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BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
  
CALIFORNIA WATERFIX WATER )  
RIGHT CHANGE PETITION )  
HEARING )  
  
JOE SERNA, JR. BUILDING  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
COASTAL HEARING ROOM  
1001 I STREET  
SECOND FLOOR  
SACRAMENTO, CALIFORNIA  
  
PART 1 - REBUTTAL  
  
Friday, May 19, 2017  
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APPEARANCES

CALIFORNIA WATER RESOURCES BOARD

Division of Water Rights

Board Members Present:

Tam Doduc, Co-Hearing Officer  
Felicia Marcus, Chair & Co-Hearing Officer  
Dorene D'Adamo, Board Member

Staff Present:

Dana Heinrich, Senior Staff Attorney  
Conny Mitterhofer, Supervising Water Resource Control  
Engineer  
Kyle Ochendusko senior Water Resources Control Engineer

PART 1 - REBUTTAL

For Petitioners:

California Department of Water Resources:

Thomas M. Berliner  
Robin McGinnis

The U.S. Department of the Interior:

Amy L. Aufdemberge, Esq.

INTERESTED PARTIES:

For Central Delta Water Agency, South Delta Water Agency  
(Delta Agencies), Lafayette Ranch, Heritage Lands Inc.,  
Mark Bachetti Farms and Rudy Mussi Investments L.P.:

John Herrick, Esq.

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APPEARANCES (Continued)

INTERESTED PARTIES (Continued):

For The Environmental Justice Coalition for Water, Islands, Inc., Local Agencies of the North Delta, Bogle Vineyards/Delta Watershed Landowner Coalition, Diablo Vineyards and Brad Lange/Delta Watershed Landowner Coalition, Stillwater Orchards/Delta Watershed Landowner Coalition, Brett G. Baker:

Osha Meserve  
Jennifer Spaletta (Specially Appearing)

For San Luis & Delta-Mendota Water Authority:

Rebecca R. Akroyd

For State Water Contractors:

Stefanie Morris

For Clifton Court, L.P.:

Suzanne Womack

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

Tim O'Laughlin

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12	COALITION; STILLWATER ORCHARDS/DELTA WATERSHED LANDOWNER	
	COALITION; DANIEL WILSON; BRETT G. BAKER; SAVE OUR	
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 4 IRRIGATION DISTRICT, MODESTO IRRIGATION DISTRICT, OAKDALE  
 5 IRRIGATION DISTRICT, SOUTH SAN JOAQUIN IRRIGATION  
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 (DELTA AGENCIES), LAFAYETTE RANCH, HERITAGE LANDS INC.,  
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I N D E X (Continued)

E X H I B I T S (Continued)

SAN JOAQUIN TRIBUTARIES AUTHORITY, THE (SJTA), MERCED IRRIGATION DISTRICT, MODESTO IRRIGATION DISTRICT, OAKDALE IRRIGATION DISTRICT, SOUTH SAN JOAQUIN IRRIGATION DISTRICT, TURLOCK IRRIGATION DISTRICT, AND CITY AND COUNTY OF SAN FRANCISCO:

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1 Friday, May 19, 2017 9:30 a.m.

2 PROCEEDINGS

3 ---000---

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

8 I am Tam Doduc. To my right is Board Chair and  
9 Co-Hearing Officer Felicia Marcus. I believe we'll be  
10 joined shortly by Board Member Dee Dee D'Adamo. To my  
11 left are Dana Heinrich, Conny Mitterhofer and Kyle  
12 Ochenduszk. We are also being assisted by Mr. Hunt and  
13 Mr. Long.

14 It is Friday, so does anyone here need for me  
15 to go over the emergency evacuation instructions?

16 (Pause in proceedings.)

17 CO-HEARING OFFICER DODUC: Does anyone need for  
18 me to go over the speak into the microphone instructions?

19 (Pause in proceedings.)

20 CO-HEARING OFFICER DODUC: All right.

21 CO-HEARING OFFICER MARCUS: How about this one  
22 (holding up cell phone)?

23 CO-HEARING OFFICER DODUC: That one I never  
24 skip because there's always a violator -- Mr. Herrick --  
25 along the way.

1           Please take a moment right now and put all your  
2 noise-making devices, machinery or person, on vibrate,  
3 silent, do not disturb. Please take a moment right now  
4 and check to make sure it is that way even though you  
5 think it is.

6           All right. With that, before we continue with  
7 Mr. Herrick and his second rebuttal witness, just a quick  
8 housekeeping matter for next week. I want to just lay  
9 out the tentative schedule for all of us to keep in mind  
10 as we proceed.

11           A couple of scheduling conflict has arisen for  
12 us, as well as I heard some grumblings about requests to  
13 leave early Friday for the holiday weekend.

14           So, this is my anticipated schedule for next  
15 week:

16           On Tuesday and Wednesday, we will begin at 9:30  
17 and adjourn no later than 4 p.m.

18           On Thursday, we will begin at 1 p.m. and  
19 adjourn no later than 5 p.m.

20           On Thursday (sic), we will begin at 9:30 a.m.  
21 We will go without a lunch break but we will adjourn no  
22 later than 1 p.m. on Friday.

23           CO-HEARING OFFICER MARCUS: You said Thursday  
24 twice.

25           CO-HEARING OFFICER DODUC: I'm sorry. Did I



1 say Thursday twice?

2 CO-HEARING OFFICER MARCUS: Yeah. You meant  
3 Friday.

4 CO-HEARING OFFICER DODUC: I meant Friday.

5 Friday, start at 9:30 and go through lunch and  
6 adjourn no later than 1 p.m.

7 Thursday, begin at 1 p.m., adjourn no later  
8 than 5:00.

9 Tuesday and Wednesday, begin at 9:30 a.m. and  
10 adjourn no later than 4 p.m.

11 Any questions? Objections?

12 (Pause in proceedings.)

13 CO-HEARING OFFICER DODUC: Good. All right.  
14 Any other housekeeping matter anyone needs to raise?

15 (Pause in proceedings.)

16 CO-HEARING OFFICER DODUC: All right. At the  
17 end of today, we'll go over the list of upcoming  
18 witnesses and see if we can map out next week so that  
19 people know who to expect.

20 With that, Mr. Herrick.

21 MR. HERRICK: Thank you. John Herrick for  
22 South Delta parties.

23 Thank you, Madam Chairs, Board Member and  
24 staff.

25 This is our second witness, Mr. Chip Salmon.

1 He's already been sworn in.

2 And just as a brief intro to put things in  
3 perspective:

4 Our witness yesterday, Mr. Burke, addressed the  
5 issue of the Petitioners' case in chief regarding effects  
6 of California WaterFix on stage or water levels, and he  
7 provided the technical aspect of what the modeling may or  
8 may not show with regard to those effects.

9 And Mr. Salmon's testimony is -- is follow-on  
10 from that and also rebutting the conclusions made  
11 originally by Petitioners' witnesses that the effects of  
12 the water levels were small and would not constitute any  
13 significant impact.

14 So Mr. Salmon's testimony is with regard to  
15 that.

16 WILLIAM CHIP SALMON,  
17 called as a witnesses by the Central Delta Water  
18 Agency, South Delta Water Agency (Delta Agencies),  
19 Lafayette Ranch, Heritage Lands Inc., Mark Bachetti  
20 Farms and Rudy Mussi Investments L.P., having been  
21 duly sworn, was examined and testified as follows:

22 DIRECT EXAMINATION BY

23 MR. HERRICK: With that, Mr. Salmon, would you  
24 introduce yourself, give your full name.

25 WITNESS SALMON: My full name is William Chip

1 Salmon.

2 MR. HERRICK: And you have in front of you  
3 South Delta, et al., Exhibit Number 260; do you?

4 WITNESS SALMON: Correct.

5 MR. HERRICK: And is that a true and correct  
6 copy of your rebuttal testimony for this proceeding?

7 WITNESS SALMON: It is.

8 MR. HERRICK: Now, instead of having Mr. Salmon  
9 summarize, I just thought I'd ask him four questions and  
10 he can answer as he sees fit and then we'll be done with  
11 his case in chief -- his recitation.

12 So there's no --

13 CO-HEARING OFFICER DODUC: Before you do,  
14 though, Mr. Herrick, please confirm Mr. Salmon has taken  
15 the oath.

16 MR. HERRICK: Yes. He appeared in Part 1B as a  
17 witness also.

18 Mr. Salmon, your testimony, among other things,  
19 is meant to provide information indicating the problems  
20 currently experienced by you and others with regard to  
21 water levels or depth in the South Delta; is that  
22 correct?

23 WITNESS SALMON: That is correct.

24 MR. HERRICK: And as part of your testimony and  
25 cited in other people's testimony, there were three

1 photographs taken.

2 Do you recall that?

3 WITNESS SALMON: Yes, I do.

4 MR. HERRICK: And you did take those  
5 photographs; right?

6 WITNESS SALMON: I most certainly did, that and  
7 many more.

8 MR. HERRICK: Secondly, Mr. Salmon, your  
9 testimony confirms that irrigation for agricultural  
10 purposes in the South Delta occurs during -- or can occur  
11 during all months of the year, not just a particular  
12 season; is that correct?

13 WITNESS SALMON: Correct. Even though I'm a  
14 diversified farmer -- but even if I wasn't, that would  
15 still be the case, that the irrigation could continue  
16 throughout the year, all 12 months.

17 MR. HERRICK: And Mr. Salmon, your testimony  
18 also raises the issue that a Head of Old River Barrier,  
19 and it might exacerbate water levels downstream of it,  
20 that that would adversely affect you and others; correct?

21 WITNESS SALMON: Correct. I'm at the very  
22 front of it so, yes, I would feel the effects much sooner  
23 than anyone else.

24 MR. HERRICK: And finally, Mr. Salmon, your  
25 testimony provides evidence with regards to how even

1 small changes in water level or depth might adversely  
2 affect the diverter in the area; correct?

3 WITNESS SALMON: Correct.

4 MR. HERRICK: I think that's sufficient for a  
5 summary of his testimony, so we're ready, willing and  
6 able for any cross.

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

9 As of yesterday, I only have cross by the  
10 Department of Water Resources.

11 MS. MCGINNIS: Good morning. Robin McGinnis  
12 for Department of Water Resources.

13 We reviewed the transcript from yesterday and  
14 actually don't have any questions for Mr. Salmon.

15 CO-HEARING OFFICER DODUC: All right. Anyone  
16 else wishing to cross Mr. Salmon?

17 (Pause in proceedings.)

18 CO-HEARING OFFICER DODUC: Well, thank you for  
19 coming and bringing -- and wearing such a lovely tie.

20 WITNESS SALMON: Thank you. It's a great  
21 color.

22 CO-HEARING OFFICER DODUC: Yes.

23 MR. HERRICK: Thank you.

24 CO-HEARING OFFICER DODUC: Mr. Herrick, at this  
25 time, do you wish to move your exhibits into the record?

1 MR. HERRICK: Yes. Pardon me.

2 At this time, the exhibits that we presented  
3 for our rebuttal case are: South Delta, et al.  
4 Exhibit 257, which is the technical report prepared by  
5 Mr. Burke; South Delta Exhibit 258, which is the  
6 PowerPoint associated with his testimony and tactical  
7 report; South Delta 259, which is the written summary for  
8 Mr. Burke's testimony; and South Delta Exhibit 260, which  
9 is the chip Salmon testimony.

10 So, with that, I'd like to move those into  
11 evidence.

12 CO-HEARING OFFICER DODUC: Thank you. I don't  
13 believe there are any outstanding objections.

14 And not seeing any now, we have accepted those  
15 into the record.

16 (Central Delta Water Agency, South  
17 Delta Water Agency (Delta  
18 Agencies), Lafayette Ranch,  
19 Heritage Lands Inc., Mark Bachetti  
20 Farms and Rudy Mussi Investments  
21 L.P. Exhibits 257 through 260  
22 received in evidence)

23 CO-HEARING OFFICER DODUC: Thank you,  
24 Mr. Herrick. Thank you, Mr. Salmon. And thank you,  
25 Mr. Ruiz, who is not here, and Mr. Burke.

1 MR. HERRICK: Thank you very much.

2 (Panel excused.)

3 CO-HEARING OFFICER DODUC: Miss Meserve.

4 (Pause in proceedings.)

5 MS. MESERVE: Good morning. Osha Meserve for  
6 Land in Group 19. And sitting with me here today, I have  
7 Jennifer Spaletta, specially appearing.

8 MS. SPALETTA: Good morning.

9 CO-HEARING OFFICER DODUC: Good morning.  
10 Do you have an opening statement?

11 MS. MESERVE: No, I don't have anything  
12 opening.

13 This is in -- rebutting to the materials that  
14 were presented in DWR's case in chief.

15 I have Mr. Ringelberg back here today to  
16 discuss the figures that --

17 CO-HEARING OFFICER DODUC: Miss Meserve, please  
18 bring the microphone closer to you.

19 MS. MESERVE: Yeah.

20 -- to discuss the figures that Land is  
21 submitting with his testimony today and, in addition,  
22 Miss -- Dr. Leinfelder-Miles is here to discuss -- to  
23 rebut some of the statements in DWR's case in chief  
24 regarding the impact of salinity on plants and soils in  
25 particular.

1           So if -- if it is all right, I'll just go ahead  
2 and move into the testimony.

3           CO-HEARING OFFICER DODUC: And before you do,  
4 could you confirm for the record that both witnesses have  
5 taken the oath?

6           MS. MESERVE: Yes, they have.

7           CO-HEARING OFFICER DODUC: Thank you.

8           ERIK RINGELBERG and MICHELLE LEINFELDER-MILES,  
9 called as a witnesses by the Local Agencies of the  
10 North Delta; The Environmental Justice Coalition for  
11 Water; Islands, Inc.; Bogle Vineyards/Delta Watershed  
12 Landowner Coalition; Diablo Vineyards and Brad  
13 Lange/Delta Watershed Landowner Coalition; Stillwater  
14 Orchards/Delta Watershed Landowner Coalition; Daniel  
15 Wilson; Brett G. Baker; Save Our Sandhill Cranes; and  
16 Friends of Stone Lakes National Wildlife Refuge,  
17 having been previously duly sworn, were examined and  
18 testified as follows:

19                           DIRECT EXAMINATION BY

20           MS. MESERVE: So starting with you,  
21 Mr. Ringelberg.

22                           Is LAND-80 a true and correct copy of your  
23 testimony?

24           WITNESS RINGELBERG: Yes, it is.

25           MS. MESERVE: And are -- I'm going to list a



1 few exhibits here -- LAND-4, LAND-5, LAND-6, LAND-7,  
2 LAND-58, LAND-57 and LAND-60 true and correct copies of  
3 the figures that are being submitted with your testimony?

4 WITNESS RINGELBERG: Yes, that is correct.

5 MS. MESERVE: Mr. Ringelberg, if you could go  
6 ahead and proceed with your summary of testimony.

7 WITNESS RINGELBERG: Sure.

8 Madam Hearing Officer and -- and fellow  
9 officers, thank you very much for allowing me to speak.

10 So, the information in LAND-3, LAND-4, LAND-5,  
11 LAND-6, LAND-7, LAND-57, LAND-58 and LAND-60 is reliable  
12 and is prepared according to the normal standards of care  
13 applicable to the development of such materials.

14 MS. MESERVE: And then we will move to  
15 Dr. Leinfelder-Miles.

16 Dr. Leinfelder --

17 CO-HEARING OFFICER DODUC: Hold on,  
18 Miss Meserve. Before you do, I believe Mr. Berliner and  
19 Miss Morris --

20 MS. MORRIS: (Shaking head.) I'm just helping.

21 CO-HEARING OFFICER DODUC: Oh. Mr. Berliner  
22 has something to say.

23 MR. BERLINER: Good morning. Tom Berliner on  
24 behalf of the Department of Water Resources.

25 We have some objections to

1 Dr. Leinfelder-Miles' testimony.

2 There are -- There are two sets of objections:

3 The first set of objections refers to the  
4 references in her testimony of the water rights of  
5 various witnesses or Protestants that Land, et al., has  
6 sought to introduce into this proceeding.

7 First of all, they are not rebuttal. This was,  
8 as far as we can tell, a procedural mistake by Land  
9 regarding the submittal of evidence that they are seeking  
10 to correct by using rebuttal testimony.

11 Dr. Leinfelder-Miles refers to the protests  
12 that were filed on the basis that she used maps that are  
13 in those protests as identification of land where she may  
14 have conducted some studies.

15 As to the maps themselves, to the extent that  
16 she can establish that she actually used those maps in  
17 order to locate where she was going to conduct those  
18 studies, or that those maps are an accurate  
19 representation of exactly where she conducted those  
20 studies, we don't have an objection to the map itself.  
21 However, as to the remainder of the protest, those are  
22 irrelevant to any aspect of her testimony and we would  
23 object to those.

24 If she cannot identify why those maps were used  
25 or that she perhaps chose her locations prior to those

1 maps even being referenced in this proceeding, we object  
2 to them coming in.

3 MS. MESERVE: What is the --

4 MR. BERLINER: The second --

5 CO-HEARING OFFICER DODUC: Hold on.

6 MS. MESERVE: -- specific page number that  
7 you're referencing, and line, please?

8 MR. BERLINER: I am referring in her testimony  
9 to Page 2, commencing at Line 14 through 18.

10 CO-HEARING OFFICER DODUC: Thank you,  
11 Miss Meserve, for asking for that.

12 MR. BERLINER: These would be Land Exhibits 51,  
13 52, 54, 55.

14 MS. MESERVE: I don't see those referenced --

15 MR. BERLINER: Oh, and 53. Sorry.

16 MS. MESERVE: I'm sorry. Those aren't  
17 referenced in what you just provided.

18 MR. BERLINER: I'm sorry. What?

19 MS. MESERVE: Those -- The reference -- The  
20 Land exhibits which you've just referenced are not being  
21 submitted with this testimony, nor are they referenced on  
22 Page 2.

23 CO-HEARING OFFICER DODUC: They are not listed  
24 as Part 1 Rebuttal exhibits from Land.

25 (Pause in proceedings.)

1                   MR. BERLINER:  These would be the water rights  
2   of Bogle.

3                   Let's use it by name.  These would be the water  
4   rights of Bogle, the Diablo water rights, the L.A. and  
5   Stillwater water rights.

6                   CO-HEARING OFFICER DODUC:  Might you be  
7   referring to LAND-75, 76 and 77?

8                   MR. BERLINER:  Well, we have numbers that  
9   correspond to that, but -- I may be mistaken, but we also  
10  have other numbers that refer -- that I mentioned, the  
11  ones 51 through 55, so I'll just defer to the names  
12  rather than use exhibit numbers.

13                                   (Pause in proceedings.)

14                   MR. BERLINER:  These are the protests that were  
15  filed that they're attempting to introduce into evidence.

16                   CO-HEARING OFFICER DODUC:  So we'll refer to  
17  them for now as LAND-75, 76 and 77, because that's how  
18  they're listed.

19                   MR. BERLINER:  That'll be fine.  And I'll try  
20  to figure out, in fact, why we have different -- same  
21  names with a different set of numbers.  And I'll try to  
22  clarify that for the record.

23                   CO-HEARING OFFICER DODUC:  Please do.

24                   Any response, Miss Meserve?  Or Miss Spaletta?

25                   MS. MESERVE:  I think the problem is, we're not

1 quite clear on what the basis of the objection is.

2 He's saying that it's not relevant because she  
3 didn't rely on it? Is that the objection?

4 MR. BERLINER: There -- There's two:

5 A, this is not rebuttal testimony, and this is  
6 the rebuttal phase. It's not rebutting anything.

7 These are documents that should have been  
8 submitted as part of the case in chief, and they were  
9 not, and this is an attempt to try to clean up that  
10 mistake at this point, so it's improper.

11 And the other is, they're not relevant -- the  
12 documents in the main are not relevant to her testimony.  
13 It may be that the maps themselves are relevant, but  
14 that's yet to be established.

15 She references these rights in passing in her  
16 testimony.

17 CO-HEARING OFFICER DODUC: Miss Spaletta.

18 MS. SPALETTA: Thank you very much.

19 If you read the testimony that is being  
20 objected to, what the witness has done is say that she is  
21 rebutting the testimony of Petitioners' witnesses  
22 regarding the impact of salinity on crops as a result of  
23 the Project.

24 And in order to provide that rebuttal  
25 testimony, she has had to -- to describe some background

1 information about how she, as a professional in this  
2 field, would go about making that determination.

3 And in order to do that, she has described,  
4 specifically on Page 2, that, if she were asked to  
5 evaluate water salinity impacts, she would take the  
6 following steps:

7 The first is, she would look at the location of  
8 the diversions. And in order to describe how she would  
9 determine the location of the diversions, she has simply  
10 cited to the water right information of particular  
11 landowners who are near the locations of the new intakes.

12 So this is simply demonstratively used to show  
13 that she is as a professional would take the following  
14 steps and she's pointed to the information in the record  
15 that she would have used and is now saying that  
16 Petitioners should have used to conduct this analysis.

17 CO-HEARING OFFICER DODUC: Thank you,  
18 Miss Spaletta.

19 Any response to that that you wish us to  
20 consider, Mr. Berliner?

21 MR. BERLINER: Yes, please.

22 And, actually, I think Miss Spaletta makes a  
23 point that the research that Dr. Leinfelder-Miles was  
24 doing has nothing to do with the substance of the  
25 protests that were submitted by these growers, that she

1 would identify areas where she wanted to conduct her  
2 investigation.

3 So, to the extent that the maps in the protests  
4 might be relevant has absolutely nothing to do with the  
5 basis of the protests that are filed by these particular  
6 landowners.

7 She was conducting a -- a scientific study of  
8 salt tolerance of alfalfa --

9 WITNESS LEINFELDER-MILES: (Shaking head.)

10 MR. BERLINER: -- and was looking for various  
11 places to conduct that study.

12 It has nothing to do with, let's say, the text,  
13 if you will, of the protest. It has to do with a  
14 particular location in the Delta.

15 So, to the extent that the maps help with that  
16 particular location, that's fine. That's a usable piece  
17 of information. However, it has nothing to do with the  
18 actual protests that are being submitted by those  
19 parties.

20 CO-HEARING OFFICER DODUC: Miss Akroyd, do you  
21 wish to join in or provide any further comment?

22 MS. AKROYD: I'd like to join in. And also --  
23 On behalf of San Luis & Delta-Mendota Water Authority.

24 And I think I can offer some clarification  
25 regarding the numbering.

1 CO-HEARING OFFICER DODUC: Yes. And perhaps  
2 you might use a different microphone so you don't have to  
3 give me imaginary back pain.

4 (Laughter.)

5 MS. AKROYD: Okay. My recollection is, during  
6 the first phase, I -- the protester listed, I believe,  
7 exhibits as 50 -- whichever are the numbers Mr. Berliner  
8 said.

9 But they weren't actually submitted. They were  
10 referenced in material. I believe that I did a  
11 cross-examination during Part 1 and highlighted the fact  
12 that no evidence of the water rights was in the record.

13 They have now in these new exhibits put the  
14 protests as rebuttal exhibits, and for the reasons that  
15 Mr. Berliner has stated, I would agree that they are not  
16 actually rebuttal and shouldn't be accepted as such.

17 CO-HEARING OFFICER DODUC: All right.

18 Miss Morris, do you wish to add?

19 MS. MORRIS: Yes. I would join for the State  
20 Water Contractors and just note, in response to some of  
21 the comments made by Miss~Spaletta, that these maps  
22 protests don't actually identify where the studies that  
23 were done -- I'm not saying she's implying that, but to  
24 the extent it was applied, these maps are where  
25 landowners' properties are located and not where the



1 location of Dr. Leinfelder-Miles' studies were done.

2 CO-HEARING OFFICER DODUC: All right. Final  
3 comments before we take this under consideration?

4 Miss --

5 MS. SPALETTA: Yes.

6 CO-HEARING OFFICER DODUC: -- Spaletta.

7 MS. SPALETTA: I think it would appropriate,  
8 since the witness is here, for her to explain what that  
9 reference in her testimony meant with respect to her  
10 testimony, because it seems to be that the Petitioners  
11 are complaining that, because the Land parties filed  
12 information regarding their water rights with their  
13 protest, which is part of the Administrative Record  
14 already, that they somehow, then, had to move those into  
15 evidence in the case in chief in order for an expert  
16 witness to rely on a map, which is a very, very odd  
17 argument.

18 So, I think we should just simply allow the  
19 witness to summarize her testimony and then, on this  
20 particular point, have her explain exactly what the  
21 reference to the maps was and how it relates to what  
22 she's put in her testimony.

23 CO-HEARING OFFICER DODUC: All right.

24 MS. MESERVE: If I could just add one thing.

25 CO-HEARING OFFICER DODUC: Miss --

1 MS. MESERVE: Sorry.

2 Back to the ruling on February 21st, 2017,  
3 regarding foundation and these types of things, I believe  
4 made clear that, if evidence is helpful and reliable,  
5 that it can be submitted, and if it helps explain  
6 background.

7 And so I believe having the full protest in  
8 addition to the map, which is an attachment to it, is  
9 helpful in background to support the rebuttal testimony,  
10 which is showing that, you know, there are specific  
11 locations that could have been considered.

12 I don't think it would be necessary that  
13 there's a specific connection between this particular  
14 witness and which areas she selected to study, one of  
15 which overlaps, and all of the locations shown in the  
16 maps are discussed in the protests.

17 That is a higher bar than any other evidence  
18 has been held to thus far in the proceeding.

19 CO-HEARING OFFICER DODUC: All right. Since  
20 this seems to be a little bit more confusing than I first  
21 thought, I would like, Mr. Berliner, for the Department  
22 to submit your objection in writing by 9:30 on Monday  
23 and, Miss Meserve, Miss Spaletta, you will have till 9:30  
24 on Tuesday to provide a written response.

25 MS. MESERVE: Thank you.

1 CO-HEARING OFFICER DODUC: And you had a second  
2 objection?

3 MR. BERLINER: Yes.

4 CO-HEARING OFFICER DODUC: Let's hear it and we  
5 may add that to the written as well.

6 MR. BERLINER: You are going to. I have no  
7 doubt. This one's worse.

8 CO-HEARING OFFICER DODUC: Oh, okay. Mr. --

9 MR. BERLINER: This one is --

10 CO-HEARING OFFICER DODUC: -- Berliner --

11 MR. BERLINER: This one is a little bit more --

12 CO-HEARING OFFICER DODUC: -- give us a heads  
13 up, please.

14 MR. BERLINER: This is a little bit more  
15 complex.

16 So, in -- This concerns the report that  
17 Dr. Lein -- Leinfelder-Miles is seeking to introduce at  
18 this point as rebuttal testimony.

19 This report was actually, interestingly, not  
20 submitted by Land in their case in chief. In fact, the  
21 report -- The prior version of this report -- Actually,  
22 two prior versions of the report were submitted by the  
23 South Delta Water Agency, which is, I think, evidence in  
24 and of itself that Dr. Leinfelder-Miles was not intending  
25 to rely on that report for testimony and that Land was

1 not seeking to introduce that report as part of their  
2 case.

3           Since that time, Dr. Leinfelder-Miles has  
4 revised her report. She's added some text. We have a  
5 Kompare version of the report that we can provide to you  
6 now that shows the differences in the text.

7           And what you will see is that there is text  
8 that's added and -- for the benefit of people that would  
9 be looking at the Kompare version, as is typical in a  
10 red-line version of a document, the red-lined, or new  
11 parts, or changed parts are in red.

12           There are some tables in green. Green means in  
13 the Kompare that that was a table that was moved from one  
14 location to another but it's not new information.

15           And then there's tables that are in black,  
16 which means they're original text and were not moved or  
17 otherwise adjusted in any way.

18           What you will see is that there are no  
19 substantive changes to this report. This report is not  
20 rebuttal testimony. In my view, this is improvements to  
21 the report in terms of its language, making it a little  
22 bit fuller. Perhaps Dr. Leinfelder-Miles is going to  
23 submit this for publication somewhere and wants to make  
24 a -- upgrade the document, if you will.

25           But it is -- The changes were irrelevant to her

1 testimony. She really doesn't even discuss her report in  
2 her testimony. The report's not necessary for her to  
3 make the points in her testimony.

4 Her testimony in the direct, as well as in  
5 today's rebuttal, really doesn't refer to her report --  
6 really doesn't refer to her report and, in our view, this  
7 is just an attempt on rebuttal to get in a report that,  
8 had it been available for direct, they would have tried  
9 to get it in in direct, and it's questionable as to  
10 whether it adds anything to the case at all.

11 And on that basis, we would move that it not be  
12 admitted into evidence.

13 MR. OCHENDUSKO: Mr. Berliner, the document  
14 that was passed out, and you've been referencing the  
15 report, we're talking about LAND-79; correct?

16 MR. BERLINER: Yes, that's correct.

17 MS. MORRIS: No, that's actually incorrect.

18 What was handed out was a track change document  
19 that's not being introduced as evidence but, rather, to  
20 demonstrate the kinds of changes that were made between  
21 what has been marked and previously moved into evidence  
22 as SDWA-140, which is the Leaching Fractions Achieved in  
23 South Delta Soils under Alfalfa Culture Project Report  
24 Update August 2016 and what has been now referenced in  
25 Dr. Leinfelder-Miles' testimony as LAND-79 and is a

1 December version of that testimony.

2 State Water Contractors would like to join in  
3 this motion. And I would just again note that, looking  
4 at LAND-78, which is Dr. Leinfelder-Miles' testimony, the  
5 report is only referenced or cited in two places:

6 On Page 3 of that document, one at Line 8,  
7 which just references the Project Report and its  
8 identification, and it's solely for the purpose of,  
9 quote, describing -- well, not quote.

10 (Reading):

11 "Describe how sampling methods should vary  
12 based on drip, sprinkler, and flood irrigation  
13 programs."

14 And then, again, on Line 15, which just again  
15 says it describes the methodology for the butter --

16 (Reading):

17 ". . . Border check flood irrigated alfalfa  
18 fields, a drip irrigated vineyard, and a sprinkler  
19 irrigated pear orchard."

20 So, the point of sort of pointing to those  
21 sections is, this report has significant changes that  
22 don't have -- that don't appear to have anything to do  
23 with the citations in this report and can cause us to  
24 have to do a lot of cross-examination on other aspects of  
25 this report that have been changed. And it's an

1 inefficient use of time.

2 If -- In fact, if I'm correct that those two  
3 cites are the only point that Dr. Leinfelder-Miles is  
4 making, it should refer probably back to the other  
5 document, SDWA-140.

6 CO-HEARING OFFICER DODUC: Anyone else wish to  
7 join in on that motion which, Mr. Berliner, you will also  
8 include in your written submission due on Monday, along  
9 with the comparison document that Miss Morris just handed  
10 out.

11 Miss Spaletta.

12 MS. SPALETTA: Thank you.

13 Because you have asked for the objection to be  
14 in writing, we will respond in writing.

15 But we'll simply note here that it appears that  
16 the objection is not on a specific evidentiary ground.  
17 It's just that Petitioners think that the information is  
18 not particularly helpful to the Hearing Officers, is what  
19 I heard, but I think that's a decision the Hearing  
20 Officers can make for themselves.

21 So we will respond in writing.

22 Thank you.

23 CO-HEARING OFFICER DODUC: Thank you,

24 Miss Spaletta.

25 Mr. Berliner.

1           MR. BERLINER: Just to clarify: It's not  
2           rebuttal testimony is our objection.

3           CO-HEARING OFFICER DODUC: All right. So  
4           noted. We'll take it under advisement. We look forward  
5           to reading your written submissions, and from anyone else  
6           who wish to join in. Just keep in mind the deadline of  
7           Tuesday, 9:30.

8           All right. After all that excitement.

9           MS. MESERVE: Okay.

10          CO-HEARING OFFICER DODUC: Mr. Berliner.

11          MR. BERLINER: You wanted ours by Monday at  
12          9:30; correct?

13          CO-HEARING OFFICER DODUC: Yes. And, then,  
14          Miss Meserve, Miss Spaletta and anyone else who wish to  
15          comment will have until Tuesday, 9:30.

16          MR. BERLINER: Very good. Thank you.

17          MS. MESERVE: Thank you.

18          Shall I proceed?

19          CO-HEARING OFFICER DODUC: You should.

20          And if you, as Miss Spaletta suggested, wanted  
21          to direct Dr. Leinfelder-Miles to incorporate any of that  
22          helpful information that she might provide into her  
23          testimony today, you may want to direct her to do so as  
24          well, and we will take it under consideration.

25          MS. MESERVE: Thank you.



1           Miss -- Dr. Leinfelder-Miles, is LAND-78 a true  
2 and correct copy of your testimony?

3           WITNESS LEINFELDER-MILES: Yes, it is.

4           MS. MESERVE: And is LAND-79 a true and correct  
5 copy of your December 16th Alfalfa Project Update?

6           WITNESS MUNEVAR: Yes, it is.

7           MS. MESERVE: I haven't conferred with the  
8 witness on this particular issue.

9           But, if you wish to, do you wish to further  
10 explain the references at this time or --

11          CO-HEARING OFFICER DODUC: You do not have to  
12 since you will have an opportunity to submit it --

13          MS. MESERVE: All right.

14          CO-HEARING OFFICER DODUC: -- in writing.

15          MS. MESERVE: It's not necessary.

16          WITNESS LEINFELDER-MILES: Then I'll wait to do  
17 anything at this time.

18          MS. MESERVE: Okay.

19          CO-HEARING OFFICER DODUC: You're going to make  
20 me wait until Tuesday, then.

21          MS. MESERVE: (Laughing.)

22          Okay. That's fine.

23          If you could go ahead and proceed with your  
24 summary of testimony.

25          WITNESS LEINFELDER-MILES: Okay. Thank you.

1           My name is Michelle Leinfelder-Miles, and I'm  
2           the Delta Crops Resource Management Advisor with U.C.  
3           Cooperative Extension based in San Joaquin County and  
4           serving the five-county Delta region.

5           I've been in this position for five years, and  
6           I have 14 years of experience working in agricultural  
7           cropping systems research.

8           I received my Bachelor's in Crop Science and  
9           Management from U.C. Davis and my Master's and Ph.D. in  
10          Horticulture from Cornell University.

11          The major roles of a U.C. Cooperative Extension  
12          Farm Advisor are to conduct applied research and extend  
13          the findings of research to the local community. We are  
14          based in the counties that we serve, not on a campus.

15          My research program is directed toward crop  
16          production and soil and water resource management. I  
17          conduct Research Projects in cooperation with Delta  
18          growers on their farms in order to gain an understanding  
19          of how scientific principles apply in the field.

20          To expand our understanding of science in the  
21          field and accomplish the goal of extending new knowledge  
22          requires mutual respect and trust between the Farm  
23          Advisor and the growers.

24          The Petitioners' case in chief concluded that  
25          the proposed change would not injure legal water users in

1 the Delta and, furthermore, that submitted testimony and  
2 documents provided evidence to this.

3 In my role as Farm Advisor, I have dedicated  
4 considerable time to assessing soil salinity conditions  
5 in the Delta, because salinity has the potential to  
6 impact crop productivity and soil resource management.

7 My projects were developed in order to  
8 understand baseline salinity conditions and how  
9 irrigation water salinity and soil salinity change over  
10 time.

11 I'd like to make a correction to Mr. Berliner's  
12 statement in that my alfalfa project was not a study of  
13 crop salinity tolerance. It was to understand how soil  
14 salinity and water salinity change over time.

15 My testimony outlines the kind of research that  
16 would be required to evaluate whether water salinity is  
17 affecting soil salinity and, thus, has the potential to  
18 impact yield.

19 In a scenario where asked to evaluate how water  
20 salinity may impact soil salinity and crop yield, I would  
21 identify soil sampling locations with the following  
22 criteria in mind:

23 First, I would consider water quality. I would  
24 select locations with different water sources and then  
25 sample water as it is being applied to fields, or at

1 least from Points of Diversion onto Delta islands of  
2 interest.

3 Maps of Points of Diversion have been submitted  
4 by Protestants and those are key in helping me to  
5 understand where water is sourced from on these farms.

6 I want to emphasize the importance of sampling  
7 water as it is applied to a field and from as many  
8 irrigations as possible during the growing season in  
9 order to characterize what quality of water is available  
10 to the crop and how water quality changes over the  
11 season.

12 A witness for the Petitioners has testified  
13 that individual diversions were not considered in the  
14 assessment of how the Project may impact Delta water  
15 users; additionally, monthly or yearly averages of  
16 surface water salinity should not be used as a substitute  
17 for applied water salinity to a field.

18 I would also consider soil series, cropping  
19 patterns, and crop salinity tolerance, and irrigation  
20 systems in my evaluations.

21 For soil series, I would sample soils that are  
22 representative of large areas of the Delta. This type of  
23 information, soil series and soil characteristics, is  
24 available online, and I've cited to these web -- to the  
25 website in my written testimony.

1           Cropping patterns and crop salinity tolerance.  
2    I would select sites having typical crops for the region.  
3    Crop acreage is available from County Agricultural  
4    Commissioners' Offices, but keep in mind that these data  
5    are for the entire county and must be parsed out for the  
6    Delta.

7           Finally, I would select sites keeping the  
8    irrigation system in mind, because sampling will vary  
9    based on the wetting pattern of the irrigation system.

10           Some final thoughts on evaluating salinity in  
11   Delta agricultural systems:

12           Irrigation water carries salts and salts may  
13   accumulate in the soil at higher concentrations than what  
14   existed in the water due to evaporation and crop water  
15   uptake.

16           Salts may accumulate disproportionately in the  
17   soil and, thus, soil sampling must be thorough enough to  
18   characterize the salt distribution.

19           Now I want to characterize salinity impacts to  
20   Delta agricultural systems. I define "impacts" as  
21   decreases in crop yield or degrading of soil which  
22   requires changes in management or affects future  
23   cropping. Increases in applied water salinity may impact  
24   Delta agricultural systems in both of these ways.

25           Yields reported by County Agricultural

1 Commissioners will not accurately reflect yields for  
2 Delta -- for the Delta because crop reports aggregate  
3 data for the entire county.

4 To understand how increases in salinity have  
5 the potential to impact yield, we can observe yield  
6 potential equations, which I have submitted for alfalfa  
7 and grapes in Exhibit A.

8 I don't know if it's possible to pull up  
9 LAND-78, Exhibit A.

10 (Document displayed on screen.)

11 WITNESS LEINFELDER-MILES: So, there are two  
12 graphs here.

13 The top graph illustrates the threshold for  
14 soil salinity at which grapes would start to -- we would  
15 expect to see yield impacts to grapes. That's the top  
16 graph.

17 And what that shows is that, until a soil  
18 salinity threshold of 1.5 decisiemens per meter, we would  
19 expect to see no decreases in yield potential; hence, we  
20 would have an even yield potential at 100 percent until  
21 1.5 decisiemens per meter.

22 At that point, we would expect to see yield  
23 declines at a . . . at -- linearly decline using that  
24 equation.

25 I may have actually misspoken. I think the --

1 I apologize. The top figure is for alfalfa and the  
2 bottom one's for grapes. I can't see very well from this  
3 distance.

4 (Document enlarged.)

5 WITNESS LEINFELDER-MILES: Oh, thank you.

6 So the top one is for alfalfa. For that one,  
7 the threshold is 2.0 decisiemens per meter. Beyond 2.0,  
8 we would expect to see yield declines at roughly  
9 7 percent per increase, 1 -- 1.0 increase in EC.

10 The bottom figure represents grapes, and that  
11 would be a threshold of 1.5 and then a linear decrease of  
12 9 percent per increase of 1.0 EC.

13 While absolute tolerances such as these may  
14 vary depending on conditions, these numbers serve as a  
15 guide for understanding how salinity impacts crop yields.

16 In cross-examination, one of the Petitioners'  
17 witnesses stated that a change in water quality that is  
18 less than 5 percent is not an impact.

19 This statement flies in the face of scientific  
20 literature. Even a small change in water salinity could  
21 reduce yield if that change resulted in soil salinity  
22 that exceeded the crop tolerance threshold.

23 Additionally, if a grower must change practices  
24 to adapt to increases in water salinity in order to  
25 prevent reaching the soil salinity threshold, then the

1 cost associated with those changes is also an impact.

2 I have heard the argument that growers should  
3 grow salt-tolerant crops or plant varieties with higher  
4 salt tolerance in response to higher salinity conditions.

5 But my response to that is, the choice of what  
6 to grow is an economic decision that takes many factors  
7 into account, and plant breeding is not a substitute for  
8 soil salinity management.

9 For all of these reasons, it is inaccurate to  
10 conclude the Delta agricultural systems would not be  
11 impacted by changes in water quality that Pet -- that the  
12 Petitioners characterize as small.

13 To conclude, my applied research experiences  
14 have shown me the complexity of managing salinity in  
15 Delta agricultural systems.

16 I have outlined the kind of research that would  
17 be required to conclude no impact to Delta agricultural  
18 water users where impact could be decreases in crop yield  
19 or degradation of soil, which requires changes in  
20 management or affects future cropping.

21 The Petitioners disregarded individual  
22 diversions and assumed, quote-unquote, "small changes to  
23 water quality would not have impacts."

24 For these reasons, the analysis presented by  
25 the Petitioners is inadequate to conclude no impact to



1 Delta agricultural water users.

2 Thank you.

3 MS. MESERVE: This concludes our direct  
4 testimony.

5 CO-HEARING OFFICER DODUC: Thank you very much.

6 Let's see. As of yesterday, I had three  
7 parties wishing to conduct cross-examination of this  
8 panel: Department of Water Resources for 45 minutes;  
9 Miss Morris for about 10; and Mr. Herrick for about 20.

10 Is there anyone else wishing to conduct  
11 cross-examination?

12 (Pause in proceedings.)

13 CO-HEARING OFFICER DODUC: All right. Then  
14 we'll turn to the Department of Water Resources.

15 (Pause in proceedings.)

16 CO-HEARING OFFICER DODUC: And assuming that  
17 your 45-minute estimate is correct, we will take our  
18 morning break, Candace, at the completion of their  
19 cross-examination.

20 THE REPORTER: (Nodding head.)

21 CO-HEARING OFFICER DODUC: Oh. What does that  
22 mean? Have we not been webcasting?

23 UNIDENTIFIED SPEAKER: Right.

24 MS. MITTERHOFER: Can --

25 UNIDENTIFIED SPEAKER: Do we have to do it all

1 over again?

2 (Laughter.)

3 MR. BERLINER: We actually did hear from  
4 somebody that they couldn't --

5 CO-HEARING OFFICER DODUC: Oh, now it's on.

6 You mean that fantastic exchange of objections  
7 and responses was not aired?

8 Let's do it again.

9 MR. BERLINER: Let's not.

10 CO-HEARING OFFICER DODUC: Mr. Berliner.

11 MR. BERLINER: Are we okay to start?

12 CO-HEARING OFFICER DODUC: Yes.

13 MR. BERLINER: Thank you.

14 CO-HEARING OFFICER DODUC: Is the 45-minute  
15 estimate still somewhat good?

16 MR. BERLINER: I think so.

17 CO-HEARING OFFICER DODUC: Okay. And your  
18 topics?

19 MR. BERLINER: Essentially, I'm going to be  
20 following the -- the outline that Dr. Leinfelder-Miles  
21 just presented regarding, for instance, locations where  
22 her studies were done, salt tolerance on the crops,  
23 varieties of alfalfa, a little bit about the leaching  
24 factor and . . . root depth -- root zone and root depth.  
25 That's it.

1 CO-HEARING OFFICER DODUC: All right. Nothing  
2 for Mr. Ringelberg.

3 MR. BERLINER: No.

4 CO-HEARING OFFICER DODUC: Okay. Please  
5 proceed.

6 MR. BERLINER: Thank you.

7 Good morning. Tom Berliner on behalf of the  
8 Department of Water Resources. I'm assisted this morning  
9 by Miss Robin McGinnis, also Department of Water  
10 Resources.

11 CROSS-EXAMINATION BY

12 MR. BERLINER: Good morning,  
13 Dr. Leinfelder-Miles.

14 WITNESS LEINFELDER-MILES: Good morning.

15 MR. BERLINER: Thank you for coming today.

16 In your testimony, you indicated that, in doing  
17 your research, one of the things you have to do is find  
18 out where -- or decide where you want to conduct your  
19 research.

20 As I understand it, you looked for locations by  
21 going online and finding areas where the land is  
22 representative of water parts of the Delta.

23 Is that a correct paraphrase?

24 WITNESS LEINFELDER-MILES: I would say the soil  
25 is representative of large areas of the Delta.

1 MR. BERLINER: Okay. Thank you.

2 And once you've located these areas, how do you  
3 actually go about gaining access to the land? Do you,  
4 for example, speak to the growers, or do you just go on  
5 the land?

6 If you could just describe what you do.

7 WITNESS LEINFELDER-MILES: Yeah. I identify  
8 the soil series that were of interest to me and then,  
9 through working relationships that I've already  
10 established with the local community, I ask for  
11 permission to conduct the study of the growers.

12 MR. BERLINER: And do you call them up and say,  
13 "I'd like to come out and -- and work on your land"?

14 WITNESS LEINFELDER-MILES: Yeah.

15 MR. BERLINER: Is that a typical approach?

16 WITNESS LEINFELDER-MILES: Yeah.

17 MR. BERLINER: And you explain to them what  
18 you're going to do on the property; is that correct?

19 WITNESS LEINFELDER-MILES: Yes.

20 MR. BERLINER: And then how do you memorialize  
21 what you've done? In other words, which land you've gone  
22 on, where you conducted the study? Do you have records  
23 on that?

24 WITNESS LEINFELDER-MILES: Yes.

25 MR. BERLINER: And what do those records

1 denote? Is it -- Is it a GPS system? Or how do you  
2 indicate where you're actually conducting your analysis?

3 WITNESS LEINFELDER-MILES: Yeah. I use GPS  
4 sometimes; sometimes I just measure.

5 MR. BERLINER: And what do you measure?

6 WITNESS LEINFELDER-MILES: I measure distances.

7 MR. BERLINER: From some landmark?

8 WITNESS LEINFELDER-MILES: Um-hmm.

9 MR. BERLINER: And then you record in your  
10 records, "I was at the Jones property. I was" -- what?  
11 -- "a hundred feet from the intersection of a road and  
12 this is where I did -- did my analysis"? Is it something  
13 like that?

14 WITNESS LEINFELDER-MILES: Something like that.

15 MR. BERLINER: Okay. Great. Thank you.

16 Now, is it correct that there's research being  
17 done regarding the salt tolerance of various kinds of  
18 alfalfa?

19 WITNESS LEINFELDER-MILES: There is research  
20 that's looking at salt tolerance of alfalfa.

21 MR. BERLINER: And do you participate in that  
22 research?

23 WITNESS LEINFELDER-MILES: I'm not a  
24 participant on that project.

25 MR. BERLINER: Have you participated in the

1 past?

2 WITNESS LEINFELDER-MILES: No, I have not.

3 MR. BERLINER: Do you keep up to speed on the  
4 research that's being done?

5 WITNESS LEINFELDER-MILES: Yes, I do.

6 MR. BERLINER: And do you discuss that with  
7 farmers in the area where you work?

8 WITNESS LEINFELDER-MILES: Yes.

9 MR. BERLINER: And do those farmers sometimes  
10 change the crop they're growing, if salt is an issue, to  
11 adjust to a more salt-tolerant crop?

12 WITNESS LEINFELDER-MILES: I have described in  
13 my testimony that the choice of what crops that growers  
14 are growing is an economic decision that takes many  
15 factors into account.

16 MR. BERLINER: Okay. And economics is one.  
17 Is salt another?

18 WITNESS LEINFELDER-MILES: I would say salt is  
19 part of an economic decision. A grower has to make ends  
20 meet, and so the grower is taking into effect -- into  
21 account agronomy, soil science, irrigation, and all this  
22 goes into an economic decision of what's going to yield  
23 and . . . and make money.

24 MR. BERLINER: Okay. And as part of this  
25 consideration by -- by the farmer, if a more

1 salt-tolerant variety would produce more crop, would that  
2 be a relevant consideration?

3 MS. SPALETTA: Incomplete hypothetical.

4 MR. BERLINER: It's just one factor she  
5 identified and I'm just trying to get a better idea.

6 CO-HEARING OFFICER DODUC: Overruled.

7 WITNESS LEINFELDER-MILES: Okay. So, alfalfa  
8 varieties -- Since you've named alfalfa, let's talk about  
9 alfalfa varieties.

10 The research that has been referenced refers to  
11 alfalfa varieties that are non-dormant alfalfa varieties.  
12 These are the varieties that have been tested for salt  
13 tolerance.

14 And these varieties are not appropriate for the  
15 Delta. We do not grow non-dormant alfalfa varieties in  
16 the Delta. So, even the results of that research won't  
17 be applicable to Delta growers.

18 Secondly, alfalfa is not rotated on a yearly  
19 basis. So even if we were to learn that there are  
20 alfalfa varieties that are more salt-tolerant, it's not a  
21 decision that a grower can make quickly without losing  
22 the investment that that grower has already put into the  
23 alfalfa crop.

24 MR. BERLINER: So what variety of alfalfa are  
25 grown in the Delta?

1                   WITNESS LEINFELDER-MILES: Varieties that are  
2 non-dormant.

3                   We have dormancy scaled on a scale of 1 to 10.  
4 Generally growers in the Delta are growing non-dorm --  
5 excuse me -- dormancy -- fall dormancy 5s through 7s.

6                   The dormancies that have been tested in the  
7 San Joaquin Valley, the Southern San Joaquin Valley, have  
8 been 8s, 9s, and maybe 10s. These are considered  
9 non-dormant varieties.

10                  MR. BERLINER: And do you know what varieties  
11 were used on the lands that you studied?

12                  WITNESS LEINFELDER-MILES: I do not.

13                                 (Pause in proceedings.)

14                  WITNESS LEINFELDER-MILES: Let's also be clear  
15 that the dormancy rating is not the variety, so we're a  
16 little bit talking apples and oranges.

17                  But, to be clear, the varieties that were  
18 tested in the Southern San Joaquin Valley for salt  
19 tolerance are non-dormant varieties.

20                  MR. BERLINER: What is the range of the  
21 salinity threshold for the various alfalfa crops that are  
22 grown in the Delta?

23                  WITNESS LEINFELDER-MILES: I'm not sure I  
24 understand the question.

25                  I presented the salt tolerance for alfalfa in



1 Exhibit A. For alfalfa, we would expect to see yield  
2 declines at approximately 2.0 decisiemens per meter, and  
3 then we would expect to see a 7 percent decline in yield  
4 potential for every increase of 1 decisiemen per meter in  
5 salinity -- soil salinity.

6 MR. BERLINER: Do you know if there are growers  
7 in the south part of the Delta that plant any alfalfa  
8 varieties that have a higher salinity tolerance than 2.0  
9 decisiemens?

10 WITNESS LEINFELDER-MILES: I -- I do not know.

11 But I also know that we're not -- There is no  
12 current research looking at -- at that salt tolerance  
13 threshold. There is no current research that would  
14 change that salt tolerance threshold.

15 MR. BERLINER: Would farmers be able to figure  
16 that out for themselves?

17 WITNESS LEINFELDER-MILES: No.

18 MR. BERLINER: Not through experience?

19 WITNESS LEINFELDER-MILES: No.

20 That threshold was developed through scientific  
21 research, years of research.

22 And that's not an experiential threshold that  
23 was set. That was a scientific approach to establishing  
24 a threshold.

25 MR. BERLINER: You mentioned that -- There was

1 some testimony that -- by one of the witnesses that a  
2 5 percent increase in -- in salinity could change the  
3 crop's tolerance to -- to the -- the salt uptake; is that  
4 correct?

5 MS. SPALETTA: Misstates prior testimony.

6 MR. BERLINER: I'm not trying to --

7 CO-HEARING OFFICER DODUC: That's also not what  
8 I heard.

9 Dr. Leinfelder-Miles?

10 WITNESS LEINFELDER-MILES: What I said in my  
11 testimony is that if a change in water salinity, as small  
12 as it may be, were to result in a change in soil  
13 conditions that moved the soil salinity to be higher than  
14 the threshold, then we would expect to see yield  
15 declines.

16 MR. BERLINER: And what if it doesn't move it  
17 above the threshold?

18 WITNESS LEINFELDER-MILES: Then we wouldn't  
19 expect to see yield declines.

20 MR. BERLINER: So a -- a 5 percent increase at  
21 water quality of 1.0 to 1.05 would not, then, result in  
22 a -- in a decrease; is that correct?

23 WITNESS LEINFELDER-MILES: No, that's --

24 MS. MESERVE: Objection --

25 WITNESS LEINFELDER-MILES: -- not at all what

1 I'm saying.

2 MS. MESERVE: -- vague. And it's not clear  
3 what he's talking about now.

4 MR. BERLINER: I'm --

5 MS. MESERVE: Is it water quality or soil  
6 salinity?

7 MR. BERLINER: I'm talking about water quality.

8 WITNESS LEINFELDER-MILES: I will say again:

9 In my test -- testimony, I stated that a change  
10 in water quality, regardless of how large or small it may  
11 be, if it results in a change in soil salinity that  
12 exceeds the threshold, the salt tolerance threshold for a  
13 crop, then we would expect to see yield declines.

14 MR. BERLINER: Does the application of saltier  
15 water on a particular occasion necessarily change the  
16 soil salinity?

17 WITNESS LEINFELDER-MILES: It can.

18 MR. BERLINER: Does it?

19 WITNESS LEINFELDER-MILES: It's a hypothetical  
20 question, and so I answered hypothetically. It can.

21 (Pause in proceedings.)

22 MR. BERLINER: If I can ask you about the  
23 leaching formula.

24 Is it true that the leaching formula that you  
25 use defines the leaching fraction as the salinity of the

1 water applied at the surface of the ground divided by the  
2 soil salinity at the bottom of the root zone?

3 WITNESS LEINFELDER-MILES: The leaching  
4 fraction equation is the salinity of the water applied to  
5 the soil water salinity at the base of the root zone.

6 MR. BERLINER: So, is it fair to say that the  
7 soil salinity at the bottom of the root zone -- or I  
8 guess you could say the root zone depth -- is an  
9 important component to that formula?

10 WITNESS LEINFELDER-MILES: The base of the root  
11 zone, yes. The soil salinity at the base of the root  
12 zone is a component of that equation, yes.

13 MR. BERLINER: And by the base of the root  
14 zone, we're -- we are talking about where the roots of  
15 the plant stop growing.

16 Is that -- Is that accurate?

17 WITNESS LEINFELDER-MILES: The scientific  
18 literature would define the base of the root zone as the  
19 area of soil where the soil salinity is highest.

20 And previous research has shown that crop roots  
21 do not grow into that zone, so, yes, it would be the base  
22 of the root zone.

23 (Pause in proceedings.)

24 MR. BERLINER: Did you use the Ayers and  
25 Westcot approach in determining your leaching fraction?

1 WITNESS LEINFELDER-MILES: Yes.

2 MR. BERLINER: And did you apply their  
3 definition of root zone in -- in your work?

4 WITNESS LEINFELDER-MILES: Yes.

5 MR. BERLINER: What is the rooting depth of  
6 alfalfa? Does it vary?

7 WITNESS LEINFELDER-MILES: It can vary.

8 MR. BERLINER: And what's the range; do you  
9 know.

10 WITNESS LEINFELDER-MILES: I don't know the  
11 range. It will depend on conditions.

12 Previous research has shown that when soil  
13 salinity reaches its -- reaches its maximum -- excuse  
14 me -- that alfalfa roots are not growing into that depth.

15 And that research showed that the -- It was a  
16 study in the Imperial Valley. The soil salinity reached  
17 its maximum between 3 and 4 feet, and roots were not  
18 found below 3 feet.

19 Crops will be finding water in an area where  
20 the water is best. They won't be growing into an area of  
21 the soil where the soil is not conducive to good growth.

22 MR. BERLINER: And if there was good water,  
23 let's say, at 6 feet, might the roots go that deep?

24 WITNESS LEINFELDER-MILES: Not if water was  
25 plentiful at the -- at the surface, which, in an

1 irrigated system, water would be plentiful to establish a  
2 good root system in the top few feet.

3 (Pause in proceedings.)

4 MR. BERLINER: In the work that you were doing,  
5 did you have some fields that had leaching fractions in  
6 the 20 percent range?

7 WITNESS LEINFELDER-MILES: Yes.

8 MR. BERLINER: Were these fields restricted in  
9 rooting depth?

10 WITNESS LEINFELDER-MILES: No, I would say not.

11 MR. BERLINER: So, there can be, I take it,  
12 then, variation, depending on conditions, as to the depth  
13 of the root zone; is that right?

14 WITNESS LEINFELDER-MILES: Yes. I said that  
15 previously.

16 MR. BERLINER: Did you in your -- in your work  
17 measure the presence or absence of roots at different  
18 depths?

19 WITNESS LEINFELDER-MILES: I did not measure  
20 it, but I did not observe roots at soil levels deeper  
21 than, I don't know, 3 or 4 feet.

22 Observationally, those are the only remarks I  
23 can make. I didn't make measurements.

24 MR. BERLINER: Was there a particular reason  
25 you didn't make measurements?

1                   WITNESS LEINFELDER-MILES: Because roots can be  
2 difficult to find.

3                   MR. BERLINER: You were drilling down into the  
4 ground; correct?

5                   WITNESS LEINFELDER-MILES: Yes.

6                   MR. BERLINER: And you use an augur to do that?

7                   WITNESS LEINFELDER-MILES: Yes.

8                   MR. BERLINER: So you can't actually see down  
9 to the bottom of the hole; is that correct?

10                  WITNESS LEINFELDER-MILES: That's correct.

11                  MR. BERLINER: So, if you wanted to find root  
12 zone depth, you'd have to actually excavate; correct?

13                  WITNESS LEINFELDER-MILES: Correct.

14                  MR. BERLINER: And that would involve a much  
15 larger hole than what an augur would make; correct?

16                  WITNESS LEINFELDER-MILES: Yes.

17                  MR. BERLINER: Have you conducted that type of  
18 study?

19                  WITNESS LEINFELDER-MILES: No.

20                  Keeping in mind that I'm working with growers.  
21 I'm not on a campus. I work directly with growers. And  
22 I -- I wouldn't dare ask a grower to take an excavator to  
23 his field.

24                  MR. BERLINER: Are you aware that they do that  
25 in other places in the Central Valley?

1                   WITNESS LEINFELDER-MILES: I'm not aware of  
2 that being done on any growers' fields.

3                   MR. BERLINER: Are you aware of the almond root  
4 zone studies that are being done in the San Joaquin  
5 Valley by some of your colleagues?

6                   WITNESS LEINFELDER-MILES: I don't -- I do not  
7 work in almonds.

8                   (Pause in proceedings.)

9                   WITNESS LEINFELDER-MILES: I would point out,  
10 though, that, in an almond --

11                   MR. BERLINER: I think that --

12                   WITNESS LEINFELDER-MILES: -- orchard,  
13 there's --

14                   MR. BERLINER: I don't think there's a question  
15 pending.

16                   WITNESS LEINFELDER-MILES: Okay.

17                   CO-HEARING OFFICER DODUC: Actually, if you  
18 have something helpful to us to add . . .

19                   WITNESS LEINFELDER-MILES: I would just point  
20 out that, in an almond orchard, you can easily get  
21 tractors in between the rows of trees.

22                   So, to take an excavator into a orchard and dig  
23 a hole wouldn't probably impact the orchard that much and  
24 wouldn't have as much economic impact on a grower.

25                   But taking an excavator into an alfalfa field



1 is going to have a lot more destruction and, therefore, I  
2 haven't done that kind of research myself.

3 CO-HEARING OFFICER DODUC: But that's just an  
4 opinion, because you have not done any -- or not familiar  
5 with any studies of that happening.

6 WITNESS LEINFELDER-MILES: That's correct.

7 MR. BERLINER: In your most recent report  
8 update, you referred to a reference by Bali; is that  
9 correct?

10 WITNESS LEINFELDER-MILES: Yes.

11 MR. BERLINER: Did I pronounce that name right?

12 WITNESS LEINFELDER-MILES: Yes. But are you  
13 talking about LAND-79?

14 MR. BERLINER: Yes.

15 WITNESS LEINFELDER-MILES: Okay.

16 MR. BERLINER: And . . . as I understand it,  
17 the -- I should probably clarify for you.

18 There's no ruling yet by the Water Board on the  
19 admissibility of the . . .

20 (Coughing.)

21 Excuse me.

22 (Pause in proceedings.)

23 MR. BERLINER: There's no ruling yet on the  
24 admissibility of the study, so we have to ask a few  
25 questions that may at some point become irrelevant

1 depending on the Board's ruling.

2 MS. SPALETTA: Before we get into questions  
3 about this study, we did have DWR hand out the red-lined  
4 version and I don't believe that it has been marked as an  
5 exhibit.

6 Do you plan to refer to the red-line?

7 MR. BERLINER: No.

8 MS. SPALETTA: Okay.

9 CO-HEARING OFFICER DODUC: Hold on.

10 Miss Morris.

11 MS. MORRIS: Sorry. I'm going to ask this  
12 question and hope to be some -- to solve some efficiency.

13 I'm wondering if, instead of getting into the  
14 details again of the entirety of changes in this report  
15 that actually doesn't change the data, if the  
16 Petitioner -- Protestant's counsel would be willing to  
17 stipulate to certain -- only certain portions that are  
18 referenced in the actual testimony rather than the  
19 entirety of the report.

20 CO-HEARING OFFICER DODUC: Miss Meserve.

21 MS. MESERVE: I believe that the citations that  
22 Dr. Leinfelder-Miles has made are adequate to support the  
23 update, which was meant to be helpful to the hearing, to  
24 provide her most recent version of the report with them.

25 And I believe, in terms of the types of

1 references that we've seen hundreds of in Petitioners'  
2 submittals for rebuttal, that there's probably, you know,  
3 more reliance on this particular document than we've seen  
4 on a lot of other documents referenced.

5 So we --

6 CO-HEARING OFFICER DODUC: Commentary aside, I  
7 take that was a "no" to Miss Morris' request for  
8 stipulation.

9 MS. MESERVE: Yes.

10 CO-HEARING OFFICER DODUC: Yes, no.

11 Thank you for trying, Miss Morris.

12 With that, Mr. Berliner, please proceed with  
13 your questions.

14 MR. BERLINER: Thank you.

15 We were talking about the Bali Report,  
16 Dr. Leinfelder-Miles.

17 WITNESS LEINFELDER-MILES: Yeah.

18 MR. BERLINER: Is it correct that --

19 WITNESS LEINFELDER-MILES: And you're referring  
20 to the Bali 2001 study?

21 MR. BERLINER: Yes.

22 WITNESS LEINFELDER-MILES: Okay.

23 MR. BERLINER: So, is it accurate that they  
24 indicated that you -- you should use the 30-centimeter  
25 increment in the highest salinity concentration as the

1 depth of the root zone?

2 WITNESS LEINFELDER-MILES: No, I didn't read  
3 the paper to say that.

4 MR. BERLINER: What did you read it to say?

5 WITNESS LEINFELDER-MILES: I read the paper to  
6 say that down to 30 -- 36 inches, which would be  
7 approximately 90 centimeters, would be the depth of the  
8 root zone.

9 MR. BERLINER: In your view, does the  
10 recommendation by Bali differ from the recommendation by  
11 Ayers and Westcot?

12 WITNESS LEINFELDER-MILES: I -- I don't know  
13 what recommendation you're referring to.

14 MR. BERLINER: The use of the -- Well, you  
15 don't agree with my characterization, so I'll -- I'll  
16 just move on.

17 WITNESS LEINFELDER-MILES: I don't know either  
18 to be providing specific recommendations.

19 MR. BERLINER: So how did you calculate the --  
20 How did you calculate the leaching fraction?

21 WITNESS LEINFELDER-MILES: I specified that I  
22 calculated the leaching fraction as the electrical  
23 conductivity of the applied water divided by the  
24 electrical conductivity of the soil water.

25 (Pause in proceedings.)

1                   MR. BERLINER: Does salinity change at  
2 different depths?

3                   WITNESS LEINFELDER-MILES: Yes.

4                   MR. BERLINER: So it's not a static situation?  
5 As you go deeper or higher, it might change?

6                   WITNESS LEINFELDER-MILES: Yes. And I've  
7 illustrated that in Figure 2 of my report, which has not  
8 changed among the different versions.

9                   MR. BERLINER: I take it you're aware that this  
10 was a very wet year?

11                   WITNESS LEINFELDER-MILES: Yes.

12                   MR. BERLINER: Would that affect the depth of  
13 the salinity?

14                   WITNESS LEINFELDER-MILES: It could.

15                   MR. BERLINER: And might it affect the salinity  
16 concentration?

17                   WITNESS LEINFELDER-MILES: It -- It could  
18 affect the salt concentration, yes.

19                                   (Pause in proceedings.)

20                   MR. BERLINER: If you'd give me just a minute,  
21 I . . . am getting near . . . to the end.

22                   I want to go back to the application of  
23 irrigation water and soil salinity.

24                   Is there any rule of thumb as to the change in  
25 soil salinity in response to the application of the

1 irrigation water?

2 WITNESS LEINFELDER-MILES: No, there's no rule  
3 of thumb, because it will vary depending on conditions.

4 MR. BERLINER: When you -- When one applies the  
5 irrigation water, does that change the soil salinity  
6 immediately?

7 WITNESS LEINFELDER-MILES: Well, it's a plot --  
8 You're -- You are adding salts immediately with the  
9 irrigation water and so, yes, it would have an immediate  
10 effect on the soil salinity.

11 MR. BERLINER: And that could be either  
12 increase the soil salinity or decrease the soil salinity;  
13 correct?

14 WITNESS LEINFELDER-MILES: If the water had  
15 some level of salts, then it would be increasing the  
16 salinity.

17 MR. BERLINER: And when you're -- when you're  
18 leaching the soil, the idea is to apply a volume of water  
19 with less salt in it; correct?

20 WITNESS LEINFELDER-MILES: No, that's not  
21 correct.

22 When you're leaching the soil, you are applying  
23 water in excess of crop evapotranspiration.

24 MR. BERLINER: Such that the excess water,  
25 then, would leach the soil; correct.

1                   WITNESS LEINFELDER-MILES:  Such that the excess  
2  soil (sic) would go below the base of the root zone and  
3  reach the salts.

4                   MR. BERLINER:  The excess --

5                   MS. SPALETTA:  When you --

6                   MR. BERLINER:  -- water --

7                   MS. SPALETTA:  -- said "excess soil," did you  
8  mean "excess water"?

9                   WITNESS LEINFELDER-MILES:  Yes.  Thank you.

10                  MR. BERLINER:  Thank you.

11                                   (Pause in proceedings.)

12                  MR. BERLINER:  We were discussing some protests  
13  earlier.  I had made an objection to the submittal of  
14  some evidence, and I identified some landowners who had  
15  submitted protests in this case.

16                                   Do you recall that exchange that we had -- Or  
17  not that you and I had earlier, but that I had with the  
18  Board?

19                  WITNESS LEINFELDER-MILES:  Regarding maps.

20                  MR. BERLINER:  Correct.  And -- And protests  
21  that were submitted by -- by some landowners.

22                  WITNESS LEINFELDER-MILES:  I recall that there  
23  was an exchange.  I'm not familiar with the protests of  
24  the landowners, with the specific language.

25                  MR. BERLINER:  So you didn't rely on those

1 protests in order to choose your locations . . . for your  
2 work?

3 WITNESS LEINFELDER-MILES: What work are we  
4 speaking about?

5 MR. BERLINER: The soy -- The -- The soil  
6 examinations, the examinations of root zones that you  
7 conducted.

8 WITNESS LEINFELDER-MILES: Which project?

9 MR. BERLINER: The project that you reported in  
10 your testimony and in your report.

11 WITNESS LEINFELDER-MILES: In my report, that  
12 was a -- that was a project done in the South Delta.

13 Those exhibits, those maps, represent Points of  
14 Diversion in the North Delta, so they have no  
15 relationship to the project in the alfalfa -- the alfalfa  
16 project.

17 MR. BERLINER: And what relationship do they  
18 have to your testimony?

19 WITNESS LEINFELDER-MILES: They relate to the  
20 testimony because, in a situation where asked to evaluate  
21 how a change in surface water quality may change soil  
22 salinity, I would be interested in the Points of  
23 Diversion of water onto an island so that I would know --  
24 get a frame of reference for what that water quality  
25 might be.



1           Using that information, I would then go on to  
2     sample the water as it's being applied to the field.

3           MR. BERLINER:   Okay.   Thank you.   That's  
4     helpful.

5           How did you come to modify your report?   I  
6     understand there's three different versions of it.

7           WITNESS LEINFELDER-MILES:   I updated  
8     references.   I cited other studies in more detail.

9           As part of a scientific paper, we would be  
10    showing our results and then referencing other studies  
11    that may have had similar results or differing results.

12           We would use that scientific understanding from  
13    previous studies to explain what we found or otherwise  
14    come to conclusions on the project that we've done.

15           MR. BERLINER:   Will this report be published;  
16    do you know?

17           WITNESS LEINFELDER-MILES:   Yes, eventually.

18           Do you mean -- Do you mean peer reviewed?

19           MR. BERLINER:   Yes.

20           WITNESS LEINFELDER-MILES:   Yeah.   It will  
21    eventually be peer reviewed and published.

22           MR. BERLINER:   Are you planning to do another  
23    revision of this report?

24           WITNESS LEINFELDER-MILES:   I will continue to  
25    revise this report even until peer reviewers have given

1 me further provisions, further changes that they  
2 recommend. Until it is in -- in a journal, it will  
3 continue to be reviewed.

4 (Pause in proceedings.)

5 WITNESS LEINFELDER-MILES: The data, however,  
6 will not change. I will be adding more data. I will be  
7 using precipitation data to further look at these sites.

8 Mr. Berliner brought up precipitation, so, yes,  
9 I will be looking at precipitation, and that has always  
10 been stated as an objective of the report, in all three  
11 versions of the report that's been submitted.

12 MR. BERLINER: Thank you.

13 I have no further questions.

14 CO-HEARING OFFICER DODUC: Does that conclude  
15 DWR's cross-examination of this witness --

16 MR. BERLINER: Yes.

17 CO-HEARING OFFICER DODUC: -- or the panel?

18 MR. BERLINER: Yes, it does.

19 CO-HEARING OFFICER DODUC: All right.

20 MR. BERLINER: Thank you.

21 CO-HEARING OFFICER DODUC: Miss Morris.

22 I promised you a break. Since Miss Morris is  
23 only estimating 10 minutes, we'll power through.

24 THE REPORTER: (Nodding head.)

25 ///

1 CROSS-EXAMINATION BY

2 MS. MORRIS: Good morning. Stefanie Morris,  
3 State Water Contractors. I just have a few questions for  
4 you, Dr. Leinfelder-Miles.

5 And I apologize. I hope you will tolerate my  
6 ignorant questions, but I will do my best to try to  
7 understand this difficult area.

8 I did want to ask a couple followup questions.

9 Earlier this morning, there was discussion  
10 about your testimony, LAND-78 on Page 2, and the location  
11 of certain maps in the protests.

12 And there was a comment by Miss Meserve that  
13 there were overlapping in your areas of study to some of  
14 the areas identified in your testimony on Page 2.

15 And I was wondering if you could please tell me  
16 which map and exhibit those are that was included in your  
17 study, and what study it was.

18 WITNESS LEINFELDER-MILES: I'm -- I'm afraid I  
19 don't understand the question.

20 MS. MORRIS: Okay. I'll break it into two  
21 parts.

22 Do you recall the conversation that we had  
23 earlier this morning, and Miss Meserve stated that some  
24 of the land that was looked at in one of your studies  
25 that was presented in your testimony was overlapping with

1 some of the land that was -- that has been indicated and  
2 relied upon you on the maps on Page 2 of your testimony?

3 Do you recall that?

4 WITNESS LEINFELDER-MILES: I recall that there  
5 was a conversation being had.

6 MS. MORRIS: So, you don't recall --

7 WITNESS LEINFELDER-MILES: I was not a  
8 participant in the conversation.

9 CO-HEARING OFFICER DODUC: Miss Morris, instead  
10 of -- instead of trying to paraphrase what you believe  
11 Miss Meserve said, I suggest you just ask her a question.

12 MS. MORRIS: I'll try again. Let's do it this  
13 way.

14 The land that you looked at in any of your  
15 studies that you relied on in your reports that have  
16 presented -- been presented here, are any of those lands  
17 also lands that are Protestants' lands that you have  
18 identified in your testimony on Page 2 of LAND-78? Are  
19 any of them the same?

20 MS. SPALETTA: It may be helpful -- This is  
21 Jennifer Spaletta.

22 It may be helpful to actually put the maps up  
23 from those exhibits so that the witness can at least look  
24 at the maps and understand the locations that we're  
25 talking about instead of going from memory.

1 CO-HEARING OFFICER DODUC: Let's do that.

2 Miss Morris, if you would help us --

3 MS. MORRIS: Line --

4 CO-HEARING OFFICER DODUC: -- out with exhibit  
5 number.

6 MS. MORRIS: Sure. LAND-75, LAND-76, LAND-77.

7 (Document displayed on screen.)

8 MS. MORRIS: Just scroll down to the  
9 application.

10 (Scrolling down document.)

11 MS. MORRIS: For the record --

12 I'm sorry. Is this Land 75 that you've pulled  
13 up, Mr. Hunt?

14 (Scrolling up to top of document.)

15 MS. MORRIS: Land 76. Thank you.

16 CO-HEARING OFFICER DODUC: So why don't we just  
17 tackle them one at a time.

18 MS. MORRIS: Sure. It might take me a little  
19 more than 10 minutes but I'll do this as fast as I can.

20 CO-HEARING OFFICER DODUC: That's fine.

21 Anything to frustrate Mr. O'Laughlin further is  
22 fine with me.

23 (Laughter.)

24 MS. MORRIS: Okay.

25 WITNESS LEINFELDER-MILES: Would you please

1 scroll out so we can see the entire map?

2 (Scrolling to page view.)

3 MS. MORRIS: So we're looking at the map in  
4 LAND -- I'm sorry -- LAND-76.

5 Was this -- Was any of the property identified  
6 with these Diversion Points part of your study?

7 WITNESS LEINFELDER-MILES: Yes.

8 MS. MORRIS: And which lands were those?

9 WITNESS LEINFELDER-MILES: My previous study  
10 was indicated in my case in chief testimony.

11 MS. MORRIS: Yeah, but there's no maps. We  
12 asked you about this in details, so I can't really go  
13 into it again, but . . .

14 You didn't identify the properties that you  
15 studied or the locations of the sample sites on those  
16 properties; did you?

17 WITNESS LEINFELDER-MILES: Yes, I did.

18 MS. MORRIS: You located by GPS the location of  
19 the sample sites --

20 WITNESS LEINFELDER-MILES: I submitted --

21 MS. MORRIS: -- that you --

22 WITNESS LEINFELDER-MILES: -- a Google -- a  
23 Google Earth image of the sampling sites.

24 MS. MESERVE: Objection: Vague.

25 Can you please state, Ms. Morris, what study

1 you're talking about?

2 MS. MORRIS: I'm referring to any of the  
3 studies. There's been several that she's testified about  
4 in her report.

5 I'm just trying to identify where -- where  
6 it -- Could you just point me, then, to what exhibit in  
7 your previous testimony you identified the location of  
8 your studies and the sample locations in the fields.

9 WITNESS LEINFELDER-MILES: II-18.

10 MS. MORRIS: Could you please pull that up,  
11 Mr. Hunt?

12 (Document displayed on screen.)

13 MS. MORRIS: Okay. And could you point -- Are  
14 the stars the location of the sampling site?

15 WITNESS LEINFELDER-MILES: Yes.

16 MS. MORRIS: But there's no GPS location;  
17 right? I mean, you -- This is just a map. You haven't  
18 provided the GPS data for that.

19 WITNESS LEINFELDER-MILES: No, I have not  
20 provided the GPS data for that.

21 MS. MORRIS: But you do have that information.

22 WITNESS LEINFELDER-MILES: I do not have GPS  
23 identification for these sites, no.

24 MS. MORRIS: Okay. Let me go back.

25 Earlier in your testimony, you --

1                   WITNESS LEINFELDER-MILES: Mr. Berliner was  
2 asking me about the alfalfa study and that's what I had  
3 GPS location for.

4                   MS. MORRIS: Okay. I'm asking about either the  
5 alfalfa study or the pear study. You have both in your  
6 testimony.

7                   So, you -- you said you had GPS data for the  
8 alfalfa sites, then, and you have not provided that data.

9                   WITNESS LEINFELDER-MILES: That's correct.

10                  MS. MORRIS: And it's not part of your report.

11                  WITNESS LEINFELDER-MILES: That is correct.

12                  MS. MORRIS: For the pear studies, what are --  
13 what are the basis, then, if you don't have GPS data, of  
14 the locations of these stars?

15                  WITNESS LEINFELDER-MILES: Measurements.

16                  MS. MORRIS: And you have not provided that  
17 data in your report, either.

18                  WITNESS LEINFELDER-MILES: That's not data.  
19 Those are measurements. Those are measurements to  
20 indicate --

21                  MS. MORRIS: I apologize.

22                  WITNESS LEINFELDER-MILES: -- where I --

23                  MS. MORRIS: Let me --

24                  CO-HEARING OFFICER DODUC: Hold on.

25                  MS. MORRIS: -- rephrase the question.



1           You have not provided -- And I'm a lawyer so I  
2 confuse inches. The other day, I did something. I  
3 called inches "feet" and I -- it was an accident just  
4 because I don't think that well mathematically, which is  
5 probably why I'm a lawyer.

6           So, I apologize for saying "data." I consider  
7 that part of the information in your study.

8           So have you provided the measurements of those  
9 survey locations -- or sampling locations in your report  
10 or any of your testimony?

11           WITNESS LEINFELDER-MILES: I described the  
12 sampling procedures in my written testimony in the case  
13 in chief.

14           MS. MORRIS: But have not provided the  
15 measurements for where those sampling locations are;  
16 correct?

17           WITNESS LEINFELDER-MILES: No, I have not,  
18 because in the pear study, I explicitly stated that it  
19 was a random sampling in that pear orchard.

20           So, I took samples randomly throughout the  
21 orchard -- Which, I will point out, a prerequisite for an  
22 experiment is to randomly sample, not to sample  
23 specifically and then --

24           MS. MORRIS: I don't have --

25           WITNESS LEINFELDER-MILES: -- denote that --

1 MS. MORRIS: -- any --

2 WITNESS LEINFELDER-MILES: -- specific sample.

3 MS. MORRIS: -- any issue with -- I'm just  
4 trying to identify and understand where I can find that  
5 information and why it hasn't been provided.

6 So, I have no further questions at this point  
7 in time.

8 CO-HEARING OFFICER DODUC: Thank you,  
9 Miss Morris.

10 Mr. Herrick.

11 MS. MORRIS: Can I just -- For the record, I do  
12 want to just again, pending -- Pending the ruling, I do  
13 believe that there's significant new information in this  
14 report, LAND-79, that has -- you know, hasn't been  
15 provided.

16 And I want to reserve the right that I think I  
17 have to do surrebuttal, and it would be likely extensive  
18 surrebuttal because it hasn't been explained very well  
19 what -- the new addition and why it was provided in her  
20 testimony.

21 CO-HEARING OFFICER DODUC: So noted.

22 Mr. Herrick, do you still wish to conduct  
23 cross-examination?

24 MR. HERRICK: Yes, but it won't be 20 minutes.  
25 It will be four minutes.

1 CO-HEARING OFFICER DODUC: All right. Let's go  
2 ahead and bring you up.

3 Again, we will take a very long break before we  
4 get to Mr. O'Laughlin.

5 (Laughter.)

6 MR. HERRICK: John Herrick for South Delta  
7 parties. I just have two or three questions for  
8 Dr. Leinfelder-Miles.

9 CROSS-EXAMINATION BY

10 MR. HERRICK: My first question, Doctor, is --  
11 is a hypothetical, and so please follow through with me.

12 And the hypothetical is: Somebody proposes a  
13 project. That project needs regulatory approval. One of  
14 the criteria for regulatory approval is, I'll just say,  
15 no injury.

16 We're not going to use that as a legal term,  
17 but no harm to other water users.

18 And as evidence of no harm, the -- those  
19 project proponents present a bar chart that has the  
20 monthly averages for 16 years' data presented so that you  
21 have the EC average of the water quality in the channels,  
22 and that's the evidence for whether or not there's harm  
23 to agricultural water users from the project.

24 Does that allow any sort of scientific  
25 conclusion as to whether or not the project's potential

1 changes adversely affect agricultural water users?

2 WITNESS LEINFELDER-MILES: That sort of data  
3 would not give me any solace that there would be no  
4 injury to water users.

5 And, as stated in my rebuttal testimony,  
6 monthly averages are -- in a channel are meaningless. We  
7 have to know what's being applied to the field.

8 MR. HERRICK: And that was my next question.

9 The data with regard to the channel water --  
10 Which is the applied water for the ag.

11 The data to the channel water tells you nothing  
12 about the effects to the -- of the soil salinity of the  
13 crop, or the agricultural land; is that correct?

14 WITNESS LEINFELDER-MILES: That is correct.

15 MR. HERRICK: Moving on to -- You were asked a  
16 question with regard to -- Or you mentioned in your  
17 testimony that there are these other varieties of alfalfa  
18 that may be salt -- more salt tolerant than some others;  
19 correct?

20 WITNESS LEINFELDER-MILES: Yes.

21 MR. HERRICK: Is there any accepted science  
22 that indicates your threshold chart or graph for alfalfa  
23 is any different between salt-sensitive crops and regular  
24 non-salt-sensitive crops, I'll say?

25 WITNESS LEINFELDER-MILES: No.

1                   MR. HERRICK: And, lastly, you were asked about  
2 wet years and -- and the soil salinity might change if  
3 it's a wet year, there's heavy rainfalls.

4                   Do you remember that?

5                   WITNESS LEINFELDER-MILES: Yes.

6                   MR. HERRICK: In the Delta, a wet year might  
7 add water to the surface. It might provide leaching.  
8 But is it possible that that high flow year would also  
9 push salt up from the lower ground -- lower in the  
10 groundwater back into the root zone?

11                   WITNESS LEINFELDER-MILES: Yeah, it -- it  
12 could. There could be a redistribution of salt in the  
13 root zone.

14                   MR. HERRICK: So it's not just as simple as  
15 saying, "Well, it was a wet year so now there's no salt  
16 problem"; correct?

17                   WITNESS LEINFELDER-MILES: Oh, correct.

18                   I would also point out that, you know, we're  
19 using "wet year" relatively.

20                   I've looked at the amount of precipitation that  
21 we had in the Delta. We have new CIMIS stations in the  
22 Delta.

23                   That CIMIS -- The CIMIS station that I looked  
24 at, the Holt CIMIT station (sic) -- CIMIS station said  
25 that we had roughly 18 inches. There was some missing

1 data so I pieced together some data from another CIMIS  
2 station that was nearby, so anywhere from 18 to 20 inches  
3 this last year.

4 The . . . While it would be nice to think that  
5 this year has solved all of our problems, I would argue  
6 that this year was an anomaly and that, you know, even  
7 the Hoffman Report has 50-some-odd years of precipitation  
8 data, and the average of that precipitation over those 50  
9 years was roughly 10 inches.

10 So, having 20 inches of rain this year doesn't  
11 solve our salinity problem when the average over the  
12 years has been roughly 10.

13 MR. HERRICK: And, lastly, South Delta was  
14 integral in getting those new CIMIS stations approved for  
15 the locations; right?

16 Never mind.

17 (Laughter.)

18 MR. HERRICK: I have no further questions.

19 CO-HEARING OFFICER DODUC: Move to strike.

20 MS. MESERVE: That always happens when he comes  
21 up.

22 CO-HEARING OFFICER DODUC: Right. Any  
23 redirect?

24 MS. MESERVE: No.

25 CO-HEARING OFFICER DODUC: All right.

1 (Panel excused.)

2 CO-HEARING OFFICER DODUC: At this time, would  
3 you like to move your exhibits into the record even  
4 though we will not be ruling on that because we're still  
5 awaiting the objections and responses.

6 MS. MESERVE: Yes, I would. Would you like me  
7 to list them?

8 CO-HEARING OFFICER DODUC: Yes, please.

9 MS. MESERVE: Okay. So I would move LAND-3,  
10 -4, -5, -6, -7, -57, -58, -60, -75, -76, -77, -78, -79  
11 and -80 into the record subject to the ruling by the  
12 Hearing Officers on the objections.

13 CO-HEARING OFFICER DODUC: Thank you.

14 But at this time, I'm also closing the window  
15 to any further objections with respect to your exhibits.

16 With that, we will take a break and we will  
17 return at 11:15 to Group Number 18, for their rebuttal,  
18 which I don't believe will take us too long. So if the  
19 court reporter is okay, we'll go through this and make a  
20 lunch -- Well, we probably won't take a lunch break  
21 because we'll probably be adjourning after this.

22 THE REPORTER: (Nodding head.)

23 CO-HEARING OFFICER DODUC: And, so, after  
24 Group 18 present their rebuttal and any cross-examination  
25 and redirect therefor, I'd like to also discuss next

1 week's schedule in terms of the parties that might be up  
2 and the anticipated cross-examination because there is a  
3 possibility that we might actually be done next week.

4 And Miss Womack, actually, I see that you're  
5 here.

6 MS. WOMACK: Yes.

7 CO-HEARING OFFICER DODUC: Would you like to  
8 present your rebuttal today? It's up to you.

9 MS. WOMACK: I don't think I'm quite ready.

10 CO-HEARING OFFICER DODUC: All right.

11 MS. WOMACK: Would I be able to go Tuesday or  
12 Wednesday? Is that what it's looking like?

13 CO-HEARING OFFICER DODUC: Are you requesting  
14 to go --

15 MS. WOMACK: Tuesday or Wednesday?

16 CO-HEARING OFFICER DODUC: Is there any  
17 objection? Miss Womack's is --

18 MS. WOMACK: Wednesday's fine.

19 CO-HEARING OFFICER DODUC: -- fairly short.

20 Okay. We'll get to you as soon as we can on  
21 Tuesday or Wednesday.

22 MS. WOMACK: Okay. Wednesday is fine. I don't  
23 have to be early. I just -- I can't do Thursday or  
24 Friday.

25 CO-HEARING OFFICER DODUC: Got it.



1                   Okay. With that, we'll take our break and  
2 we'll see you at 11:15.

3                   (Recess taken at 11:00 a.m.)

4                   (Proceedings resumed at 11:15 a.m.)

5                   CO-HEARING OFFICER DODUC: All right. It is  
6 11:15. We are back in session for the much-anticipated  
7 rebuttal testimony from Group 18.

8                   MR. O'LAUGHLIN: Good morning. Tim O'Laughlin  
9 representing San Joaquin Tributaries Authority.

10                  I told you during the break that Mr. Steiner  
11 has not taken the oath so we should get that done first.

12                  CO-HEARING OFFICER DODUC: Please stand and  
13 raise your right hand.

14                                 DANIEL B. STEINER,  
15 called as witness for the San Joaquin Tributaries  
16 Authority, the (SJTA), Merced Irrigation District,  
17 Modesto Irrigation District, Oakdale Irrigation District,  
18 South San Joaquin Irrigation District, Turlock Irrigation  
19 District, and City and County of San Francisco:, having  
20 been first duly sworn, was examined and testified as  
21 follows:

22                  CO-HEARING OFFICER DODUC: Thank you.

23                                 OPENING STATEMENT BY

24                  MR. O'LAUGHLIN: My short opening statement is  
25 this:

1 Modeling results and actually what occurs in  
2 reality are two different things.

3 And what we want to have in the record moving  
4 forward is what the compliance has been with D-1641 in  
5 regards to San Joaquin River flows, because that's going  
6 to play into our arguments about the basis for the Board  
7 being able to set appropriate Delta flow criteria at a  
8 later point in time in regards to the WaterFix.

9 So this rebuttal testimony is very narrow in  
10 scope.

11 DIRECT EXAMINATION BY

12 MR. O'LAUGHLIN: Mr. Steiner --

13 CO-HEARING OFFICER DODUC: Before you begin,  
14 Mr. O'Laughlin.

15 MR. O'LAUGHLIN: Sure.

16 CO-HEARING OFFICER DODUC: Miss Aufdemberge.

17 MS. AUFDEMBERGE: Yes. Amy Aufdemberge with  
18 the Department of the Interior.

19 We have an objection to this testimony based on  
20 two grounds: Relevance; and also being improper  
21 rebuttal.

22 Mr. Steiner's rebuttal testimony states that it  
23 is intended to rebut DWR witness John -- Mr. John  
24 Leahigh's testimony regarding the State Water Project and  
25 Central Valley Project successful record of compliance

1 with water quality objectives in the Bay-Delta.

2 Mr. Steiner's rebuttal solely -- is solely  
3 focused on ground flow objectives under Table 3 of  
4 D-1641.

5 Mr. Leahigh's testimony, however, makes clear  
6 that he has focused on realtime State Water Project/CVP  
7 Ops to meet Tables 1 and 2 of D-1641. That's from  
8 Mr. Leahigh's case in chief testimony in DWR-61, Page 6,  
9 Line 4 through 6.

10 Tables 1 and 2 . . . of D-1641 encompass water  
11 quality objectives for agricultural and municipal and  
12 industrial uses.

13 To the extent Mr. Leahigh discusses flow and  
14 operational objectives, his testimony was concerned only  
15 with the key objectives affecting the joint operations of  
16 State Water Project and CVP facilities which does not  
17 include water quality or flow, operational objectives at  
18 Vernalis.

19 This was made clear in Mr. Leahigh's  
20 presentation of results and DWR-401 and 402, which did  
21 not show exceedance charts for any Vernalis objective, as  
22 well as Mr. Leahigh during presentation of his direct  
23 testimony and cross-examination.

24 In fact, during cross-examination,  
25 Mr. O'Laughlin asked Mr. Milligan if Mr. Leahigh had

1 asked him to do a chart of compliance at Vernalis, to  
2 which Mr. Milligan simply responded "No."

3 Therefore, Mr. O'Laughlin has already  
4 established that Mr. Leahigh's testimony regarding the  
5 successful record of compliance does not include  
6 Vernalis, and Mr. Steiner's testimony is fully  
7 duplicative and a waste of time.

8 To the extent that Mr. O'Laughlin is attempting  
9 to make a larger point about the volume of water at  
10 Vernalis, we note that the San Joaquin Tributary  
11 Authority did not present any evidence for a case in  
12 chief and is prohibited from now attempting to submit  
13 case in chief testimony during this rebuttal phase.

14 In addition, to address more clearly the  
15 relevance objection, Miss Kristin White on behalf of  
16 Bureau of Reclamation testified at least in three  
17 different occasions that the San Joaquin River inflows  
18 were modeled exactly the same between the No-Action and  
19 with Cal WaterFix.

20 CO-HEARING OFFICER DODUC: Before you respond,  
21 Mr. O'Laughlin.

22 Miss McGinnis.

23 MS. MCGINNIS: Robin McGinnis for California  
24 Department of Water Resources.

25 DWR joins in the objection.

1 CO-HEARING OFFICER DODUC: Now Mr. O'Laughlin.

2 MR. O'LAUGHLIN: Tim O'Laughlin, San Joaquin  
3 Tributaries Authority.

4 Well, this is all fascinating because  
5 basically, in the testimony that was presented -- and if  
6 you want, I'll do a whole written response to this -- the  
7 SWP and the CVP operate in a Coordinated Operation  
8 Agreement.

9 This Petition is being done jointly under a  
10 Coordinated Operation Agreement that has an OCAP BO that  
11 is going to be part of a Coordinated Operation Agreement  
12 specifically tied to this Project.

13 New Melones is part of the CVP. As you've  
14 heard many times before in these proceedings, the CVP is  
15 operated as an integrated system.

16 So, in regards to what water is appearing in  
17 the Delta at what time and at what location and what  
18 place, it is very relevant to this proceeding to  
19 understand what those flows are.

20 And the point that I'm trying to make here in  
21 regards to both Mr. Leahigh's testimony and the testimony  
22 of the CVP, Ms. White, if you noticed, the wording was  
23 very specific. It said that they modeled it under the  
24 No-Action Alternative, as is the same as the California  
25 WaterFix as the Proposed Project.

1           Our point is this: The No-Action Alternative  
2           that they modeled is not a No-Action Alternative because  
3           it doesn't represent reality.

4           Reality is that D-1641 has not been met since  
5           1995 and is currently not being met and will not be met  
6           moving forward.

7           And when you look at that equation about how  
8           much water is or isn't appearing in the Delta under  
9           D-1641 changes the inflow into the Delta and the outflow  
10          to the Delta, which changes all the other parameters in  
11          the Delta.

12          So, our point is this: If you don't have the  
13          right numbers in -- in the git-go, then your modeling --  
14          modeling assumptions are incorrect and, therefore, your  
15          model differentials or your deltas are incorrect. So,  
16          that's the point that's being made.

17          And it's entirely relevant because, at some  
18          point in time, this Board is going to have to set  
19          appropriate Delta flow criteria.

20          And as part of the proceedings, what's been put  
21          forward so far by DWR -- So DWR says, basically, "We're  
22          DWR. We don't have any facilities in the San Joaquin, so  
23          we're taking a hall pass and we'll let Reclamation do the  
24          modeling that they're going to do, put it in our model,  
25          and we'll go with it."

1           Well, the problem is, is if Reclamation puts  
2 the wrong numbers in, then -- then you have the wrong  
3 numbers.

4           And not only that, based on that, we're all  
5 assuming that D-1641 is being met when you, in fact, have  
6 a letter from Mr. Woodley that says, specifically, that  
7 they haven't met it and they won't meet it.

8           So, just to clear up the record: For our  
9 case -- And it may not be relevant to her case but it  
10 certainly is relevant to our case to show that you don't  
11 have a basis upon which to move forward.

12           CO-HEARING OFFICER DODUC: Miss Aufdemberge.

13           MS. AUFDEMBERGE: Two things.

14           I think Mr. O'Laughlin just made my case that  
15 his case is basically not rebuttal but is a case in chief  
16 and, specifically, it does not -- he hasn't tightened it  
17 up -- made the connection between this Phase I, which is  
18 to -- is for recog -- determining impacts to other legal  
19 users of water, not the Delta outflow issue.

20           And the purpose of raising the base case in our  
21 modeling, the No-Action versus the Cal WaterFix modeling,  
22 is to show that, irrespective of how San Joaquin was  
23 modeled, if it was modeled the same, that's -- in both  
24 scenarios, then we're isolating the impacts of the  
25 Cal WaterFix.

1                   There's no new operation in San Joaquin caused  
2 by the Cal WaterFix.

3                   MR. O'LAUGHLIN: But -- But that's my -- my  
4 point. If you modeled it wrong under the No-Action or  
5 under Cal WaterFix, I -- I understand that you've  
6 isolated the problem.

7                   But the problem for you, as you sit here as the  
8 determiners of fact, is going to be, let's say  
9 hypothetically, there's 50,000 acre-feet less water  
10 coming in under the No-Action Alternative than what --  
11 what we think.

12                   They say, "We're meeting D-1641." It's not  
13 being met. And, then, all of a sudden, you're  
14 50,000 acre-feet.

15                   Well, that changes what the South Delta looks  
16 like; that changes what salinity looks like; and that  
17 changes what outflow looks like.

18                   And then the other point about this is -- I  
19 know we have not made this point directly, because -- in  
20 a case in chief, because our understanding was, the  
21 parties had to go forward first with putting on an  
22 affirmative case.

23                   We had hoped that DWR and Reclamation could  
24 actually model what was actually occurring in the real  
25 world. They didn't -- They decided not to do that. Not



1 my problem; their problem.

2 And, then, finally, the last point on the  
3 injury to legal users of water, this -- this does go to  
4 injuries to legal users of water.

5 Because how Reclamation operates New Melones in  
6 regards to the modeling and the flows that are being made  
7 at Vernalis directly impacts the amount of storage in New  
8 Melones, and that is available for -- not only for the  
9 CVP contractors but for my clients in the South San  
10 Joaquin who may take water from that, or from my other  
11 SJTA clients who have -- might have to make up the  
12 difference under an appropriate Delta flow criteria.

13 So, if there is a Delta shortfall that's  
14 occurring in the modeling, that -- and you set -- let's  
15 say, D-1641 is the appropriate Delta flow criteria and  
16 it's not showing up, well, where are we going to get the  
17 water from?

18 CO-HEARING OFFICER DODUC: All right. Enough.

19 Final comment, Miss Aufdemberge, or final  
20 response, before I open it up to others.

21 MS. AUFDEMBERGE: Well, I'd just like to say  
22 that the problem is, a lot of that is not supported by  
23 evidence and there's no case in chief to -- for him to  
24 base a lot of that argument on.

25 Thank you.

1 CO-HEARING OFFICER DODUC: Mr. Herrick.

2 MR. HERRICK: Thank you. John Herrick for  
3 South Delta parties.

4 First of all, I believe Mr. Laughlin's (sic)  
5 point is correct, that if the base case doesn't have the  
6 proper information, whether or not the analyses both have  
7 the problem in them, they're not giving us reliable  
8 information.

9 But the issue in rebuttal, I think, is clear.  
10 Mr. Leahigh -- Leahigh's testimony absolutely touched  
11 upon compliance with South Delta salinity standards.

12 He chose not to include one of the four South  
13 Delta salinity standards. That doesn't -- In my view,  
14 that doesn't make that untouchable for rebuttal. That's  
15 just something for somebody to point out that he lacked a  
16 complete analysis and to put on the proper information.

17 The third thing is, as Mr. O'Laughlin touched  
18 upon, the notion that the modeling or operations might be  
19 meeting the standard, and that's what we're assuming will  
20 happen -- standards, whatever -- if the -- if it's not  
21 being done, that's perfectly relevant and rebuttal to  
22 their statements because we don't know what's going to  
23 happen to other things when they do meet it, don't meet  
24 it, where they -- how they meet it. This is directly  
25 relevant to me.

1 Thank you.

2 CO-HEARING OFFICER DODUC: Thank you.

3 Mr. Jackson, and then Miss Meserve.

4 MR. JACKSON: CalSPA rises to support  
5 Mr. O'Laughlin and his argument.

6 It is very clear, from the use of the models in  
7 a comparative mode, that if the . . . if . . . you are --  
8 in -- you are comparing the Cal Fix alternative with an  
9 inadequate NAA that doesn't reflect what's actually  
10 happening, it is relevant to the testimony of all of the  
11 witnesses that have found no injury.

12 The . . . It's also relevant to the fact that  
13 you are a responsible agency and, at some point, will be  
14 receiving a -- an environmental document that may not  
15 cover your responsibility, which is the finding of no  
16 injury.

17 The allegations made by can each and every  
18 witness, it seems like, from DWR and the Bureau are that  
19 you can rely in a determination on injury of the use of  
20 the models in a comparative sense to find no injury in a  
21 circumstance in which we are not allowed to put on the  
22 evidence that the original NAA is incorrect.

23 And so this is the only way we can get to it in  
24 this hearing.

25 CO-HEARING OFFICER DODUC: Miss Meserve.

1 MS. MESERVE: I -- Osha Meserve for Land.

2 And I support the -- the submittal of this  
3 particular rebuttal testimony. And, in particular, just  
4 looking at DWR-61, it discusses the Vernalis standard and  
5 South Delta salinity standards on Pages 8 through 11, and  
6 I don't see why we would unduly narrow the discussion at  
7 this juncture.

8 CO-HEARING OFFICER DODUC: All right.

9 Miss McGinnis? Miss Aufdemberge?

10 MS. MCGINNIS: I just wanted to respond to a  
11 couple of the arguments made just now by Mr. Herrick,  
12 Mr. Jackson and Ms. Meserve.

13 They stated that, you know, there was  
14 information missing from Mr. Leahigh's testimony that  
15 San Joaquin Trib is now going to put on. And I wanted to  
16 bring the Hearing Officers' attention to some citations  
17 that I think are appropriate.

18 Rebuttal is not the proper place for presenting  
19 new arguments, which is R&O Construction Company versus  
20 Rox Pro International Group, Ltd. The citation is 2011  
21 Westlaw 2923703.

22 And a defense witness whose purpose is to  
23 contradict an expected and anticipated portion of the  
24 Plaintiff's case in chief can never be considered a  
25 rebuttal witness or anything analogous to one. And that

1 is in Morgan vs. Commercial Union Assurance Company, 606  
2 F. 2d 554.

3 CO-HEARING OFFICER DODUC: Miss Aufdemberge,  
4 final short comment.

5 MS. AUFDEMBERGE: I just want to be clear that  
6 at no time have we testified that the modeling is  
7 inappropriate or not correct; that the issue is that the  
8 model includes the base flows for Vernalis and then,  
9 instead, of the pulse flow, it's Table -- it's 2E from  
10 the Biological Opinion, and then it returns to the base  
11 flow. The issue is that the pulse flow from -- on the  
12 San Joaquin is not fully implemented.

13 While these folks will talk about compliance,  
14 our issue is that there's no wet water behind the  
15 standard, and that's the issue we have on San Joaquin.

16 CO-HEARING OFFICER DODUC: Enough.

17 No, Mr. O'Laughlin.

18 MR. O'LAUGHLIN: No, I'm not adding anything.

19 CO-HEARING OFFICER DODUC: You may not add  
20 anything else.

21 Thank you all for that input.

22 I do, however, find that this testimony is  
23 relevant and is proper, so I am overruling your  
24 objections, Miss Aufdemberge.

25 Now, Mr. O'Laughlin, you may continue.

1 MR. O'LAUGHLIN: Yes.

2 Mr. Steiner, we've attached as SJTA Exhibit 102  
3 a resumé from you.

4 Is that a true and correct copy of your resumé?

5 WITNESS STEINER: Yes, it is.

6 MR. O'LAUGHLIN: Thank you.

7 And we've also attached as Exhibit 101 and  
8 SJTA-103 a -- your rebuttal testimony and a diagram  
9 called Table 1. SJTA-103 is "Table 1: D1641 Vernalis  
10 Flow Requirement and Recorded Flows."

11 Are those true and correct copies of your  
12 testimony?

13 WITNESS STEINER: Yes, they are.

14 MR. O'LAUGHLIN: Can you -- and I emphasize  
15 this word -- briefly summarize your testimony.

16 WITNESS STEINER: Yes, I can.

17 MR. O'LAUGHLIN: Thank you.

18 WITNESS STEINER: I was requested to review the  
19 historical operations and records of the San Joaquin  
20 River in -- in light of the D-1641 flow requirements,  
21 which I was a part of helping develop all the way back to  
22 the Bay-Delta Accord, et cetera.

23 The -- What you have in front of you in terms  
24 of Exhibit 103 is an accounting and an illustration of  
25 the historical operation that occurred at Vernalis since

1 19 -- since 2003 through 2016. It is multicolumn there.

2 And what I've done is try to present the -- my  
3 estimate of what the compliance with D-1641 flow  
4 requirement would have been, or is, or was, February  
5 through June of that historical period, along with, next  
6 door to it, presenting to you what the actual flows  
7 recorded by USGS were at Vernalis.

8 And, in a sense, to give you a little color  
9 coding there. Anytime you see the -- the -- the magenta  
10 type of highlight, you're seeing a month, an instance  
11 within a year, what I consider the operation to be out of  
12 compliance with D-1641.

13 There is a period, 2003 and 2009, during the  
14 April-May pulse flow period where I've highlighted it  
15 separately. That was because, by D-1641 in that day, we  
16 were operating to the VAMP requirements rather than the  
17 stated numbers of Table 3 in D-1641 for April and May.

18 MR. O'LAUGHLIN: And during the time period  
19 from 2003 until 2009, they operated pursuant to -- to  
20 meet the VAMP pulse flows; is that correct?

21 WITNESS STEINER: That's correct, during the  
22 April-May period.

23 MR. O'LAUGHLIN: And the -- And just so we're  
24 clear, 2003 through 2009, the VAMP pulse flows may have  
25 been different than the D-1641 April-to-May pulse flow

1 requirements; right?

2 THE WITNESS: That would be correct.

3 MR. O'LAUGHLIN: Thank you. That's all.

4 CO-HEARING OFFICER DODUC: Thank you.

5 As of yesterday, I have cross-examination being  
6 requested by Mr. Herrick, Mr. Jackson with a caveat that  
7 he may not need it depending on how well Mr. Herrick  
8 does, and Miss Meserve.

9 Does anyone else wish to conduct  
10 cross-examination?

11 (Pause in proceedings.)

12 CO-HEARING OFFICER DODUC: All right.

13 Mr. Herrick.

14 MR. HERRICK: Thank you.

15 John Herrick for South Delta parties.

16 I just have one or two questions, really, since  
17 this didn't -- Anyway . . .

18 CROSS-EXAMINATION BY

19 MR. HERRICK: Mr. Steiner, thank you for being  
20 here.

21 Your testimony notes that the compliance  
22 success of the State and Federal Projects for D-1641 did  
23 not include exceedances during times of Temporary Urgency  
24 Permit approvals; correct?

25 WITNESS STEINER: Correct.



1           MR. HERRICK: And so whether or not those are  
2 technically a violation, that would indicate that the  
3 water quality at a certain place was not in compliance  
4 with -- was not at the level that D-1641 numbers specify;  
5 correct?

6           MR. O'LAUGHLIN: Well --

7           MR. HERRICK: I'm sorry.

8           Whether or not operations under Temporary  
9 Urgency Change Petition constitute a violation, it's  
10 still -- your testimony is that there were still times  
11 when the water quality was a level that was not specified  
12 in D-1641; correct?

13           MR. O'LAUGHLIN: Just real quick, John, so  
14 we're clear about this.

15           His testimony is solely related to flow and not  
16 to quality. If you're equating flow -- quality which may  
17 be EC, I just want to make sure you get your right  
18 question.

19           MR. HERRICK: That's correct. Thank you for  
20 that.

21           So my question deals with flow, not quality.

22           WITNESS STEINER: And what my analysis did was  
23 purely compare, as though it were the requirements under  
24 D-1641 in terms of flow at Vernalis, regardless if  
25 there's an overriding consideration and they operated to

1 a different standard.

2 MR. HERRICK: And depending upon the flow at  
3 Vernalis, other water quality parameters may be affected  
4 downstream; correct?

5 WITNESS STEINER: Depending on the flow at  
6 Vernalis, correct that would affect downstream water  
7 quality.

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

10 CO-HEARING OFFICER DODUC: Thank you,  
11 Mr. Herrick.

12 Mr. Jackson.

13 MR. HERRICK: Michael Jackson on behalf of CSPA  
14 parties.

15 CROSS-EXAMINATION BY

16 MR. JACKSON: Mr. Steiner, in your examination  
17 of the flow compliance -- or the flow at Vernalis in  
18 comparison to D-1641, did you . . . take into -- take  
19 into account -- Or did you compare that to what the DWR  
20 and the Bureau say would be the . . . the comparison with  
21 the California WaterFix Project?

22 Did you compare likely flows under -- if the  
23 Project is approved at Vernalis?

24 WITNESS STEINER: I believe what the proponents  
25 are doing are offering modeling results regarding what

1 the flows would be at Vernalis with or without --

2 MR. JACKSON: Yes.

3 WITNESS STEINER: -- CWF.

4 MR. JACKSON: Yes.

5 WITNESS STEINER: Then I guess -- Could you ask  
6 your question again?

7 MR. JACKSON: Did you make a comparison of what  
8 the likely flow regime would be at Vernalis with the CWF  
9 in place?

10 WITNESS STEINER: I have not made that  
11 analysis.

12 MR. JACKSON: Thank you.

13 CO-HEARING OFFICER DODUC: Miss Meserve, any  
14 questions?

15 MS. MESERVE: No questions.

16 CO-HEARING OFFICER DODUC: Any redirect,  
17 Mr. O'Laughlin?

18 MR. O'LAUGHLIN: None.

19 (Panel excused.)

20 CO-HEARING OFFICER DODUC: At this time, do you  
21 wish to move your exhibits in?

22 MR. JACKSON: Yes. I'd like to move in SG --  
23 SJTA-101, -102 and -103, please.

24 CO-HEARING OFFICER DODUC: All right. With no  
25 outstanding objections, those exhibits are accepted in

1 the record.

2 MR. JACKSON: Thank you very much.

3 (San Joaquin Tributaries Authority,

4 the (SJTA), Merced Irrigation

5 District, Modesto Irrigation

6 District, Oakdale Irrigation

7 District, South San Joaquin

8 Irrigation District, Turlock

9 Irrigation District, and City and

10 County of San Francisco Exhibits

11 101, 102 & 103 received in

12 evidence)

13 CO-HEARING OFFICER DODUC: Before we adjourn,

14 let's discuss next week.

15 We have Dr. Paulsen up first representing

16 Groups 22 and 27, with the City of Stockton and Antioch.

17 What is the estimated cross-examination for

18 Dr. Paulsen?

19 MR. BERLINER: One hour.

20 CO-HEARING OFFICER DODUC: DWR, one hour.

21 Anyone else?

22 MR. JACKSON: Maybe 20 minutes. South Delta.

23 MS. MESERVE: 20 minutes, SJTA.

24 CO-HEARING OFFICER DODUC: Miss Meserve?

25 MR. JACKSON: 10 minutes.

1 CO-HEARING OFFICER DODUC: 10 minutes from  
2 Miss Meserve.

3 Okay.

4 MS. MORRIS: Maybe five minutes.

5 CO-HEARING OFFICER DODUC: Five minutes from  
6 Miss Morris.

7 So we'll say two hours for Dr. Paulsen.

8 Then we will get to the joint 19, 24 and 31,  
9 Mr. Naka -- never mind -- and Mr. Del Piero.

10 Cross-examination for that group? Estimate,  
11 please?

12 MS. MCGINNIS: 20 minutes for DWR.

13 CO-HEARING OFFICER DODUC: DWR for 20.

14 MS. MORRIS: 10 possibly.

15 CO-HEARING OFFICER DODUC: 10 for State Water  
16 Contractors.

17 MS. MESERVE: 10 for the authorities as well.

18 CO-HEARING OFFICER DODUC: Okay. Anyone else?

19 MR. JACKSON: Five or 10 minutes perhaps, South  
20 Delta.

21 CO-HEARING OFFICER DODUC: Okay. So that's --  
22 We'll just make that round up to an hour. So that's --  
23 So that is roughly three hours.

24 And then Group 37, Miss Des Jardins is not  
25 here.

1           Group 37 is Dr. Tom Williams and  
2 Miss Des Jardins.

3           Anticipated cross?

4           MS. MCGINNIS: 20 minutes.

5           CO-HEARING OFFICER DODUC: Okay. Anyone else?

6           Then Number 40 is Mr. Porgans. Anticipated  
7 cross for Mr. Porgans.

8           MS. MCGINNIS: None pouring pouring two hours.

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

10          MS. MESERVE: No time.

11          CO-HEARING OFFICER DODUC: Okay. No cross.

12          Then we have Miss Suard, Group 41.

13          Cross-examination?

14          MS. MCGINNIS: 10 minutes.

15          MS. MORRIS: 10.

16          CO-HEARING OFFICER DODUC: All right. And then  
17 we have Miss Womack, Group 43.

18          Cross?

19          MS. MCGINNIS: No.

20          CO-HEARING OFFICER DODUC: None.

21          People, it looks like we might be done next  
22 week. In that case -- Anything else? Mr. Jackson. Are  
23 you going to make another commentary about --

24          MR. JACKSON: No, no, no, no. That didn't  
25 work.

1 CO-HEARING OFFICER DODUC: Okay.

2 MR. JACKSON: The -- I don't know how many  
3 years I'm going to regret that.

4 MR. JACKSON: TPHA\*EUPBLG might.

5 MR. JACKSON: I'm just trying to replace you.  
6 The -- the question that I have now is about  
7 surrebuttal. Is this the time to ask it?

8 CO-HEARING OFFICER DODUC: We are still  
9 considering the request that Miss Meserve, I guess,  
10 initiated that I believe at the time Mr. Berliner either  
11 joined in or did not object to the idea of having some  
12 time between the end of rebuttal and the beginning of  
13 surrebuttal.

14 We are considering it. We'll be discussing it  
15 and letting you know next week. So if you have anything  
16 you wish to have for our consideration, now would be the  
17 time.

18 MR. JACKSON: Okay. The dates of the 30th and  
19 you canceled the 31st. Thank you very much for doing  
20 that.

21 I just wanted to make sure that I can be gone  
22 on the 30th if we're going to go on that date.

23 CO-HEARING OFFICER DODUC: Actually, that's an  
24 excellent point given that I believe we will -- Well, we  
25 will be done next week, I don't think the 30th would be

1 an issue. But since we have canceled the 31st and May 29  
2 is a holiday, I'm looking to my Co-Hearing Officer here,  
3 but I propose we also at this point cancel the May 30th  
4 hearing date. If for whatever reason we do not finish  
5 next week, then we would reconvene on June 1st.

6 Would that be okay with you?

7 CO-HEARING OFFICER MARCUS: Yeah.

8 CO-HEARING OFFICER DODUC: Mr. Jackson, you've  
9 just earned, I think, everyone's gratitude for that  
10 request.

11 MR. JACKSON: Thank you.

12 CO-HEARING OFFICER DODUC: So let me --

13 MR. JACKSON: I'm going home now.

14 CO-HEARING OFFICER DODUC: Yes. Leave while  
15 you're ahead.

16 We are canceling the Tuesday, May 30th WaterFix  
17 hearing date. 9696.

18 CO-HEARING OFFICER DODUC: Ness Nikkel. 9696  
19 Meredith Nikkel.

20 CO-HEARING OFFICER DODUC: I don't think you  
21 can top what Mr. Jackson did 9696 probably not but I'm  
22 going to try, anyway. I'm here today on before and after  
23 of the entire Group 7, San Joaquin water group. I know I  
24 change my hat just to make that clear.

25 CO-HEARING OFFICER MARCUS: Keeps us on our



1 toes 9696 that's right. And we did want to make a  
2 request on the issue of surrebuttal.

3 CO-HEARING OFFICER DODUC: Okay. 9696 as we  
4 saw, the Petitioners' surrebuttal was quite technical in  
5 nature and --

6 CO-HEARING OFFICER DODUC: I'm sorry,  
7 Petitioners' surrebuttal.

8 MR. JACKSON: Rebuttal.

9 CO-HEARING OFFICER DODUC: Yes.

10 MR. JACKSON: To which surrebuttal would be  
11 responding.

12 CO-HEARING OFFICER DODUC: Wow. You did  
13 surrebuttal?

14 MR. JACKSON: No. Thank you. The rebuttal. I  
15 wish.

16 So we wanted to request that -- and join  
17 Miss Meserve's request that there be an opportunity to  
18 submit written surrebuttal evidence prior to the hearing  
19 on that surrebuttal evidence and we would also --

20 CO-HEARING OFFICER DODUC: So, sorry, let me  
21 make sure we understand. You are requesting that  
22 staggered deadline. You meant to be able to respond  
23 to -- No, wait. That's --

24 MR. JACKSON: I actually have some dates for  
25 you, so let me try to outline it.

1           What we're requesting that is that on -- the  
2 parties be afforded the opportunity to simultaneously  
3 submit written surrebuttal on June 22nd.

4           CO-HEARING OFFICER DODUC: All parties.

5           MR. JACKSON: All parties.

6           CO-HEARING OFFICER DODUC: Okay.

7           MR. JACKSON: And that the hearing to orally  
8 present that written surrebuttal testimony would commence  
9 on July 11th. And we think that in light of the highly  
10 technical nature of some of the operations and  
11 rebuttal -- sorry -- modeling rebuttal testimony that was  
12 offered by Petitioners, that we expect our surrebuttal  
13 evidence to also be highly technical, which would be best  
14 presented in writing so that folks can have an  
15 opportunity to review it and avoid surprises during the  
16 oral hearing.

17           We also think that allowing the additional time  
18 and giving parties' the opportunity to put some thought  
19 into preparing that would clarify some of the technical  
20 issues that were presented in rebuttal.

21           CO-HEARING OFFICER DODUC: All right. Any  
22 comments, objections, concerning that request? Any  
23 concurrence? I see concurrence from the Department.

24           MR. BERLINER: No, not concurrence. Objection.

25           CO-HEARING OFFICER DODUC: Objection. Okay. I

1 thought that was too good to be true.

2 Miss Meserve.

3 MR. JACKSON: Good morning. Just to add a  
4 little bit more detail to the -- what we've just heard,  
5 just -- I did look -- Basically I'm predicting it will  
6 take about 14 days by the time we finish to have gotten  
7 through this part of the hearing, the rebuttal, so I  
8 don't think that, you know, surrebuttal shouldn't take  
9 any more than that. I think it should take less, I would  
10 think. And we have about 27 hearing dates left.

11 See in general, I agree with what Ms. Nikkel  
12 has proposed in terms of having a date certain.

13 And then I believe we would still be able to  
14 finish early. I heard, in a conference with Petitioners,  
15 that, you know, folks were interested in seeing if a  
16 certain portion of the summer might be freed.

17 But, you know, my concern is having the space  
18 after the conclusion of rebuttal to work on preparing the  
19 testimony.

20 As to whether the testimony is written or not,  
21 I actually had clarified in my discussion when I was up  
22 there and Mr. Berliner was there, that I don't  
23 necessarily have a request to submit written surrebuttal.  
24 That wasn't necessarily part of my request.

25 I do think that at the very least written

1 supporting references may be necessary and appropriate,  
2 but I don't have an opinion as to whether the testimony  
3 itself should be in writing.

4 So, in general, I support the guidelines  
5 provided -- the timeline provided by Miss Nikkel,  
6 although I was going to suggest mid-June in order to  
7 leave more cushion on the back end to make sure that we  
8 could finish with surrebuttal.

9 CO-HEARING OFFICER DODUC: All right.  
10 Miss Taber.

11 MS. MESERVE: Thank you. Kelley Taber for the  
12 City of Stockton.

13 CO-HEARING OFFICER DODUC: Is the microom?

14 MS. MESERVE: It's green.

15 Kelley Taber for the City of Stockton.

16 The city strongly supports the request both for  
17 some period of time between the conclusion of rebuttal  
18 and the presentation of surrebuttal testimony and the  
19 opportunity to present surrebuttal testimony in writing.

20 Stockton is in a somewhat unique situation  
21 because extensive written rebuttal testimony was  
22 submitted, including multiple Expert Reports that relate  
23 to the issues that Stockton has raised that weren't  
24 raised in the Petitioners' case in chief. And due  
25 process really requires that Stockton have an opportunity

1 to respond appropriately to that extensive technical  
2 information. And it would be very difficult to do so  
3 verbally without the benefit of a written report.

4 So we would support -- and the timing that's  
5 been proposed by Sac Valley Water Users would be  
6 acceptable to the city as well but, most importantly, we  
7 think that some interval between the conclusion next week  
8 of this and the deadline for written surrebuttal is  
9 necessary and appropriate, so . . . thank you.

10 CO-HEARING OFFICER DODUC: Miss Womack.

11 MS. WOMACK: This is on surrebuttal. I'm --  
12 for Mr. Oceandust . . .

13 MR. OCHENDUSZKO: Ochenduszko.

14 MR. JACKSON: I'd like to have my father attend  
15 the hearing so are we thinking Tuesday wait or Wednesday.

16 CO-HEARING OFFICER DODUC: You're not talking  
17 about surrebuttal. Your rebuttal.

18 MR. JACKSON: No. Sorry. Just about my  
19 rebuttal.

20 As far as a --

21 CO-HEARING OFFICER DODUC: I'll tell you what,  
22 since we have Dr. Paulsen wrapping up in about two hours,  
23 let me say that we'll get to you Tuesday afternoon.

24 MR. JACKSON: Tuesday afternoon, okay. Great.  
25 Okay. So if we could have -- thank you so much.

1 CO-HEARING OFFICER DODUC: Unless there's any  
2 objections. All right.

3 Oh, hold on.

4 MS. MESERVE: Just to clarify: Are you  
5 suggesting that Miss Womack's case in -- or rebuttal  
6 would go prior to Group 31's?

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

8 MR. JACKSON: I believe that would be  
9 acceptable. I'm just trying to fend for out-of-town  
10 witnesses.

11 CO-HEARING OFFICER DODUC: My estimate for  
12 Dr. Paulsen was about 2 -- 9:30.

13 How much time do you need, Ms. Womack, since  
14 there's no cross-examination.

15 MR. JACKSON: 15 minutes.

16 CO-HEARING OFFICER DODUC: 15 minutes?

17 MR. JACKSON: 20?

18 CO-HEARING OFFICER DODUC: You know what? In  
19 that case, we actually --

20 MR. JACKSON: Right before lunch.

21 CO-HEARING OFFICER DODUC: I'm sorry?

22 MR. JACKSON: Right before lunch?

23 CO-HEARING OFFICER DODUC: Right before lunch,  
24 yes.

25 MR. JACKSON: Awesome. And that's -- that's

1 great for my dad.

2 CO-HEARING OFFICER DODUC: Okay.

3 MR. JACKSON: Thanks.

4 CO-HEARING OFFICER DODUC: If that works out,  
5 we'll do Dr. Paulsen, we will do Miss Womack, and we will  
6 get to Group 19, 24 and 31.

7 All right. Now we get to DWR.

8 MR. BERLINER: Just a word of caution on the  
9 Dr. Paulsen, because there might be redirect and then  
10 recross, so before you pick a time certain for  
11 Ms. Womack, we might want to leave a little fudge room in  
12 there.

13 CO-HEARING OFFICER DODUC: If necessary,  
14 we'll -- 10, 15 minutes for Miss Womack in between the  
15 direct and redirect.

16 MR. BERLINER: That would be great, yeah.

17 CO-HEARING OFFICER DODUC: Yeah.

18 MR. BERLINER: That's totally fine with us.

19 Tom Berliner on behalf of Department of Water  
20 Resources.

21 We are concerned about such a long break. The  
22 parties have had a month. There's no surprises as to  
23 what's coming in. We have very little testimony to go.  
24 There'll be some very technical testimony by Dr. Paulsen  
25 next week, so we have everybody's testimony in advance.

1 The parties could be working on their surrebuttal right  
2 now. I know we are. There's no reason why the others  
3 shouldn't be and I suspect that they are. So to then  
4 give another month is essentially a two-month extension,  
5 which seems excessive.

6 We would propose a more -- a shorter break than  
7 that. And in that regard, we do agree that it would be  
8 useful to have a simultaneous exchange of something in  
9 writing but to go to the length of actual written  
10 testimony, we were thinking, is kind of burdensome and if  
11 the parties were going to do PowerPoint which seems to be  
12 kind of the norm, or even if not PowerPoint, we have some  
13 graphics or whatever to support their testimony, that  
14 they would just submit that and that would be sufficient  
15 so that we would know the nature of what the testimony is  
16 rather than going to extensive formatted written  
17 testimony which seems to be a bit much. After all, as  
18 one of the parties noted, this is surrebuttal, so the  
19 breadth of this is much narrower, it should be much more  
20 on target with -- with very specific issues as we've been  
21 narrowing and narrowing through each phase.

22 Given that we're going to have a pretty short  
23 remainder to this part, our thought is that there's no  
24 reason why we wouldn't be ready to go on June 8th and --

25 CO-HEARING OFFICER DODUC: By that, you mean



1 the presentation of surrebuttal.

2 MR. BERLINER: Correct.

3 MS. MCGINNIS: So if --

4 MR. BERLINER: We would propose an exchange of  
5 power plants or whatever the parties choose to exchange.  
6 I mean, if they want to do written, that's fine, that's  
7 up to them. They can certainly do more. But we would  
8 sort of suggest some -- if they're going to use  
9 something, that whatever they use would be -- would be  
10 made available, and that that would be scheduled for a  
11 few days ahead of that perhaps June 2nd or June 1st.  
12 June 1st would be a week, something right in that  
13 timeframe.

14 CO-HEARING OFFICER DODUC: Miss McGinnis.

15 MS. MCGINNIS: So to -- Is this one on.

16 MR. OCHENDUSKO: No.

17 MS. MCGINNIS: To summarize in order what  
18 Mr. Berliner just said. You know, if we finish by next  
19 Friday with rebuttal and cross of rebuttal, then we could  
20 have until June 1st, which is about a week for the  
21 parties to prepare whatever they're going to prepare for  
22 surrebuttal, and then the hearing on surrebuttal could  
23 commence on June 8th, and that's what DWR thinks is  
24 reasonable.

25 CO-HEARING OFFICER DODUC: All right. I see

1 Miss Nikkel standing up.

2 MR. JACKSON: Thank you. If I could just  
3 respond on a couple of points.

4 So Mr. Berliner mentioned the time period in  
5 which the parties would have to prepare the surrebuttal,  
6 and I just want to point out a couple of things about  
7 Petitioners' rebuttal case that was presented in March.

8 They submitted more than double the pages of  
9 written testimony that we saw in their case in chief.  
10 They also presented three new witnesses that the -- that  
11 were not part of their case in chief the Protestants now  
12 have to respond to.

13 Also, protest -- Petitioners had four months  
14 from the close of the case in chief of the Protestants to  
15 prepare and submit full written rebuttal testimony, and  
16 to deny the Protestants a similar opportunity to do that  
17 would deny some due process to those Protestants to  
18 respond for this new evidence that was submitted by DWR  
19 and Reclamation in the rebuttal phase.

20 And so what we're asking for is essentially  
21 what will amount to about six weeks from the close of  
22 Petitioners' rebuttal case to submit written surrebuttal  
23 and that seems quite fair and reasonable to us as -- as  
24 the responding parties. Thank you.

25 CO-HEARING OFFICER DODUC: Do you have any

1 comment on the suggestion that a full-scale written  
2 submission is not necessary?

3 MR. JACKSON: I -- I appreciate the suggestion,  
4 and we are -- we are working on our surrebuttal, of  
5 course, and I just don't know yet if that will allow us  
6 the opportunity to fully clarify some of the issues.  
7 While we are certainly striving to be as concise and on  
8 point as possible so as to minimize unnecessary paper,  
9 I'm not certain that a PowerPoint will cut it or an  
10 outline form. We may need to also submit some concise  
11 written testimony to help clarify some of the complicated  
12 technical issues.

13 CO-HEARING OFFICER DODUC: Miss Meserve, and I  
14 think I saw Miss Taber also coming up.

15 MR. JACKSON: Yes. I would just add that I do  
16 think it's going to be important and it could be done at  
17 the time of presentation that we will have additional  
18 reference materials to submit and so I just want to  
19 ensure that that can be submitted.

20 CO-HEARING OFFICER DODUC: Of course.

21 Ms. Taber. And then I'll allow DWR to have  
22 some final comments and I'm going to close this.

23 MR. JACKSON: I just would support the -- some  
24 short time period in advance of the start of the hearing.  
25 So if you were to make the surrebuttal testimony due in

1 the middle of June and the hearing to start the following  
2 week, that would be fine for the City of Stockton, but,  
3 again, as Miss Nikkel pointed out, some parties are  
4 forced to respond to a substantial amount of rebuttal  
5 testimony under a very tight timeframe in which their  
6 experts are also preparing to present rebuttal and  
7 needing to monitor the course of this hearing to, we  
8 hope, identify and narrow the issues that would be  
9 addressed in surrebuttal.

10 So it's been difficult to work on the testimony  
11 and participate actively in the hearing and, therefore,  
12 some additional time we think is necessary, so that's all  
13 I have to say.

14 CO-HEARING OFFICER DODUC: All right.  
15 Miss Morris.

16 MS. MORRIS: One comment.

17 If -- If the Board does allow us a long amount  
18 of time after, then I would agree that written submittals  
19 would be appropriate because it gives people -- I mean,  
20 the whole idea of surrebuttal is it goes immediately  
21 after and everybody's kind of going and it's the same  
22 amount of time and amount of preparation, which if we're  
23 considering a longer period, it would be helpful to have  
24 it in writing because it might be potentially a large  
25 amount of information all at once. That's my only

1 comment.

2 CO-HEARING OFFICER DODUC: Right.

3 Any final comments, Mr. Berliner or  
4 Miss McGinnis?

5 MR. BERLINER: Just briefly.

6 We weren't suggesting that a party should be  
7 constrained in what they want to submit. So if we are  
8 going to start on the June 8th date, that's acceptable,  
9 and a party wants to submit written, I think that's  
10 perfectly fine. We weren't -- We thought there ought to  
11 be at least some minimum threshold where you would be  
12 required at least to inform the other parties of the  
13 nature, and a PowerPoint would seem to be a convenient  
14 way to do it. If somebody wanted to submitted more --  
15 submit more, that would certainly be fine. And we would  
16 concur with the State Water Contractors. If we're going  
17 to have a lengthy period of time, it should be in writing  
18 and simultaneously. But we don't prefer the lengthy  
19 delay. We'd rather start sooner than later.

20 MS. MCGINNIS: Just to continue on the point  
21 of, you know, starting sooner rather than later and not  
22 having a lengthy delay.

23 I was just looking for when rebuttal exhibits  
24 were due. I believe it was March 23rd, which was -- I'm  
25 losing track of days, but I think, like, two months ago.

1 So -- And we've been going through the rebuttal  
2 testimony, obviously, and doing cross-examine and, you  
3 know, it seems -- sir rebuttal's supposed to be limited  
4 to this rebuttal face, so I just -- DWR does not think  
5 that a lengthy delay is necessary.

6 CO-HEARING OFFICER DODUC: Oh, yes. I do want  
7 to ask for an update on the SA CEQA process.

8 MS. MCGINNIS: I know that it's moving along  
9 but I don't have any certain dates to give right now. I  
10 can check and I.

11 CO-HEARING OFFICER DODUC: Provide that  
12 information next week.

13 MS. MCGINNIS: Okay.

14 CO-HEARING OFFICER DODUC: Thank you.

15 MS. MCGINNIS: Do you mean the Biological  
16 Opinion? Okay. Thank you.

17 CO-HEARING OFFICER DODUC: All right. Thank  
18 you all.

19 Ms. Nikkel.

20 MR. JACKSON: I think it would be also helpful  
21 to have a-an update from DWR and Reclamation on the  
22 certification of the Final EIR in addition to the  
23 Biological Opinion.

24 CO-HEARING OFFICER DODUC: All right. Next  
25 week.

1           With that, thank you all for your input. We'll  
2 take it under advisement. We'll reconvene on Tuesday at  
3 9:30 in -- oh, this room.

4           All right. Thank you.

5           (Proceedings adjourned at 12:05 p.m.)

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1 State of California )  
2 County of Sacramento )

3

4 I, Candace L. Yount, Certified Shorthand Reporter  
5 for the State of California, County of Sacramento, do  
6 hereby certify:

7 That I was present at the time of the above  
8 proceedings;

9 That I took down in machine shorthand notes all  
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes  
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and  
14 correct transcription of said shorthand notes, and a  
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16 and testimony taken;

17 That I am not a party to the action or related to a  
18 party or counsel;

19 That I have no financial or other interest in the  
20 outcome of the action.

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22 Dated: May 21, 2017

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Candace L. Yount, CSR No. 2737