Overruled.

11 WITNESS LEAHIGH: Yes. So my recollection was  
12 incorrect. So the SWP export is a calculation, and  
13 that's why it -- that error propagated into that  
14 column.

15 MR. WASIEWSKI: Okay. So then there's two  
16 ways to look at this. It's either that those -- it's  
17 either that everything flows into the export -- the SWP  
18 export column or it flows out of that column.

19 So you're saying to me that the SWP export  
20 column is calculated from the other columns and not the  
21 other way around?

22 WITNESS LEAHIGH: It -- that SWP export column  
23 is calculated. Right, is a calculated number.

24 MR. WASIEWSKI: Okay. So now I'm not entirely  
25 sure how you applied the reduction.

1           So do you know if there are any days in this  
2 table in which you would have applied a reduction for a  
3 water transfer but then the net result didn't cause a  
4 negative to show up in the "SWP Export" column because  
5 maybe the SWP export was still in the positive and so  
6 we can't necessarily see it? Are there any instances  
7 of that? I don't know if that was clear or not.

8           WITNESS LEAHIGH: That wasn't -- that wasn't  
9 clear to me, what the question is. Yeah.

10          MR. WASIEWSKI:                Okay. I can try it again.  
11          So --

12          CO-HEARING OFFICER DODUC: I'm sorry. Are you  
13 trying to ascertain whether the numbers in the "SWP  
14 Export" column have any similar errors with respect to  
15 water transfer that is not reflected by the currently  
16 negative numbers?

17          MR. WASIEWSKI: Right. So it may be there,  
18 it's just not visible because of the math in the end,  
19 it was -- the export number was still positive?

20          WITNESS LEAHIGH: So the -- so as we just  
21 reviewed, the three columns that should add up to equal  
22 that "SWP Export" column, they do not, in this  
23 particular year. And there's that difference of 24,000  
24 acre-feet.

25                If you go to the other two years that were

1 analyzed and you add up those same three columns, they  
2 do match exactly to that "SWP Export" column. So I  
3 believe this is the only year that had this particular  
4 error.

5 MR. WASIEWSKI: Well, okay. But does -- but  
6 are there unseen errors here that are not apparent  
7 because the number in the "SWP Export" column did not  
8 dip into the negative when you made the reduction to  
9 account for the water transfer? Or if you don't know  
10 whether or not, that's fine also.

11 WITNESS LEAHIGH: Well, so part of the problem  
12 with -- there were a number of approaches that were  
13 going to be pursued in analyzing this data, and one of  
14 those approaches attempted to remove the water  
15 transfers. That approach was abandoned.

16 And so the approach -- the final approach just 17 took  
the straight SWP export because it was more  
18 straightforward. It would show additional export of  
19 unstored flow that wasn't really occurring, but it was  
20 felt to be a more streamlined way to look at the data.

21 And unfortunately, when that more streamlined  
22 approach was used, this one year still had the other  
23 approach that was abandoned as part of the data set  
24 where it was attempting to remove a water transfer.

25 And we -- because of the complications

1 involved in that other approach, we rejected that  
2 approach and just went more with a straightforward --  
3 just accounted all SWP exports as -- as -- regardless  
4 of whether they were water transfers or not, as  
5 counting as part of this calculation.

6 Now, that was conservative because it actually  
7 shows more -- it would end up showing more SWP export  
8 as from stored water when in reality some of that  
9 export from stored water was really a water transfer.  
10 So the problem here was there was a couple of 11  
different approaches that were initially pursued, and 12  
we went with the more streamlined approach.

13 Unfortunately, some of the old approach found its way  
14 into this one particular year, and that's what went on  
15 here.

16 CO-HEARING OFFICER DODUC: So in some way,  
17 Mr. Leahigh, how confident are you that the currently  
18 positive numbers in the "SWP Export" column are  
19 correct?

20 WITNESS LEAHIGH: I'm very confident because I  
21 compared those columns with just a straight, measured  
22 SWP export column, and they match for the other years.

23 MR. WASIEWSKI: Okay. I guess I -- I have one  
24 just one last question. It's sort of an example, if  
25 you could explain it to me.



1           If we go to July 1 real quick, you have a  
2 negative here for SWP export of negative 206. And you  
3 have an exported unstored flow of 394.

4           How much did the State Water Project export on  
5 that day?

6           WITNESS LEAHIGH: It will be the combination  
7 -- it should be the combination of the three columns  
8 that we were discussing before.

9           MR. WASIEWSKI:           Okay. That's all I have.  
10 Thank you.

11           CO-HEARING OFFICER DODUC: Thank you for  
12 ruining spreadsheets for me for the rest of my life.  
13 Ms. Meserve did not get her recross yesterday. 14 So, Mr.  
Herrick, we're now up to you.           Perhaps you  
15 might restore my love for spreadsheets.  
16 And Mr. Herrick had estimated ten minutes 17  
yesterday.

18           MR. HERRICK: Yes. Thank you, Madam Chairs,  
19 Board Member.

20           RE CROSS-EXAMINATION BY MR. HERRICK

21           MR. HERRICK: John Herrick for South Delta  
22 Water Agency, et al. I don't have that many questions,  
23 but it's going to be a string of questions that deals  
24 with Mr. Berliner's recross of the reliability aspects  
25 of DSM-2 under -- or the uses of the reliability.

1 I'm also going to touch upon the exceedance  
2 curves -- probability curves, excuse me. And lastly,  
3 very briefly, on the -- how the operators might work to  
4 avoid or make any potential exceedance go away.

5 Dr. Nader-Tehrani, I don't want to limit your  
6 answers, but I'm going to try to set up a series of  
7 questions. The first are going to be what we can do,  
8 and then the second set will be what we should do or  
9 what you think is appropriate to do with DSM-2 output.  
10 So I'm trying to get you to answer yes or no. 11 You  
11 don't have to, but don't feel the need to say what 12 we  
12 should do because I'm going to ask you that question 13  
13 later, if that's okay. If you have a problem with  
14 that, just say so, and I won't try to limit you.

15 So let me start with -- we can use DSM-2 --  
16 let me start over.

17 All these questions of course deal with our  
18 use of DSM-2 in this process, so I'm not talking about  
19 some abstract thing. But in this process, DSM-2 has  
20 been used to evaluate various alternatives -- sorry,  
21 I'm going fast -- various alternatives of the  
22 California WaterFix project. So that's the framework.

23 So, Dr. Nader-Tehrani, we can use DSM-2 to  
24 produce 15-minute increments of data dealing with water  
25 quality at particular times and places, correct?

1 WITNESS NADER-TEHRANI: Yes.

2 MR. HERRICK: And we also can take that  
3 15-minute data and then average it for any time period  
4 like a day; is that correct?

5 WITNESS NADER-TEHRANI: Yes.

6 MR. HERRICK: And we can then also average it  
7 for, say, two-week periods?

8 WITNESS NADER-TEHRANI: Yes.

9 MR. HERRICK: And we could look at the daily  
10 data for a month period that's not averaged but for  
11 those daily -- for those month -- excuse me -- for  
12 those monthly averages -- start over.  
13 We can look at the DSM-2 data as daily 14  
averages over a month time frame, correct?

15 WITNESS NADER-TEHRANI: You can use daily  
16 averages over any time period.

17 MR. HERRICK: Great. And we could also do  
18 that for, say, a four-month period with those daily  
19 averages?

20 WITNESS NADER-TEHRANI: Yes.

21 MR. HERRICK: Now, in your opinion, it's  
22 inappropriate to use the DSM-2 15-minute outputs as  
23 some sort of estimate or prediction of what actually  
24 might occur; is that correct?

25 WITNESS NADER-TEHRANI: That's correct.

1 MR. HERRICK: And it's your opinion -- is it  
2 your opinion that it's inappropriate to use a daily  
3 average based on those 15-minute time frames as a  
4 prediction of what would happen on any particular date?

5 WITNESS NADER-TEHRANI: That's correct.

6 MR. HERRICK: And it's also your opinion --  
7 the same thing would go for a monthly average or for  
8 daily averages over a multi-month period; is that  
9 correct?

10 WITNESS NADER-TEHRANI: Here is where I guess  
11 we're going a bit overboard.

12 So, yeah. Sure. I was referring to the fact  
13 that you cannot compare single 15-minute daily or a  
14 single month.

15 MR. HERRICK: That's my next set of questions.

16 WITNESS NADER-TEHRANI: Right.

17 MR. HERRICK: So it's also your opinion, is it  
18 not, that we shouldn't use the 15-minute DSM-2 outputs  
19 to compare against measured data? Is that generally  
20 correct?

21 WITNESS NADER-TEHRANI: That's correct.

22 MR. HERRICK: And would it be your same answer  
23 for daily averages of that 15-minute data?

24 WITNESS NADER-TEHRANI: That's correct.

25 MR. HERRICK: And I'll say again, would it be

1 your opinion also for a monthly average for that same  
2 15-minute --

3 WITNESS NADER-TEHRANI: Could you expand the  
4 question?

5 MR. HERRICK: Sure. Is it your opinion that  
6 it's inappropriate to use DSM-2 15-minute output to  
7 make a monthly average number that you would use as a  
8 prediction of some future month?

9 WITNESS NADER-TEHRANI: That's correct.

10 MR. HERRICK: Okay. Now, this will be the  
11 same set of questions.

12 Is it your opinion that you should -- we  
13 should not use a 15-minute DSM-2 output to compare  
14 against some other run in this form, some other run's  
15 15-minute output for that same time and place?

16 WITNESS NADER-TEHRANI: The same time and  
17 place, yes.

18 MR. HERRICK: And then the same question  
19 for -- is it your opinion that you -- it is  
20 inappropriate to use a daily average from the 15-minute  
21 data to compare one model run against another model run  
22 for a particular place and time?

23 WITNESS NADER-TEHRANI: That's correct.

24 MR. HERRICK: Okay. Now let's move to the  
25 probability exceedance curves that you used, and this

1 is just in the abstract now.

2 Is it correct to say that, in your probability  
3 curves or charts, whatever you want to call them,  
4 sorry, that you've taken -- is it daily averages and  
5 then plotted them against a line which is either D1641  
6 standard or some other standard; is that correct?

7 WITNESS NADER-TEHRANI: That's a  
8 simplification of what I did.

9 MR. HERRICK: Yeah. And I don't want to  
10 misstate that, but that's -- the plots are daily  
11 average dots?

12 WITNESS NADER-TEHRANI: I think when I used  
13 the exceedance plots, I used it -- let's -- can we  
14 specifically say in reference to water quality  
15 objectives under D1641?

16 MR. HERRICK: Sure.

17 WITNESS NADER-TEHRANI: Can we agree in that  
18 context?

19 MR. HERRICK: Sure.

20 WITNESS NADER-TEHRANI: Okay. So in that  
21 context, we have different water quality objectives  
22 that I presented that would be including, say, Emmaton  
23 and, say, the daily chloride at Contra Costa. So one  
24 is based on 14-day average; one is based on daily  
25 average maximum. So the type of analysis I did would

1 be different, depending on which one of those two we're  
2 talking about.

3 MR. HERRICK: So is it your opinion that we  
4 can take daily averages that can't be used to predict  
5 any particular result and can't be used as comparisons  
6 against other model runs, but we can put those together  
7 on a line and then it becomes valuable information?

8 WITNESS NADER-TEHRANI: Over the course of a  
9 long enough term period, which in this case I did it  
10 over the course of 16 years.

11 MR. HERRICK: Yes. But all of those dots,  
12 I'll say, on your exceedance curve that go above a  
13 line, those are all daily averages compared against  
14 something, correct?

15 WITNESS NADER-TEHRANI: Compared against a  
16 certain threshold, yes.

17 MR. HERRICK: And that's consistent with we  
18 can't use the daily average information to compare  
19 against another model run?

20 WITNESS NADER-TEHRANI: That's what I  
21 testified yesterday, is when you are trying to use  
22 DSM-2 model against a certain threshold, you need to  
23 look at it over the course of a long term and not on a  
24 single day or single month.

25 MR. HERRICK: Okay. But all of the dots on

1 your probability curve are those single-day numbers,  
2 correct?

3 WITNESS NADER-TEHRANI: In the case of a daily  
4 average chloride concentration results, that would be  
5 the case.

6 MR. HERRICK: Now, when we do a probability --  
7 when you do a probability curve -- is "curve" the right  
8 word to use? Sorry. The probability --

9 WITNESS NADER-TEHRANI: You can use the  
10 "curve," and I would understand what that means.

11 MR. HERRICK: When we use a probability curve,  
12 it is telling us how often something might happen under  
13 the modeled conditions inputs. It's not telling us  
14 whether or not that output is any sort of damage or  
15 harm to someone, is it?

16 WITNESS NADER-TEHRANI: Well, I can't answer  
17 "harm." All I can say is the D1641s are clearly  
18 defined, and I did my analysis based on that clearly  
19 defined objectives that were -- yeah.

20 MR. HERRICK: I'm not trying to criticize.  
21 I'm just trying to make the point that the probability  
22 is not the extent or the degree of harm that may or may  
23 not occur; it's a how often something might occur  
24 according to these numbers?

25 WITNESS NADER-TEHRANI: What I was trying to



1 illustrate using this exceedance plot is how often one  
2 scenario meets a certain objective versus another  
3 scenario. And I also further expanded that there --  
4 the exceedances that were reported by the model, it's  
5 my understanding most of them are not real.

6 MR. HERRICK: Now, part of your testimony  
7 yesterday dealt with the fact that operators have the  
8 ability to take actions which may obviate or cure any  
9 exceedance that may be suggested by the modeling data;  
10 is that correct?

11 WITNESS NADER-TEHRANI: That's correct.

12 MR. HERRICK: And I think you were at the time  
13 talking about the chloride concentration requirement at  
14 the Contra Costa Pumping Plants; is that correct?

15 WITNESS NADER-TEHRANI: You can use it in that  
16 context, yes.

17 MR. HERRICK: And in that instance, it may be  
18 possible, right, for -- excuse me -- CVP or SWP  
19 operators to either release more water or change  
20 pumping conditions, do something that might either  
21 improve or correct something, right? Correct the  
22 chloride?

23 WITNESS NADER-TEHRANI: Yeah. They would have  
24 all the data. They could anticipate an increase in  
25 the, you know, salinity intrusion that is occurring and

1 anticipating those conditions. Then they have several  
2 tools, and you suggested a number of them.

3 MR. HERRICK: And that's based upon -- I  
4 believe you said your -- is it 27 years you've been  
5 doing this? I apologize for bringing that up.

6 WITNESS NADER-TEHRANI: Yeah, over 27 years,  
7 yes.

8 MR. HERRICK: That's based on your 27 years of  
9 maybe not direct involvement but your interaction and  
10 knowledge of the operations part of DWR, correct?

11 WITNESS NADER-TEHRANI: Yes.

12 MR. HERRICK: Now let's move to the South  
13 Delta standards, and by that I don't mean the Vernalis  
14 standard but the three interior South Delta salinity  
15 standards. You are aware of those?

16 WITNESS NADER-TEHRANI: Yes.

17 MR. HERRICK: When -- to your knowledge, when  
18 there's an expected, according to modeling, exceedance  
19 of one of those standards, do the project's operators  
20 change their operations in order to avoid that?

21 WITNESS NADER-TEHRANI: I don't think I --  
22 well, those three are very different compared to the  
23 other scenarios. And I think we've dealt with the --  
24 you know, the South Delta salinity issues in the past.  
25 And we can get to that if you like, as to what my

1 opinion is, because they are somewhat different in  
2 terms of how the operators would -- can and cannot do  
3 to resolve exceedances in those areas that Mr. Herrick  
4 just mentioned.

5 MR. HERRICK: That's an excellent answer, but  
6 it's not to my question. Let me try again.

7 Dr. Nader-Tehrani, to your knowledge, when the  
8 model predicts a potential exceedance at one of the  
9 three South Delta salinity standards, do the operators  
10 change their operations in order to avoid that?

11 WITNESS NADER-TEHRANI: Well, that would get  
12 to what the CVP operators do. And my main thing was --  
13 I guess it's my understanding of the SWP project  
14 operators.

15 MR. HERRICK: Okay. Let's make the question  
16 deal only with SWP operators.

17 WITNESS NADER-TEHRANI: It is my opinion, and  
18 I think I presented that to the Board in the past, that  
19 the SWP -- there is very little that the SWP operators  
20 can do to meet that salinity standard at that location.

21 MR. HERRICK: Let me try a third time. No  
22 offense.

23 Based on your 27 years of experience and  
24 knowledge, when DSM-2 predicts a potential exceedance  
25 at one of the three South Delta interior salinity

1 standards, do the SWP operators alter their operations  
2 to avoid that?

3 WITNESS NADER-TEHRANI: I don't know.

4 MR. HERRICK: I'm going to ask you the same  
5 question now with regard to after the exceedance  
6 occurs.

7 So to your knowledge, if and when an  
8 exceedance of a Southern Delta salinity standard  
9 occurs, do the SWP operators change their operations in  
10 order to make that violation go away or cure it?

11 WITNESS NADER-TEHRANI: I don't have --

12 MR. BERLINER: Objection, beyond the scope of  
13 his testimony.

14 CO-HEARING OFFICER DODUC: Mr. Herrick.

15 MR. HERRICK: That's almost my last question,  
16 but of course if he -- if the witness believes that the  
17 operators will act to cure violations, it's perfectly  
18 appropriate to ask him about a specific standard that  
19 might be violated.

20 MR. BERLINER: Well, that's not the basis of  
21 my objection, though.

22 MR. HERRICK: Oh, well, then I misunderstood.  
23 Sorry.

24 CO-HEARING OFFICER DODUC: What is the basis  
25 of your objection?

1 MR. BERLINER: I was trying to give  
2 Mr. Herrick a lot of leeway here.

3 We did not discuss the three interior Delta  
4 standards. And as Dr. Nader-Tehrani has just  
5 explained, those are substantially different than the  
6 standards that we did discuss. So I was hoping that  
7 Mr. Herrick was going to be keeping it very general,  
8 but he's getting quite specific, and that's well beyond  
9 the scope of what Nader-Tehrani testified.

10 CO-HEARING OFFICER DODUC: So,  
11 Dr. Nader-Tehrani, your statement about operational --  
12 that operations can address exceedances that might be  
13 shown in a modeling result, does that not apply to  
14 South Delta standards?

15 WITNESS NADER-TEHRANI: I would -- that is  
16 correct. I was referring mostly to places like  
17 Emmaton, Jersey Point, Contra Costa Water District,  
18 those standards.

19 CO-HEARING OFFICER DODUC: Mr. Aladjem.

20 MR. ALADJEM: Madam Chair, David Aladjem on  
21 behalf of the City of Brentwood.

22 Dr. Nader-Tehrani's statements were very broad  
23 and -- on redirect, and I believe that Mr. Herrick's  
24 questions were amply justified.

25 Now Dr. Nader-Tehrani has suddenly said

1 only -- well, the South Delta standard -- South Delta  
2 compliance points are excluded from his testimony.  
3 That opens up a whole new line of examination.

4 CO-HEARING OFFICER DODUC: I believe that's  
5 why Mr. Berliner made the objection.

6 MR. ALADJEM: But with all due respect to  
7 Mr. Berliner, I believe that the witness has testified  
8 that -- very generally and by now qualified that he's  
9 changed his testimony substantially.

10 CO-HEARING OFFICER DODUC: Might we pull up  
11 Dr. Nader-Tehrani's testimony for the rebuttal?

12 And the specific section, perhaps you can help us  
13 out, Dr. Nader-Tehrani -- and the language that has  
14 been focused on by various cross-examiners.

15 MR. HERRICK: Madam Chair, would it help that  
16 I'm done?

17 CO-HEARING OFFICER DODUC: Well, thank you so  
18 much, Mr. Herrick, for finishing, but you left a can of  
19 worms wide open that I need to address.

20 MR. HERRICK: Well, I was trying to gently  
21 nudge Dr. Nader-Tehrani into a hole.

22 But I think we're done, and all I want to say,  
23 absent your pursuing this, is I'd like to thank the  
24 witnesses. I've known most of them for many years, and  
25 it's never enjoyable for them to sit there and be

1 cross-examined.

2 But I have no further questions.

3 CO-HEARING OFFICER DODUC: Thank you,  
4 Mr. Herrick.

5 MR. BERLINER: In that case, I can withdraw my  
6 objection.

7 CO-HEARING OFFICER DODUC: In that case we're  
8 done, at least with Mr. Herrick.

9 Thank you. It's nice when I'm made  
10 superfluous.

11 Ms. Des Jardins, you're up for your recross,  
12 and I believe that is the last recross I have for this  
13 panel. And Ms. Des Jardins had given us what she  
14 termed as a conservative estimate of 15 minutes.

15 MS. DES JARDINS: Thank you. And I had some  
16 more questions for Dr. Nader-Tehrani.

17 RECROSS-EXAMINATION BY MS. DES JARDINS

18 MS. DES JARDINS: So you said DSM-2 can be  
19 used for forecasts in meeting D1641 requirements. And  
20 I wanted to ask you some specific questions about the  
21 modeling errors and how you considered those errors in  
22 reaching your conclusion.

23 I'd like to go to SWRCB-4, Appendix 5A,  
24 Section D, Attachment 1, and Page 10. This is the 2000  
25 -- Attachment -- Appendix 5A, Section B, Attachment 1.

1 There. Yeah. Okay. And this is the DSM-2  
2 recalibration. I'd like to go to Page 10, please, and  
3 -- pdf Page 10, please.

4 Oh. You had it on what I needed. Maybe it's  
5 document Page 10 -- oh, DWR, yeah, 79. Excuse me.  
6 Yes. That's it.

7 Boundary conditions are river inflows,  
8 exports, diversions, drainage, and tidal stage.

9 Is this -- this is -- and so there's boundary  
10 conditions that are fed into the modeling on a monthly  
11 time step; is that correct?

12 MR. BERLINER: Objection, beyond the scope of  
13 his redirect testimony, which is what we are currently  
14 conducting recross on.

15 CO-HEARING OFFICER DODUC: Ms. Des Jardins,  
16 link it for me.

17 MS. DES JARDINS: Very specifically, if  
18 Dr. Nader-Tehrani didn't take into account the errors  
19 in the modeling in making that statement, then it's  
20 invalid.

21 CO-HEARING OFFICER DODUC: I'm sorry. In  
22 making what statement?

23 MS. DES JARDINS: The statement that DSM-2  
24 could be used for forecasting meeting D1641  
25 requirements. So this is implicit in the foundation



1 for that statement.

2 CO-HEARING OFFICER DODUC: He did make that --  
3 well, that is part of his testimony and part of his  
4 redirect testimony in terms of the use of the model.

5 So it's a stretch, but I'll give you a little  
6 bit of leeway, Ms. Des Jardins. Overruled.

7 MS. DES JARDINS: Okay. Thank you.

8 So you have boundary conditions that are fed  
9 into the DSM-2 model, and that comes from CalSim,  
10 correct?

11 WITNESS NADER-TEHRANI: That's correct.

12 MS. DES JARDINS: So do you have an idea what  
13 the monthly errors are in the CalSim model, river  
14 inputs in, for example, flow into Freeport?

15 WITNESS NADER-TEHRANI: That was not part of  
16 my testimony. No.

17 MS. DES JARDINS: You don't. So you have no  
18 idea what the errors are in the boundary conditions?

19 WITNESS NADER-TEHRANI: No, I don't.

20 MS. DES JARDINS: How can you then say that  
21 these forecasts have any relation to actual predicted  
22 values if you don't know what the errors are in the  
23 model input?

24 MR. BERLINER: Objection. Now we're going to  
25 go deep into modeling calibration questions which we

1 did not cover in this redirect testimony.

2 MS. DES JARDINS: There is a saying in  
3 modeling; garbage in, garbage out.

4 CO-HEARING OFFICER DODUC: The objection is  
5 sustained.

6 MS. DES JARDINS: All right. Well, next I'd  
7 like to go to Page 99, which is the actual errors in  
8 the DSM-2 modeling.

9 Dr. Nader-Tehrani, this is the monthly average  
10 error at Emmaton. And it looks like your EC estimates,  
11 which are on top of whatever errors are introduced by  
12 the inputs, are as much as 40 percent in August and  
13 September.

14 MR. BERLINER: Objection. Could we get a  
15 reference as to what this document is that we're  
16 looking at, please, for the record?

17 MS. DES JARDINS: This is the 2009 DSM-2  
18 recalibration that was done for the modeling that  
19 Dr. Tehrani conducted, and this is the actual errors  
20 that were remaining after that recalibration.

21 Respectfully, I think this goes to the weight  
22 of the evidence.

23 MR. BERLINER: Could we see the cover page,  
24 please?

25 MS. DES JARDINS: Yeah, we could go back to

1 Page 1. This is in an exhibit that you submitted as  
2 Attachment 1. I found out that, yes, it is the  
3 recalibration. And, yes, this is -- this is the basis  
4 of -- Dr. Tehrani has testified numerous times in this  
5 hearing that they looked at model errors. This is the  
6 actual results which I'm examining him on.

7 Can we go back to Page 99 now?

8 MR. BERLINER: So, same objection. We had a  
9 whole -- hours and hours on model calibration and  
10 errors in Part 1A. Sounds like we're going right back  
11 to that again, and we did not touch upon this in  
12 redirect testimony.

13 MS. DES JARDINS: Respectfully, Ms. Doduc,  
14 they did not discuss this attachment in Part 1A.

15 CO-HEARING OFFICER DODUC: But they also did  
16 not discuss it in his redirect.

17 Objection is sustained.

18 MS. DES JARDINS: Okay. So, Mr. Tehrani, you  
19 did not discuss -- in making the statement that you  
20 thought DSM to forecast errors, you did not make --  
21 provide any statements which substantiated that about  
22 the model errors.

23 MR. BERLINER: Objection.

24 MS. MCGINNIS: Objection, misstates  
25 Dr. Nader-Tehrani's testimony. We don't use modeling

1 for forecasting.

2 CO-HEARING OFFICER DODUC: Forecasting errors  
3 especially. Sustained.

4 MS. DES JARDINS: All right. I -- excuse me.  
5 There is a prediction here that you will meet D1641,  
6 and either it's accurate or it's not; isn't that  
7 correct, Dr. Nader-Tehrani?

8 CO-HEARING OFFICER DODUC: Would you please  
9 limit or focus your question more directly on what was  
10 presented in his redirect.

11 MS. DES JARDINS: He said in his redirect that  
12 he thought DSM-2 could be used for -- to forecast --  
13 that they could meet the -- meet the DSM -- meet the  
14 D1641 requirements. That's a very specific model  
15 prediction, and either it's accurate or it's not.

16 MR. BERLINER: This misstates his testimony.  
17 Objection.

18 MS. DES JARDINS: Okay. So --

19 CO-HEARING OFFICER DODUC: I am sustaining the  
20 objection and asking you to move on to your next point,  
21 if you have one.

22 MS. DES JARDINS: Yeah. So I'd like to go and  
23 I would like to object at this point because I believe  
24 it's -- scientific evidence by its nature must consider  
25 errors.

1 CO-HEARING OFFICER DODUC: What exactly are  
2 you objecting to?

3 MS. DES JARDINS: To not being able to ask  
4 questions about the model errors. I believe that  
5 without -- it is an improper use of modeling in any --  
6 in a quasi judicial proceeding such as this one.

7 CO-HEARING OFFICER DODUC: Your objection is  
8 overruled because your recross needs to be focused on  
9 the specific redirect that Mr. Berliner asked of this  
10 witness.

11 MS. DES JARDINS: Okay. So Ms. Parker -- so I  
12 want to move on to that. I wanted to ask you about  
13 your statement that these are planning models; that the  
14 modeling that was conducted was a planning model.

15 WITNESS PARKER: The CalSim applications for  
16 the WaterFix are planning models.

17 MS. DES JARDINS: Yeah. So the Bureau made  
18 the commitment to affirm the water supplies on the  
19 Sacramento River so there wouldn't be a deficit of more  
20 than 25 percent from contract amounts.

21 Is that your understanding of the demands in  
22 the -- in the Sac River portion of the model?

23 MR. BERLINER: Objection, beyond the scope of  
24 the redirect testimony.

25 CO-HEARING OFFICER DODUC: Unless you can

1 explain to me how that ties back to her redirect, I  
2 will have to sustain the objection.

3 MS. DES JARDINS: I just wanted to ask. I can  
4 go into my next thing.

5 You're asserting that the droughts in the  
6 Sacramento River Basin are unique, so a planning model  
7 doesn't need to evaluate how to meet the commitments in  
8 the Sacramento Valley in a drought? That's what's  
9 confusing to me.

10 MR. BERLINER: Objection, that goes beyond the  
11 scope of the redirect testimony.

12 CO-HEARING OFFICER DODUC: Sustained.

13 MS. DES JARDINS: I would like to raise an  
14 objection. I believe that the -- she said droughts are  
15 unique, and she said it was a planning model. And I  
16 just -- it's a very general statement. And I believe  
17 one should be able to ask why isn't the planning model  
18 evaluating how to meet the errors commitments in a  
19 drought? And it's difficult to do that without asking  
20 about some specific commitments.

21 CO-HEARING OFFICER DODUC: That statement was  
22 part of her rebuttal testimony to which you and others  
23 had plenty of time to cross her on. Her redirect was  
24 more focused.

25 MS. DES JARDINS: The redirect literally said

1 these are planning models and droughts are unique.

2 CO-HEARING OFFICER DODUC: I don't think she  
3 said droughts are unique.

4 MS. DES JARDINS: Yes, she did.

5 CO-HEARING OFFICER DODUC: Oh, you did?

6 WITNESS PARKER: Yes.

7 CO-HEARING OFFICER DODUC: Mr. Bezerra?

8 MR. BEZERRA: Yes. Ryan Bezerra. I believe  
9 Ms. Parker just confirmed it, but my recollection was  
10 she did discuss on redirect the fact that, in her  
11 opinion, you could not model for droughts because they  
12 are unique.

13 CO-HEARING OFFICER DODUC: Ms. Parker, would  
14 you like to explain or clarify that statement or affirm  
15 it?

16 WITNESS PARKER: The fact that all droughts  
17 are unique is one reason why it's difficult for a  
18 general planning model like CalSim to address all of  
19 them. What we try do in planning models is use  
20 consistent logic.

21 What we can observe from, I guess, recent  
22 experience is that policy and regulatory decisions that  
23 govern project operations in a particular drought are  
24 unique to the characteristics of that drought; i.e.,  
25 the timing, the locality, the specific nature of

1 precipitation, and other considerations. And that  
2 logic has not been generalized to the point that it can  
3 be included in a planning model.

4 I believe that was the gist of what I was  
5 trying to say. Does that make sense?

6 MS. DES JARDINS: The conclusion there is that  
7 your planning model doesn't address droughts in the  
8 Sacramento River Basin. And is that -- you know, and  
9 that, I find --

10 CO-HEARING OFFICER DODUC: And your question  
11 is?

12 MS. DES JARDINS: My question is how can you  
13 have a planning model that doesn't address droughts? I  
14 mean, how can you do water supply planning in  
15 California without addressing droughts in the  
16 Sacramento River Basin?

17 WITNESS PARKER: So the role of the CalSim  
18 modeling for the California WaterFix change of point of  
19 diversion petition process was to demonstrate the  
20 potential change between a no action condition and the  
21 with-project condition. To the extent that we can  
22 capture that for normal operating conditions that we  
23 can generalize and depict in a planning model, that has  
24 been accomplished.

25 I think the question you're asking is, if we



1 don't do that for stressed water conditions, is that  
2 still appropriate? I believe that it is, because what  
3 we have stated is the CalSim can depict when the system  
4 reaches stressed conditions.

5 What the modeling also shows is that the role  
6 that the WaterFix plays in water supply during stressed  
7 conditions is limited. To that extent, I believe that  
8 the use of a planning model for this proceeding is  
9 appropriate.

10 Does that answer your question?

11 MS. DES JARDINS: I would like to ask just one  
12 thing, so --

13 CO-HEARING OFFICER DODUC: And this will be  
14 your final question.

15 MS. DES JARDINS: Yeah, this will be the final  
16 question.

17 But -- so it says the no action alternative  
18 also doesn't have a plan for dealing with -- the  
19 planning model also doesn't deal with droughts?

20 MS. AUFDEMBERGE: Objection. I'm just going  
21 to raise a relevance objection to this entire line at  
22 this point. Thank you.

23 CO-HEARING OFFICER DODUC: At this point,  
24 we've suffered through it, so might as well just end  
25 it.

1 Ms. Parker, do you have an answer?

2 WITNESS PARKER: The no action and the  
3 WaterFix alternatives all depict stressed water supply  
4 conditions, I could say, equivalently.

5 Does that help?

6 The answer to your question, yes. The no  
7 action condition does not have a specific drought plan  
8 in it. Neither do any of the alternatives, and we've  
9 discussed the reasons why.

10 MS. DES JARDINS: Thank you.

11 CO-HEARING OFFICER DODUC: Thank you.

12 That concludes the recross of this panel.

13 Mr. Berliner, Ms. McGinnis, and  
14 Mr. Aufdemberge, I believe this concludes or completes  
15 the petitioners' rebuttal testimony.

16 At this time, do you wish to move your  
17 exhibits into evidence?

18 MS. MCGINNIS: Yes. At this time, DWR and the  
19 U.S. Bureau of Reclamation move our exhibits into  
20 evidence, and we will serve a notice with exhibit  
21 numbers within 24 hours.

22 CO-HEARING OFFICER DODUC: Thank you very  
23 much.

24 We have been -- or at least Ms. Heinrich has 25 been  
noting all the oral objections that have been

1       voiced during the course of your rebuttal testimony and  
2       cross and redirect and recross. We will respond to  
3       that within the next few weeks or so.

4               MS. MCGINNIS: On that topic of -- I'd also  
5       like to note that, by the end of the day, DWR will file  
6       written responses to the verbal objections that have  
7       been made through yesterday.

8               If there are any more today or if we get more  
9       written objections, we'll need more time to respond.

10       CO-HEARING OFFICER DODUC:                       We are not --  
11       pursuant to our -- I forget the date of the ruling.

12               MS. MCGINNIS: May -- March 15th.

13               CO-HEARING OFFICER DODUC: Thank you very  
14       much. There's been so many rulings.

15               We are not accepting any additional objections  
16       to the exhibits -- with respect to the admissibility of  
17       evidence and exhibits that petitioner has just  
18       requested to be moved into the record.

19       I would also impose that deadline with respect to  
20       responses to objections as well.                       So if there are

21       any responses you wish to put into the record right  
22       now, you may do so.

23               During the course of your rebuttal testimony,  
24       whenever oral objections were voiced, I have always  
25       given petitioners' counsel the opportunity to respond

1 to those objections. Therefore, I am not willing to  
2 provide further time for you to submit further written  
3 responses to which then I will have to allow everyone  
4 else to join in and comment as well.

5 MS. MCGINNIS: Understood.

6 CO-HEARING OFFICER DODUC: So that means you  
7 have no further responses to make at this time or at  
8 all.

9 MR. BERLINER: If we could have just a moment,  
10 please?

11 CO-HEARING OFFICER DODUC: I'll tell you what.  
12 We need to take a break for the court reporter anyway,  
13 so we will take a break until 11:15.

14 (Recess taken)

15 CO-HEARING OFFICER DODUC: All right. We are  
16 back in session.

17 And, Ms. Des Jardins, before you begin, I 18  
18 actually need to address something.

19 I appreciate that in our March ruling we were  
20 a bit unclear, or at least we didn't address the issue  
21 of responses to objections. But let me make it very  
22 clear right now that, when verbal objections are voiced  
23 during the course of rebuttal, you will have the  
24 opportunity to respond verbally to those verbal  
25 objections, but we will not be accepting at least --

1 I'll rephrase that.

2 Petitioners, you had the opportunity to  
3 respond verbally to verbal objections that have been  
4 voiced to date as part of your rebuttal testimony. We  
5 received -- I think you sent out during the break some  
6 written responses to those objections.

7 I am informing you that we are disregarding  
8 this written response. We will consider only the  
9 verbal responses that you have voiced during the course  
10 of rebuttal testimony, cross, and redirect and recross  
11 as captured in the transcript and as captured by  
12 Ms. Heinrich.

13 So we will not be accepting any further  
14 responses, including what you just e-mailed out to the  
15 in-service list with respect to the objections that  
16 have been voiced. And that will also apply to all  
17 subsequent rebuttal testimony, rebuttal objections, and  
18 rebuttal responses to objections as we move forward.

19 To make it very clear, voice your objections  
20 during the course of testimony; cross, redirect,  
21 recross. Counsel will have the opportunity to respond  
22 verbally at that time, but unless we discuss  
23 differently, like in the instance with respect to  
24 Dr. Thornberg's testimony, we will not be accepting  
25 further objections or responses to objections after the

1 evidence -- after exhibits have been moved into the  
2 record.

3 So in other words, this is getting -- this is  
4 the problem with having an engineer trying to do this.

5 Petitioners, you have already moved or at  
6 least requested to move your exhibits into the record.  
7 Therefore, I am closing, not accepting, not considering  
8 any additional objections or responses to objections.

9 MS. MCGINNIS: May I respond?

10 CO-HEARING OFFICER DODUC: Please.

11 MS. MCGINNIS: So I got a little confused and  
12 excited about the timing this morning. And what  
13 happened is our office has been following the  
14 transcripts very closely and following the objections  
15 and making sure that, if there are objections that  
16 haven't been ruled on, we've done more research on  
17 those.

18 And so that is the substance of the responses  
19 we filed just a few minutes ago. So the responses that  
20 we just filed are only to objections and a motion to  
21 strike that weren't ruled on yet.

22 CO-HEARING OFFICER DODUC: Correct.

23 MS. MCGINNIS: So that was the substance of  
24 those responses.

25 And the other thing -- well, that's it on that

1 topic.

2 CO-HEARING OFFICER DODUC: All right. And our  
3 ruling is that we are not accepting those written  
4 responses that were just e-mailed, and we will  
5 disregard them.

6 MS. MCGINNIS: Okay. The other topic is that  
7 I got a little overzealous about filing our exhibit  
8 list. I said 24 hours, and my co-counsel has asked me  
9 to ask for a Monday deadline for submitting our list.

10 CO-HEARING OFFICER DODUC: Oh, that's right. 11  
It's the weekend.

12 MS. MCGINNIS: Our exhibit list.

13 CO-HEARING OFFICER DODUC: Understood.

14 Yes, 24 hours, working hours, is good. Yes,  
15 you may have until Monday.

16 Mr. Bezerra.

17 MR. BEZERRA: Yes. Thank you. I'd like to  
18 ask for a slight modification of the procedure you just  
19 described. What you described is that those of us who  
20 will be presenting testimony will offer our exhibits  
21 into evidence, there then will be whatever objections  
22 there are, and then we will need to answer  
23 on-the-fly --

24 CO-HEARING OFFICER DODUC: No, no. I'm sorry.  
25 Let me clarify. I know I was not very clear.

1           If you -- let's take petitioner's rebuttal  
2 testimony, for example. During the course of the  
3 presentation of their rebuttal testimony -- cross,  
4 redirect, recross -- there have been numerous  
5 objections filed during that time, verbal objections,  
6 putting aside the one written one with respect to  
7 Dr. Thornberg for now.

8           There's been verbal objections voiced, and at  
9 that time I allowed petitioner's counsel to respond  
10 verbally, sometimes twice, to those objections. We  
11 have all those objections and all those responses, and  
12 we will be responding to them.

13           So per our March ruling, I think -- I don't  
14 have the exact ruling, but it says that we will not  
15 consider objections after exhibits have been requested  
16 to be -- been moved into the record.

17           So going forward, Mr. Bezerra, as you present  
18 your witnesses, I expect there will be objections  
19 voiced. You will have the opportunity to verbally  
20 respond to those objections. And upon the conclusion  
21 of your rebuttal testimony, you will move your exhibits  
22 into the record. At such time, we will no longer  
23 accept any objections or responses, written, verbal or  
24 otherwise, with respect to your rebuttal testimony.

25           MR. BEZERRA: Yes. And I think that still



1 presents the same concern I had.

2 So the way that plays out is those of us who  
3 are offering testimony into the record will hear  
4 potentially quite a barrage of evidentiary objections  
5 at the end of our panel. And what you've just  
6 described allows us no time other than two seconds on  
7 oral response to respond to the evidentiary objections.

8 What I'd like to request is 24 hours to  
9 provide a written response to the objections that we  
10 will hear, potentially for the first time, right at the  
11 end of the panel.

12 And I say this because of course we offered --  
13 we presented all of our exhibits on March 23rd, and so  
14 anyone who plans to make evidentiary objections will  
15 have had since March 23rd to develop whatever  
16 objections they have, and it's not really an equitable  
17 response period to expect us to respond to all of those  
18 things in the moment.

19 So I'd just like to request, you know, a brief  
20 period of time to provide a written response to  
21 whatever objections are made to anybody's exhibits when  
22 they are offered at the end of a panel.

23 MR. BERLINER: Madam Chair, if I might?

24 CO-HEARING OFFICER DODUC: Hold on.

25 Mr. Berliner?

1           MR. BERLINER:    Yes.   We would support that  
2 proposal by Mr. Bezerra.   It's been our experience  
3 sometimes that there may have been any amount of time  
4 given by some party to -- they know they're going to  
5 seek to strike some document that's been submitted, and  
6 if we're caught on-the-fly and have to prepare a  
7 comprehensive response immediately to that, it's very  
8 difficult.

9           So if we have time on those -- I'm not talking 10 about  
the routine objections that we're dealing with  
11 all the time.

12          CO-HEARING OFFICER DODUC:                   And as in the case  
13 of Dr. Thornberg's testimony, there was an example when  
14 there was a request made to provide a written response  
15 and a written -- I guess a written objection, a written  
16 response. And we recognize that that was a special  
17 case that needed some additional time and additional  
18 responses.

19           MR. BERLINER:    Yes.

20          CO-HEARING OFFICER DODUC:                   And I expect that  
21 should those occasions arise, we will continue to  
22 discuss them as they do come up.

23           MS. MCGINNIS:    Another question.

24           CO-HEARING OFFICER DODUC:    Before you do.

25           Ms. Morris, did you have something to add?

1 MS. MORRIS: (Shakes head negatively)

2 CO-HEARING OFFICER DODUC: Okay. We've left  
3 Ms. Morris speechless. That should be noted for the  
4 record.

5 Ms. McGinnis?

6 MS. MCGINNIS: So does that mean that, during  
7 the course of rebuttal, only verbal objections and  
8 verbal responses are allowed unless you specifically  
9 state like you did the other day about Dr. Thornberg --

10 CO-HEARING OFFICER DODUC: Correct.

11 MS. MCGINNIS: -- that written submissions  
12 will be accepted?

13 CO-HEARING OFFICER DODUC: Correct.

14 MS. MCGINNIS: Okay. Thank you.

15 CO-HEARING OFFICER DODUC: Right now, unless  
16 there's further comments, I want to respond to  
17 Mr. Bezerra's request.

18 Mr. Bezerra makes a good point that -- of  
19 course it didn't happen today yet, and it won't happen  
20 because I have closed the period for objections.

21 But should, at the time or just at the time  
22 that -- just before a party moves their exhibits into  
23 the record, if numerous extraordinary objections are then  
24 vocally voiced at that late time, then yes,  
25 Mr. Bezerra, you and other parties may have 24 hours

1 upon which to respond, but that would be only to those  
2 last-minute significant objections that are not routine  
3 in nature that have not been previously articulated and  
4 responded to already.

5 MR. BEZERRA: Yes, I understand. There's  
6 essentially two classes of objections. One is the  
7 standard objection to a question as it proceeds, and  
8 the other is potential objections to exhibits as they  
9 are offered into evidence.

10 And given that we do our testimony via written 11  
11 exhibits, what I'm understanding is, if we feel the  
12 need to respond to an objection when we offer the  
13 exhibits that requires more than a moment, we --

14 CO-HEARING OFFICER DODUC: You may make that  
15 request.

16 MR. BEZERRA: We may request written -- time  
17 to do a written response.

18 CO-HEARING OFFICER DODUC: (Nods head  
19 affirmatively)

20 MR. BEZERRA: Thank you.

21 CO-HEARING OFFICER DODUC: Thank you.

22 But again, I will have to remind all the  
23 parties that in, I guess, whatever -- was it February,  
24 March ruling that we issued, there was a general  
25 category of objections that we noted that would not be

1 well looked upon if you were to voice them in the  
2 matter of admissibility.

3 And I would encourage all of you to not hold  
4 your objections until the end, upon threat of drawing  
5 ire from the Hearing Officer. All right.

6 Now, have we resolved that? Are there any  
7 questions?

8 Ms. Des Jardins.

9 MS. DES JARDINS: I have a request. I wish to  
10 request reconsideration of the decision to --

11 CO-HEARING OFFICER DODUC: I'm sorry. Which  
12 decision?

13 MS. DES JARDINS: To prematurely close the --  
14 close acceptance of objections.

15 You cited the December 19th hearing ruling  
16 says --

17 CO-HEARING OFFICER DODUC: I'm sorry. The  
18 March? Ms. Des Jardins, it was the March 15th ruling.

19 MS. DES JARDINS: Well, this one states  
20 objections that seek to disqualify a witness or exclude  
21 a witness's testimony in whole or in part will not be  
22 accepted unless they're based on new information that  
23 was presented during cross-examination.

24 I did have an objection that was based on new  
25 information which I was not given a chance to present.

1 I -- and I did not know -- I based -- I thought that I  
2 could present that objection when exhibits were offered  
3 into evidence, based on prior -- the prior procedure.

4 I understand this is the new procedure for  
5 hearing, that they have to be raised during cross, but  
6 that was not my understanding.

7 CO-HEARING OFFICER DODUC: That was the new  
8 procedure as specified in the March 15th ruling.  
9 Everyone has known about this since March 15th about  
10 voicing objections during the course of rebuttal.

11 MS. DES JARDINS: That they have to be done  
12 during cross-examination and that they cannot be done  
13 during --

14 CO-HEARING OFFICER DODUC: Cannot be done  
15 after exhibits have been moved into the record or have  
16 been requested to be moved into the record.

17 MS. DES JARDINS: They can't be done? Okay.

18 CO-HEARING OFFICER DODUC: Please review the  
19 March 15th ruling.

20 MS. DES JARDINS: Okay. Thank you very much.

21 CO-HEARING OFFICER DODUC: Thank you. Okay.  
22 Good-bye, Ms. McGinnis and Mr. Berliner, for 23 now.

24 All right. Let me turn to Ms. Nikkel and  
25 Mr. Hitchings. We are now on -- I actually need -- I

1 need a new sheet.

2 MR. OCHENDUSZKO: Grab one, here.

3 CO-HEARING OFFICER DODUC: Thank you.

4 My vow to be paperless has totally been  
5 destroyed during this course of this hearing.

6 We will now turn to you. I believe you have  
7 an opening statement you would like to make?

8 MS. NIKKEL: We do. Thank you.

9 My name is Meredith Nikkel, and I'm 10  
representing the Sacramento Valley group of  
11 protestants. Today I will be taking the lead on the  
12 presentation of rebuttal testimony offered by all of  
13 the protestants of Group 7, which is a broader group  
14 than the Sacramento Valley group. It includes all of  
15 those protestants in Group 7 known as the Sacramento  
16 Valley Water Users.

17 I'm here with Andy Hitchings, who will offer a  
18 brief opening statement.

19 MR. HITCHINGS: Good morning, Board Members  
20 and Board Staff. The Sac Valley Water Users did submit  
21 a written rebuttal opening statement two days ago which  
22 was intended to help frame this rebuttal presentation  
23 within the context of the larger overall proceeding, so  
24 I'd like to briefly summarize that now.

25 During Part 1A of this hearing, the

1 petitioners submitted evidence regarding whether the  
2 California WaterFix project would cause injury to legal  
3 users of water. Petitioners assert that, even if the  
4 project proceeds, the upstream CVP and SWP reservoirs  
5 will still be operated in largely the same way as  
6 they're operated today and that, based on their  
7 modeling work, the CVP and SWP operations would not  
8 injure any other legal users of water.

9 During Part 1B of this proceeding, the Sac 10  
Valley Water Users provided substantial evidence  
11 demonstrating that the petitioners' modeling does not  
12 accurately and realistically reflect how the CVP and  
13 SWP would be operated with the project in place, given  
14 the additional operational flexibility that the project  
15 would provide.

16 On rebuttal, the Sac Valley Water Users have  
17 submitted written testimony and exhibits prepared by  
18 MBK Engineers which cover two specific subjects: one,  
19 the monthly CalSim II output from petitioners'  
20 CalSim II modeling for key operational parameters; and,  
21 two, the problems with petitioners' modeling  
22 assumptions for drought conditions under the no action  
23 alternative and the California WaterFix alternative  
24 scenarios and the ways these problems can and should be  
25 corrected.



1           Mr. Bourez will summarize that written  
2 testimony during his direct examination by Ms. Nikkel.  
3 In short, Mr. Bourez's rebuttal testimony provides  
4 further evidence that the California WaterFix project  
5 would cause injury to legal users of water.

6           Throughout this proceeding the petitioners  
7 have essentially said, "Trust us. We will operate the  
8 project to ensure no injury to others," but petitioners  
9 have refused to confirm that they will agree to permit  
10 terms and conditions ensuring that the CVP and SWP,  
11 with the project in place, would be operated in a  
12 manner that does protect legal users of water from  
13 injury.

14           The rebuttal evidence offered by the Sac  
15 Valley Water Users will further demonstrate that  
16 without those assurances the petitioners have failed to  
17 meet their burden under Water Code Section 1702.

18           And that concludes our rebuttal opening  
19 statement. Thank you.

20           CO-HEARING OFFICER DODUC: Thank you.

21           Ms. Nikkel, please begin.

22           DIRECT EXAMINATION BY MS. NIKKEL

23 MS. NIKKEL:           If I could have the witnesses  
24 please state their full names for the record.

25           CO-HEARING OFFICER DODUC: And I believe both

1 have already taken the oath.

2 MS. NIKKEL: Yes.

3 WALTER WILLIAM BOUREZ III

4 and

5 DANIEL EASTON

6 called as panel rebuttal witnesses by the  
7 protestants Sacramento Valley Water Users  
8 group, having been previously duly sworn,  
9 were examined and testified further as  
10 hereinafter set forth:

11 WITNESS BOUREZ: Walter William Bourez III.

12 CO-HEARING OFFICER DODUC: Oh, the III. I'll  
13 have to add that from now on.

14 WITNESS EASTON: Daniel Easton.

15 MS. NIKKEL: Thank you.

16 Mr. Bourez, you understand that you're  
17 presenting your testimony today under oath, correct?

18 WITNESS BOUREZ: Yes.

19 MS. NIKKEL: Is Exhibit SVWU-200 an accurate  
20 statement of your rebuttal testimony in this  
21 proceeding?

22 WITNESS BOUREZ: Yes, it is.

23 MS. NIKKEL: Were Exhibits SVWU-201 and  
24 SVWU-202 Errata prepared by you or at your direction to  
25 support your rebuttal testimony in this proceeding?

1 WITNESS BOUREZ: Yes.

2 MS. NIKKEL: Mr. Easton, you understand that  
3 you are presenting your testimony today under oath,  
4 correct?

5 WITNESS EASTON: Yes.

6 MS. NIKKEL: Is Exhibit SVWU-203 an accurate  
7 statement of your rebuttal testimony?

8 WITNESS EASTON: Yes.

9 MS. NIKKEL: Mr. Bourez, would you please  
10 summarize your testimony submitted for this proceeding?

11 WITNESS BOUREZ: Yes. Monthly output  
12 information is critical for adequately evaluating the  
13 impacts of the California WaterFix project because the  
14 use of annual or average output information can mask  
15 impacts that may otherwise occur on a monthly or  
16 seasonal basis.

17 The petitioners failed to use CalSim II  
18 properly to estimate project impacts during drought  
19 periods even though, with appropriate modification,  
20 CalSim II has the capacity to do so.

21 The key findings in this matter include the  
22 petitioners' model does not realistically simulate  
23 drought conditions. It is possible to simulate drought  
24 conditions that are more realistic than those in the  
25 petitioners' modeling for this proceeding.

1 Numerous refinements to the petitioners'  
2 modeling can be made using reasonable modeling criteria  
3 that will produce modeled operations with fewer model  
4 violations of existing requirements. With such  
5 refinements, CalSim II modeling can be used to assess  
6 the effects of California WaterFix during critical  
7 periods. These refinements must be performed to fully  
8 disclose the effects of the California WaterFix project  
9 and the potential impacts to legal users of water.  
10 With that, I'd like to request Mr. Hunt to 11  
pull up Exhibit SVWU-202 Errata, Page 5, Table 1.

12 This table contains output from the DWR USBR  
13 California WaterFix no action alternative, and we  
14 extracted the stressed-conditions years. And I'd like  
15 to explain this table and walk through an example.

16 So Column 1 is the water year. And the year I  
17 want to use for an example is 1933, which is in the  
18 middle of the table.

19 Column 2 is the Folsom carryover storage in 20 that  
year, and that's in Column 2. And you see under 21 1933,  
the value is 90. So in that particular year,

22 Folsom falls to dead storage at 90,000 acre-feet.

23 Column 3 under 1933 has a value of 550 for  
24 Shasta carryover storage in that year.

25 Column 4 is CVP San Luis storage in that year.

1 And the carryover storage in San Luis in that year is  
2 719,000 acre-feet, which is greater than Folsom and  
3 Shasta combined.

4 Now, Column 5 of that year, you can see that  
5 the Jones export for the July-through-September period  
6 is 483,000 acre-feet. And that's just July, August,  
7 and September total exports during that period.

8 So when we looked at that, it raised a red  
9 flag to us of why would we have such high San Luis  
10 storage and low storage in upstream reservoirs.

11 So we looked at -- Column 6 is a calculation  
12 of how much Folsom is releasing for Delta exports  
13 during that year. So Column 6 is calculated as the  
14 American River flow above minimum midstream at Nimbus  
15 and above minimum midstream at H Street. And we  
16 compared that to Delta exports, and we found that  
17 Folsom is releasing during that period, that summer  
18 period, 230,000 acre-feet to support exports.

19 Column 7 is similar to Column 6, but it's  
20 showing how much Shasta release occurs above what's  
21 required at Keswick and Wilkins Slough on the  
22 Sacramento River to support exports, and that value is  
23 196,000 acre-feet.

24 Column 8 is the CVP South of Delta  
25 Agricultural Service Contractor delivery, and that

1 value is zero for that year.

2 So what we see is that Shasta and Folsom are  
3 releasing significant amounts of water. It's being  
4 exported and stored in San Luis. And our opinion is  
5 that that is not a realistic operation. And with  
6 adjustments to CalSim, we could simulate these years  
7 much more accurately and realistically, and we could  
8 get a better assessment of what the impacts of the  
9 California WaterFix may be.

10 So we performed some calculations, and these 11  
are rough calculations. We did not run the model. We  
12 just calculated how much could we reduce the release  
13 from Folsom during that water year and preserve the  
14 minimum storage in Folsom.

15 And that would be Column 9. And we found that  
16 just backing off releases, in two months we could store  
17 an additional 170,000 acre-feet in Folsom that year.  
18 And we also saw that we could store around 179,000  
19 acre-feet of additional water in Shasta. That doesn't  
20 get Shasta out of a critical situation, but it does  
21 prevent a dead pool condition.

22 So these are some of the situations that we 23 see  
with the no action alternative. These dead pool  
24 issues are not caused by the WaterFix; it's in the no  
25 action alternative.

1           And what our concern is, if there is an effect  
2 from the California WaterFix, these reservoirs can't go  
3 below those values. So these operations in these  
4 critical years are difficult to assess and difficult to  
5 assess what a project -- effect a project may have with  
6 this type of model simulation.

7           So this is one of the things that we really  
8 believe that needs to be done with the WaterFix and  
9 evaluations, is to refine the no action alternative so  
10 we can look at drought periods.

11           And that concludes my direct testimony.

12 MS. NIKKEL:           That concludes our direct  
13 testimony.

14 CO-HEARING OFFICER DODUC: Thank you,  
15 Ms. Nikkel.

16 All right.           Let's have those who expect to  
17 conduct cross-examination, starting with petitioners,  
18 please come up and identify yourself by group number,  
19 if possible, and give me a time estimate.

20 MR. HERRICK: John Herrick, South Delta  
21 parties. Five or ten minutes at most. Thank you.

22 CO-HEARING OFFICER DODUC: And you are group  
23 number?

24 MR. HERRICK: 21. Sorry. Group No. 21.

25 CO-HEARING OFFICER DODUC: All right.

1 Mr. Berliner.

2 MR. BERLINER: Yes, thank you. Tom Berliner  
3 on behalf of the Department of Water Resources. And I  
4 will be joined by Ms. Amy Aufdemberge on behalf of the  
5 Bureau of Reclamation. I had initially estimated less  
6 than five minutes. I'm going to extend that. It will  
7 be somewhere probably between five and ten minutes.

8 CO-HEARING OFFICER DODUC: All right.

9 Ms. Morris?

10 MS. MORRIS: Stefanie Morris, State Water  
11 Contractors Group 3. I estimate approximately ten  
12 minutes.

13 MR. JACKSON: Michael Jackson, Group 31, 10 to  
14 15 minutes.

15 MR. KEELING: John Keeling for the San Joaquin  
16 County protestants. No more than ten minutes.

17 MS. DES JARDINS: Dierdre Des Jardins,  
18 Group 37; 15 to 20 minutes.

19 CO-HEARING OFFICER DODUC: All right. Thank  
20 you. Looks like we will get to Group 7's second panel  
21 today.

22 With that, Mr. Berliner and Ms. Aufdemberge,  
23 you're up first.

24 CROSS-EXAMINATION BY MR. BERLINER

25 MR. BERLINER: Good morning, Hearing Officers,



1 witnesses, fellow attorneys. My name is Tom Berliner.  
2 I'm here on behalf of the Department of Water  
3 Resources.

4 Good morning, Mr. Bourez, Mr. Easton.

5 Mr. Easton, if I recall correctly from  
6 cross-examination in Part 1A, you indicated that you  
7 were the person who performed the actual modeling that  
8 was done as part of the Sacramento Valley Water Users'  
9 case at that point; is that correct?

10 MS. NIKKEL: I'm going to object as outside  
11 the scope of rebuttal. Mr. Bourez just testified that  
12 they didn't conduct any additional modeling with  
13 respect to this rebuttal testimony.

14 CO-HEARING OFFICER DODUC: Mr. Berliner.

15 MR. BERLINER: Just a preliminary question.  
16 I'm not going to be asking -- not going to be asking  
17 about that work that he did.

18 CO-HEARING OFFICER DODUC: So why is the  
19 question needed?

20 MR. BERLINER: Just so that I can find out  
21 whether I should direct the next questions to  
22 Mr. Bourez or Mr. Easton.

23 CO-HEARING OFFICER DODUC: Why don't you just  
24 ask your next question, and whoever could answer, would  
25 answer, if it's within the scope of rebuttal testimony.

1 MR. BERLINER: That'll be fine.

2 In the summary just offered, there was  
3 discussion of the no action alternative.

4 Who reviewed the modeling for the no action  
5 alternative?

6 WITNESS BOUREZ: Both Dan Easton and I  
7 extensively reviewed the no action alternative as well  
8 as other members of the MBK team. That would be Lee  
9 Bergfeld and Shankar.

10 MR. BERLINER: And when you were conducting  
11 that review of the no action alternative, did you  
12 observe that there were times when the reservoir --  
13 when either Lake Shasta or Folsom Reservoir went to  
14 dead pool?

15 WITNESS BOUREZ: Just to be clear, this is the  
16 petitioners' no action alternative that they used for  
17 this proceeding.

18 MR. BERLINER: Yes, correct.

19 WITNESS BOUREZ: Yes, we did observe dead pool  
20 conditions in Shasta.

21 MR. BERLINER: And you mentioned here that you  
22 were critiquing the way that the petitioners handled  
23 stressed conditions or drought conditions in the  
24 modeling, correct?

25 WITNESS BOUREZ: That's correct.

1 MR. BERLINER: And you were aware of those  
2 stressed or drought conditions when you reviewed the  
3 modeling in Part 1A, correct?

4 WITNESS BOUREZ: That's correct.

5 MR. BERLINER: Regarding the testimony that is  
6 being offered by the Sacramento Valley Water Users  
7 today, specifically Exhibits 200 and 201, regarding  
8 monthly CalSim model output, it's our view that it is  
9 merely a continuation of the cases in chief of the 10  
10 protestants constituting the Sacramento Valley Water  
11 Users and not proper actual rebuttal testimony.

12 A significant part of the Sacramento Valley  
13 Water Users' case in chief was a technical review of  
14 the boundary modeling analysis in support of the  
15 WaterFix, which was presented through the direct  
16 testimony of Mr. Bourez in Exhibit SVWU-100; and  
17 Mr. Easton, SVWU-105; and a related technical report,  
18 SVWU-109.

19 CO-HEARING OFFICER DODUC: Mr. Berliner, was  
20 that an objection or a question?

21 MR. BERLINER: This is an objection.

22 CO-HEARING OFFICER DODUC: Okay. So you're  
23 directing that at me and not at Mr. Bourez?

24 MR. BERLINER: Yes, correct. Sorry.

25 CO-HEARING OFFICER DODUC: That's fine. I

1 just wanted to clarify so that Ms. Heinrich can start  
2 taking notes as well.

3 MS. NIKKEL: May I respond?

4 MR. BERLINER: I'm not done.

5 CO-HEARING OFFICER DODUC: I don't think he's  
6 finished yet.

7 MR. BERLINER: I'm not even close, and I'll  
8 give you plenty of time to respond.

9 For example, in SVWU-100 at Pages 1 to 2, it 10  
states, "For this hearing, I was asked to prepare  
11 exhibits and testimony on the following subjects: A, a  
12 review of the California WaterFix boundary analysis,"  
13 which is referred to in SVWU-109. I'm going to make it  
14 simple. All of these 100's exhibit numbers are from  
15 the Sacramento Valley Water Users.

16 At Exhibit 109 at Page 1, it said, "This  
17 technical memorandum describes MBK Engineers' review of  
18 the boundary analysis modeling performed by the  
19 California WaterFix proponents."

20 The transcript of the proceedings, Volume 20 21 at  
Page 27, Lines 1 through 5, confirms that

22 Exhibit 109 describes the evaluation of the boundary  
23 analysis modeling submitted by the petitioners.

24 Now in rebuttal, the Sacramento Valley Water  
25 Users are attempting to submit additional evidence

1 reviewing the petitioners' boundary analysis. See, for  
2 example, Exhibit 200 at Page 1, and Exhibit 201.

3 In his rebuttal testimony, Mr. Bourez states  
4 he was asked to prepare exhibits and testimony concerning  
5 monthly CalSim II outputs from petitioners' CalSim II  
6 modeling for California WaterFix for key operational  
7 parameters.

8 This is at Exhibit 200, Page 1.

9 Mr. Bourez testifies that this monthly data is  
10 critical to evaluating the impacts of the California  
11 WaterFix, the same citation.

12 "MBK Engineers extracted the data from the  
13 modeling outputs that were available on the Water  
14 Board's website and prepared the tables in Exhibit 201.

15 Mr. Bourez's testimony implies that this  
16 modeling output from the Water Board's website first came  
17 to his attention during cross-examination of the  
18 petitioners' modeling panel. See, for example,  
19 Exhibit 201 at Page 2.

20 Mr. Bourez's rebuttal testimony states, quote,  
21 "This monthly model output information was not included  
22 in petitioners' Part 1A exhibits and testimony, but was  
23 described during cross-examination of petitioners'  
24 modeling panel during which one of their witnesses  
25 stated that the information was available through the

1 State Water Board's website."

2 The data extracted by MBK Engineers, however,  
3 and presented by Mr. Bourez had been publicly available  
4 since May of 2016. Mr. Bourez's testimony provides no  
5 explanation or reason why this monthly data could not  
6 have been incorporated as part of this extensive direct  
7 testimony evaluating petitioners' boundary analysis  
8 modeling of potential California WaterFix impacts.  
9 Further, Mr. Bourez' testimony points to no 10  
particular testimony or evidence in petitioners' cases  
11 in chief that is purportedly new evidence that's being  
12 rebutted; instead, this additional modeling information 13  
is a continuation or supplementation of Mr. Bourez' and 14 Mr.  
Easton's direct testimony submitted during the  
15 Sacramento Valley Water Users case in chief.

16 Allowing evidence in the record on rebuttal  
17 allows Mr. Bourez to supplement his direct testimony  
18 reviewing petitioners' modeling and seemingly to add  
19 information Mr. Bourez failed to include in his case in  
20 chief.

21 For these reasons, the petitioners  
22 respectfully request that the Hearing Officers exclude  
23 from evidence those portions of Exhibit 200 that  
24 pertain to monthly CalSim model output and the modeling  
25 output tables in Exhibit 201. Thank you.

1 CO-HEARING OFFICER DODUC: Ms. Aufdemberge?

2 MS. AUFDEMBERGE: Ms. Aufdemberge. On behalf  
3 of the United States Department of the Interior, we  
4 would like to join in this objection.

5 CO-HEARING OFFICER DODUC: And before I get to  
6 Ms. Nikkel and Mr. Hitchings, does that conclude your  
7 cross-examination?

8 MR. BERLINER: No, it does not.

9 CO-HEARING OFFICER DODUC: Okay. Wishful  
10 thinking.

11 Ms. Nikkel, response.

12 MS. NIKKEL: I'd like to first clarify the  
13 motion. Is the motion only made with respect to  
14 SVWU-200 and 201?

15 MR. BERLINER: Technically speaking, yes,  
16 because the testimony submitted by Mr. Easton indicates  
17 it's in support. So to the extent that there would be  
18 any additional need to conform that testimony to comply  
19 with this motion, it would extend to that as well. But  
20 there was nothing specifically set forth in  
21 Mr. Easton's testimony that we were seeking to exclude  
22 as written.

23 MS. NIKKEL: And so -- thank you. A further  
24 point of --

25 CO-HEARING OFFICER DODUC: Hold on.

1 MS. NIKKEL: Sure.

2 CO-HEARING OFFICER DODUC: Ms. Morris?

3 MS. MORRIS: Stefanie Morris, State Water  
4 Contractors.

5 I would join the objection, but I understood  
6 the objection to include SVWU-202 Errata as well, and I  
7 don't recall Ms. Nikkel stating that exhibit.

8 MR. BERLINER: Oh, yes.

9 MS. NIKKEL: I did not.

10 MR. BERLINER: I'm sorry. Yes, it meant to  
11 include that as well.

12 MS. NIKKEL: Okay.

13 CO-HEARING OFFICER DODUC: Ms. Nikkel?

14 MS. NIKKEL: So thank you for that  
15 clarification. That would mean also, then, the  
16 entirety of SVWU-200, not only those portions that  
17 would be related to 201 and 202; is that correct?

18 MR. BERLINER: I'm sorry. Can you ask me that  
19 again?

20 MS. NIKKEL: Sure. I just want to understand  
21 the scope of your motion. Is it related to the  
22 entirety of SVWU-200 as well as 201 and 202 or only  
23 portions of 200?

24 MR. BERLINER: Portions.

25 MS. NIKKEL: Those portions that are relative



1 to 201 and 202; is that right?

2 MR. BERLINER: Correct.

3 MS. NIKKEL: Okay. I think I understand the  
4 motion now.

5 First, I'd like to respond with respect to  
6 SVWU-201. And I think that these responses will then  
7 apply back to SVWU-200.

8 So with respect to SVWU-201, I think that  
9 Mr. Berliner misstated the testimony. Nowhere did  
10 Mr. Bourez testify that, at the time of submitting the  
11 rebuttal testimony or preparing it was that the first time  
12 that he was aware of the model output.

13 Rather, the testimony was that, at the time of  
14 preparing the rebuttal testimony -- I'm sorry, at the  
15 time of submitting the original testimony in Part 1B,  
16 the Sacramento Valley Water Users were not aware of  
17 whether petitioners intended to or would be submitting  
18 the model results or the monthly outputs as part of  
19 their case in chief as well as the modeling files. And  
20 this was a subject of cross-examination during Part 1A.

21 With respect to SVWU-202, my response would be  
22 similar. However, specific to the topics in the  
23 drought operations modeling subject of SVWU-202, the  
24 document itself refers to an exchange that occurred  
25 during cross-examination in which DWR's witness

1 Mr. Munevar testified about the need for flexible  
2 adaptations and potential changes that might occur  
3 during drought operations. And the purpose of this  
4 testimony, the rebuttal testimony offered as SVWU-202,  
5 is to respond to that oral cross-examination testimony.

6 CO-HEARING OFFICER DODUC: Thank you,  
7 Ms. Nikkel.

8 Mr. Bezerra?

9 MR. BEZERRA: Yes. Thank you. I'd just like  
10 to add a little on behalf of Group 7 to Ms. Nikkel's  
11 response. In particular, I want to just explain what I  
12 understand to be the net effect of this objection. It  
13 would be to exclude from the record of this hearing,  
14 comprehensive model outputs from petitioners' own  
15 models. These are outputs from their own models that  
16 are just being put into the record. And it rebuts in  
17 particular, Mr. Munevar's testimony in Exhibit DWR-71,  
18 throughout the testimony, in which he refers to Exhibit  
19 DWR-514 and the averaged water deliveries depicted in  
20 that exhibit as demonstrating a lack of injury to legal  
21 users of water.

22 Petitioners essentially have asserted that the  
23 Board should only look at a very small sliver of their  
24 modeling results to determine whether legal users of  
25 water are injured by the project.

1           This exhibit is an attempt to present to the  
2 Board comprehensive results from petitioners' modeling  
3 so that the Board can understand those comprehensive  
4 results and response and rebuttal to DWR-514 and  
5 Mr. Munevar's related testimony.

6           CO-HEARING OFFICER DODUC: Thank you for that  
7 addition, Mr. Bezerra.

8           MR. BEZERRA: And if I could make one further  
9 point on the point about SVWU-202, DWR's witness  
10 Maureen Sergent testified extensively under  
11 cross-examination that it was her opinion as a water  
12 right expert that this project would not injure legal  
13 users of water notwithstanding the modeling results  
14 because petitioners would operate the projects to make  
15 sure no injuries would occur. So 202 is a direct  
16 response and rebuttal to Ms. Sergent's testimony, among  
17 other things.

18           CO-HEARING OFFICER DODUC: Ms. Des Jardins.

19           MS. DES JARDINS: Yes, the CSFA did  
20 cross-examine.

21           CO-HEARING OFFICER DODUC: Hold on, hold on.

22 I assume you are joining Ms. Nikkel and 23 Mr.  
Bezerra in their response to the objection?

24           MS. DES JARDINS: This is with respect to the  
25 modeling output tables --

1 CO-HEARING OFFICER DODUC: We are discussing  
2 Mr. Berliner's objection.

3 MS. DES JARDINS: -- to admitting that into  
4 evidence. This is information we have sought from the  
5 petitioners. I was still speaking on --

6 CO-HEARING OFFICER DODUC: When you say  
7 "this," what are you talking about.

8 MS. DES JARDINS: The modeling output table  
9 which respect the detailed modeling outputs in a  
10 human-readable form.

11 This is information which we have sought from  
12 the petitioners since before the hearing. It was -- I  
13 sent a letter --

14 CO-HEARING OFFICER DODUC: So you are in  
15 support of Group 7's testimony?

16 MS. DES JARDINS: Yes, and I wanted to point  
17 out that, on August 26th -- I don't have the exact  
18 reference, PCFFA did cross-examine the petitioners  
19 about a spreadsheet model. They didn't indicate that  
20 they used spreadsheets to view the modeling output in a  
21 format similar to that that Mr. Bourez has provided.  
22 It is has not been provided for the hearing.  
23 Mr. Bourez is doing a service for all the 24  
protestants by offering this into the record.

25 CO-HEARING OFFICER DODUC: Thank you. All

1 right. Anything else you wish to add, Mr. Berliner?

2 MR. BERLINER: Yes.

3 CO-HEARING OFFICER DODUC: After that detailed  
4 objection that you somehow just, you know, pulled out  
5 of thin air, go ahead.

6 MR. BERLINER: Well, I won't comment that  
7 part.

8 But I will offer that there's nothing new on  
9 the -- the information upon which this testimony was  
10 based has been publicly available, as I indicated,  
11 since May of 2016. We had extensive testimony in  
12 Part 1A -- it should all sound very familiar -- about  
13 rule curves, about dropping reservoirs down, about  
14 drought conditions, stressed conditions, et cetera. We  
15 have been over that extensively during the direct and  
16 cross-examination of witnesses in Part 1A.

17 The Sacramento Valley Water Users had ample  
18 opportunity at that time, if they thought that there  
19 was insufficiencies in the model, to come in at that  
20 time and present that testimony.

21 I would also comment that, regarding the  
22 rebuttal of Ms. Sargent's testimony, this is not  
23 rebuttal of her testimony. She testified regarding the  
24 Department's operational responses. And this is  
25 seeking to provide a modeling response, not an

1 operational response.

2 CO-HEARING OFFICER DODUC: Final words,  
3 Ms. Nikkel?

4 MS. NIKKEL: I think I would just direct the  
5 Hearing Officers to review the testimony itself in  
6 which the foundation for this being proper rebuttal is  
7 laid out specifically. I think that would be helpful  
8 in addition to the points we've already raised.

9 CO-HEARING OFFICER DODUC: Not necessary.  
10 Thank you.

11 After considering all the points made, I am  
12 ruling against the petitioners. So your objection,  
13 Mr. Berliner, is overruled.

14 You may proceed with your cross-examination.

15 MR. BERLINER: Thank you.

16 First question is for Mr. Bourez. Mr. Bourez,  
17 in your testimony, you proposed five specific changes  
18 to the petitioners' modeling to achieve higher storage  
19 levels during dry conditions. Do you recall that?

20 WITNESS BOUREZ: Yes, I'm counting them now.  
21 But, yes.

22 MR. BERLINER: Five bullets on the page,  
23 correct?

24 WITNESS BOUREZ: Yes.

25 MR. BERLINER: And as I understand it, it's

1 your opinion that these five proposed changes should be  
2 applied to both the no action alternative as well as  
3 the project alternatives?

4 WITNESS BOUREZ: That's correct.

5 MR. BERLINER: Does your model include the  
6 D1641 salinity requirements?

7 WITNESS NADER-TEHRANI: I'm sorry. My  
8 rebuttal testimony is focused on the petitioners' no  
9 action alternative. Are you referring to the modeling  
10 MBK did or what the petitioners --

11 MR. BERLINER: MBK.

12 MS. NIKKEL: And with that clarification I  
13 would I would like to object that the question is  
14 outside the scope of rebuttal.

15 Again, the rebuttal testimony is limited to  
16 modeling performed and scenarios presented by the  
17 petitioners, and it is not the subject of the MBK  
18 modeling that was presented in Part 1B.

19 CO-HEARING OFFICER DODUC: Mr. Berliner?

20 MR. BERLINER: I'm having a misunderstanding.  
21 Let me ask a couple of questions.

22 In preparing your critique, did you use the  
23 MBK model to analyze -- to prepare the critique of  
24 petitioners' model?

25 WITNESS BOUREZ: No. This is solely based on

1 petitioners' model and the review of their modeling and  
2 specifically the no action alternative -- which the  
3 methods that are used in the no action alternative are  
4 also used in the with-project alternatives.

5 MR. BERLINER: So you did not make use of the  
6 MBK model for purposes of your testimony here today?

7 WITNESS BOUREZ: That's correct.

8 MR. BERLINER: Thank you. I have no further  
9 questions.

10 CO-HEARING OFFICER DODUC: All right.  
11 Ms. Morris, if you are still projecting ten 12  
minutes, then let's go ahead and get your  
13 cross-examination done, and we will take our lunch  
14 break then.

15 CROSS-EXAMINATION BY MS. MORRIS

16 MS. MORRIS: Thank you, good morning.  
17 Stefanie Morris, State Water Contractors.

18 CO-HEARING OFFICER DODUC: Good afternoon.

19 MS. MORRIS: Good afternoon -- by four  
20 minutes.

21 Mr. Easton, did you create Table 1 on SVWU-202  
22 Errata?

23 WITNESS EASTON: No, I did not.

24 MS. MORRIS: Mr. Bourez, did you?

25 WITNESS BOUREZ: Yes, I did.



1 MS. MORRIS: Great. I have a question. I  
2 just want to confirm, in Table -- not "Table" --  
3 Columns 6 and 7 are releases for Delta exports?

4 WITNESS BOUREZ: That's correct. And let me  
5 clarify because I want to make sure that -- all these  
6 calculations can be confusing.

7 What we did is we looked at, for Column 6, the  
8 flow in the American River at Nimbus above what's  
9 required, the flow in the American River at H Street  
10 above -- which is above the requirement, took the  
11 minimum of those two, and we compared that to Delta  
12 exports at Jones. And so it's the minimum of those  
13 values.

14 And for the Jones exports, we subtracted what  
15 we would consider a minimum public health and safety  
16 value of 300 cfs. So the equations, if you look at --  
17 on Page 4 of this exhibit --

18 CO-HEARING OFFICER DODUC: Hold on. Hold on,  
19 Mr. Bourez.  
20 Is this beyond what you were seeking, 21  
21 Ms. Morris?

22 MS. MORRIS: Yes.

23 WITNESS BOURE Z: I'm sorry.

24 MS. MORRIS: Everything after "yes" I don't  
25 need.

1 CO-HEARING OFFICER DODUC: Please ask your  
2 next question.

3 MS. MORRIS: Thank you. I wanted to go back  
4 to Table 1. And my question for you is how did you  
5 compute the values in Columns 9 and 10? Because I've  
6 looked through your testimony, all of it, and I'm  
7 unable to see where that calculation is or how you came  
8 up with those numbers.

9 CO-HEARING OFFICER DODUC: Now you may explain  
10 Mr. Bourez?

11 WITNESS BOUREZ: That's a good question.  
12 Okay. So those calculations are performed on a monthly  
13 basis, and this is an annual summary. So it would be  
14 difficult to just look at this annual summary and  
15 determine the values in 9 and 10.

16 And I would be happy to walk through all of 17  
17 these calculations. If you look on Page --

18 CO-HEARING OFFICER DODUC: Hold on.

19 MS. MORRIS: No, thank you. I only am  
20 interested on the calculations on 9 and 10. And I'm  
21 hearing you tell me they're in your testimony. And I  
22 didn't see where you are providing the monthly basis.  
23 Did you submit that in your written testimony?

24 WITNESS BOUREZ: It is in this exhibit. And  
25 they're on Pages 8 and 9, the data that are used to

1 calculate these values.

2 MS. MORRIS: For Columns 9 and 10?

3 WITNESS BOUREZ: That's correct.

4 MS. MORRIS: I have no further questions.

5 CO-HEARING OFFICER DODUC: Thank you,

6 Ms. Morris.

7 With that, we will take our lunch break and we  
8 will resume at 1:10.

9 (Whereupon, the luncheon recess was taken  
10 at 12:08 p.m.)

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## 1 AFTERNOON SESSION

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3 (Whereupon, the appearance of all  
4 parties having been duly noticed  
5 the proceedings resumed at 1:11 p.m.)

6 CO-HEARING OFFICER DODUC: I believe,  
7 Mr. Herrick, you're up.

## 8 CROSS-EXAMINATION BY MR. HERRICK

9 MR. HERRICK: John Herrick, on behalf of South 10  
Delta parties. I just have a couple of three  
11 questions. Shouldn't take more than five or ten  
12 minutes at the most.

13 The topics are a couple of the sets of  
14 information presented in Exhibit 202 -- is that Errata  
15 -- for Sacramento Valley Water Users. And I'll get to  
16 them right now.

17 Mr. Bourez, on Exhibit SVWU-202 -- I don't  
18 know if that's an errata or not, but on Page -- sorry  
19 -- Page 5, which is the one with your Table 1. Do you  
20 see that in front of you?

21 WITNESS BOUREZ: Yes, I have a copy here.

22 MR. HERRICK: Now, in your testimony and  
23 slightly on cross -- but anyway, in your testimony, you  
24 highlighted 1933 as a year the dead pool was reached at  
25 Folsom and Shasta; is that correct?

1 WITNESS BOUREZ: Yes.

2 MR. HERRICK: And this is pursuant to the  
3 CalSim II modeling, not the historic thing; this is the  
4 modeling under the various Cal WaterFix scenarios,  
5 correct?

6 WITNESS BOUREZ: That's correct.

7 MR. HERRICK: And in that same year, the  
8 purpose of this was to show that there was -- there  
9 were releases from Folsom and Shasta that, to some  
10 degree, ended up in San Luis during the year that dead  
11 pool was reached, correct?

12 WITNESS BOUREZ: That's correct.

13 MR. HERRICK: Now, the question I want to get  
14 to -- the question I'm getting to is the modeling is  
15 not just a result of that year's operations, 1933, but  
16 that's a result of the prior year's operations, too, in  
17 the model?

18 WITNESS BOUREZ: That's correct.

19 MR. HERRICK: By that I mean the decisions  
20 made in whatever year is before that -- and in this  
21 year, it's '32 -- those decisions for releases,  
22 carryover exports, they're what result in the  
23 conditions for '33 that ended up in these numbers,  
24 correct?

25 WITNESS BOUREZ: That's correct. And it's

1 more complicated than that. If you want to go through  
2 details, I'm happy to do that.

3 MR. HERRICK: I'm just trying to make the  
4 point though that, when you look at one year, that's  
5 the results from prior decisions also, correct?

6 WITNESS BOUREZ: Correct.

7 MR. HERRICK: And so if the projects under  
8 petition tell us that, "well, when we reach a year like  
9 '33, we'll do something differently," that may be too  
10 late; is that correct?

11 WITNESS BOUREZ: That's correct.

12 MR. HERRICK: Thank you. And without  
13 incurring the wrath of everyone within a hundred miles,  
14 if we'll move to Page 6 of your testimony. And in I  
15 guess it's the second full paragraph, under the heading  
16 "Refine CVP and SWP Allocations," you explain about  
17 what is and isn't --

18 CO-HEARING OFFICER DODUC: Page 6, Mr. Hunt.

19 MR. HERRICK: Page 6. Sorry, of 202.  
20 I don't understand what "perfect foresight" 21  
means at all. And I've tried.

22 In your discussion of this, is the point that  
23 decisions made currently using perfect foresight  
24 somehow different, according the petitioners, than your  
25 decision regarding perfect foresight when you ran the

1 models?

2 WITNESS BOUREZ: There is a difference between  
3 what the petitioners say is perfect foresight and how  
4 they're using it versus how we're using "perfect  
5 foresight" because both methods do involve a form of  
6 perfect foresight.

7 MR. HERRICK: And the perfect foresight that  
8 you used attempted to not end up with dead pool in main  
9 reservoirs with exports; is that correct?

10 WITNESS BOUREZ: That's correct.

11 MR. HERRICK: And if one were obligated to  
12 protect carryover over exports, then your perfect  
13 foresight in that instance may very well be the  
14 appropriate way of doing that?

15 WITNESS BOUREZ: Could be, yes.

16 MR. HERRICK: Now is -- does the -- does your  
17 perfect foresight that you used differ substantially  
18 from the perfect foresight used in the petitioners'  
19 modeling of CalSim II?

20 WITNESS BOUREZ: Okay. This is a complex  
21 question. So in both models -- there is a significant  
22 amount of perfect foresight in both models. And if I  
23 were to list all of the different components of the  
24 model that use perfect foresight -- and I say "the  
25 model," both petitioners' version of the model and the

1 MBK version -- I'd say a majority of the water  
2 allocations that are made in the model are done with  
3 perfect foresight.

4 The D1641 standards are set each year using  
5 perfect foresight. The reservoir inflows and flood  
6 control operations are all set with perfect foresight.  
7 And I can really describe these in significant detail,  
8 so I want to make sure I'm answering your question.  
9 The WSIDI procedure is a form of perfect foresight  
10 itself.

11 MR. HERRICK: Yes. And so that's the point I  
12 was trying to get to. Both approaches use some level  
13 of perfect foresight, but your use of perfect foresight  
14 is to try to give the Board a better view of what  
15 conditions would look like rather than just a model  
16 that says, "Oop, dead pool, and we're still exporting  
17 money" -- "exported water," correct?

18 Ooh, that was the worst Freudian slip ever. I  
19 wish that was intentional.

20 WITNESS BOUREZ: I wouldn't word it exactly  
21 that way, but I don't think the petitioners  
22 intentionally wanted to hit dead pool.  
23 We -- when Mr. Easton and I perform the 24  
24 modeling, we look at every year, and we'll make  
25 adjustments to the model until we believe the operation



1 reflects what may actually happen in operations.

2 And if you -- for example, the 1933 that you  
3 see here in this Table 1 and in Exhibit SVWU-202, we  
4 have adjusted our modeling, so we're not making  
5 releases to bring reservoirs down to dead pool to store  
6 that water in San Luis. You won't see that type of  
7 operation in our model.

8 So I'm struggling with what your question is.

9 MR. HERRICK: I'm sorry.

10 WITNESS BOUREZ: If you want more background  
11 on why we say that WSIDI uses perfect foresight, we can  
12 explain that and explain in greater detail how we're  
13 using our allocation procedure.

14 MR. HERRICK: I apologize if I didn't make my  
15 question very clear. But the point was that your  
16 approach, you believe, results in a better description  
17 of conditions, especially during the beginning and  
18 onset of drought times; wouldn't that be correct?

19 WITNESS BOUREZ: Yes, that's correct.

20 MR. HERRICK: And that then would lead to  
21 better decisions by not only operators but by  
22 regulators who are trying to make sure operators do the  
23 right thing?

24 WITNESS BOUREZ: That's correct. Given that  
25 these are models, that the operators aren't making

1 day-to-day decisions based on these models, it's more  
2 of a longer term operational planning tool.

3 MR. HERRICK: It's for the purpose of planning  
4 ahead when we have droughts; isn't it?

5 WITNESS BOUREZ: That's correct.

6 MR. HERRICK: So the purpose of your testimony  
7 is then to suggest that there may be necessary  
8 conditions put upon anything that might be approved so  
9 that we don't run into these droughts where we throw up  
10 our hands and have to play it by ear every day of the  
11 year?

12 WITNESS BOUREZ: That's our opinion, correct.

13 MR. HERRICK: Thank you. That's all the  
14 questions I have. If I may address one procedural  
15 thing?

16 CO-HEARING OFFICER DODUC: Actually, I have a  
17 question for you as well. But go ahead.

18 MR. HERRICK: Certainly.

19 Nobody knows how fast this is going to go.  
20 The San Joaquin Tributaries Group, I think they're 19,  
21 asked me if South Delta parties could switch with them  
22 if they had to go on Thursday, and we can do that.  
23 When today's through and there's better estimates --  
24 we'll let you know on Monday, if that's okay, whether  
25 or not we'll switch them. I don't know if that will

1 ultimately help everybody, but we're willing to go in  
2 place of the San Joaquin Tributaries group.

3 CO-HEARING OFFICER DODUC: Okay.

4 MR. HERRICK: Thank you.

5 CO-HEARING OFFICER DODUC: So Mr. Herrick, I  
6 was a bit confused by your questioning, and I just  
7 wanted to get clarification.

8 I don't recall petitioners' witnesses saying  
9 that they used perfect foresight in their modeling. I  
10 recall their rebuttal testimony as saying that some of  
11 the things that MBK -- you know, some of the  
12 assumptions in MBK's modeling would require foresight,  
13 and then there's some discussion about perfect  
14 foresight.

15 It seemed to me that, from the questioning you 16 were  
asking Mr. Bourez, that you were interpreting or 17  
understanding petitioners to have also used, quote --  
18 or to have said they used perfect foresight in  
19 conducting their modeling. And even though  
20 Ms. McGinnis didn't object or didn't voice anything, I  
21 was confused enough that I thought I should ask.

22 Is it your understanding that perfect  
23 foresight was also applied -- or at least that  
24 petitioners claim they also have perfect foresight?  
25 That's how I interpreted your question.

1 MR. HERRICK: It is my recollection, correct  
2 or not, that during cross-examination of especially the  
3 Bureau witnesses on CalSim II, that it was described --  
4 the term "perfect foresight" was used both for some of  
5 the modeling decisions done by the petitioners and then  
6 they claimed that the MBK modeling used too much  
7 perfect foresight.

8 That may be wrong -- or additional. But that  
9 may be wrong, but that was my recollections; that was  
10 the basis for my bringing the questions up.

11 CO-HEARING OFFICER DODUC: Okay.

12 Ms. Morris, did you have something to add?

13 MS. MORRIS: Is the question standing?  
14 Because it seems to me that -- or I guess we're done.

15 CO-HEARING OFFICER DODUC: Yes, we are. I'm  
16 not sure that my confusion was clarified, but at least  
17 I think I understand what Mr. Herrick --

18 MR. HERRICK: That's what I thought.

19 CO-HEARING OFFICER DODUC: -- was thinking.  
20 Which is actually a scary thought in itself.

21 Anyway, thank you, Mr. Herrick.

22 Mr. Keeling?

23 MR. KEELING: No cross.

24 CO-HEARING OFFICER DODUC: Oh, no cross? All  
25 right.

1           Mr. Jackson -- who is not here. I am assume  
2 he has no cross.

3           Ms. Des Jardins?

4           And someone should let Mr. Jackson know that I did  
5 call upon him, and therefore, I did not violate his due  
6 process.

7           And Ms. Des Jardins is our last cross-exam.

8           CROSS-EXAMINATION BY MS. DES JARDINS

9           MS. DES JARDINS: So can we pull up SVWU-202  
10 Errata.

11           My name is Dierdre Des Jardins with California  
12 Water Research. And I wanted to go to Page 6.

13           And Walter, you had some specific  
14 recommendations to refine the CVP and State Water --  
15 SWP allocation logic to better reflect realtime  
16 allocation procedures. And you mentioned the water  
17 supply index, delivery index curve.

18           And you state that, "Although the method of  
19 running the model and using output to develop model  
20 inputs employs a form of perfect foresight, this method  
21 creates an unreasonable balancing of available water  
22 supply -- of available supply to water supply  
23 allocation and is very different from what is done in  
24 actual operations."

25           And I wanted to ask you about that and

1 specifically in the context of --

2 Can you pull up DDJ-195? I introduced it on  
3 cross-examination of the petitioners' witnesses. It's  
4 in the Modeler Ops Panel Cross. I'm not sure it's been  
5 posted on the website yet. Yeah, you need to go to the  
6 memory stick, if you look at the Modeler Ops Panel  
7 Cross. So go into the Modeler Ops Panel Cross folder  
8 and DDJ-195.

9 So this is for the no action alternative. 10

11 This is the State Water Project Water Supply Index,  
12 Demand Index Curve.

13 Walter, so refresh me, what is the Water  
14 Supply Index?

15 WITNESS BOUREZ: The Water Supply Index -- and  
16 I think the petitioners did a good job explaining what  
17 the Water Supply Index is. So the model CalSim will do  
18 a water supply allocation in March, April, and May.  
19 And the final allocation is May. So let's just use May  
20 as an example.

21 So for May, the Water Supply Index would be  
22 what's in the key reservoir storages at the beginning  
23 of May plus the -- a forecasted inflow from May through  
24 September. And that would be the Water Supply Index in  
25 this curve.

MS. DES JARDINS: So I could go to the

1 definition, but I believe it was for the State Water  
2 Project that's -- the storage is the storage in  
3 Oroville and the State Water Project's share of  
4 San Luis?

5 WITNESS BOUREZ: That's correct.

6 MS. DES JARDINS: And the forecast inflow is  
7 the forecast inflow to Oroville?

8 WITNESS BOUREZ: That's correct.

9 MS. DES JARDINS: Okay. And so then this  
10 takes the Water Supply Index and converts it to a  
11 delivery index using -- using this curve; is that  
12 correct?

13 WITNESS BOUREZ: Yes. And the definition of  
14 the curve and how that curve is derived is very  
15 important to this process.

16 MS. DES JARDINS: I'm just -- it looks like,  
17 to me, and I asked this question on cross, that at  
18 about 2,000 -- 2 million acre-feet -- that's the 2,000  
19 number -- of Water Supply Index, it starts -- it levels  
20 off, and then it's at about 1800-. I can pull up the  
21 table for the exact number. It's 1815-.

22 But it looks like it just keeps telling the  
23 system that it has, at one point, you know  
24 1815-thousand [sic] acre-feet even when it has less.  
25 Is this the kind of thing you're referring to?

1 MS. MORRIS: Objection, outside the scope of  
2 this witness's rebuttal testimony.

3 MS. DES JARDINS: This is just a specific in-  
4 -- specific example of the Water Supply Index, Demand  
5 Index curve. And I'm trying to understand exactly what  
6 Walter's saying when he says that the method creates an  
7 unreasonable balancing of available supply to water  
8 supply allocation.

9 CO-HEARING OFFICER DODUC: So Mr. Bourez, what  
10 -- what were you attempting to say, and how does it  
11 relate to this curve?

12 WITNESS BOUREZ: Okay. So in order to answer  
13 the question, I want to provide just a little bit of  
14 background so we're all talking about the same thing.

15 So first off, this curve is developed by  
16 running CalSim iteratively. Given the Water Supply  
17 Index, it determines that Delivery Index from running  
18 the model iteratively. So you run the model, you get  
19 82 -- it's an 82-year model. So you get 82 points that  
20 relate Water Supply Index to Delivery Index. And from  
21 those 82 points, this curve is developed.

22 So when the model runs and it's looking at  
23 making a -- a delivery allocation, it will take the  
24 Water Supply Index and go to this curve and come up  
25 with a Delivery Index. That Delivery Index is then



1 split out between what's going to be allocated in that  
2 year and what's going to be carried over in that year.

3 And for the SWP, there's an equation that's  
4 used that relates deliveries to carryover. And for the  
5 CVP, there's a similar procedure, but it uses a look-up  
6 table for the delivery versus carryover curve.

7 And it is our opinion that this curve does a  
8 poor job of relating water supply for the system to  
9 what the deliveries should be.

10 MS. DES JARDINS: Let me --

11 CO-HEARING OFFICER DODUC: Hold on. Hold on  
12 Ms. Des Jardins. Mr. Easton has something to add.

13 WITNESS EASTON: Quickly, I think I understand  
14 Ms. Des Jardins's question, and I could fairly quickly  
15 answer it, if that's all right.

16 CO-HEARING OFFICER DODUC: Please.

17 WITNESS EASTON: Okay.

18 Ms. Des Jardins, so the -- I think your  
19 concern is the flat part of the curve that's at about  
20 1.8 million acre-feet?

21 MS. DES JARDINS: Yes. And that seems to  
22 continue --

23 MR. EASTON: Right.

24 MS. DES JARDINS: It doesn't look like, when  
25 it goes to make the allocations, it actually has

1 information that the actual water supply is less.

2 WITNESS EASTON: So that flat part of the  
3 curve is defined by 1977, which is the driest year on  
4 record. And the methodology for training this curve --  
5 1977 has an outsized effect on the beginning of this  
6 curve and how it looks. And so given that that's the  
7 driest year -- I can't remember what the exact WSI is  
8 for 1977, but it doesn't go so far down to where --  
9 your point where the WSI is bigger -- or less than the  
10 DI. So that's not an issue.

11 But that front part of the curve, 1977  
12 dominates that.

13 MS. DES JARDINS: So 1977 dominates this  
14 curve?

15 WITNESS EASTON: It defines everything from  
16 zero -- in the WSI from zero to 3 million acre-feet.  
17 And then you started rising because it starts taking  
18 into account other years within the simulation.

19 MS. DES JARDINS: Okay. So you're the ones  
20 who said that you believe that -- actually, I'd like to  
21 go to DDJ-197 if possible. And I compared -- this is  
22 just two different sets because it's compared with the  
23 historical simulation that petitioners presented.

24 And I just see two very different curves  
25 there, at the flat part.

1           WITNESS EASTON: I don't -- I did not -- I  
2 never had a hold of this.

3           But based on what I know of what -- the data  
4 that is used to train these curves, the difference in  
5 that flat part is the difference that got results for  
6 1977. But I have not seen the analysis, so I can't  
7 tell you.

8           MS. DES JARDINS: So the difference for the  
9 flat part is specifically where it's trained to deal  
10 with the drought year?

11           WITNESS EASTON: It's -- well, the flat part  
12 -- there are drought years where your WSI/DI is going  
13 to be in the range where you're going to be above that  
14 flat part. I can't tell you the -- you know, the  
15 number of years that go above that. But there will be  
16 drought years where your WSI is above.

17           MS. DES JARDINS: So I just -- just going back  
18 up a level because this is very detailed. So you're  
19 asserting that training this curve results in drought  
20 operations that are not realistic. Why is that?

21           WITNESS BOUREZ: The relationship between the  
22 WSI and DI -- and I think Ms. Parker mentioned that all  
23 droughts are very different. And the timing of the  
24 inflow is different, the location of the inflow is  
25 different. And the WSI/DI is inadequate to capture the

1 nuances of every different drought. And so being that  
2 every year in CalSim the hydrology is so different,  
3 that this one curve cannot fit the range of hydrology  
4 that is in the model.

5 So it's -- there's a lot of specificity --  
6 specifics that you need for each year to get an  
7 appropriate operation of the model and a good balance  
8 between water supply and allocations.

9 MS. DES JARDINS: Is part of the problem that  
10 the Water Supply Index lumps together North of Delta  
11 storage, which is Oroville, with South of Delta  
12 storage, which is -- which is San Luis, and then you  
13 get a single lump that you can't -- you can't  
14 distinguish where your storage is?

15 WITNESS BOUREZ: So the fact that the State  
16 Water Project lumps Oroville storage with San Luis  
17 storage I think is okay because that's the water supply  
18 that's available to meet State Water Project Table A  
19 allocations.

20 MS. DES JARDINS: But they're also using it to  
21 kind of try to train this curve, which as I understand  
22 sets northern reservoir behavior as well as -- or as  
23 well as San Luis behavior?

24 WITNESS BOUREZ: It does. So the components  
25 of water supply -- I think Mr. Leahigh did a good job

1 explaining where a lot of the water supplies come from  
2 from the State Water Project.

3 There's a component of runoff, natural runoff  
4 or flows that occur in the system that the State Water  
5 Project can pump at Banks without pulling storage down.  
6 And that amount of surplus or available rainfall runoff  
7 is factored into this curve because there's a certain  
8 amount of that that gets picked up.

9 In addition to that natural flow that's  
10 available, there are storage assets that the State can  
11 draw upon to meet those deliveries. And that is also  
12 factored into this curve. So it's a combination of  
13 those two that make up the Delivery Index. So you have  
14 to take into account all the water supplies when  
15 considering this curve.

16 And those, again, those water supplies vary 17  
17 significantly each year, both in terms of timing and  
18 quantity. And that's why we believe this process, this  
19 curve, is inadequate to reflect or to get a reasonable  
20 operation of the CVP and the SWP system because one  
21 curve doesn't fit all that wide variety of hydrology  
22 that we have in this state.

23 MS. DES JARDINS: So what kind of  
24 modifications, again, would you like to see? And, you  
25 know, are they something that can be done

1 automatically, or they have to be done with manual  
2 inputs? What would you do?

3 WITNESS BOUREZ: That's -- you know, we could  
4 speak about that for hours and hours here.

5 MS. DES JARDINS: Well, let's high level it.

6 WITNESS BOUREZ: Let's just give --

7 MS. DES JARDINS: Yeah.

8 WITNESS BOUREZ: It would be great if we had  
9 an automated procedure, but that does not currently  
10 exist. And that's one of the reasons that MBK spent so  
11 much time adjusting our operations because there is no  
12 automated procedure that is adequate for balancing  
13 water supply with deliveries. An automated procedure  
14 would be preferable.

15 MS. DES JARDINS: Can I just pull up -- I'd  
16 like to ask you one question about -- specifically  
17 about 2013. And I'd I like to go to DDJ-204.

18 CO-HEARING OFFICER DODUC: And this will be  
19 your final question.

20 MS. DES JARDINS: Yes.

21 CO-HEARING OFFICER DODUC: Thank you.

22 MS. DES JARDINS: Apologies if this took  
23 longer.

24 So this shows that the end-of-September  
25 storage for 2013 was about 1.6 million acre-feet, and

1 yet it looked like the planning equation was  
2 significantly less than that. And I wanted to ask you  
3 about, you know, is this -- is that the kind of  
4 adjustments that you've observed in how the system's  
5 operated?

6 MS. NIKKEL: I'm going to object as to vague  
7 and ambiguous. I don't understand what you mean by  
8 "planning equation."

9 MS. DES JARDINS: I can pull it up. It's the  
10 Exhibit DWR-902 that had the equation that John Leahigh  
11 used that's in the modeling.

12 CO-HEARING OFFICER DODUC: And how is this  
13 related to Mr. Bourez's testimony?

14 MS. DES JARDINS: It was testified that that  
15 equation is reflected in the modeling, and yet I  
16 questioned Mr. Leahigh --

17 CO-HEARING OFFICER DODUC: You're questioning  
18 Mr. Bourez on someone else's testimony.

19 MS. DES JARDINS: Yeah. Yeah, so I'm just  
20 trying to question him on, you know, that sometimes --  
21 maybe I can't do it specifically with this.

22 But sometimes end-of-September storage, have  
23 you observed, during droughts is different than the  
24 model would forecast or what -- or what Mr. Leahigh  
25 represented in DWR-902?

1 CO-HEARING OFFICER DODUC: I think I hear some  
2 objections coming.

3 Ms. Nikkel, no?

4 MS. MORRIS: Outside the scope of the rebuttal  
5 testimony. This is dealing with 2013. All the  
6 examples of stress conditions in Mr. Bourez's testimony  
7 are not 2013. There's about ten of them.

8 MS. MCGINNIS: Robin McGinnis, Department of  
9 Water Resources. Misstates Mr. Bourez's testimony,  
10 which I guess I also add a scope objection.

11 CO-HEARING OFFICER DODUC: So let's strike the  
12 part referring to another witness's testimony.

13 Ms. Des Jardins, what is your question to  
14 Mr. Bourez based on his testimony?

15 MS. DES JARDINS: Yeah. So based on your  
16 testimony, you noticed times when the model was  
17 projecting different storage than you thought the  
18 operators would -- would actually -- like, for example,  
19 this end-of-September storage, than they would actually  
20 have you -- is it your understanding that they could  
21 try to conserve storage?

22 CO-HEARING OFFICER DODUC: Answer that  
23 question, Mr. Bourez, not specific to the 2013 data up  
24 here, which you did not include in your rebuttal  
25 testimony, but based on the analysis you did for your



1 rebuttal testimony.

2 WITNESS BOUREZ: Some of the storage levels  
3 that are in the no action alternative we did disagree  
4 with. But our -- really, our rebuttal just focused on  
5 their no action alternative, not the changes that we  
6 would -- that we made.

7 We do believe that there could be a better  
8 balance between water supply and deliveries in the no  
9 action alternative. And that goes to both the CVP and  
10 the SWP.

11 MS. DES JARDINS: Okay. Thank you.

12 CO-HEARING OFFICER DODUC: Thank you,  
13 Ms. Des Jardins.

14 I see Mr. Jackson has joined us. Do you wish  
15 to conduct cross?

16 MR. JACKSON: For the record, no.

17 CO-HEARING OFFICER DODUC: Thank you,  
18 Mr. Jackson.

19 With that, is there any redirect Ms. Nikkel?

20 MS. NIKKEL: No, we have no redirect.

21 CO-HEARING OFFICER DODUC: All right. Do we  
22 need to take a short break before your next panel comes  
23 up?

24 MS. NIKKEL: To allow the witnesses time?  
25 Sure.

1 CO-HEARING OFFICER DODUC: All right. Let's  
2 take a ten-minute break.

3 MS. NIKKEL: Before we take a break, Hearing  
4 Officer Doduc, we just want to clarify that, since  
5 there's another panel for Group 7 and there's also been  
6 numerous exhibits presented by individual members and  
7 parties within Group 7, our proposal would be to offer  
8 all of those exhibits into the record at the end of  
9 Group 7 and also to do it by way of some written  
10 submissions to be clear for the record which party  
11 is -- within Group 7 is offering which exhibits into  
12 the record.

13 CO-HEARING OFFICER DODUC: All right. I would  
14 expect that you would adhere to the same 24-hour time  
15 frame --

16 MS. NIKKEL: Absolutely.

17 CO-HEARING OFFICER DODUC: -- to which  
18 petitioners have requested and received.

19 MS. NIKKEL: Absolutely. We're just trying to  
20 be clear for the record which exhibits because there's  
21 so many parties.

22 CO-HEARING OFFICER DODUC: And when you say  
23 "submit in writing," that does not -- that means that,  
24 like petitioners did today, you will make a motion to  
25 move your exhibits into the record to be followed

1 within 24 hours by a written --

2 MS. NIKKEL: Yes, a written identification of  
3 which exhibits are being offered by which parties.

4 CO-HEARING OFFICER DODUC: Correct.

5 Ms. Morris?

6 MS. MORRIS: I'm so sorry to have to clarify  
7 and maybe possibly confuse.

8 So does that mean if I have an objection to  
9 this panel and their exhibits, I need to do it right  
10 this very second?

11 CO-HEARING OFFICER DODUC: I would prefer you  
12 do it right now.

13 MS. MORRIS: Okay. I would just -- again, I  
14 want to strike, move to strike SVWU-202 on the basis  
15 that it's outside the scope of rebuttal. It has -- and  
16 by the witness's own words at the top of Page 4, says,  
17 "We believe the following changes that they're  
18 addressing in terms of model can and should be made to  
19 petitioners' modeling to develop reasonable modeled  
20 operations of the SB, CVP, and SWP with and without the  
21 California WaterFix," so that this is actually having  
22 to do with modeling changes that they are asserting  
23 should be in both scenarios and are not related to the  
24 California WaterFix.

25 CO-HEARING OFFICER DODUC: I'm confused by

1 your objection.

2 MS. MORRIS: The point is that I think that  
3 the modeling testimony that was presented in the  
4 analysis here is outside the scope of these hearings  
5 because what I understand the protestants saying in  
6 their testimony or, more specifically, Mr. Bourez  
7 saying in 202 Errata is that these are changes that he  
8 thinks should occur to the modeling with or without  
9 WaterFix.  
10 They're issues that pertain to the modeling 11 now  
and have really nothing to do with WaterFix.

12 CO-HEARING OFFICER DODUC: Ms. Nikkel -- hold  
13 on. Before you do, I believe Ms. Aufdemberge is about  
14 to join in the motion.

15 MS. AUFDEMBERGE: Yes, Amy Aufdemberge, United  
16 States Department of the Interior. We join in that  
17 motion.

18 CO-HEARING OFFICER DODUC: All right.

19 MS. NIKKEL: I think I understand the motion,  
20 so I'll try to respond.

21 CO-HEARING OFFICER DODUC: Actually, would you  
22 explain the motion to me as well?

23 MS. NIKKEL: I'll try. So as I understand it,  
24 the motion is based on the fact that the sentence  
25 referenced refers to the "without the CWF model"

1 scenario, which I think the motion is trying to say  
2 that that would be outside the scope of these  
3 proceedings which are about modeling scenarios with the  
4 project.

5 And my response would be I think "without the  
6 CWF" refers to no action alternative scenario which is  
7 the basis of the comparison of the with-project  
8 modeling scenarios that have been presented by the  
9 petitioners.

10 CO-HEARING OFFICER DODUC: May I get a  
11 confirmation from Mr. Bourez?

12 WITNESS BOUREZ: It does refer to the no  
13 action alternative used for the WaterFix.

14 CO-HEARING OFFICER DODUC: Mr. Bezerra?

15 MR. BEZERRA: Yes, responding to the motion,  
16 Exhibit SVWU-202 clearly rebuts the continued testimony  
17 by the petitioners that began in their case in chief  
18 that the models are not -- it is not possible to model  
19 for stressed water supply conditions. And Mr. Bourez  
20 is testifying that it would be possible to do so.

21 CO-HEARING OFFICER DODUC: I think  
22 Ms. Aufdemberge is about to correct what you just said.

23 MS. AUFDEMBERGE: Yeah, let me -- the way I  
24 understand the testimony is that the -- a drought  
25 module for purposes of isolating impacts of the Cal

1 WaterFix is -- doesn't add anything to that practice of  
2 isolating the impacts because of the difficulties with  
3 and the uniqueness of droughts and the fact that it's  
4 -- would be a module that attached to the no action as  
5 well as the with project.

6 CO-HEARING OFFICER DODUC: Thank you.

7 Anything else on this particular objection,  
8 Ms. Des Jardins?

9 MS. DES JARDINS: I just have a more general  
10 issue which is --

11 CO-HEARING OFFICER DODUC: Hold on. Let me  
12 close the door on this. Any other comment on this  
13 particular objection that was just voiced by  
14 Ms. Morris? If not, we will --

15 MS. DES JARDINS: I do.

16 CO-HEARING OFFICER DODUC: Okay.

17 MS. DES JARDINS: It is an issue of scientific  
18 controversy in this hearing, the handling of the no  
19 action alternative as well as the assumptions which are  
20 reflected in the modeling. And I do not believe that  
21 that issue should be dealt with by excluding evidence.  
22 That's all.

23 CO-HEARING OFFICER DODUC: Ms. Nikkel?

24 MS. NIKKEL: Yes, if I may, I'd like to  
25 respond to Ms. Aufdemberge's last point.

1 CO-HEARING OFFICER DODUC: Please.

2 MS. NIKKEL: And, again, I hope I'm  
3 understanding it correctly to be that, because we're  
4 dealing with modeled drought scenario -- or periods  
5 that are reflected in, as petitioners have said,  
6 equivalently in the no action alternative and the with  
7 project scenarios, that it doesn't -- that the --  
8 there's no relevance to this rebuttal testimony.

9 And my response would be that, because  
10 petitioners have taken the position that the model  
11 cannot be used adequately to analyze impacts during  
12 drought operations, this is relevant to respond to that  
13 position because it shows that the modeling can be  
14 adjusted and changed in order to be used to analyze the  
15 impacts of the project during drought periods.

16 CO-HEARING OFFICER DODUC: Final comment,  
17 Ms. Aufdemberge?

18 MS. AUFDEMBERGE: Yeah, the problem with  
19 what -- that response is that I haven't heard  
20 Mr. Bourez say that that is unique to the Cal WaterFix,  
21 that the drought changes that he would make would be  
22 also applicable to the no action alternative.

23 CO-HEARING OFFICER DODUC: Mr. Bourez?

24 WITNESS BOUREZ: I'm not sure I totally  
25 understand the question, but in order to evaluate the

1 effects of the California WaterFix, we need an adequate  
2 no action alternative.

3 And to compare a with-project alternative to a  
4 no action alternative that's inadequate leads us to  
5 inappropriate conclusions. And we just can't not -- we  
6 cannot assess the effects of the California WaterFix  
7 without an appropriate baseline, without an appropriate  
8 no action alternative. So I think it's directly  
9 applicable to this project.

10 CO-HEARING OFFICER DODUC: Thank you. That's  
11 it. That's all. We will take it under advisement.

12 Any other objections so far with respect to 13  
these witnesses and their testimony?

14 (No response)

15 CO-HEARING OFFICER DODUC: All right. We  
16 definitely need to take a break now. And we will  
17 resume at 2:05 with Group 7's second panel.

18 (Recess taken)

19 CO-HEARING OFFICER DODUC: It is 2:05. We are  
20 back in session.

21 Before we resume, Mr. O'Brien.

22 MR. O'BRIEN: Thank you, Hearing Officer  
23 Doduc. Kevin O'Brien for the Downey Brand, Sacramento  
24 Valley Group.

25 I just wanted to quickly note for the record



1 that, although this next panel is being presented under  
2 the umbrella of Group 7, my client does not join or  
3 otherwise endorse this particular presentation. In  
4 fact, we will have some cross-examination for these  
5 witnesses later.

6 CO-HEARING OFFICER DODUC: All right. Thank  
7 you for that.

8 And just a quick housekeeping note, I would  
9 like to break around 3:45 so we can start discussing  
10 housekeeping issues for next week. So please keep that  
11 in mind as you're conducting, you know, either your  
12 presentation or rebuttal testimony or  
13 cross-examination.

14 MR. BEZERRA: And along -- thank you, Chair  
15 Doduc.

16 Along those lines, as I mentioned yesterday,  
17 Mr. Durkin is retiring as of 5:00 o'clock today, so it  
18 would be lovely if we could complete cross-examination  
19 of Mr. Durkin, not necessarily the whole panel, today  
20 if possible.

21 CO-HEARING OFFICER DODUC: All right. How  
22 long do you expect to need for your presentation of you  
23 rebuttal?

24 MR. BEZERRA: I think it's half an hour, maybe  
25 40 minutes.

1 CO-HEARING OFFICER DODUC: All right. Let me  
2 ask who has cross-examination questions for Mr. Durkin?

3 I see one person. All right. I think we --  
4 unless your cross-examination will take several hours.  
5 All right. I think we should be able to accommodate  
6 Mr. Durkin and send him off on his retirement.

7 MR. BEZERRA: And I greatly appreciate the  
8 courtesy from all involved.  
9 So I'd like to begin with a brief opening 10  
statement.

11 CO-HEARING OFFICER DODUC: Quick question. Do  
12 any of the witnesses need to take the oath? All right,  
13 if so please stand.

14 (Witness Gohring sworn)

15 MR. BEZERRA: Thank you. Ryan Bezerra  
16 representing the cities of Folsom and Roseville, San  
17 Juan Water District and Sacramento Suburban Water  
18 District.

19 I'll be delivering a brief opening statement 20 on  
rebuttal for the entire American River Water  
21 Agencies group.

22 In Part 1A of this hearing, the petitioners  
23 presented evidence and testimony claiming that amending  
24 their water right permits to authorize export  
25 diversions through the California WaterFix would not

1 injure other legal users of water.

2 DWR and Reclamation asserted that there was no  
3 possibility that California WaterFix operations will  
4 injure other legal users of water because they would  
5 operate the Central Valley Project and the State Water  
6 Project in realtime to ensure no injures would occur.  
7 They asserted this position partly because of testimony  
8 concerning their hydrologic modeling, that it should  
9 not be understood to reflect what would actually occur  
10 in stressed water supply conditions. Those are the  
11 conditions in which the impacts to water supplies from  
12 Folsom Reservoir would be most likely.

13 The American River Water Agencies group is now  
14 presenting testimony to rebut these points. That group  
15 consists of the cities of Folsom, Roseville and  
16 Sacramento, Placer County Water Agency, Sacramento  
17 County Water Agency, Sacramento Suburban Water  
18 District, and San Juan Water District.

19 Keith Durkin, Marcus Yasutake, Jim Peifer, and  
20 Tom Gohring will testify based on their experiences  
21 during the recent drought. They will explain why those  
22 experiences show that it is, at best, uncertain whether  
23 Reclamation would operate Folsom Reservoir to avoid  
24 water supply impacts in very draw years involving the  
25 California WaterFix.

1           Mr. Gohring will also testify concerning  
2 potential practical impacts that could occur at Folsom  
3 Reservoir if it were operated consistent with the  
4 modeling depicted in the EIR/EIS for this project.

5           Mr. Gohring will explain how the modeled  
6 storage draw downs throughout the year could cause  
7 problems in the American River system.

8           Consistent with the State Board's e-mailed  
9 rulings concerning presentation of proposed terms and  
10 conditions, Mr. Gohring also will present and explain  
11 the terms and conditions that the American River Water  
12 Agencies group proposes that the State Board apply to  
13 Reclamation's water right permits for Folsom Dam and  
14 Reservoir. DWR and Reclamation have stipulated that  
15 they are currently not proposing any terms and  
16 conditions that would govern CVP and SWP operations  
17 with California WaterFix.

18           The American River groups' proposed terms and  
19 conditions are known as the Modified Full Management  
20 Standard or the Modified FMS or MFMS for short.

21           Jeff Weaver will provide technical support  
22 concerning the modeling of the Modified FMS's effects  
23 on key American River Basin conditions. Mr. Gohring  
24 will demonstrate that implementing the Modified FMS  
25 would address a key risk that implementing California

1 WaterFix would create in the American River Basin,  
2 namely, the worsening of storage draw downs related to  
3 very dry conditions.

4 Also consistent with the State Board's  
5 rulings, the American River group now is presenting  
6 only that testimony necessary to demonstrate that the  
7 Modified FMS and its effect would protect American  
8 River Water Agencies members as legal users of water.  
9 This group will be presenting a full suite of technical  
10 testimony to support that proposal in Part 2 of this  
11 hearing because the Modified FMS is, in the end, an  
12 integrated package of water supply and environmental  
13 measures.

14 Thank you.

15 CO-HEARING OFFICER DODUC: Thank you,  
16 Mr. Bezerra. You may begin -- oh, another statement?  
17 No? I just thought he was reaching for the microphone.

18 Mr. Bezerra, please begin.

19 KEITH DURKIN, MARCUS YASUTAKE,  
20 JIM PEIFER, and TOM GOHRING  
21 called as Panel 2 witnesses by Protestants  
22 Group 7, American River Water Agencies group,  
23 and with the exception of Sacramento Valley  
24 Group as represented by Downey Brand, having  
25 been previously duly sworn, were examined

1 and testified further as hereinafter set  
2 forth:

3 MR. BEZERRA: Thank you.

4 DIRECT EXAMINATION BY MR. BEZERRA

5 MR. BEZERRA: Mr. Durkin, can you please state  
6 your name for the record?

7 WITNESS DURKIN: Keith Durkin.

8 MR. BEZERRA: And do you understand you're  
9 under oath in this hearing?

10 WITNESS DURKIN: Yes.

11 MR. BEZERRA: What is currently your position?

12 WITNESS DURKIN: Assistant General Manager of  
13 the San Juan Water District.

14 MR. BEZERRA: Are Exhibits SJWD-18 through  
15 SJWD-26 referenced in your testimony?

16 WITNESS DURKIN: Yes, they are.

17 MR. BEZERRA: Thank you. Mr. Durkin, is your  
18 a summary of your testimony?

19 WITNESS DURKIN: Yes, it is.

20 MR. BEZERRA: Mr. Yasutake, can you please  
21 state your name your name for the record.

22 WITNESS YASUTAKE: Marcus Yasutake.

23 MR. BEZERRA: Mr. Yasutake, do you understand  
24 you are under oath in this hearing.

25 WITNESS YASUTAKE: Yes, I do.

1 MR. BEZERRA: Thank you. Have you previously  
2 submitted your qualifications in this hearing?

3 WITNESS YASUTAKE: Yes.

4 MR. BEZERRA: Thank you. Is Exhibit Folsom 28  
5 your testimony?

6 WITNESS YASUTAKE: Yes.

7 MR. BEZERRA: Mr. Yasutake, are you relying on  
8 Mr. Durkin's summary of testimony?

9 WITNESS YASUTAKE: Yes, I am.

10 MR. BEZERRA: Thank you. Mr. Durkin, using  
11 Exhibit SJWD-27 please provide a summary of your  
12 testimony.

13 And if we could please pull up SJWD-27 that 14  
would be wonderful.

15 WITNESS DURKIN: So in Part 1A of this  
16 hearing, DWR and Reclamation testified that the  
17 hydrologic modeling they prepared to analyze the  
18 proposed project under Cal WaterFix should not be  
19 relied upon under stressed water supply conditions to  
20 predict what might occur.

21 Reclamation and DWR essentially claim that, in  
22 dry years, they would never operate Folsom Reservoir as  
23 depicted in the model. They further claim that they  
24 would operate in real-time under stressed conditions  
25 and would never consider draining Folsom Reservoir down

1 so low that it would injure legal users of water.

2 Next slide, please.

3 We believe that Reclamation's recent drought  
4 operations contradict their claims and demonstrate that  
5 there is a need for enforceable terms and conditions to  
6 protect San Juan Water District and other legal users  
7 of waters from potential injuries that might result  
8 from the proposed project's increased exports of stored  
9 water and the associated loss of carryover storage  
10 going into dry years.

11 For example, in 2015, Reclamation and DWR  
12 submitted a joint temporary urgency change petition to  
13 the State Board. To support the petition request,  
14 Reclamation submitted draft temperature management  
15 plans for Shasta Reservoir and the Sacramento River.  
16 In a March 26, 2015 e-mail from Ron Milligan of  
17 Reclamation to Tom Howard at the State Board,  
18 Mr. Milligan reported results of the Sacramento River  
19 temperature model runs and the associated operational  
20 forecasts. These are shown on this slide, an excerpt  
21 from Mr. Milligan's e-mail.

22 As you can see, in two of the three  
23 operational scenarios that Reclamation presented,  
24 Folsom storage reaches dead pool.

25 Next slide, please.



1           So in Part 1A of these hearings, evidence was  
2 presented that indicates that deliveries through the M  
3 and I intake through Folsom Reservoir becomes unsafe  
4 when the reservoir drops to about 111,000 acre-feet.

5           As you can see from this table of monthly  
6 reservoir storage, the Sacramento River salmonid plan  
7 would have drained Folsom Reservoir to dead pool  
8 sometime in July of 2015.

9 Folsom Reservoir is depicted, it's that middle 10 row.  
And you can scan out there to July, and you see 11  
the end-of-month storage is 59,000 acre-feet.

12           Next slide, please.

13 In the Sacramento River Temperature Optimal 14 Plan,  
Folsom Reservoir would have drained to dead pool 15  
sometime in November of 2015. Again, that's that  
16 center row. And you can scan out there and see the end  
17 of November 2015 storage of 58,000 acre-feet.

18           Next slide, please.

19 As another example of Reclamation's actions 20  
during the drought, in early December of 2015, the  
21 State Board circulated the draft water right order that  
22 proposed a temporary term on Reclamations' operations  
23 as a condition of granting a TUCP. That termed  
24 required an end-of-October-2016 storage level of no  
25 lower than 200,000 acre-feet in Folsom Reservoir to

1 ensure that there were adequate water supplies for  
2 municipal uses going into the 2017 water year.

3 In a December 11th, 2015 letter from David  
4 Murillo, the director of Reclamation's Mid-Pacific  
5 region, Reclamation opposed a carryover storage  
6 requirement for Folsom Reservoir. A copy of that  
7 letter is what's provided here in this slide.

8 So in the recent drought, Reclamation did not  
9 operate Folsom Reservoir to mitigate or avoid the risks  
10 of dead pool until the State Board ordered it to do so.  
11 Future conditions are certainly going to have some dry  
12 years.

13 By exporting more water and drawing upstream  
14 reservoirs down, Cal WaterFix will result in upstream  
15 users having less water storage going into dry years,  
16 which will decrease water supply reliability and  
17 increase risks.

18 We believe that Reclamation's actions during 19 the  
recent dry years demonstrates that, unless the  
20 State Board imposes terms or conditions requiring  
21 Reclamation to maintain specified minimum levels in  
22 Folsom Reservoir, it's possible that, in future dry  
23 years with Cal WaterFix in place, Reclamation will  
24 operate the CVP in a manner that results in Folsom  
25 Reservoir being drawn down so low that water supplies

1 cannot physically be delivered to those who depended on  
2 them.

3 That concludes my testimony.

4 CO-HEARING OFFICER DODUC: Thank you.

5 MR. BEZERRA: Mr. Miliband will now conduct  
6 the remainder of the direction examination.

7 DIRECT EXAMINATION BY MR. MILIBAND

8 MR. MILIBAND: Good afternoon, Chair Doduc and  
9 Members of the Board and staff, Wes Miliband on behalf  
10 of the City of Sacramento and the Water Forum. First  
11 we will start with Mr. Peifer from the City of  
12 Sacramento.

13 Mr. Peifer, would you please state your name, 14 first  
and last.

15 WITNESS PEIFER: James Peifer, P, as in Paul,  
16 -E-I-F, as in Frank, -E-R.

17 MR. MILIBAND: Mr. Peifer, have you taken your  
18 oath in this proceeding?

19 WITNESS PEIFER: Yes, I have.

20 MR. MILIBAND: Would you please identify your  
21 current professional position?

22 WITNESS PEIFER: I am the policy and  
23 legislation manager for the City of Sacramento  
24 Department of Utilities.

25 MR. MILIBAND: Are exhibits City Sac 35 and

1 City Sac 35A true and correct copies of your written  
2 rebuttal testimony?

3 WITNESS PEIFER: Yes, they are.

4 MR. MILIBAND: Mr. Peifer, referring to  
5 Exhibit City Sac 35A, would you please summarize your  
6 written rebuttal testimony?

7 WITNESS PEIFER: Certainly, and I'll be very  
8 brief in my remarks.

9 While I stand here -- excuse me, while I stand 10 by my  
testimony in Part 1B, I'm here today to express 11 the  
City of Sacramento's support for the Modified Flow 12  
Management Standard, sometimes referred to as the  
13 Modified FMS or the MFMS.

14 As Mr. Gohring and others will testify here 15 and  
will be during Part 2 of the proceeding, the  
16 Modified FMS is an excellent tool as a part of the  
17 solution to protecting against water supply challenges,  
18 among other things.

19 With that, I strongly encourage approval of  
20 the Modified FMS. Thank you.

21 MR. MILIBAND: Thank you Mr. Peifer.

22 Turning to Mr. Gohring, Mr. Gohring, would you 23 please  
state your first and last name and spell your  
24 last for the record, please?

25 MR. GOHRING: Tom Gohring, G-O-H-R-I-N-G.

1 MR. MILIBAND: Mr. Gohring, hopefully this is  
2 an easy one to answer, but have you taken your oath in  
3 that proceeding?

4 MR. GOHRING: You just saw me -- yes. Yes, I  
5 have.

6 MR. MILIBAND: And would you please state your  
7 current professional position?

8 WITNESS GOHRING: I'm executive director of  
9 the Sacramento Water Forum.

10 MR. MILIBAND: Would you please describe  
11 briefly your duties in that position.

12 MR. GOHRING: I am custodian of the Water  
13 Forum Agreement, which is a comprehensive agreement  
14 between water purveyors and the environmental community  
15 in the Sacramento region.

16 I'm also a project manager of some ecosystem  
17 restoration projects on the Lower American River. And  
18 I am project manager for the Modified Flow Management  
19 Standard.

20 MR. MILIBAND: Mr. Gohring, is Exhibit  
21 ARWA-300e a true and correct statement of your written  
22 testimony?

23 MR. GOHRING: It is, with one correction that  
24 we actually just noticed this morning.

25 Can I go ahead and mention the correction?

1 MR. MILIBAND: Yes, please do.

2 MR. GOHRING: On Paragraph 20 of my testimony,  
3 I make reference to a diversion on the Sacramento River  
4 that was effected in 2015. That is incorrect. It  
5 should reference the American River. And it was an  
6 event that happened in the year 2014.

7 MR. MILIBAND: Other than that correction in  
8 Paragraph 20 as you just described, is Exhibit  
9 ARWA-300e a true and correct statement of your written  
10 testimony?

11 MR. GOHRING: Yes, yes.

12 MR. MILIBAND: Did anyone assist you with the  
13 preparation of your written testimony?

14 WITNESS GOHRING: Yes.

15 MR. MILIBAND: Would you please describe who  
16 those people are?

17 MR. GOHRING: Mr. Bezerra and Mr. Miliband  
18 both reviewed my testimony and offered suggestions, and  
19 I considered -- seriously considered those suggestions  
20 and did some revisions based on them.

21 MR. MILIBAND: Is Exhibit ARWA-301 a correct  
22 statement of your professional credentials and  
23 experience?

24 WITNESS GOHRING: Yes.

25 MR. MILIBAND: Are Exhibits ARWA-302 through

1 308 referenced in your testimony?

2 MR. GOHRING: Yes.

3 MR. MILIBAND: Are you familiar with those  
4 exhibits, ARWA 302 through 308?

5 MR. GOHRING: Yes.

6 MR. MILIBAND: Is Exhibit ARWA-309 a summary  
7 of your testimony?

8 MR. GOHRING: Yes.

9 MR. MILIBAND: Was that particular exhibit  
10 prepared by you or at your direction?

11 MR. GOHRING: It was prepared by me.

12 MR. MILIBAND: We'll come back to that in just  
13 a moment, but first, Mr. Weaver.

14 Mr. Weaver, can you please state your name for  
15 the record and spell your last, please?

16 WITNESS WEAVER: Jeffrey Weaver, W-E-A-V-E-R.

17 MR. MILIBAND: And Mr. Weaver, have you taken  
18 your oath in this proceeding?

19 WITNESS WEAVER: Yes, I have.

20 MR. MILIBAND: Is Exhibit ARWA-400 your  
21 testimony?

22 WITNESS WEAVER: Yes, it is.

23 MR. MILIBAND: Have you previously submitted  
24 your qualifications in this hearing?

25 WITNESS WEAVER: Yes, I have.

1 MR. MILIBAND: Are you familiar with Exhibits  
2 ARWA-401 through 402?

3 WITNESS WEAVER: Yes, I am.

4 MR. MILIBAND: Are you relying upon  
5 Mr. Gohring's testimony here today?

6 WITNESS WEAVER: Yes, I am.

7 MR. MILIBAND: Thank you, Mr. Weaver.

8 And if we could please bring up ARWA-309.

9 While that's occurring, I'll present the  
10 question to Mr. Gohring that if you could use ARWA-309  
11 to please summarize your testimony.

12 MR. GOHRING: Yes, I can, thank you.

13 I -- my testimony kind of can be binned into 14 three  
14 boxes. The first two boxes have to do with

15 evidence of the harm of California WaterFix on American  
16 River water users. And the third box is a proposal to  
17 mitigate that harm, the proposal for the Modified Flow  
18 Management Standard.

19 Next slide, please.

20 Just as background, the Water Forum is a group 21 of  
21 water users, environmental groups, business

22 interests, and public agencies in the Sacramento region  
23 who signed an agreement in 2000 to try to provide for a  
24 reliable water supply through the year 2030 and to  
25 preserve the environment of the Lower American River.



1 As such, the Modified FMS that I'm going to be talking  
2 about in a minute is based on those co-equal  
3 objectives.

4 I want to say thank you to the Hearing  
5 Officers for giving us clarification on how to parse  
6 our presentation between Parts 1 and Part 2. As I  
7 understand it, I have leeway to talk about  
8 environmental objectives that our product is based on,  
9 but I need to steer clear of environmental benefits or  
10 impacts. So I will do my best to stay in those  
11 boundaries.

12 Next slide.

13 The first evidence of harm of WaterFix has to  
14 do with testimony that we've heard repeatedly from DWR  
15 and Reclamation that states, in essence, when you look  
16 at our exceedances, particularly the exceedances --  
17 this one's for end of May. Particularly if you look at  
18 our exceedances for end of September, you can see a lot  
19 of years where Folsom Reservoir hits dead pool. But  
20 we've been told repeatedly that we should do a search  
21 and replace in our brains and replace the word "dead  
22 pool" with the words "stress conditions" or "dry  
23 conditions."

24 I think this brings up two problems for the  
25 American River water users. One is the "Just trust me.

1 We will do some actions in those years that haven't  
2 been defined, that can't be represented in our  
3 modeling." That is not an adequate assurance for the  
4 water users in the American River Basin.

5 The other issue this brings up is, if we take  
6 Reclamation and DWR at their word, that the modeling is  
7 not accurate for those stress periods, those apparent  
8 low storage periods, it makes it impossible for us to  
9 adequately compare the results of the with project and  
10 the without project.

11 To put it bluntly, for all we know, the  
12 without project alternative could have storage that's  
13 50,000 acre-feet higher and the with project could be  
14 50,000 acre-feet lower. There could be impacts there  
15 that just aren't displayed for us.

16 Next slide, please.

17 My next demonstration of harm has to do with 18 some  
additional testimony by DWR and Reclamation. They  
19 have testified that a key metric that they used to  
20 establish that there is no harm to Folsom Reservoir  
21 storage is a comparison of end-of-December -- excuse me  
22 end-of-September storage for the with and without  
23 projects. And they've said essentially, "You know, 24  
over our CalSim simulation, over those 82 years, we 25  
compared the with and without projects;

1 end-of-September is pretty close."

2           They've also admitted, however, that in months  
3 outside of September, sometimes storage will --  
4 comparatively, sometimes storage for the with project  
5 will be higher than the without. Sometimes storage  
6 will be lower. And that's okay because it all comes  
7 back together in September.

8           That's very problematic for American River  
9 Basin because storage in Folsom is really important in  
10 months other than September. In particular, looking at  
11 this slide, you can see in the column for November and  
12 December. And in the 90 percent exceedance line -- so  
13 this would be the 10 percent driest years -- you can  
14 see that in November and December, on average, Folsom  
15 Reservoir is 15,000 feet lower in November, 25,000  
16 acre-feet lower in December. Folsom Reservoir  
17 typically hits its low point every year in either  
18 November or December.

19           I also want to point out that there are also  
20 really big differences in storage, lower storage for  
21 the with project in the spring -- May, June and July.  
22 That -- that -- I will come back to that. I hope to  
23 come back to that as part of Part 2 because that has a  
24 big bearing on meeting our environmental objectives.

25           Next slide, please.

1           When I -- the last slide showed that WaterFix  
2 would reduce Folsom storage on average 25,000 acre-feet  
3 lower in the driest 10 percent of the years in  
4 December. And I want to point out that, in 2015,  
5 specifically December 2nd, 2015, Folsom Reservoir hit  
6 its lowest recorded storage since first being built of  
7 106,000 acre-feet. 136- minus 25,000 puts us down in  
8 that 111,000 range, which we've heard earlier makes the  
9 water intake for about half a million people  
10 non-operable. So this is real. All right?  
11 Next slide, please.

12           To sum that up, we already have a risky  
13 situation for water supply in the American River Basin.  
14 As we saw in 2015, we came -- you know, we came within  
15 sight of running out, of half a million people losing  
16 access to their water supply.

17           That risky situation was not created by  
18 WaterFix. However, WaterFix' own modeling has shown  
19 that conditions will be worse in the future with the  
20 WaterFix project, particularly in the low months of  
21 storage.

22           Next slide, please.

23           The folks from the American River and the  
24 Water Forum in particular have had a long history of  
25 trying to bring to the State Board not just problems

1 but where we can bring solutions as well. So we bring  
2 you a solution called a Modified FMS.

3 As this table tries to portray, the Modified  
4 FMS is the latest in an evolution of flow approaches  
5 for the Lower American River. Prior to the Water Forum  
6 in the pre-2000 era, there was a flow requirement on  
7 the Lower American River that was being basically  
8 guided by a 1958-era water right decision. And the  
9 only real constraints on flows in the river were either  
10 a minimum flow of 250 or 500 cfs, depending on time of  
11 water year.

12 In the early part of this century, the Water  
13 Forum, in cooperation with Reclamation and State and  
14 Federal fish agencies, developed a new approach to flow  
15 management. We now call it the 2006 FMS. It had a new  
16 approach to minimum flows. It had a variable minimum  
17 flow depending on hydrology that ranged from 800 to  
18 2,000 cubic feet per second except for certain off-ramp  
19 and conference years where we reverted back to the  
20 older standard, the pre-2006 standard.

21 The other thing that was notable about the  
22 2006 FMS is that the first time it included an approach  
23 to managing water temperature on the Lower American  
24 River, water temperature being considered one of the  
25 limiting factors for restoration of two key salmonid

1 species in the Lower American River.

2 Over about the last three or four years, we  
3 have developed this thing called the Modified FMS. It  
4 also has a minimum flow approach that ranges from 500  
5 to 2,000 cubic feet per second. It also has an annual  
6 temperature management approach. But we've also added  
7 storage requirements, in particular a storage  
8 requirement at the end of December which is either 300-  
9 or 230,000 acre-feet. Most years it's 300,000. It  
10 drops to 230,000 with some drought exceptions. And it  
11 contains an end-of-May storage requirement which is  
12 variable. It maxes out at 900,000 acre-feet at the end  
13 of May.

14 Next slide, please.

15 As we developed the Modified Flow Management 16  
Standard, we did so with three objectives in mind. The  
17 first was to protect water supplies in the American  
18 River Basin by drying to avoid low storage in Folsom  
19 Reservoir. The second was to improve fishery  
20 conditions in the Lower American River particularly in  
21 regard to water temperatures. And the third was to  
22 avoid redirected impacts to the Sacramento River.

23 Next slide.

24 We achieved those three objectives which are  
25 repeated there in the green box: Folsom storage;

1 American River temperature; no redirected impacts to  
2 Sacramento River. We achieved those by iterating  
3 hundreds of model runs -- models included CalSim and  
4 various water temperature models -- to find a sweet  
5 spot in our approach that achieved all three  
6 objectives.

7 The knobs that we turned through that  
8 iterative approach were the magnitude and frequency of  
9 the required minimum flows on the Lower American River  
10 and the magnitude of the storage requirements that are  
11 part of our Modified FMS.

12 This tuning was required because essentially  
13 what we found is that, if you have a really big  
14 carryover storage requirement at Folsom Reservoir, we  
15 actually increased the benefits to the Lower American  
16 River and to the water suppliers of the American River  
17 Basin. But if it gets too big, we begin to transfer  
18 impacts over to the Sacramento River. Too much  
19 carryover in Folsom digs a hole in Shasta. A hole in  
20 Shasta, as you are all aware, can create a temperature  
21 problem on the Sacramento.

22 So we backed off to a point where we're still  
23 maintaining demonstrable benefits to the American River  
24 Basin, both for water supply and the environment, with  
25 no measurable change in water temperature on the

1 Sacramento River.

2 Next slide, please.

3 I won't spend a lot of time on these slides.  
4 These present modeling results between the 2006 flow  
5 management standard and the Modified Flow Management  
6 Standard. 2006 FMS is in red, modified is in blue.  
7 You can see end-of-May storage is higher. This, as I  
8 hope to come back to in Part 2, is a really important  
9 component of generating cold water pool, which is  
10 important for water temperature management in the  
11 river.

12 Next slide.

13 Modified FMS also keeps storage higher in 14  
September. Next slide.

15 November, typically the low storage month in  
16 modeling scenarios, and December.

17 Next slide, sorry. You can't read my mind?

18 I do want to point out that this modeling does  
19 not include WaterFix. This is a future -- we modeled a  
20 future condition, a 2030 demand without climate change.

21 And we felt that that was the most accurate way to  
22 portray the relative changes between these two  
23 alternatives.

24 Next slide, please.

25 Conclusion. I think the evidence shows us



1 that WaterFix will exacerbate our existing low storage  
2 risks at Folsom Reservoir. I believe that the Modified  
3 Flow Management Standard would be a reasonable approach  
4 to guarding against that increased risk.

5 And just to reiterate, I hope to be back here  
6 at as part of Part 2 in order to present a more  
7 complete description of the Modified Flow Standard so  
8 that I can describe the environmental benefits as well.

9 Thank you.

10 MR. MILIBAND: Thank you, Mr. Gohring.

11 And Mr. Hunt, if I could ask you to please  
12 bring up ARWA-300e, please. And please scroll to Page  
13 6. And while that's occurring -- thank you. And if  
14 you could bring it to full view, Paragraph 18.

15 Mr. Gohring, just one clarifying question. I  
16 asked to have this brought up to refresh your  
17 recollection. When you mentioned a few moments ago  
18 "106,000 acre-feet," there's a reference here about  
19 halfway down in Paragraph 18 referencing 135,000  
20 acre-feet. Is that related to that same figure?

21 MR. GOHRING: Yes, it is. The 135,561 is  
22 exactly what I was referring to. I rounded that up to  
23 136,000 in my testimony.

24 MR. MILIBAND: Okay. And we might have heard  
25 106-, so I just wanted to clarify that point. So your

1 testimony would be as stated here in Paragraph 18?

2 WITNESS GOHRING: Yes.

3 MR. MILIBAND: And you've been rounding up to  
4 136,000?

5 MR. GOHRING: Yes, yes.

6 MR. MILIBAND: Thank you.

7 WITNESS GOHRING: Sorry if I misstated.

8 MR. MILIBAND: Sorry if I misheard, but with  
9 that, that concludes our direct examination.  
10 Thank you.

11 CO-HEARING OFFICER DODUC: Thank you. And per  
12 earlier indication, there was one cross-examinationer  
13 for Mr. Durkin, I believe. Anyone else wish to  
14 cross-examine just Mr. Durkin?

15 (No response)

16 CO-HEARING OFFICER DODUC: All right. It's  
17 yours.

18 CROSS-EXAMINATION BY MR. O'HANLON

19 MR. O'HANLON: Thank you, Hearing Officer  
20 Doduc, Chair Marcus, Member D'Adamo, staff. My name is  
21 Daniel O'Hanlon. I'm representing the San Luis and  
22 Delta-Mendota Water Authority, which is Group 4. I  
23 just have a few questions for Mr. Durkin.

24 Good afternoon, Mr. Durkin.

25 WITNESS DURKIN: Good afternoon.

1 MR. O'HANLON: Could I have his rebuttal  
2 testimony, which is SJWD-17, brought up. And  
3 specifically when you get there, Paragraph 25.

4 My questions relate to claims of legal injury.

5 Mr. Durkin, in this paragraph, in this second  
6 sentence, you say, "As a physical matter, Reclamation  
7 must maintain Folsom Reservoir's water level above the  
8 existing M and I intakes for Reclamation to be able to  
9 satisfy San Juan's water right, it's related contracts  
10 with the United States, and San Joaquin's and  
11 Roseville's other water supplies (which rely on an  
12 operable M and I intake for physical delivery of  
13 water).

14 Are you familiar with the terms of the 1954  
15 settlement agreement between North Fork Ditch Company  
16 and the United States?

17 WITNESS DURKIN: Yes, I am.

18 MR. O'HANLON: And for the record, that's  
19 already been introduced as SJWD Exhibit No. 10.

20 Now, the 1954 settlement agreement doesn't  
21 require the United States to maintain any specific  
22 minimum storage level in Folsom Reservoir, correct?

23 WITNESS DURKIN: It requires Reclamation to be  
24 able to deliver up to 75 cfs to us as needed as we  
25 demand, not to exceed 33,000 acre-feet in any year.

1 They can only do that if the intake isn't daylighted.  
2 So indirectly, storage is required for them to be able  
3 to meet those contract terms. But it does not  
4 specifically require a certain level of storage. They  
5 just need enough storage to be able to give us our --  
6 to meet their contract obligation, settlement contract  
7 obligation.

8 MR. O'HANLON: So the answer is there is no  
9 specific storage requirement in the contract, correct?

10 WITNESS DURKIN: Correct, there is no specific  
11 storage requirement?

12 MR. O'HANLON: Are you familiar with the terms  
13 of long-term renewal contract between the United States  
14 and San Juan?

15 WITNESS DURKIN: Yes.

16 CO-HEARING OFFICER DODUC: Hold on.

17 Mr. Bezerra, did you wish to say anything?

18 MR. BEZERRA: (Shakes head negatively)

19 CO-HEARING OFFICER DODUC: My apologies.

20 MR. O'HANLON: For the record, that's San Juan  
21 -- SJWD Exhibit 12.

22 And Mr. Durkin, San Juan's CVP contract  
23 doesn't require the United States to maintain a  
24 specific minimum storage level in Folsom Reservoir,  
25 correct?

1 MR. BEZERRA: Objection, calls for a legal  
2 conclusion.

3 CO-HEARING OFFICER DODUC: Mr. O'Hanlon, are  
4 you asking just for his knowledge of the contract?

5 MR. O'HANLON: Yes. He made a statement in  
6 his testimony about what's necessary to respect their  
7 rights, and so I'm asking a question about that  
8 contract, yes.

9 CO-HEARING OFFICER DODUC: Overruled.

10 WITNESS DURKIN: Similar to the first answer,  
11 again, there is no specific storage requirement. They just  
12 physically, in order to meet their obligations,  
13 they would have to keep some level of storage in Folsom  
14 Reservoir or they would be in breach of both our  
15 settlement contract and that long-term renewal  
16 contract; that is my understanding.

17 MR. O'HANLON: All right. But, again, there's  
18 no specific minimum storage level required in that  
19 contract, correct?

20 WITNESS DURKIN: Correct.

21 MR. O'HANLON: And that's the contract that  
22 governs the terms of the United States's obligation to  
23 San Juan?

24 MR. BEZERRA: Objection, vague and ambiguous  
25 and calls for a legal conclusion. San Juan has at

1 least three different contracts that relate to  
2 deliveries through the intake; there's the settlement  
3 contract, the water service contract, and the Warren  
4 Act contact to deliver PCWA water.

5 So the question said San Juan's contracts.  
6 It's vague and ambiguous.

7 CO-HEARING OFFICER DODUC: Mr. O'Hanlon?

8 MR. O'HANLON: I'll limit my question to the  
9 CVP contract, the long-term renewal contract.

10 WITNESS DURKIN: I'm sorry. Can you repeat  
11 the question specifically to the CVP long-term renewal  
12 contract?

13 MR. O'HANLON: Sure. The terms of that  
14 contract govern Reclamations's obligations to San Juan  
15 under long-term renewal contract, correct?

16 WITNESS DURKIN: Correct. The long-term  
17 renewal contract governs the terms of the long-term  
18 renewal contract, if I understand what you just asked  
19 me.

20 MR. O'HANLON: Yes. Let me ask you about the  
21 Warren Act contract. The same question, the Warren Act  
22 contract doesn't require the United States to maintain  
23 a specific minimum storage level in Folsom Reservoir,  
24 correct?

25 MR. BEZERRA: Objection. Calls for a legal

1 conclusion. I believe both of those contracts  
2 incorporate the terms and conditions of Reclamation's  
3 water right permits for Folsom Dam and Reservoir. And  
4 we can go into this at great length, but there are  
5 terms in those permits that protect supplies to  
6 American River agencies. So the contract incorporates  
7 the water right permit terms.

8 CO-HEARING OFFICER DODUC: To the extent that  
9 Mr. Durkin, in his position, has knowledge about the  
10 contracts to which he can answer Mr. O'Hanlon's  
11 question, he should do so without pretending to be a  
12 lawyer like I am.

13 WITNESS DURKIN: And along that vein, if I may  
14 answer the question then, in terms of a yes or no  
15 answer, the question is that the contracts don't  
16 require specific level of storage. But in all of our  
17 years dealing with Reclamation, again, it's understood  
18 if they don't maintain some level of storage in Folsom,  
19 they would be in breach of those contracts.

20 So, I mean, the specific answer if you want a  
21 yes or no answer is there is nothing in those contracts  
22 that spells out a specific amount of storage that is  
23 mandated. And I will get smacked by my attorney after  
24 answering this question, but, yes. There are no words  
25 in there that say Reclamation has to maintain a certain

1 level of storage.

2 But, again, I would rely on our attorneys to  
3 strongly support us to make sure they have adequate  
4 storage in order to meet their contract obligations.

5 MR. O'HANLON: Thank you, Mr. Durkin. And I  
6 have no further questions. And congratulations of your  
7 retirement.

8 CO-HEARING OFFICER DODUC: Any redirect of  
9 Mr. Durkin?

10 MR. BEZERRA: No.

11 CO-HEARING OFFICER DODUC: Mr. Durkin, thank  
12 you very much. Happy retirement.

13 WITNESS DURKIN: Oh, thank you.

14 CO-HEARING OFFICER DODUC: I wish we were all  
15 going with you.

16 WITNESS DURKIN: My wife does not wish that at  
17 all.

18 CO-HEARING OFFICER DODUC: On that note, may I  
19 ask those wish to conduct cross-examination of this  
20 panel minus Mr. Durkin to please come up to the  
21 microphone, identify themselves by group number and  
22 give me a time projection.

23 And that includes you, Mr. O'Brien. In fact,  
24 we'll start with Mr. O'Brien.

25 MR. O'BRIEN: Kevin O'Brien, Group 7. I would



1 estimate about a half hour.

2 CO-HEARING OFFICER DODUC: Okay.

3 MS. MCGINNIS: Robin McGinnis, California  
4 Department of Water Resources, Group 1, 40 to 45  
5 minutes.

6 MR. O'HANLON: Daniel O'Hanlon, Group 4. I  
7 would estimate 15 minutes.

8 MS. MORRIS: Stefanie Morris, Group 3, State  
9 Water Contractors. Probably 30 minutes, but if some of  
10 the questions are covered before, it will be shorter.

11 CO-HEARING OFFICER DODUC: All right. And if  
12 that's all, then we will begin with the Department of  
13 Water Resources.

14 And correction. That would be Department of  
15 Water Resources and Department of the Interior.

16 MS. AUFDEMBERGE: Yes, that's correct. Thank  
17 you.

18 CROSS-EXAMINATION BY MR. BERLINER

19 MR. BERLINER: Good afternoon. My name is  
20 Tom Berliner on behalf of the Department of Water  
21 Resources. I'm here with Robin McGinnis, also of the  
22 Department of Water Resources, and Amy Aufdemberge from  
23 the Department of the Interior.

24 We have coordinated our cross-examination, so  
25 this cross-examination will be on behalf of both

1 petitioners.

2 CO-HEARING OFFICER DODUC: Thank you.

3 Coordination is always appreciated.

4 MR. BERLINER: Mr. Peifer, I would like to  
5 start with you with just some very brief questions.

6 Could you tell me again what your current  
7 position is with the City? You're a government affairs  
8 manager; is that correct?

9 WITNESS PEIFER: Policy and legislation  
10 manager.

11 MR. BERLINER: Policy and legislation. So you  
12 deal with government affairs and legislative matters;  
13 is that correct?

14 WITNESS PEIFER: Amongst other things.

15 MR. BERLINER: How is it that you've come to  
16 deal with the FMS?

17 WITNESS PEIFER: Through a background of --  
18 from engineering, starting with that. For a number of  
19 years, I was with the Department of Utilities.  
20 Eventually, I took over this position that I have right  
21 now about three or four years ago.

22 I am the delegate for the City of Sacramento  
23 for the Sacramento Water Forum. I've continued to be  
24 part of the stakeholder group in developing and  
25 providing input from the agencies that are also part of

1 the Water Forum.

2 MR. BERLINER: And is the City's support for  
3 the FMS of recent vintage, or does it go back in time  
4 substantially?

5 WITNESS PEIFER: The City of Sacramento is one  
6 of the founding members of the Water Forum, amongst  
7 others. Our history goes back to about 1993, when the  
8 Water Forum started.

9 The Modified FMS had an evolution over time.  
10 It has been something the City of Sacramento has been  
11 interested in for years.

12 MR. BERLINER: And my understanding is that  
13 the FMS has been modified over time, correct? There  
14 have been changes made to it?

15 MR. MILIBAND: Objection, vague, and seems to  
16 potentially go beyond the scope of the rebuttal  
17 testimony offered by Mr. Peifer.

18 CO-HEARING OFFICER DODUC: Actually,  
19 Mr. Peifer just said it has evolved over time.

20 So, Mr. Berliner, where are you going with  
21 this?

22 MR. BERLINER: If I could have a little  
23 leeway, I think it will become clear.

24 CO-HEARING OFFICER DODUC: All right.

25 MR. BERLINER: I don't have long with the

1 witness.

2 CO-HEARING OFFICER DODUC: All right.

3 Overruled for now -- overruled.

4 MR. BERLINER: My understanding is that there  
5 is a Modified FMS that is currently being proposed; is  
6 that right?

7 WITNESS PEIFER: That is correct.

8 MR. BERLINER: And how long has that  
9 modification been proposed?

10 WITNESS PEIFER: I think that Mr. Gohring had  
11 spoke to this in the development of the Modified FMS.  
12 I think that the current version of that has been  
13 fairly recent, perhaps in the last year or two.

14 MR. BERLINER: Okay. Was it in existence, as  
15 far as you know, in 2015?

16 WITNESS PEIFER: The Modified FMS has not --

17 MR. BERLINER: I should say the proposal for  
18 the Modified FMS.

19 WITNESS PEIFER: No, it was not -- it was not  
20 completely constituted in early 2015.

21 MR. BERLINER: What about late 2015?

22 WITNESS PEIFER: I think -- actually, I would  
23 defer to Mr. Gohring on the time frame for when there  
24 were changes made to the Modified FMS.

25 MR. BERLINER: Okay. Thank you. I have no

1 further questions. Thank you.

2 Mr. Gohring, I have a few questions for you.

3 MR. GOHRING: Yes, sir.

4 MR. BERLINER: First, I wanted to straighten  
5 something out. At the very end of your testimony, I  
6 think you may have inadvertently stated something  
7 somewhat different than your written testimony. And I  
8 just wanted to see if we can straighten that out.  
9 I believe at the end of your testimony, you 10  
10 stated that, in your opinion, the California WaterFix  
11 will adversely affect Folsom storage.

12 As I understand your written testimony it says  
13 that it's your opinion that the California WaterFix  
14 could impact Folsom storage. And I wanted to  
15 straighten that out. Is my understanding correct that  
16 it's "could impact" as opposed to "will impact"?

17 MR. GOHRING: May I take a moment and look at  
18 my testimony?

19 MR. BERLINER: Yes, please.

20 MR. MILIBAND: And perhaps it might help, just  
21 for efficiency, if Mr. Berliner has a specific  
22 reference from the written testimony.

23 MR. BERLINER: Well, perhaps we could pull it  
24 up so that everybody has it, and...

25 MR. GOHRING: That would be ARWA-308, please.

1 Do you have a paragraph you want to direct us to?

2 MR. BERLINER: You know, I don't, but it's  
3 pretty easy to find.

4 MR. HUNT: It's actually 300e.

5 WITNESS GOHRING: Oh, thank you.

6 MR. HUNT: Sure.

7 MR. BERLINER: Could you just do a word search  
8 for "could" please?

9 MS. MORRIS: Actually -- Stefanie Morris,  
10 State Water Contractors.

11 If you look at ARWA-300e, Paragraph 3, in the  
12 middle under B, it says, "...the fact that the  
13 California WaterFix could increase that vulnerability,"  
14 I think that's what Mr. Berliner is referring to.

15 CO-HEARING OFFICER DODUC: Thank you,  
16 Ms. Morris.

17 MR. GOHRING: It looks like my written  
18 testimony says "could."

19 MR. BERLINER: I just wanted to straighten  
20 that out for the record. Thank you very much.

21 Mr. Gohring, I understand that you have  
22 reviewed the results of Mr. Weaver's modeling in  
23 ARWA-402 correct?

24 MR. GOHRING: Yes.

25 MR. BERLINER: And do you have background

1 sufficient to understand modeling?

2 MR. GOHRING: Yes.

3 MR. BERLINER: And I saw in the description of  
4 your background, you have some experience with  
5 hydrologic modeling. So are you -- I'm not going to  
6 ask you about CalSim and DSM-2 and things like that,  
7 but are you generally familiar with models like that?

8 MR. GOHRING: Yes.

9 MR. BERLINER: So in your own estimation,  
10 you're competent to review Mr. Weaver's work and  
11 understand it?

12 MR. GOHRING: Yes.

13 MR. BERLINER: Great. Thank you. So since  
14 you have that level of understanding, isn't it true  
15 that the modeling results shown in ARWA-402 -- and for  
16 convenience, all of my references will be to ARWA  
17 exhibits unless I specify otherwise.

18 Isn't it true that the modeling results shown 19 in 402  
do not include WaterFix in either the 2006 FMS 20 or the  
Modified FMS?

21 MR. GOHRING: True.

22 MR. BERLINER: And for convenience, could we  
23 please get 402 on the screen. I believe it has been  
24 conveniently shown in here. Just by way of reminder  
25 that you have gone to the trouble of highlighting in

1 red changes that were made associated with the 2006 FMS  
2 and in blue with the Modified FMS; is that correct? I  
3 think there was a key for that.

4 MR. GOHRING: Did you say that they are --  
5 that we're representing changes with the colors? I  
6 don't think --

7 MR. BERLINER: Didn't I understand that  
8 correctly that there were some changes highlighted,  
9 just wording changes? Or am I confusing that with  
10 another document?

11 WITNESS DURKIN: I don't think that --

12 MR. MILIBAND: That does seem very vague and  
13 ambiguous. So if we could receive some clarification  
14 or --

15 CO-HEARING OFFICER DODUC: I think we all  
16 could use clarification.

17 MR. BERLINER: That's okay. I was just trying  
18 to get oriented for myself here.

19 CO-HEARING OFFICER DODUC: So the question is  
20 withdrawn?

21 MR. BERLINER: I'll move on. I'll move on.  
22 We'll come back to that in a minute.

23 Let me ask you about this. These modeling  
24 results do not include WaterFix, correct?

25 MR. GOHRING: Correct.



1 MR. BERLINER: And isn't it true that you  
2 started modifying the 2006 FMS either sometime in 2012  
3 or 2013?

4 MR. GOHRING: We began exploring improvements  
5 to the 2006 FMS as early as 2009.

6 MR. BERLINER: 2009.

7 MR. GOHRING: We took -- we took -- we  
8 explored a number of different approaches to improving  
9 protection of fisheries on the Lower American River.  
10 One approach in particular that we kind of abandoned in  
11 the 2014 era, which would have 2013 era, was an  
12 approach to at least virtually, in the modeling world,  
13 have full control over Folsom Reservoir.

14 And in that approach, through the modeling,  
15 what we saw was that we were unduly impacting water  
16 temperature on the Sacramento River. It was in the  
17 2012-2013 era that we began looking at the possibility  
18 of adding a carryover storage component to the Modified  
19 FMS and added our third objective, which was not to  
20 transfer impacts to the Sacramento River as part of our  
21 exploration.

22 MR. BERLINER: Did you issue an NOP in 2013 on  
23 your proposal?

24 MR. MILIBAND: Madam Chair, if I could just  
25 insert an objection, I'm not sure to what extent

1 counsel intends to go, but this certainly is getting  
2 into CEQA compliance issues that clearly are not part  
3 of Part 1. So I'm trying to be judicious in that  
4 regard, limited with objections but help facilitate  
5 efficient cross-examination.

6 CO-HEARING OFFICER DODUC: Mr. Berliner?

7 MR. BERLINER: I'm just asking as a point of  
8 reference whether they issued a Notice Of Preparation  
9 for a CEQA document on the Modified FMS in 2013. I'm  
10 not planning to get into the substance of it.

11 WITNESS GOHRING: Yeah --

12 CO-HEARING OFFICER DODUC: Let's go ahead and  
13 answer, and we the move on.

14 MR. GOHRING: Not exactly. We issued a notice  
15 of preparation to do an environmental document for an  
16 improved Flow Management Standard. At that -- at the  
17 issuance of the NOP, we didn't have a position or a  
18 decision on what our preferred project would be. It  
19 was subsequent to releasing the NOP that we kind of  
20 discovered through our iterative modeling that the  
21 modified FMS was a superior way to operate Folsom  
22 Reservoir in -- superior in meeting our three  
23 objectives.

24 MR. BERLINER: And when that Notice Of  
25 Preparation was issued, WaterFix was not included

1 within the scope of the modified FMS; is that correct?

2 MR. GOHRING: That is correct.

3 MR. BERLINER: And no CEQA has been completed  
4 on the proposed project, correct?

5 MR. MILIBAND: Chair Doduc, I'd have to insert  
6 the same objection. We're now on the third question  
7 after what sounded like might be one question, so -- as  
8 to relevance.

9 CO-HEARING OFFICER DODUC: Yes, and now,  
10 Mr. Berliner, I, too, am wondering where you're going with  
11 this.

12 MR. BERLINER: Where I'm going is pretty  
13 simple, actually. The FMS is a project entirely  
14 independent and parallel to the WaterFix. It has  
15 nothing to do with the WaterFix.

16 This is a project in search of a home. There  
17 are records from the State Water Board informing the  
18 Water Forum that this will be considered as part of the  
19 Water Quality Control Plan, Phase 4.

20 The good people here have been discussing this  
21 project with the Bureau of Reclamation, and there are  
22 issues associated with that.

23 And I'm going to demonstrate through questions to  
24 Mr. Gohring this project is a long-standing independent and  
25 had nothing to do with the WaterFix and

1 that, in essence, they are seeking to insert this  
2 project into the WaterFix despite no CEQA related to  
3 the WaterFix, no notice in the WaterFix proceeding  
4 related to this project and that it's improperly before  
5 the Board.

6 CO-HEARING OFFICER DODUC: So then are you  
7 leading to a motion to strike?

8 MR. BERLINER: I will leading to laying  
9 grounds for a motion to strike.

10 CO-HEARING OFFICER DODUC: Attorneys.  
11 Mr. Miliband, Mr. Bezerra, you're -- actually, 12before  
you do, Ms. Morris, I assume you want to join  
13 in?

14 MS. MORRIS: Well, I want to make a specific  
15 objection to specific testimony.

16 CO-HEARING OFFICER DODUC: Hold on. Okay.  
17 Let me do one thing at a time.

18 So Mr. Bezerra, or Mr. -- I guess Mr. Miliband 19 your  
response to what Mr. Berliner has said, as he has 20 not  
quite voiced an objection yet, but he's on motion; 21he's  
laying the grounds. And so your comment, your  
22 response to that?

23 MS. AUFDEMBERGE: Excuse me.

24 MR. MILIBAND: Yes. Thank you, Chair Doduc.

25 My response initially would be that it sounds

1 like counsel's position that's evolving through this  
2 questioning or at least that he's attempting to develop  
3 through this questioning is designed to get at a  
4 question of relevance or a motion to strike, whatever  
5 the mechanism might be, to say that this "home,"  
6 quote-unquote, through the WaterFix proceeding is not the  
7 place for the Water Flow Management Standard based on the  
8 virtue that the MFMS has been developed independent and  
9 development of it started before WaterFix.

10           And my response to that would be that  
11 essentially -- really cutting right to it for purposes  
12  
13 of efficiency and trying to move through this and have  
14 the FMS given its due attention through this proceeding  
15 is to invite from counsel what authority exists as a  
16 matter of law that would suggest, much less  
17 demonstrate, the proposition that the proposed term and  
18 condition must be developed strictly as it relates  
19 after the filing of a petition such as that in this  
20 proceeding or as otherwise being strictly created or  
21 developed by virtue of proceeding as opposed to the  
22 decades, as we've heard from Mr. Gohring, and more  
23 recently in the last eight years, a development and  
24 redevelopment of a standard that's being fine tuned.  
25           So to me my -- this lawyer's good faith

1 representation is that I'm not aware of any such  
2 authority but would certainly invite the opportunity to  
3 receive that so we can more fully look at this if it's  
4 truly necessary. But not being aware of anything and  
5 just as a matter of policy and certainly trying to  
6 present a solution, the first of its kind in this  
7 proceeding, to the problems that have been testified  
8 to, I would certainly object and oppose that here and  
9 as we need to as we move forward.

10 CO-HEARING OFFICER DODUC: Okay.

11 Ms. Aufdemberge, I believe you were about to 12 add  
something before I turned to Mr. Miliband

13 MS. AUFDEMBERGE: I apologize. This  
14 microphone was off and doesn't work apparently.

15 But I just wanted to be clear for the record  
16 that I join in the motion to strike and the objection.

17 MR. MILIBAND: The motion to strike that  
18 hasn't been brought yet? Sorry. But we do need a  
19 clear record.

20 MR. BEZERRA: Chair Doduc, could I add a  
21 little bit?

22 CO-HEARING OFFICER DODUC: Mr. Bezerra.

23 MR. BEZERRA: It sounds like the forthcoming  
24 motion to strike will be based on relevance grounds.  
25 If I can --

1 CO-HEARING OFFICER DODUC: Can I just -- no.  
2 I'm not going to ask permission. I'm just going to  
3 interrupt you all now, before we get into this dueling,  
4 legal back and forth between lawyers.

5 Mr. Berliner, Ms. Aufdemberge, petitioners  
6 have not proposed any terms or conditions. The hearing  
7 -- as Hearing Officer throughout this entire process,  
8 we have encouraged parties to come in and present their  
9 proposal. And, in fact, this is what Mr. Gohring is  
10 attempting to do.

11 So I am just going to rule right now that I am  
12 allowing this testimony. You may question him. You  
13 may cross-examine him. You may set the grounds for, I  
14 guess, objecting to what he is proposing. But he has  
15 the right to propose it.

16 So objection or whatever it is that you are  
17 about to do is overruled.

18 MS. MORRIS: This is Stefanie -- there is no  
19 objection for the record. I'd like to make one for the  
20 record with the background that supports it and the  
21 legal authority that Mr. Miliband has requested because  
22 right now -- I could wait -- I'd rather wait and let  
23 Mr. Berliner ask a few more questions or I can do it  
24 now, whatever your preference.

25 CO-HEARING OFFICER DODUC: Do it now.

1 MS. MORRIS: Okay. I make a motion to strike  
2 the testimony ARWA-308, which is the proposed permit  
3 conditions; ARWA-41, which is the modeling assumptions;  
4 ARWA-402, which is the modeling results; ARWA-300e,  
5 Paragraphs 5 through 12, 27 through 35, Paragraph 36;  
6 ARWA-309, which is the PowerPoint, Pages 2 and Pages 7  
7 through 13; ARWA-400.

8 And the basis of this motion is that, while I  
9 hear the Hearing Officer saying they've come to you  
10 with permit conditions, this Modified Flow Management  
11 Standard has been floating around for a while, it  
12 sounds, in various forms.

13 There was an NOP that was provided. It has  
14 been marked as DWR -- although not introduced -- as a  
15 DWR exhibit. U.S. -- the Bureau of Reclamation, I  
16 believe, has been discussing this, but they have not  
17 agreed to put this in their water rights permits.

18 The State Board staff has specifically said in  
19 the letter, also marked as a DWR exhibit, that, to the  
20 extent the Bureau doesn't agree or other parties don't  
21 agree to implement the Modified Flow Management  
22 Standard voluntarily, that there would have to be a  
23 hearing.

24 So this testimony is outside the scope of this  
25 hearing. It hasn't been noticed for other legal water



1 users who may have an interest in this to participate.  
2 And the testimony that's been presented, just looking  
3 at this, which is the only modeling results that were  
4 summarized and provided, it has going to do with  
5 anything else in CVP, SWP operations or in the Delta.

6 It exists solely to show you end of Folsom  
7 Reservoir storage and American River flows. By  
8 modifying the flow standards of an integrated project,  
9 there is a potential to have legal impacts on a number  
10 of other legal users of water and public trust  
11 resources.

12 So given the fact that the protestants have  
13 essentially admitted by putting an NOP and saying they  
14 have to do CEQA, the State Board, in official letters,  
15 has said, "If people don't agree to this, you're going  
16 to have to have a hearing," this is outside the scope.

17 And to try to sneak this in -- I'm sorry.  
18 Strike "sneak in." To try to present this as a permit  
19 condition, I think, is a far stretch.

20 And then I just -- one more point. The only  
21 testimony of this panel that ties this to WaterFix is  
22 Mr. Gohring's testimony. If we the pull that up,  
23 ARWA-300e. And actually, I'm sorry. Can you go to the  
24 PowerPoint, Slide 3?

25 MR. BEZERRA: If I could, Mr. Durkin just

1 finished testifying how --

2 MS. MORRIS: I'm sorry. I'm not --

3 CO-HEARING OFFICER DODUC: Just let her  
4 finish, Mr. Bezerra.

5 MR. BEZERRA: Thank you.

6 MS. MORRIS: The only testimony presented by  
7 Mr. Gohring to tie his bringing in the Modified Flow  
8 Management Standards --

9 Can you go to Slide 3, please.

10 -- is this table and the following table. And 11 if  
you look at this table, this isn't even the current 12  
project. This is from the Draft EIR/EIS. And if you  
13 look at it, it says "Alternative 4." We've already  
14 established in this proceeding that the alternative is  
15 Alternative 4A. And if you look at it this, the LLT at  
16 each of the things, that's late long-term climate  
17 change.

18 The existing conditions and the alleged sort  
19 of injury, if you will, that Mr. Gohring is trying to  
20 imply here, that's -- existing conditions doesn't  
21 include any climate changes assumptions. So you at  
22 least have to look at the no action alternative and  
23 compare it to the others.

24 But, again, it would be helpful if the  
25 evidence that was trying to bring in the Modified Flow

1 Standard, which I believe is outside the scope of this  
2 hearing and inappropriate, would be responsive to the  
3 project that's currently before the Board.

4 CO-HEARING OFFICER DODUC: Are you now done,  
5 Ms. Morris?

6 MS. MORRIS: I'm done. Thank you.

7 CO-HEARING OFFICER DODUC: Thank you very  
8 much.

9 Mr. Bezerra.

10 MR. BEZERRA: Yes, a couple points.  
11 Ms. Morris is, first, incorrect about what 12  
12 testimony ties -- what testimony of Mr. Gohring ties  
13 this to current project.

14 Exhibit ARWA-306, which is reference to  
15 Mr. Gohring's testimony, is exhibits from the December  
16 2016 Final EIR/EIS for this project. Unless  
17 petitioners are now taking the position that the Final 18  
18 EIR/EIS does not reflect the project they're proposing 19 Mr.  
19 Gohring's testimony does in fact refer to existing 20  
20 information regarding the project. That exhibit

21 contains copies directly out of the Final EIR/EIS  
22 Appendix 5A regarding the effects of the project on  
23 Folsom Lake storage. So there's a direct connection.

24 Second, this issue regarding beyond the scope  
25 of the hearing, if I could read from Page 11 of the

1 October 30th, 2015 notice of this hearing, it states  
2 key issues for the hearing.

3 And I'll quote, for the record, "Part 1,  
4 Effects of the petition on municipal, industrial, and  
5 agricultural uses of water, including associated legal  
6 users of water. Issue 2, Will the proposed changes  
7 cause injuries to any municipal, industrial, or  
8 agricultural users of water, including associated legal  
9 users of water," and Sub-Issue 2C, "If so, what  
10 specific conditions, if any, should the State Water  
11 Board include in any approval of the petition to avoid  
12 injure to these users?"

13 This board had specifically asked for  
14 protestants to propose terms and conditions, which is  
15 what is occurring here.

16 MS. MORRIS: For the record, may I just  
17 clarify --

18 CO-HEARING OFFICER DODUC: Ms. Morris?

19 MS. MORRIS: -- that the modeling that's  
20 presented is in the EIR/EIS, but the modeling is also,  
21 for this project, is 4A. And what was --

22 CO-HEARING OFFICER DODUC: Ms. Morris, I'm  
23 going to stop you. Enough.

24 I've heard all of you. Your objections, your  
25 non-objections are all overruled. I'm allowing

1 Mr. Gohring and his colleagues to present this as part  
2 of their rebuttal. You may address it in your  
3 surrebuttal. You may make your arguments then, but for  
4 now, this is being allowed, and we will proceed.

5 MR. BERLINER: Mr. Gohring, I have additional  
6 questions for you.

7 Is it correct that you are still having  
8 discussions with the Bureau of Reclamation regarding  
9 Modified FMS?

10 MR. GOHRING: Yes.

11 MR. BERLINER: Has the Bureau of Reclamation  
12 agreed to the modified FMS?

13 MR. GOHRING: No.

14 MR. BERLINER: Has the Bureau of Reclamation  
15 indicated to you or to the Water Forum that the  
16 end-of-September carryover storage for Folsom is  
17 problematic?

18 MR. MILIBAND: Objection --

19 MR. BERLINER: I'm sorry -- end-of-December.

20 MR. MILIBAND: Objection to the extent that  
21 there might be any privileged communications. I just  
22 want there to be a clear parameter that, if there are  
23 discussions outside of the open session of the WaterFix  
24 proceeding, we just need to be careful not to venture  
25 into the other side of any other discussions.

1           So I'm just concerned about --

2           MR. BERLINER: I'm only asking about  
3           communications with --

4           CO-HEARING OFFICER DODUC: Hold on. One at a  
5           time.

6           MR. BERLINER: I am only asking about  
7           communications with the Bureau of Reclamation.

8           MR. MILIBAND: Which could be any kind of  
9           confidential or settlement communications. So, hence,  
10          my objection is one of a cautionary note of potentially  
11          getting into privileged communications.

12          CO-HEARING OFFICER DODUC: And Mr. Gohring and  
13          other witnesses are free to say that it is, I guess,  
14          confidential information that they're not comfortable  
15          divulging.

16          MR. MILIBAND: Fair enough. Thank you.

17          CO-HEARING OFFICER DODUC: I think you need to  
18          clarify that for your own witness.

19          MR. MILIBAND: So, Mr. Gohring, go ahead.

20          MR. GOHRING: I think the answer to that  
21          question is part of privileged information and part of  
22          a settlement discussion.

23          MR. BERLINER: What settlement are you talking  
24          about?

25          MR. MILIBAND: Objection, misstates the

1 testimony.

2 Please, go ahead.

3 CO-HEARING OFFICER DODUC: He actually said  
4 "settlement discussion."

5 MR. MILIBAND: Right. But the question became  
6 what settlement, as if there is a settlement.

7 MR. BERLINER: Yes. I'm wondering what  
8 settlement the discussions are about.

9 MR. GOHRING: I need help on this one.

10 MR. MILIBAND: This is where lawyers -- yes.  
11 Mr. Gohring has just, I think, responded and 12  
12 clarified that a response to the question that was  
13 presented by Mr. Berliner would be asking for  
14 privileged and confidential communications, whether as  
15 part of settlement communications or otherwise.

16 CO-HEARING OFFICER DODUC: So you're saying  
17 the nature of that discussion is also confidential?

18 MR. MILIBAND: Yes. And the question then  
19 became what are the discussions of the settlement, as  
20 if there is a settlement. And it's just -- it's taken  
21 us down a road with -- that just quite frankly not only  
22 gets beyond the confidentiality of any settlement  
23 communications but was almost mischaracterizing the  
24 testimony and -- very luckily unintentionally, but it's  
25 taken us down a road that's just kind of skewing it.

1 So just trying to keep things focused. Thank you.

2 CO-HEARING OFFICER DODUC: Mr. Berliner.

3 MR. BERLINER: Let me try this from a  
4 different directions.

5 I'm interested in getting into confidential  
6 settlement discussions. I'd rather not have to spend  
7 the time exploring whether there's any confidentiality  
8 or not.

9 CO-HEARING OFFICER DODUC: Thank you.

10 MR. BERLINER: Has -- as I understand it, the  
11 Modified FMS has a proposal for end-of-December  
12 carryover storage targets; is that correct?

13 WITNESS GOHRING: Correct.

14 MR. BERLINER: Have you discussed  
15 end-of-December carryover storage targets with any  
16 state or federal agency?

17 MR. GOHRING: Yes.

18 MR. BERLINER: Has any state or federal agency  
19 indicated whether they are amenable to having  
20 end-of-December carryover storage targets imposed  
21 forever Folsom Reservoir?

22 MR. GOHRING: Yes. Any state or federal  
23 agency indicated they would be amenable to those  
24 carryover storage, the answer would be yes.

25 MR. BERLINER: And which agencies would those



1 be? And I don't want the contents of any privileged  
2 information.

3 MR. MILIBAND: If I may, Madam Chair?

4 So, again, Mr. Gohring, just go ahead and give  
5 your response as to whether or not you have any  
6 information outside privileged communications to  
7 address Mr. Berliner's question.

8 MR. GOHRING: I don't think so. I don't think  
9 I can give any more specifics that aren't covered by a  
10 nondisclosure agreement.

11 MR. BERLINER: With whom do have a  
12 nondisclosure agreement?

13 MR. GOHRING: The Department of -- the  
14 California Department of Water -- of Fish and Wildlife.

15 MR. BERLINER: Do you have a nondisclosure  
16 agreement with the Department of Water Resources?

17 MR. GOHRING: No.

18 MR. BERLINER: Do you have a nondisclosure  
19 agreement with any federal agencies?

20 WITNESS GOHRING: No.

21 MR. BERLINER: Aside from the nondisclosure  
22 agreement you have with the California Department of  
23 Fish and Wildlife -- I don't want to know anything  
24 about that -- is there any federal agency that's  
25 indicated agreement to an end-of-December carryover

1 storage target for Folsom Reservoir?

2 MR. MILIBAND: I'd just have to insert the  
3 same confidentiality admonition.

4 WITNESS GOHRING: Yeah, and I --

5 MR. BERLINER: I think it's a yes-or-no  
6 question.

7 MR. GOHRING: Okay. I don't understand the  
8 question because I don't under what you mean when you  
9 say "agency." If you're asking me if there are  
10 individual staff members of state -- of a federal  
11 agency who have indicated that "I'd like that," the  
12 answer is yes.

13 MR. BERLINER: That is not my question.

14 MR. GOHRING: So an official agency response,  
15 no.

16 MR. BERLINER: So let me be a little bit  
17 narrower. Has the Bureau of Reclamation - and I'm not  
18 talking about individual employees.

19 Has the Bureau of Reclamation agreed to an  
20 end-of-December carryover storage target for Folsom  
21 Reservoir?

22 MR. GOHRING: No.

23 MR. BERLINER: Do you recall that the State  
24 Water Resources Control Board sent a letter concerning  
25 the proposed modified FMS commenting on the Notice Of

1 Preparation of an EIR?

2 MR. GOHRING: I do remember getting the  
3 letter. I'm pretty fuzzy on the content.

4 MR. BERLINER: Could we please have DWR-912.  
5 This is a new exhibit. This is a copy of a June 24th,  
6 2013 letter from the State Water Board to Ms. Catherine  
7 Hack, City of Sacramento, as I understand it.

8 Mr. Gohring, have you ever seen that letter  
9 before?

10 MR. GOHRING: Yes, I have.

11 MR. BERLINER: Does that letter refresh your 12 memory  
as to the communication from the Water Board? 13

WITNESS GOHRING: Same answer. I remember it  
14 in general. I'm a little fuzzy on the detail.

15 MR. BERLINER: Let me refer you to Page 2, the  
16 top paragraph, starting about seven lines up from the  
17 bottom of that paragraph, with a sentence that starts,  
18 "The State Board understands..."

19 MR. GOHRING: I see two sentences that start  
20 with, "The State Board understands." Could you be more  
21 specific, please?

22 MR. BERLINER: Sure. "The State Water Board  
23 understands that Reclamation is not currently an active  
24 participant in the Water Forum and does not fully  
25 support the proposed FMS update," do you see that

1 sentence?

2 WITNESS GOHRING: I'm sorry. I don't.

3 MS. MCGINNIS: Mr. Hunt, it's Page 2 first  
4 paragraph, about halfway down.

5 MR. BERLINER: Mr. Gohring, do you have the  
6 same document that's on the screen?

7 MR. GOHRING: I think I do. I found it.

8 MR. BERLINER: Perfect.

9 WITNESS GOHRING: I see the sentence, yes.

10 MR. BERLINER: And the sentences that follow  
11 indicate that if Reclamation doesn't support the  
12 amendment to their permits, the Water Board would be  
13 required to conduct a hearing? We talked about that a  
14 little earlier.

15 MR. GOHRING: I see that.

16 MR. BERLINER: Yes, okay. Thank you. And to  
17 the best of your knowledge, the Water Board has not  
18 noticed a hearing on the Modified FMS, correct?

19 MR. GOHRING: Correct.

20 MR. BERLINER: Nor a hearing to modify the  
21 Bureau's permit on the American River to accommodate  
22 the FMS, correct?

23 WITNESS GOHRING: I believe this is a hearing  
24 to modify Reclamation's water right.

25 MR. BERLINER: Yes, but not on the American

1 River to accommodate the FMS.

2 MR. MILIBAND: Objection, calls for  
3 speculation.

4 MR. BERLINER: I'm just asking him if he  
5 knows.

6 MR. GOHRING: Not to my knowledge.

7 MR. BERLINER: Thank you. Mr. Gohring, isn't  
8 it true that you've been pursuing several different  
9 forums for having the Modified FMS implemented?

10 MR. GOHRING: Yes.

11 MR. BERLINER: And one of those forums would  
12 be reinitiation -- one of those forums would be  
13 Reinitiation of Consultation on Water Project  
14 Operations?

15 MR. GOHRING: Uhm -- can you clarify?

16 MR. BEZERRA: Objection, vague and ambiguous.  
17 I think I know where Mr. Berliner's going, but he's  
18 asking it in terms of did the Water Forum initiate  
19 reconsultation. That's vague and ambiguous. I think  
20 what he means is the existing reinitiation of OCAP  
21 Biological Opinions under the Endangered Species Act.

22 CO-HEARING OFFICER DODUC: Mr. Berliner?

23 MR. BERLINER: Yes, I short-cuttet that. I  
24 apologize.

25 WITNESS GOHRING: We have had discussions with

1 both Reclamation staff and staff at NMFS about the  
2 possibility of including the Modified FMS in both the  
3 BA and the BO, the new BA and BO, yes.

4 MR. BERLINER: And you've also, as I  
5 understand it, had discussions with the Water Board  
6 regarding the update to the Water Quality Control Plan,  
7 correct?

8 MR. GOHRING: Correct.

9 MR. BERLINER: Referring you to Exhibit 300e  
10 in Paragraph 3, you state that the Modified FMS was  
11 developed to address a combination of two factors.

12 And one is the is the vulnerability of Folsom  
13 Reservoir to dry conditions as demonstrated by the  
14 recent drought, and the other is that the California  
15 WaterFix could increase the vulnerability, I assume, of  
16 Folsom Reservoir storage by enabling Central Valley  
17 Project operations that could draw the reservoir too  
18 low in years preceding severely dry years, correct?

19 MR. GOHRING: Yes.

20 MR. BERLINER: Now, isn't it true that the  
21 Modified Flow Management Standard is a drought buffer  
22 for the environment and local water supplies?

23 WITNESS GOHRING: Yeah, we have characterized  
24 it that way, yes.

25 MR. BERLINER: And just for reference,

1 Mr. Hunt, could we have Exhibit 915, please?

2 MR. BEZERRA: And just for clarity,  
3 Mr. Berliner, are we talking DWR Exhibit 915?

4 MR. BERLINER: Yes.

5 MR. BEZERRA: Thanks.

6 MR. BERLINER: It's a new exhibit for us.

7 This is the Lower American River Modified Flow  
8 Management Standard document that was put out by the  
9 Sacramento Water Forum in October 2015.

10 Are you familiar with this document, 11 Mr.  
Gohring?

12 MR. GOHRING: I am.

13 MR. BERLINER: And as I understand it, this is  
14 an overview of the Modified Flow Management Standard,  
15 correct?

16 MR. GOHRING: Yes.

17 MR. BERLINER: And does this document say  
18 anything about the California WaterFix?

19 MR. GOHRING: No.

20 MR. BERLINER: Does it say anything about the  
21 Water Quality Control Board?

22 WITNESS GOHRING: I don't recall.

23 MR. BERLINER: I will represent to you that it  
24 does not.

25 As you understand it, the -- do you understand

1 that the Draft EIR/EIS for the WaterFix project was  
2 published before this Modified Flow Management Standard  
3 document was published?

4 MR. GOHRING: Yes.

5 MR. BERLINER: And isn't it correct that the  
6 Modified Flow Management Standard document has two  
7 different goals, one of which is to protect anadromous  
8 salmonids, and the other is to avoid catastrophic water  
9 shortages in the basin?

10 WITNESS GOHRING: We developed the Modified  
11 Flow Management Standard with three goals in mind, was  
12 to improve conditions for resident salmonids on the  
13 Lower American River, protect against low storage  
14 conditions in Folsom Reservoir, and to avoid redirected  
15 impacts to the Sacramento River.

16 MR. MILIBAND: I'm sorry. Redirected impacts  
17 to the Sacramento --

18 WITNESS GOHRING: -- River.

19 MR. BERLINER: River, thank you.

20 MR. GOHRING: Excuse me.

21 MR. BERLINER: Isn't it accurate to say that  
22 the flow management, I'll call it, report states that  
23 climate change is another factor that you're seeking to  
24 -- the impacts of climate change is another factor  
25 you're seeking to address?



1 MR. MILIBAND: For clarity, Counsel, are you  
2 referring to DWR-915?

3 MR. BERLINER: I'm referring to the same  
4 document, DWR-915, Page 15.

5 MR. MILIBAND: Thank you.

6 WITNESS GOHRING: I really don't remember if  
7 we referenced climate change in this document. I'm not  
8 trying to be difficult.

9 MR. BERLINER: No, I understand. It's a long  
10 document, got a lot of stuff in it, was published a  
11 while ago.

12 And these two goals that the document  
13 identifies of protecting anadromous salmonids and  
14 avoiding catastrophic water shortages in the basin,  
15 those are different than the goals that you stated in  
16 Exhibit 300e, correct?

17 WITNESS GOHRING: I think there are -- I think  
18 they are a subset of the goals listed in No. 3 [sic].

19 MR. BERLINER: If we could pull up 300e,  
20 Paragraph 3, please.

21 MR. BEZERRA: Chair Doduc, while we're having  
22 a brief break here, I believe the cross-examination of  
23 Mr. Durkin has been completed.

24 CO-HEARING OFFICER DODUC: Yes.

25 MR. BEZERRA: And he has a variety of things

1 he need to take care of on his last day. So he would  
2 very much like to get back and take care of those last  
3 things before close of business, if at all possible.

4 So I'm wondering if we can release him from  
5 the panel?

6 CO-HEARING OFFICER DODUC: Oh, thank you, yes.  
7 Actually, I had meant to release him much earlier, but  
8 thank you for sticking around.

9 WITNESS DURKIN: Ryan had a handcuff on me  
10 over here, just in case.

11 Thank you.

12 MR. BEZERRA: Thank you very much. Happy  
13 trails.

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

16 WITNESS GOHRING: I should probably mention  
17 that, since this document was produced there was an  
18 additional component added to the Modified Flow  
19 Management Standard. This document does not describe  
20 the end-of-May storage requirement. That had been  
21 added since this. So it's a little out of date in that  
22 respect.

23 The end-of- May storage requirement was added  
24 to the Modified FMS specifically to respond to the  
25 potential for the lowering of Folsom Reservoir from a

1 project like California WaterFix. That was done in  
2 direct -- with direct knowledge of the WaterFix EIR/EIS  
3 and was put there to kind of respond to that.

4 MR. BERLINER: Did you submit that document as  
5 part of your testimony?

6 MR. GOHRING: The terms and conditions that  
7 are -- that we presented include the -- our current  
8 version of the Modified Flow Management Standard, which  
9 includes the end-of-May storage requirement, yes.

10 MR. BERLINER: Well, maybe I misunderstood 11  
11 you. I thought you said that there's a different  
12 version of this Modified Flow Management Standard  
13 overview document. Did I misunderstand that?

14 MR. GOHRING: No -- yeah, I think you did.  
15 This document was published in October of 2015. Since  
16 that time, we have added a component to the Modified  
17 Flow Management Standard, so it's not reflected in this  
18 document. So I just want to set the record straight.  
19 This is a little out of date.

20 And just for clarity, I wanted to point out 21 that  
21 the component we added is the end-of-May storage 22  
22 requirement. And it was added in response to the  
23 potential for a project like California WaterFix to  
24 draw down Folsom Reservoir.

25 MR. BERLINER: And what document would I find

1 that May-end-of-storage [sic] proposal in other than  
2 the terms and conditions that you are submitting to the  
3 Water Board?

4 WITNESS GOHRING: It -- I believe there is  
5 discussion of the end of -- the end-of-May storage  
6 requirement in ARWA-300e and in the PowerPoint slide,  
7 ARWA-309.

8 MR. BERLINER: Let me state, in arrive- -- I  
9 don't want to get too deep into this. It's kind of a  
10 simple reference that I'm looking for.

11 In the process of doing your work related to  
12 the Water Forum, I'm assuming these things are a  
13 subject of some public discussion, discussion with  
14 whole -- all members of the Water Forum.

15 Is there a document that describes why you're  
16 proposing an end-of-May storage, it's been vetted  
17 publicly, there's a public document available that we  
18 can look at?

19 MR. GOHRING: No.

20 MR. BERLINER: So the only place I could find  
21 it would be in the proposed terms and conditions and in  
22 your testimony, correct?

23 MR. GOHRING: Yes, at this time, yes.

24 MR. BERLINER: So then, as you sit here today,  
25 are you proposing storage goals for the end of May, end

1 of September, and end of December for Folsom Reservoir?

2 MR. GOHRING: No, we're proposing  
3 end-of-December and end-of-May storage requirements?

4 MR. BERLINER: And could you provide me with a  
5 reference -- we're going to be here for a little while  
6 longer this afternoon. I'm not going to ask you to do  
7 it right now because I have some additional questions  
8 for you, and I have some questions for Mr. Weaver.

9 But when I turn to Mr. Weaver, I'd like to  
10 request, if the Chair would allow, if you could provide  
11 me the reference where in the -- I identified a couple  
12 of goals that I thought were the objectives of the Flow  
13 Management Standard, which were the anadromous fish  
14 protection and avoiding catastrophic water storage.  
15 And you indicated that there was a third goal of  
16 avoiding redirected harms to the Sacramento River.

17 I'm just wondering if, when we have an  
18 opportunity, you could find that reference for me so  
19 that we could see that and get that in front of the  
20 Board?

21 MR. GOHRING: I will endeavor to do so.

22 CO-HEARING OFFICER DODUC: Mr. Berliner, hold  
23 on.

24 Was there an objection to that, Mr. Bezerra?

25 MR. BEZERRA: No, not an objection.

1 CO-HEARING OFFICER DODUC: Mr. Berliner, just  
2 a reminder that I would like to start wrapping up in  
3 about ten minutes. So your statement about "we'll be  
4 here a while this afternoon," caught my attention.

5 I assume from that statement that you will not  
6 be completing your cross-examination today?

7 MR. BERLINER: Oh. I fully was hoping to  
8 complete today.

9 CO-HEARING OFFICER DODUC: By 3:45?

10 MR. BERLINER: Did you want to quit today at  
11 3:45?

12 CO-HEARING OFFICER DODUC: I want to start to  
13 wrap-up around 3:45.

14 MR. BERLINER: I would be happy to wrap up  
15 around 3:45, but I won't been completely done with my  
16 cross-examination. But that would be a great time to  
17 break because I could switch -- I could probably finish  
18 with Mr. Gohring and hold Mr. Weaver for the next time  
19 we're together.

20 CO-HEARING OFFICER DODUC: That sounds like a  
21 plan.

22 MR. BERLINER: That would probably make  
23 everybody happy.

24 CO-HEARING OFFICER DODUC: Now, Mr. Bezerra,  
25 Mr. Miliband, was there a -- were you about to voice a

1 concern of some kind?

2 MR. BEZERRA: Well, I was hoping to respond to  
3 Mr. Berliner's request for a reference. I believe it's  
4 in Exhibit ARWA-300e, Paragraphs 29 and 30 refer to the  
5 Sacramento River issue. Also Paragraph 27 in that  
6 document.

7 MR. BERLINER: Just as a quick follow-up on  
8 that, is there a -- again, along the same veins, some  
9 sort of publicly available document from the Water  
10 Forum or any of the participants that would describe  
11 this third goal, or is it only in the testimony?

12 MR. GOHRING: Not -- not a finalized published  
13 document, no.

14 MR. BERLINER: Is there a publicly available  
15 draft document?

16 MR. GOHRING: No.

17 MR. BERLINER: Thank you. Mr. Gohring, is it  
18 correct that the Modified Flow Management Standard  
19 caused reductions to CVP contract delivery south of the  
20 Delta?

21 MR. MILIBAND: Objection, I have to state I  
22 guess the legal objection as being relevance, Madam  
23 Chair, where there is very specific language from  
24 previous Board hearing team rulings, including from  
25 February 21st, referring back to October 7th of last

1 year in which, explicitly and verbatim, there was the  
2 indication that Part 1 does not encompass impacts from  
3 conditions for approval.

4 And here, we're in the context of a proposed  
5 condition as part of an approval if that approval were  
6 to even happen. So with that -- excuse me, with that  
7 language, our understanding of that very explicit  
8 language is that the impacts or purported impacts from  
9 a proposed condition are not part of Part 1 because  
10 that is explicitly what those rulings say from  
11 October 21st -- or excuse me, October 7th and  
12 February 21st.

13 CO-HEARING OFFICER DODUC: A fisheries impact?

14 MR. MILIBAND: No, Madam Chair, it actually  
15 doesn't decipher from fishery impact. It actually  
16 speaks to impacts, period. In fact, looking at Page 15  
17 of the February 21st ruling, it says -- starting with  
18 the first sentence of the second full paragraph, quote,  
19 "On the other hand, we stated that the scope of Part 1  
20 does not encompass the economic feasibility of the  
21 WaterFix project, consistency of the project with the  
22 Delta Reform Act, the benefits of approving the  
23 project, or the potential impacts of conditions of  
24 approval."

25 And I'm focused on the last part of that



1 that's talking far more broadly than just as to fishery  
2 impacts that have come up in more recent rulings and  
3 submitted evidence.

4 So I would submit that this line of  
5 questioning or any other line of questioning of a  
6 similar nature is outside of Part 1.

7 CO-HEARING OFFICER DODUC: Someone actually  
8 read our ruling that carefully.

9 Mr. O'Brien.

10 And then I'll get back to you, Mr. Berliner.

11 MR. BERLINER: Thank you.

12 MR. O'BRIEN: Yes, Kevin O'Brien for the  
13 Downey Brand Sacramento Valley group.

14 I'd just like to make a comment on this issue  
15 that's being raised by Mr. Miliband. This proposal has  
16 now been placed into Part 1 of this hearing, and the  
17 purpose of Part 1 is to determine broadly the question  
18 of injury to other legal users of water.

19 We're now hearing that the proponents of this  
20 proposal are suggesting that those of us who want to  
21 conduct cross-examination can't cross-examine on the  
22 question of what impacts this proposal might have on  
23 other users of water within the CVP-SWP system.

24 I don't believe that's a fair reading of this  
25 Board's prior rulings in this proceeding. I think, if

1 the Board is going to consider this proposal at this  
2 juncture in the hearing, we out to be able to ask  
3 questions about impact associated with the proposal  
4 relating to water supply. I agree that fisheries and  
5 other impacts should link to Part 2, but water supply  
6 should be dealt with in Part 1.

7 MR. BEZERRA: If I could add a little on that?

8 CO-HEARING OFFICER DODUC: Yes.

9 MR. BEZERRA: So, as the Chair is aware, we  
10 struggled with how to present this proposal in this  
11 hearing. And our understanding of the Board's rulings  
12 was that in Part 1 we were to present evidence to  
13 demonstrate how our proposed terms and conditions would  
14 protect us or these agencies as legal users of water.  
15 So we tried to slice it like that with everything else  
16 being reserved to Part 2.

17 We fully intend to bring back technical  
18 studies that addresses all of these things in Part 2  
19 because Part 2 is not just environmental; it's also  
20 public interest.

21 So we did not submit testimony on modeling  
22 results regarding the full array of SWP and CVP  
23 operations. And frankly, the witnesses don't cover  
24 that in their testimony. So I believe we could  
25 potentially generally talk to issues outside of the

1 American Basin. But as Mr. Gohring's testimony  
2 indicates, we plan to present a full suite of these  
3 technical analyses in Part 2.

4 CO-HEARING OFFICER DODUC: Including impacts  
5 to users as part of the public interest discussion?

6 MR. BEZERRA: Yes, we certainly can. I mean,  
7 that's certainly been part -- as I understand it,  
8 that's been part of the modeling analysis of the  
9 Modified FMS all long.

10 And so we -- I suppose we could have  
11 cross-examination on these things, but you don't have  
12 in front of you the technical information that we could  
13 have produced, potentially, if that had been within the  
14 scope of Part 1.

15 MR. MILIBAND: Right. And just so I could  
16 clarify and be clear with my comments, Madam Chair, not  
17 trying to do what might have been suggested, which is  
18 to try to propose a solution but then not provide an  
19 opportunity to explore that solution, that -- we're  
20 obviously dealing with what Mr. Bezerra just very  
21 accurately characterized and the Board is very well  
22 aware of is the complex process, that we're at least in  
23 a bifurcated stage.

24 So we've done our best to do that with  
25 Mr. Gohring, identifying his background information and

1 third objective. But given that very clear language  
2 that is explicit language and really, quite frankly, I  
3 think was -- shows the intent behind it without  
4 interpretation, much less a fair or an unfair reading  
5 -- it's a literal reading. That these are impacts --  
6 or any concerns about impacts certainly can be  
7 addressed in Part 2.

8 CO-HEARING OFFICER DODUC: Mr. Berliner.

9 MR. BERLINER: Yes, two points please.

10 CO-HEARING OFFICER DODUC: Please.

11 MR. BERLINER: First point is this issue was  
12 raised in their testimony. I'm not asking it out of  
13 the blue. It's in DWR-915 on Page 14. So we have not  
14 opened the door; they opened the door on this. And I  
15 think Mr. O'Brien's points are well taken.

16 The other point is this should have been  
17 presented in their case in chief this. Is not  
18 rebuttal. This is a proposal for reoperation of the  
19 American River. It doesn't respond to issues that we  
20 raised in our case. This should have been done before.  
21 And on that basis, I will make a motion to strike  
22 because it's too late; it's not rebuttal.

23 If they want to try to get it in as a fishery 24  
management measure, which is more consistent with the  
25 goal of Part 2, they can do that. But they should have

1 presented it as part of the case in chief in Part 1A,  
2 not now in rebuttal.

3 CO-HEARING OFFICER DODUC: I'll allow you to  
4 respond to that. But let's first here from Mr.  
5 O'Brien.

6 And Mr. O'Brien which of the objections and  
7 counter objection are you addressing.

8 MR. O'BRIEN: Well, I would like to supplement  
9 Mr. Berliner's comments regarding this group having  
10 raised this issue of impacts by referencing  
11 specifically -- and if we could just quickly pull it up  
12 -- their PowerPoint, Slide 9 of the PowerPoint.

13 MR. HUNT: This is ARWA-309?

14 MR. O'BRIEN: Thank you. And you can see at  
15 the bottom, there is the statement "No Sac River  
16 Impact." That is exactly the issue that my Sacramento  
17 River settlement contractor clients are concerned  
18 about.

19 Clearly they have made the assertion that  
20 there is no Sac River impact, no water supply impact.  
21 I don't know how you can come into a hearing and  
22 present evidence and make assertions like that and then  
23 not be subjected to cross-examination. Thank you.

24 CO-HEARING OFFICER DODUC: All right.  
25 Mr. Miliband, Mr. Bezerra.

1 MR. MILIBAND: Very briefly, Madam Chair --

2 CO-HEARING OFFICER DODUC: I'm sorry. Hold  
3 on. I think Ms. Aufdemberge is about to join in.

4 MS. AUFDEMBERGE: Yes, I would like to join  
5 in, and I would also like to add specifically I join  
6 with Mr. Berliner's objection, motion to strike, that,  
7 to the extent that the testimony has said that -- has  
8 made a claim that the Cal WaterFix exacerbates impacts  
9 to drought, the way I understand the law on this issue  
10 would be that this, if relevant at all, would only be  
11 to the incremental difference, not this broad sweeping  
12 drought protection that they are seeking. Thank you.

13 CO-HEARING OFFICER DODUC: Now, Mr. Miliband,  
14 Mr. Bezerra.

15 MR. MILIBAND: All right. Briefly, Madam  
16 Chair. Thank you. I take issue with some of the  
17 characterizations there but certainly as to the points  
18 about there being a motion to strike and this being too  
19 late or trying to propose something and even put  
20 something as at issue as Mr. O'Brien was just  
21 describing.

22 This really comes back to what was a rather  
23 lengthy process for the structuring of Part 1 and what  
24 evolved to Parts 1A and B and then rebuttal and surrebuttal  
25 with a lot of that, as I'm sure that the

1 Hearing Officers and the team would recall, involved  
2 questions specific from this group as for direction on  
3 when to do this and how to do it.

4 So we have tried our very best to help create  
5 a transparent well managed process, which we think you  
6 all have done. And with that are an intertwined set of  
7 coequal objectives as described by Mr. Gohring that  
8 clearly get into what have been framed for Part 2  
9 issues.

10 And those two points, looking to ARWA-309 and 11 in  
this greenish colored box, Folsom storage is what 12 we're  
focused on here for Part 1 rebuttal because very 13

clearly Bullet Points 2 and 3 on there are Part 2  
14 issues.

15 So this isn't trying to have our cake and eat 16 it  
too, as is somewhat being suggested. There are  
17 clear rulings that state which issues are for Part 1  
18 versus Part 2. And Mr. Bezerra has made the  
19 representation that we can be prepared to address  
20 these, not just from an environmental perspective, but  
21 from a public interest or other perspectives that would  
22 be part of Part 2. Thank you.

23 CO-HEARING OFFICER DODUC: Thank you.

24 Mr. Bezerra, quickly.

25 MR. BEZERRA: Yes, thank you. Two points.

1           First, our agency specifically sought  
2 direction from this Board in August of 2016 about when  
3 it would be appropriate to present proposed terms  
4 conditions. There was an e-mail from the Board to, I  
5 believe, Dan Kelly at Placer County Water Agency  
6 stating it would be appropriate to present these terms  
7 and conditions on rebuttal. That's why we're here.

8           Second, regarding the Sacramento River  
9 impacts, again, our understanding of the proper scope  
10 of Part 1 was to explain how this was developed, not to  
11 present an analysis of environmental effects. And in  
12 fact, the Board directed us to strike limited portions  
13 of Mr. Gohring's testimony that relate to environmental  
14 effects.

15           So as Mr. Miliband indicated, we're not trying  
16 to hide the ball. We're not trying to escape  
17 cross-examination. We're simply trying to divide an  
18 integrated proposal into two parts.

19           CO-HEARING OFFICER DODUC: All right. Thank  
20 you.

21           I have an objection from Mr. Miliband with  
22 respect to the line of questioning regarding the impacts of  
23 the proposed flows or proposed parameters. And I have -- I  
24 guess it's a motion to strike,  
25 Mr. Berliner?



1 MR. BERLINER: Well, I guess that would be the  
2 best way to characterize it.

3 CO-HEARING OFFICER DODUC: A motion to strike  
4 on the ground that this should have been presented as  
5 direct testimony instead of rebuttal.

6 MR. BERLINER: Correct.

7 CO-HEARING OFFICER DODUC: And we've gotten  
8 everyone's input. We will take that under advisement,  
9 and we will revisit and issue our ruling when we see  
10 you next Thursday.

11 MS. HEINRICH: Yes, Thursday is our next  
12 hearing date. But I'm not -- I'm sorry. I got lost.

13 What is the subject of the motion to strike  
14 exactly? Is it just Mr. Gohring's testimony? Is it  
15 his testimony in its entirety?

16 MR. BERLINER: No, his testimony goes beyond  
17 the Modified FMS. Earlier, Ms. Morris cited chapter  
18 and verse on which portions of the testimony concerned  
19 the Modified Flow Management strategy. I believe that  
20 those are the correct references.

21 MS. HEINRICH: So, again, your motion to  
22 strike is to those portions of Mr. Gohring's testimony  
23 that concern the Modified Flow Standard; is that right?

24 MR. BERLINER: Yes, there will be related  
25 testimony from Mr. Weaver, whose testimony supports

1 that. We haven't gotten to it, obviously, yet. But  
2 since we're dealing with kind of the global question,  
3 the related testimony from Mr. Weaver.

4 MS. HEINRICH: And how is your motion  
5 different from the motion that Ms. Morris made and that  
6 Hearing Officer Doduc overruled?

7 MR. BERLINER: It's a different ground for the  
8 motion. This ground is on the ground that it should  
9 have been submitted as -- essentially, it's late. This  
10 is not rebuttal testimony. This is Part 1A testimony  
11 based on the cross-examination that was elicited today.

12 MS. HEINRICH: Okay. Thank you for that  
13 clarification.

14 MR. BERLINER: Thank you.  
15 I only have four questions left. Would you  
16 like me to do them now or hold them for next week?

17 CO-HEARING OFFICER DODUC: Well, it depends on  
18 what they are. Are they yes-no?

19 MR. BERLINER: They are --

20 CO-HEARING OFFICER DODUC: Let's hold them  
21 Mr. Berliner. Thank you.

22 MR. BERLINER: They are yes-noes, but I would  
23 be happy to hold them.

24 CO-HEARING OFFICER DODUC: All right. Let's  
25 discuss logistics for next week. We have two days

1 together next week. Ah, yes, two days.

2 That was out loud, wasn't it. I love you all.

3 I expect -- Mr. O'Brien had estimated 30  
4 minutes for this group. And Ms. Morris, I believe, has  
5 estimated 30. And Group 4 has estimated 15. That  
6 might be longer now, I guess, depending on our ruling  
7 on these objections and motions.

8 So I expect we will need at least a couple of  
9 hours with this group. Do you anticipate, at this  
10 time, redirect?

11 MR. MILIBAND: If so, very briefly.

12 CO-HEARING OFFICER DODUC: Okay. So then  
13 looking at the list, Ms. Nikkel, are you up next?

14 MS. NIKKEL: Yes, we are North Delta.

15 CO-HEARING OFFICER DODUC: North Delta. And  
16 you have two witnesses. Will they be -- I should say  
17 they will be ready, at the earliest, Thursday, correct?

18 MS. NIKKEL: Yes, they will.

19 CO-HEARING OFFICER DODUC: And then  
20 Mr. Herrick has left, but when he was here, did he say  
21 something about Group 18? Does someone remember? Ah,  
22 please, come up.

23 MR. WASIEWSKI: Yes, Tim Wasiewski for the San  
24 Joaquin Tributaries Authority.

25 So we had a witness unavailability problem for

1 Thursday. Mr. Steiner's not available Thursday. So we  
2 went to arrange with Mr. Herrick's group, just in case  
3 we were to be called Thursday.

4 CO-HEARING OFFICER DODUC: Okay.

5 MR. WASIEWSKI: If we're not, if it looks like  
6 we're not going to be, then we don't need to make that  
7 arrangement since he will be -- Mr. Steiner will be  
8 available Friday.

9 CO-HEARING OFFICER DODUC: All right.

10 MR. WASIEWSKI: So I don't know if we can make  
11 that assessment now or not.

12 CO-HEARING OFFICER DODUC: I don't know that  
13 we can make that assessment now.

14 MR. WASIEWSKI: Okay. So we'll go ahead with  
15 the swap then, and we can commit to that now. And  
16 we'll send around a notice Monday morning, just  
17 indicating which groups are switching. But for the  
18 record now, we are Group 18.

19 CO-HEARING OFFICER DODUC: All right.

20 MR. WASIEWSKI: Group 5 for rebuttal purposes.  
21 And we'll be switching with Group 21, which is 7 for  
22 rebuttal purposes.

23 CO-HEARING OFFICER DODUC: So for those of you  
24 planning cross-examination, after this group is completed,  
25 we will go to Group 9 with Ms. Nikkel's two

1 witnesses.

2           Then we will go to Group 21, Central Delta  
3 Water Agency; is that correct?

4           MR. WASIEWSKI: Yes.

5           CO-HEARING OFFICER DODUC: With Tom Burke and  
6 Chip Salmon.

7           And then, after that, we will turn back to  
8 Group 18.

9           MR. WASIEWSKI:           That's fine with me. Or we  
10 can do a straight swap with them.

11           CO-HEARING OFFICER DODUC: Straight swap and  
12 go to --

13           MR. WASIEWSKI: It's up to you. I mean, so  
14 long as we're able to go Friday. That's the issue --  
15 or later.

16           CO-HEARING OFFICER DODUC: All right. We'll  
17 make sure to incorporate you somewhere in there, since  
18 we don't have Ms. Meserve here today to discuss  
19 Group 19.

20           MR. WASIEWSKI: Thank you.

21           MS. HEINRICH: Ms. Meserve did tell me  
22 yesterday that she thought that the oral summary of her  
23 witnesses' direct would take about 20 minutes and that  
24 they're available on both Thursday and Friday of next  
25 week.

1 CO-HEARING OFFICER DODUC: All right. So we  
2 have next week. We have plenty to discuss next week.

3 Any other issues?

4 MR. BEZERRA: One brief note about next week.  
5 My understanding is we have completed cross-examination  
6 of everyone except Mr. Gohring and Mr. Weaver on this  
7 panel.

8 I don't think we anticipate any redirect of  
9 Mr. Yasutake or Mr. Peifer. So I'd like to tell them  
10 they don't have to be here next Thursday.

11 CO-HEARING OFFICER DODUC: I would like to  
12 confirm that from all of those who are planning on  
13 conducting cross-examination.

14 MR. BERLINER: We have no cross of the other  
15 witnesses.

16 CO-HEARING OFFICER DODUC: Anyone else?

17 MR. O'BRIEN: Same here.

18 CO-HEARING OFFICER DODUC: Same here? All  
19 right.

20 So -- oh, Ms. Des Jardins, did I have you on 21 my  
list of cross-examination?

22 MR. DES JARDINS: No, I apologize. I was held  
23 for a minute. I could have ten minutes of  
24 cross-examination. I ask to reserve that much time.

25 CO-HEARING OFFICER DODUC: I'm sorry, but for

1 whom?

2 MS. DES JARDINS: For Mr. Gohring, I believe.

3 CO-HEARING OFFICER DODUC: But not

4 Mr. Peifer --

5 MR. BEZERRA: Mr. Peifer, Mr. Yasutake?

6 CO-HEARING OFFICER DODUC: Yes.

7 MS. DES JARDINS: I believe it's mostly for

8 Mr. Gohring. Might be for some other witnesses.

9 MR. BEZERRA: Ms. Des Jardins, do you want to  
10 ask about modeling?

11 MS. DES JARDINS: No.

12 MR. BEZERRA: Can I just ask what you do want 13 to  
ask about? I'd just like to -- prefer not to have 14  
witnesses come back for ten minutes just to be here in  
15 case.

16 MS. DES JARDINS: Okay. It would -- okay. So  
17 he wouldn't need to come back otherwise?

18 CO-HEARING OFFICER DODUC: Mr. Gohring will be  
19 back. We're talking about Mr. Peifer and Mr. Yasutake.

20 MS. DES JARDINS: Okay. I won't need them.

21 CO-HEARING OFFICER DODUC: Thank you. They  
22 are thus -- unless you have redirect for them?

23 MR. BEZERRA: I do not.

24 CO-HEARING OFFICER DODUC: Then they are thus  
25 dismissed. Thank you both very much. Thank you all.

1 We will see you -- unless there's any other  
2 housekeeping matters, we will see you on Thursday. And  
3 where will we be?

4 MR. OCHENDUSZKO: Coastal Room.

5 CO-HEARING OFFICER DODUC: In the Coastal  
6 Hearing Room at 9:30.

7 (Whereupon, the proceedings recessed  
8 at 3:55 p.m.)

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

3 I, DEBORAH FUQUA, a Certified Shorthand  
4 Reporter of the State of California, do hereby certify  
5 that the foregoing proceedings were reported by me, a  
6 disinterested person, and thereafter transcribed under  
7 my direction into typewriting and is a true and correct  
8 transcription of said proceedings.

9 I further certify that I am not of counsel or 10  
11 attorney for either or any of the parties in the  
12 foregoing proceeding and caption named, nor in any way  
13 interested in the outcome of the cause named in said  
caption.

14 Dated the 19th day of November, 2017.

15  
16 *Deborah Fuqua*  
17 DEBORAH FUQUA  
18 CSR NO. 12948

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