



1 APPEARANCES

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present:

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

8 Staff Present:

9 Dana Heinrich, Senior Staff Attorney  
10 Andrew Deeringer, Senior Staff Attorney  
11 Conny Mitterhofer, Supervising Water Resource Control  
12 Engineer  
13 Jean McCue, Water Resources Control Engineer  
14 Hwaseong Jin

15

16 PART 2

17 For Petitioners:

18 California Department of Water Resources:

19 James (Tripp) Mizell  
20 Jolie-Anne Ansley

21

22 The U.S. Department of the Interior:

23

24 Amy L. Aufdenberge, Esq.

25

26 INTERESTED PARTIES:

27 For The City of Roseville, Sacramento Suburban Water  
28 District, San Juan Water District, and The City of  
29 Folsom:

30 Ryan Bezerra

31 For Clifton Court, L.P.:

32 Suzanne Womack

33

1 INTERESTED PARTIES (Continued):

2 For California Water Research:

3 Deirdre Des Jardins

4 For California Sportfishing Protection Alliance (CSPA),  
5 California Water Impact Network (C-WIN), and  
6 AquAlliance as well as specially for Friends of the  
7 River and the Sierra Club California:

8 Michael Jackson

9 For Natural Resources Defense Council, The Bay  
10 Institute, and Defenders of Wildlife:

11 Doug Obegi

12 Sacramento Valley Group and City of Brentwood:

13 David Aladjem

14 For County of San Joaquin, San Joaquin County Flood  
15 Control and Water Conservation District, and Mokelumne  
16 River Water and Power Authority:

17 Thomas H. Keeling

18 For State Water Contractors:

19 Stefanie Morris

20 For San Luis & Delta-Mendota Water Authority:

21 Daniel J. O'Hanlon

22 For North Delta Water Agency & Member Districts:

23 Meredith Nikkel

24 For Sacramento County Water Agency, Glenn-Colusa  
25 Irrigation District, Biggs-West Gridley Water District,  
26 Carmichael Water District as well as Placer County  
27 Water Agency and the County of Sacramento:

28 Aaron Ferguson

29

30

1 INTERESTED PARTIES (Continued):  
2 For East Bay Municipal Utility District (EBMUD):  
3 Jonathan Salmon  
4 For County of Solano, et al.:  
5 Daniel Wolk  
6 For Sacramento Regional County Sanitation District:  
7 Kelley Taber  
8 For Central Delta Water Agency, South Delta Water  
9 Agency (Delta Agencies), Lafayette Ranch, Heritage  
10 Lands Inc., Mark Bachetti Farms and Rudy Mussi  
11 Investments L.P.:  
12 John Herrick, Esq.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 I N D E X

| 2  | PETITIONERS' WITNESSES               | PAGE | VOL. |
|----|--------------------------------------|------|------|
| 3  | BUCHHOLZ, GWEN                       |      |      |
|    | BEDNARSKI, JOHN                      |      |      |
| 4  | PIRABAROOBAN, SHANMUGAM              |      |      |
|    | (Witnesses Sworn)                    | 32   | 3    |
| 5  | Direct examination by Mr. Mizell     | 35   | 3    |
|    | Cross-examination by Mr. Bezerra     | 51   | 3    |
| 6  | Cross-examination by Ms. Nikkel      | 101  | 3    |
|    | Cross-examination by Mr. Aladjem     | 116  | 3    |
| 7  | Cross-examination by Ms. Taber       | 123  | 3    |
|    | Cross-examination by Mr. Salmon      | 129  | 3    |
| 8  | Cross-examination by Mr. Herrick     | 145  | 3    |
|    | Cross-examination by Mr. Keeling     | 152  | 3    |
| 9  | Cross-examination by Mr. Wolk        | 165  | 3    |
|    | Cross-examination by Mr. Jackson     | 172  | 3    |
| 10 | Cross-examination by Mr. Obegi       | 222  | 3    |
|    | Cross-examination by Ms. Des Jardins | 260  | 3    |

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Thursday, February 22, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICE DODUC: Good morning,  
5 everyone. Please take a seat, and welcome back to this  
6 hearing on the joint Water Right Change Petition for  
7 the California WaterFix Project.

8 I am State Water Resources Control Board  
9 Member Tam Doduc and also Co-Hearing Officer. To my  
10 right is Board Chair and Co-Hearing Officer Felicia  
11 Marcus. We will be joined shortly by Board Member Dee  
12 Dee D'Adamo who will be sitting to the Chair's right.

13 To my left are Senior Staff Attorneys Andrew  
14 Deeringer and Dana Heinrich. Also to my left are Conny  
15 Mitterhofer, Jean McCue and Hwaseong Jin.

16 We are also being assisted today by other  
17 staff members.

18 As you all know, we completed Policy  
19 Statements on February 8th and are now moving on to the  
20 evidentiary portion of Part 2 of this hearing.

21 So here comes the three general announcements.  
22 Since it's our first day back, I will not pick on any  
23 of you.

24 First, please take a look around and identify  
25 the exits closest to you. Should an alarm sound, we

1 will evacuate this room.

2           Please take your valuables with you and please  
3 take the stairs, not the elevators, down to the first  
4 floor, exit the building and go to our relocation site  
5 across the street in the park.

6           If you cannot use stairs, we will have staff  
7 members, as well as people dressed in very unmistakably  
8 orange clothing, to direct you to a protective area  
9 inside the stairwell.

10           Secondly, this hearing is being Webcast. Both  
11 the audio and video are being recorded, so please speak  
12 clearly into the microphone and begin by stating your  
13 name and affiliation.

14           A court reporter is also present today and  
15 will prepare a transcript of this hearing.

16           The transcript for Part 1 has already been  
17 posted on our WaterFix Petition hearing website. The  
18 transcript for Part 2 will be posted as soon as  
19 possible after completion of Part 2.

20           If you would like to receive the transcript  
21 sooner, you may make arrangements with the court  
22 reporter.

23           As the hearing proceeds, we will generally  
24 take a 10- or 15-minute break in the morning and again  
25 in the afternoon for the court reporter and everyone

1 else, and also a 60-minute lunch break.

2           Finally, and you know this is the most  
3 important announcement for me: Please take a moment --  
4 I'm looking at the Chair --

5           CO-HEARING OFFICER MARCUS: I just did it.

6           CO-HEARING OFFICE DODUC: -- and turn off,  
7 mute, do not disturb, on your cellphone and other  
8 noise-making devices.

9           Even if you think it's already done, please  
10 take a moment and check, as I am doing right now.

11           All right. I'm sure Miss Aufdemberge has  
12 already checked and triple-checked.

13           All right. Let's move on and describe a  
14 little bit of the evidentiary -- a little bit about the  
15 evidentiary portion of the hearing.

16           As you know, we're moving into Part 2  
17 evidentiary portion today, and only parties who  
18 submitted a Notice of Intent to Appear and/or  
19 Supplemental Notice of Intending to Appear in Part 2 of  
20 the hearing, in accordance with the hearing notices and  
21 our subsequent rulings, may participate in this  
22 evidentiary portion of the hearing.

23           Those parties are listed on the order for  
24 cross-examination and group number assignment for  
25 Part 2.



1 Further, only parties who are listed on the  
2 order of presentation for Part 2 may call witnesses to  
3 present direct testimony.

4 These two lists were originally included with  
5 our January 4th, 2018, ruling. The order of  
6 presentation was later revised in our January 23rd  
7 ruling in response to comments by the parties.

8 We have made minor revisions to the order for  
9 cross-examination by reordering individual parties  
10 within certain groups to more closely reflect the order  
11 in Part 1 of the hearing and added a footnote  
12 reflecting our November 8th, 2017, ruling letter.

13 The updated order for cross-examination will  
14 be e-mailed to the parties, and extra copies are  
15 available in the back of the room.

16 All right. It bears repeating that this  
17 hearing is relatively narrow in focus and is not a  
18 referendum on the WaterFix Project.

19 The purpose of a Water Right Change Petition  
20 hearing is for the Board to receive information to  
21 inform our decision whether to approve the Change  
22 Petition subject to terms and conditions, or to  
23 disapprove the Petition.

24 To that end, this hearing will afford the  
25 parties an opportunity to present relevant testimony

1 and other evidence that addresses the key issues  
2 identified in our October 20th, 2015, Hearing Notice.

3           The key issues for Part 1 generally focused on  
4 the potential effects of the changes requested in the  
5 Petition on agricultural, municipal, industrial and  
6 associated legal users of water.

7           Generally -- Generally, the key issues for  
8 Part 2 focuses on the potential effects of the changes  
9 requested on fish and wildlife and recreational uses of  
10 water, public interest considerations, and whether to  
11 enter the Final EIR into the record.

12           Part 2 also includes consideration of  
13 appropriate Delta Flow Criteria for the WaterFix  
14 Project.

15           Additionally, our prior rulings noted certain  
16 situations in which a party may raise Part 1 issues in  
17 response to a witness' testimony in Part 2. Parties  
18 should refer back to those rulings for further details.

19           Unless I hear an objection, I will not read  
20 the specific key issues identified in the Hearing  
21 Notice. I assume all of you have committed it to  
22 memory by now.

23           All right. Thank you for not objecting.

24           The public evidentiary record for the hearing  
25 will serve as the basis for the Board's decision

1 regarding the Change Petition for this Project.

2           Only one evidentiary record will be developed  
3 in this proceeding comprising of -- comprising evidence  
4 admitted and accepted during both Parts 1 and Part 2 of  
5 the hearing and, consequently, if there is a Part 3.  
6 Therefore, evidence accepted during Part 1 of the  
7 hearing should not be resubmitted in Part 2.

8           All right. Now, let's move on to order of  
9 proceedings for today.

10           Let's begin by acknowledging that, yesterday,  
11 we issued a ruling on outstanding motions to stay this  
12 proceeding until Petitioners announce a decision as to  
13 whether they intend to implement the WaterFix Project  
14 in stages. We also ruled on certain other recently  
15 filed procedural motions.

16           For the reasons stated in the ruling, we are  
17 moving forward with Part 2 of the hearing and will  
18 continue to hear evidence relevant to the complete  
19 Project while Petitioners analyze and consider staged  
20 implementation.

21           The parties have demonstrated sufficient  
22 controversy regarding the implications of staged  
23 implementation for Part 1 and Part 2 key issues that it  
24 will be necessary to conduct another stage of the  
25 hearing if and when Petitioners decide to exercise the

1 option to implement the WaterFix Project in stages.

2           Should that occur, we will convene Part 3 of  
3 this hearing to consider Part 1 and Part 2 key hearing  
4 issues only to the extent of any alleged differences  
5 from the analysis applicable to Petitioners' current  
6 proposal.

7           Because parties will have the opportunity to  
8 present testimony and evidence regarding staged  
9 implementation if and when we convene Part 3,  
10 cross-examination and rebuttal on issues related to  
11 staged implementation will not be allowed during  
12 Part 2.

13           Let me stop there and just make sure we all  
14 understand.

15           Based on comments provided by DWR's Director  
16 last week, as well as written submittals from DWR, our  
17 understanding is that Petitioners have not made a  
18 decision to pursue staged implementation but are  
19 exploring it at this point.

20           Furthermore, in your written response to us,  
21 you committed to notifying us and all the parties as  
22 soon as possible should you make that determination.

23           And let me say right now that when you  
24 notified, I don't mean an e-mail forwarding us a press  
25 release and a memo directed to a third party regarding

1 this matter, and not at 4:45. We are at a critical  
2 stage as the hearing resumes. Please keep that in  
3 mind.

4           Upon notifying us and all the parties when you  
5 make that decision, you have, according to your  
6 submittal, also committed -- and we will hold you -- to  
7 submitting your supplemental EIR as well as any other  
8 supporting documentation with respect to staged  
9 implementation, and to make your witnesses available  
10 for cross-examination by all the other parties.

11           Are we clear on that, Mr. Mizell?

12           MR. MIZELL: Yes. Thank you.

13           CO-HEARING OFFICER DODUC: All right. Does  
14 anyone have clarifying questions regarding that?

15           I am not seeking your opinion, I am not  
16 seeking arguments, only questions of clarification.

17           Mr. Bezerra.

18           MR. BEZERRA: Yes. Thank you.

19           CO-HEARING OFFICE DODUC: Let's turn  
20 Mr. Bezerra's microphone on and allow him to speak, for  
21 now.

22           MR. BEZERRA: I . . .

23           Thank you. Ryan Bezerra for the Cities of  
24 Folsom, Roseville, Sacramento Suburban Water District  
25 and San Juan Water District.

1           This is not something I'm doing lightly  
2 because I know you have given great thought to this.  
3 But I would respectfully ask you to reconsider  
4 yesterday's ruling based on one simple fact, which is  
5 that every shred of technical evidence that Petitioners  
6 have presented in this hearing are based on 2025 to  
7 2030 climate change projections.

8           And after looking at Director Nemeth's  
9 statement the other day, this morning before I came  
10 here, to make sure I remembered it correctly, and she  
11 specifically stated that the Department would have a  
12 deferred second stage.

13           There is no way the Department will be  
14 building a deferred second stage of this Project by  
15 2025. Every bit of modeling they have submitted is  
16 based on 2025-2030 climate change.

17           So I appreciate your ruling yesterday. I read  
18 it three times. And I appreciate the statements about  
19 how we may need a Part 3 based on whether or not there  
20 have been changes to Petitioners' technical analysis.

21           We know today there will absolutely have to be  
22 changes to Petitioners' technical analysis. They have  
23 made a decision to prepare a supplemental EIR. It will  
24 have to reflect a staged Project.

25           There is no way that this complete Project

1 will be built within the climate change projections  
2 that their entire technical case is based on.

3           So, they have done an enormous amount of  
4 technical work already. They clearly knew before they  
5 sent you a letter at 4:45 the day before we came back  
6 last time, that they were doing this technical  
7 analysis. We could have had this conversation in a  
8 much more reasonable way in December or January.

9           But we know right now -- And I went back and  
10 we can scroll through the exhibits where Petitioners  
11 testified about the climate projections --

12           CO-HEARING OFFICE DODUC: Mr. Bezerra, no, we  
13 are not seeking clarification but may --

14           MR. BEZERRA: That's right. That's why --

15           CO-HEARING OFFICE DODUC: Let's stop right  
16 there for a minute.

17           MR. BEZERRA: Yes.

18           CO-HEARING OFFICE DODUC: Miss Womack, did you  
19 have something to --

20           MS. WOMACK: Oh, yes. Well . . .

21           CO-HEARING OFFICE DODUC: In terms of  
22 requesting a clarification.

23           MS. WOMACK: Yes, a clarification.

24           DWR objected to my CPRA request, two of three  
25 of them, in February.

1           And then I responded. And I got a call from  
2 someone at the WaterFix saying that I couldn't re --  
3 they were taking my response off because DWR was  
4 withdrawing their objections.

5           Yet, yesterday, you all ruled on their  
6 objections to my -- to my -- to my -- you know, they --  
7 you ruled on what they asked for for two of the three  
8 CPRA requests.

9           So, I haven't been able to, as far as I can  
10 tell, respond to their objection because my -- what I  
11 said in response was not allowed, was taken off.

12           So I'm feeling --

13           CO-HEARING OFFICE DODUC: Let me stop -- Let  
14 me stop you --

15           MR. BEZERRA: Yes.

16           THE COURT: -- right there, Miss Womack, and  
17 turn to . . .

18           Has anyone -- Who from our staff contacted  
19 Miss Womack?

20           MR. DEERINGER: Just to be clear.

21           So you're saying that after DWR withdrew its  
22 objections --

23           MS. WOMACK: They didn't withdraw.

24           MR. DEERINGER: They didn't withdraw their  
25 objections.



1 MS. WOMACK: No. Because you just ruled on  
2 them yesterday, that you would strike --

3 CO-HEARING OFFICE DODUC: And -- And,  
4 Miss Womack, so your question is?

5 MS. WOMACK: Well, I have something that they  
6 didn't object to.

7 THE COURT: Okay.

8 MS. WOMACK: They made some snarky remarks,  
9 but they didn't object, I know.

10 I'm sorry. I'm a second grade teacher and,  
11 you know, fair is fair.

12 I have --

13 CO-HEARING OFFICER DODUC: All right. You're  
14 a teacher.

15 MS. WOMACK: Yes. We don't allow fabrication.

16 So, anyway, there's -- there's a whole area  
17 that they didn't object to that I don't get to make a  
18 response on.

19 And, frankly, there's an awful lot missing  
20 when they say -- They told you they've responded and  
21 all that. I have e-mails from them where they say  
22 there's voluminous amount of stuff that they're going  
23 to be giving me.

24 They didn't answer. They gave me two tiny  
25 four-page office memos on things regarding the --

1 the -- the problem at the dam last year, at the --

2 CO-HEARING OFFICER DODUC: All right.

3 MS. WOMACK: -- Clifton Court Dam. I got more  
4 when I went online that I got from them.

5 CO-HEARING OFFICER DODUC: All right,  
6 Miss Womack.

7 MS. WOMACK: I'm very upset that I'm not being  
8 able to represent my concerns.

9 CO-HEARING OFFICER DODUC: All right. You  
10 raised your --

11 MS. WOMACK: Clarification.

12 CO-HEARING OFFICER DODUC: -- Request for  
13 Clarification.

14 MS. WOMACK: Thank you.

15 CO-HEARING OFFICER DODUC: We will look into  
16 it.

17 MS. WOMACK: Thank you so much.

18 CO-HEARING OFFICE DODUC: Miss Des Jardins, we  
19 have already received your Request for Clarification  
20 along with other things and given them due  
21 consideration.

22 Do you have anything new to add right now?

23 MS. DES JARDINS: I wanted to join in their  
24 Request for Reconsideration.

25 CO-HEARING OFFICE DODUC: Which is not a

1 Request for Clarification, so thank you very much.

2 MS. DES JARDINS: And the other issue that I  
3 do -- would like clarified on:

4 So I did provide testimony in Part 1, sea  
5 level rises being more rapid than we thought, and we  
6 could get higher levels of sea level rise than the  
7 6 inches that was projected by 2025 within the Project  
8 lifetime, and if there is a staged implementation, it's  
9 likely.

10 The other question I have is: Has the Board  
11 made any agreement about whether to prepare a  
12 Subsequent or Supplemental EIR? Because --

13 CO-HEARING OFFICE DODUC: That is, I believe,  
14 the subject of your Request for Clarification --

15 MS. DES JARDINS: Yes.

16 CO-HEARING OFFICE DODUC: -- your written that  
17 you have submitted to us --

18 MS. DES JARDINS: Yes.

19 CO-HEARING OFFICE DODUC: -- we are taking  
20 into consideration and there's no need to repeat that  
21 right now.

22 MS. DES JARDINS: Okay. Thank you.

23 CO-HEARING OFFICE DODUC: Thank you.

24 MS. DES JARDINS: And then there's a  
25 housekeeping matter.

1 I have adverse witnesses that I've called  
2 for --

3 CO-HEARING OFFICE DODUC: Let's hold on to  
4 that. I will get to housekeeping.

5 MS. DES JARDINS: Okay.

6 CO-HEARING OFFICE DODUC: Right now, I was  
7 just seeking clarification -- questions on  
8 clarification.

9 We'll get back to you on that.

10 MS. DES JARDINS: Okay. Thank you.

11 CO-HEARING OFFICE DODUC: Mr. Jackson.

12 MR. JACKSON: Michael Jackson on behalf of the  
13 California Sportfishing Protection Alliance, California  
14 Impact Network and AquAlliance, Group Number 31, and,  
15 for today speaking on behalf of Group 33, Friends of  
16 the River and the Sierra Club California.

17 I'd like some clarification of an existing  
18 ruling that seems to be on the books, that you would  
19 not start Part 2 until you had a Final Environmental  
20 Impact Report, until you had Final Biological Opinions,  
21 and you don't have either right now.

22 CO-HEARING OFFICE DODUC: Mr. Jackson --

23 MR. JACKSON: So the --

24 CO-HEARING OFFICER DODUC: One --

25 MR. JACKSON: -- question is --

1 CO-HEARING OFFICER DODUC: Mr. Jackson, one,  
2 we've addressed that previously in our ruling to begin  
3 Part 2.

4 Secondly, the same situation exists today, as  
5 we did when we issued that ruling, and that is,  
6 Petitioners have not made change to the Petition that  
7 is before us.

8 MR. JACKSON: But the Biological Opinions have  
9 been reopened. They've committed to do a supplemental  
10 document because they don't have a complete  
11 environmental document.

12 In the words of the --

13 CO-HEARING OFFICE DODUC: Mr. Jackson, enough.  
14 We're not going to spend all day arguing this.

15 Thank you.

16 It's noted. I will give Petitioners a chance  
17 to briefly respond, but we are going to move on.

18 MR. JACKSON: (Nodding head.)

19 CO-HEARING OFFICE DODUC: Mr. Obegi.

20 MR. OBEGI: Good morning. Doug Obegi on  
21 behalf of Natural Resources Defense Council, Defenders  
22 of Wildlife and the Bay Institute.

23 I will not address our disagreement with the  
24 ruling. However, I do have a question regarding  
25 clarification.

1           You just discussed that Part 3 would begin,  
2 and parties would have an opportunity for  
3 cross-examination. And I would like to request that --  
4 clarification that Part 3 would not begin until there  
5 is a final CEQA document, a -- Final Biological  
6 Opinions, final ITP, and after DWR and other  
7 Petitioners submit testimony and provide all the rest  
8 of the parties sufficient time to review that  
9 testimony, modeling and analysis, so that we're not  
10 prejudiced yet again by Part 3.

11           CO-HEARING OFFICE DODUC: I would disagree  
12 about you being prejudiced yet again, Mr. Obegi.

13           But the point of having a Part 3 is so  
14 Petitioners will submit their information and  
15 testimony, and make their witnesses available for  
16 cross-examination, and that other parties might have  
17 the opportunity to present their testimony as well on  
18 the issue of staged implementation.

19           MR. OBEGI: And just to clarify, then: Part 3  
20 will not begin until the subsequent or Supplemental  
21 CEQA document is finalized and the Biological Opinions  
22 and ITP and amendments thereto are finalized as well?

23           CO-HEARING OFFICE DODUC: We will not begin  
24 until we have the sufficient information upon which --  
25 for the parties to conduct your cross-examination and

1 for proper consideration of staged implementation.

2 MR. OBEGI: Thank you.

3 CO-HEARING OFFICE DODUC: Mr. Aladjem.

4 MR. ALADJEM: Good morning, Madam Chair,  
5 members of the Board.

6 David Aladjem, Sacramento Valley Group, City  
7 of Brentwood.

8 A very simple question of clarification.

9 CO-HEARING OFFICE DODUC: There are no simple  
10 questions.

11 MR. ALADJEM: This is a simple one.

12 CO-HEARING OFFICER MARCUS: We're counting on  
13 you for that.

14 MR. ALADJEM: If I understood -- If I  
15 understood the Chair earlier, that in Part 3, if it  
16 were to come about, the Department will make available  
17 all witnesses who testify or will be testifying Part 2  
18 as well as Part 1. That is my understanding of the --

19 CO-HEARING OFFICE DODUC: As it pertains to  
20 staged implementation or any other issue that we might  
21 want to cover in Part 3.

22 MR. ALADJEM: That's my clarification. And  
23 I -- I'm taking that as an affirmative.

24 CO-HEARING OFFICE DODUC: Mr. Aladjem, thank  
25 you.

1 MR. ALADJEM: Thank you.

2 CO-HEARING OFFICE DODUC: This actually was  
3 more detailed than I thought.

4 But Mr. Mizell, Miss Ansley, do you wish to  
5 add anything at this point just for matter of  
6 clarification?

7 MR. MIZELL: I'll be very brief.

8 We have not reopened the Biological Opinions  
9 that were issued for the California WaterFix. That was  
10 the long-term coordinate -- confirmation BiOps.

11 Other than that, I don't have any additional  
12 clarification at this time.

13 CO-HEARING OFFICE DODUC: Thank you,  
14 Mr. Mizell.

15 Let me resume, then, with discussion of this  
16 evidentiary portion.

17 All right. In our January 4th, 2018, ruling,  
18 following our review of the written direct testimony  
19 submitted for this Part 2, we addressed the disposition  
20 of late-submitted testimony and exhibits and identified  
21 written testimony that was beyond the scope of the case  
22 in chief phase of Part 2.

23 Where applicable, we directed the offering  
24 party to revise their testimony to eliminate the  
25 subject areas outside of the scope of Part 2 and to



1 submit revised written testimony and serve the other  
2 parties.

3 Thank you for doing so.

4 In our August 31st, 2017, ruling, we directed  
5 the parties not to file evidentiary objections to the  
6 admissibility of testimony or exhibits before the  
7 hearing resumes.

8 In our November 8th, 2017, ruling, we further  
9 directed that all objections to the admissibility of  
10 evidence be made orally during the hearing before or at  
11 the time the evidence is offered into the record.

12 We may allow the submission of written motions  
13 at the request of the moving party if we determine that  
14 a written motion would assist us in ruling on the  
15 issue.

16 If a written motion is permitted, written  
17 responses will also be allowed.

18 Evidentiary objections that go to the weight  
19 of the evidence, including hearsay objections, should  
20 be reserved for closing briefs.

21 I will remind again that we went through this  
22 several times in Part 1A and Part 1B. We actually even  
23 issued, I believe, a guidance with respect to  
24 objections.

25 So, again, evidentiary objections that go to

1 the weight of the evidence, including hearsay  
2 objections, should be reserved for closing briefs.

3 Parties should be prepared to offer their  
4 testimony and exhibits into evidence immediately after  
5 their witnesses summarize their direct testimony and  
6 have been subject to cross-examination and any redirect  
7 and recross.

8 Parties presenting multiple witnesses should  
9 offer their testimony and exhibits after their last  
10 witness or panel of witnesses.

11 Ah. I got ahead of myself.

12 Parties should review the updated Part 2  
13 guidance document enclosed with our November 8th, 2017,  
14 ruling for guidance on procedural motions and  
15 evidentiary objections in Part 2.

16 As we concluded in prior rulings, the bar for  
17 admission of evidence is low in our administrative  
18 proceedings and evidence may be admissible even though  
19 its appropriate value is limited.

20 This is for you, Mr. Bezerra:

21 As we have stated throughout this hearing, we  
22 will not be reconsidering procedural issues that we  
23 have already ruled upon. In addition, we continue to  
24 discourage duplicative motions and may not acknowledge  
25 or respond to repetitive arguments.

1           Finally, consistent with the practice  
2 established in Part 1 of this hearing, parties must  
3 update their exhibit identification indices to include  
4 any exhibits introduced during cross-examination.

5           The parties are not required to offer  
6 cross-examination exhibits into evidence, but if they  
7 elect to do so, they must formally offer their  
8 cross-examination exhibits into evidence by the  
9 deadline that we will establish later in the hearing  
10 process.

11           Let's get to Opening Statements.

12           Opening Statements from parties presenting a  
13 case in chief should briefly summarize the party's  
14 position and what the party's evidence is intended to  
15 establish.

16           In our December 5th, 2017, ruling, we directed  
17 parties who intend to present an oral Opening Statement  
18 during Part 2 of the hearing to submit their Opening  
19 Statement in writing by noon on December 18th.

20           We will allow those parties who submitted  
21 timely written Opening Statements 20 minutes to make  
22 those statements before the presentation of their  
23 testimony.

24           Parties who presented a Policy Statement on  
25 February 8th were asked to track their time on the

1 honor system and deduct the time used to present Policy  
2 Statements from the 20 minutes allocated for their  
3 Opening Statements.

4           Following a party's Opening Statement, if you  
5 have any, we will hear oral testimony from the party's  
6 witnesses.

7           Before testifying, witnesses should identify  
8 their written testimony as their own and confirm that  
9 it is true and correct. Witnesses should then  
10 summarize the key points in their written testimony and  
11 should not read their written testimony into the  
12 record.

13           In an e-mail on January 12th, the Hearing Team  
14 relayed a message from Hearing Officer Marcus reminding  
15 parties that our standard practice of allowing no more  
16 than 20 minutes per witness to summarize their  
17 already-submitted written testimony should be adequate  
18 and that they should plan accordingly.

19           Hearing Officer Marcus further directed that  
20 witnesses should succinctly summarize, not recite, the  
21 key points of their written testimony in less than 20  
22 minutes. And I concur.

23           Direct testimony will be followed by  
24 cross-examination by the other parties.

25           Some parties intend to present witnesses in

1 panels. In that case, parties will cross-examine --  
2 will cross-examine one panel at a time following each  
3 panel's direct testimony.

4 Please note that, according to our prior  
5 rulings, the scope of cross-examination is not limited  
6 to the scope of a witness' direct testimony so long as  
7 the questions are relevant to Part 2 issues.

8 In addition, we will allow cross-examination  
9 of witnesses on Part 1 issues if the line of  
10 questioning directly relates to a witness' direct  
11 testimony in Part 2.

12 Each party will be limited to one hour of  
13 cross-examination per witness or panel of witnesses,  
14 with the exception of Petitioners' Panel 2.

15 As stated in our January 23rd ruling, we will  
16 allow each party up to two hours for productive  
17 cross-examination of Petitioners' Panel 2 only.

18 The Hearing Officers have -- We have  
19 discretion to allow additional time for  
20 cross-examination if there is good cause demonstrated  
21 in an offer of proof.

22 However, as in Part 1 of the hearing,  
23 duplicative cross-examination will not be permitted.  
24 Parties should limit their cross-examination to  
25 questions that have not already been asked by another

1 party and answered by the witness.

2           Parties should efficiently move to the  
3 substance of their line of questioning without spending  
4 time on foundational issues already addressed in the  
5 testimony or by questions previously asked and  
6 answered.

7           We further encourage parties with similar  
8 interest to coordinate, where possible, to avoid  
9 duplicative cross-examination.

10           You all did a very good job in Part 1 and we  
11 expect that to continue in Part 2.

12           After completion of direct testimony and  
13 cross-examination for each panel, redirect testimony  
14 and recross limited to the scope of the redirect  
15 testimony may be admitted.

16           All right. Now back to the list I discussed  
17 earlier.

18           Parties will present their case in chiefs in  
19 the order shown on the Order of Presentation for  
20 Part 2.

21           Parties will conduct cross-examination and  
22 recross-examination, if any, in the order shown on the  
23 Order for Cross-Examination and Group Number Assignment  
24 for Part 2.

25           Unless any parties object, I will skip reading

1 the list of parties in the Order of Presentation and  
2 Order of Cross-Examination.

3 Thank you.

4 The list will be part of the record. I ask,  
5 however, that parties speak up now if there are any  
6 errors on the list of names or notify the Hearing Team  
7 at some point today.

8 Okay. Consistent with Part 1 and our prior  
9 rulings, unless we approve a change, parties are on  
10 notice that they should be ready to present their  
11 witness testimony and exhibits and conduct  
12 cross-examination when called in the scheduled order.

13 We will not accept Notices of Unavailability  
14 from parties, as in Part 1. We remain willing to  
15 accommodate some changes to the order of appearance of  
16 parties' witnesses provided that any changes do not  
17 delay the hearing schedule and the other parties are  
18 notified in advance.

19 If a party cannot present on a particular day,  
20 it is that party's responsibility to coordinate with  
21 another party to take their place and to give at least  
22 three days' notice to the Hearing Officers and the  
23 service list.

24 Again, we encourage all parties to be  
25 efficient in presenting their oral testimony and in

1 conducting their cross-examination. Except where  
2 Co-Hearing Officer Marcus or I approve a variation, we  
3 will follow the procedures set forth in the Board's  
4 regulation, the Hearing Notice, and our previous  
5 rulings.

6           After all cases in chief are completed, the  
7 parties will be permitted to present rebuttal testimony  
8 and exhibits that are responsive to either the  
9 Petitioners' case in chief or the remaining parties'  
10 cases in chief presented in Part 2.

11           During rebuttal, parties may present evidence  
12 that directly responds to another party's case in  
13 chief.

14           Parties may present rebuttal evidence that is  
15 within the scope of either Part 1 or Part 2 if it is in  
16 direct response to another party's Part 2 case in  
17 chief.

18           For example, rebuttal is the appropriate time  
19 to present evidence of potential injury to legal users  
20 from a term or condition presented in another party's  
21 case in chief in Part 2.

22           We will inform the parties at a later point in  
23 time if we decide to impose any additional procedural  
24 requirements to the presentation of rebuttal testimony  
25 or exhibits.



1 All right. Now -- I'm almost at the end --  
2 we'll get to some housekeeping matters.

3 First, we received a request from San Luis and  
4 Delta-Mendota Water Authority to allow substitution of  
5 one of their witnesses. They requested to substitute  
6 Assistant Executive Director Frances Mizuno for their  
7 former Executive Director Jason Peltier.

8 Miss Mizuno's written testimony, Exhibit  
9 SLDMWA-19, is the same as Mr. Peltier's written  
10 testimony, SLD and WM-11, with the exception of a  
11 paragraph describing Mr. Peltier's background.  
12 SLDMWA-19 includes a paragraph describing Miss Mizuno's  
13 background instead.

14 Unless there are any objections, we will grant  
15 this request to substitute the witness and testimony.

16 Are there any objections?

17 All right. So granted.

18 Also, another housekeeping item.

19 Tomorrow, the hearing will begin at 10 a.m.  
20 instead of 9:30, and we will be here in the Coastal  
21 Hearing Room.

22 Now, I know Miss Des Jardins has a  
23 housekeeping item.

24 Is there anyone else who has a housekeeping  
25 item?

1 Miss Des Jardins, we'll begin with you.

2 MS. DES JARDINS: Yeah. So, I -- The . . .

3 The California Department of Fish and  
4 Wildlife, I called witnesses to testify on their --  
5 being cross-examined on their recommendations in the  
6 2010 Delta Flow Criteria hearing.

7 And they indicated that they couldn't produce  
8 witnesses if they didn't have an exact time, and they  
9 wanted -- the Office -- the General Counsel contacted  
10 me and also told me that I would have to serve a  
11 subpoena directly on the witnesses.

12 I need a date certain, and I need either a  
13 signed, sealed subpoena, or I need the Board to issue a  
14 subpoena for these witnesses, because I'm a pro per.

15 CO-HEARING OFFICE DODUC: We'll take that  
16 under advisement, Miss Des Jardins.

17 MS. DES JARDINS: Thank you.

18 CO-HEARING OFFICE DODUC: Mr. Bezerra.

19 MR. BEZERRA: Thank you.

20 Is this when you'd like to begin receiving  
21 evidentiary objections? My understanding is we were  
22 not supposed to file any before the hearing recommenced  
23 and that we are supposed to state them orally and not  
24 in writing.

25 CO-HEARING OFFICE DODUC: You don't want to

1 wait until they present their witnesses?

2 MR. BEZERRA: No, because the testimony that  
3 I'd like to object to I think is beyond the scope of  
4 Part 2 and, frankly, shouldn't be presented.

5 CO-HEARING OFFICER DODUC: Okay. This is  
6 housekeeping, so let's wait until we actually get to  
7 Petitioners and their case in chief.

8 MR. BEZERRA: Okay. Thank you.

9 CO-HEARING OFFICE DODUC: But thank you for  
10 the question.

11 Mr. Keeling.

12 MR. KEELING: Good morning, Hearing Officer  
13 Doduc.

14 Tom Keeling on behalf of San Joaquin County  
15 Protestants.

16 I have been asked today to speak also for Osha  
17 Meserve, who is out of town on a family vacation that  
18 was long planned and paid for.

19 CO-HEARING OFFICE DODUC: Is she somewhere fun  
20 that we all wish we were at?

21 MR. KEELING: It's cold up north.

22 CO-HEARING OFFICER MARCUS: That could be fun.

23 MR. KEELING: She has asked for an  
24 accommodation that I know is rarely granted, but she  
25 has been pretty good about it and I reiterate her

1 request.

2           And I believe she e-mailed you a request that,  
3 on cross-examination, she is normally at Slot 19, be  
4 put to the end -- to be allowed to testify at the end  
5 on the first panel, provided, of course, the first  
6 panel is still here when she returns on Monday.

7           And I hope you give due consideration to her  
8 request for accommodation.

9           CO-HEARING OFFICE DODUC: Assuming that  
10 request has come in, we will so accommodate her if the  
11 panel is still available.

12           MR. KEELING: Thank you.

13           CO-HEARING OFFICER DODUC: All right. All  
14 right. Thank you.

15           We will actually now finally get started.

16           Is there anything else?

17           I think, since we are -- Even though some of  
18 your faces are familiar, since we are starting Part 2,  
19 I'm just going to administer the oath to everybody. I  
20 don't think it hurts for you to take it a second time.  
21 That way, I don't have to guess about who has taken the  
22 oath and who has not.

23           So, let's -- I'll ask you to stand and raise  
24 your right hand.

25           Do you swear or affirm that the testimony

1 you're about to give is the truth. If so, answer,

2 "Yes, I do."

3 THE WITNESSES: Yes, I do.

4

5 GWEN BUCHHOLZ,

6 JOHN BEDNARSKI, and

7 SHANMUGAN PIRABAROOBAN

8 called as witnesses by the Petitioners, having been

9 duly sworn, were examined and testified as follows:

10 CO-HEARING OFFICE DODUC: Thank you very much.

11 Please be seated.

12 All right. Mr. Mizell, you do not have an

13 Opening Statement so I will turn to you now to present

14 the witnesses for this panel.

15 I'm sorry. Hold on.

16 Mr. Bezerra, you need to thank Chair Marcus

17 because she just reminded me of how quickly I had

18 forgotten your --

19 MR. BEZERRA: There are many, many things --

20 CO-HEARING OFFICER DODUC: Yes.

21 MR. BEZERRA: -- going on. I take no offense.

22 CO-HEARING OFFICE DODUC: Yes. Let's go ahead

23 and hear your objection now.

24 MR. BEZERRA: Yes.

25 Sacramento Valley water users object to

1 portions of testimony being presented by DWR's witness  
2 Erik -- Erik Reyes as water supply testimony that is  
3 beyond the scope of Part 2. It should have been  
4 presented in Part 1. It should not be in Part 2.

5 I have the detailed list. I can provide it on  
6 paper, but I can go ahead and read it if you like.

7 The first -- The first objectionable exhibit  
8 is DWR-1015. The objectionable portions are: Page 3,  
9 Line 22 through Page 4, Line 2; Page 4, Lines 5 through  
10 7; Page 7, Lines 10 through 13; Page 7, Lines 9 through  
11 20; Page 8, Lines 12 through 18; Page 11, Line 25  
12 through Page 12, Line 11; Page 15, Lines 4 through 11;  
13 Page 15, Lines 14 through 16.

14 DWR-1028 is also objectionable, in part, on  
15 this basis.

16 Line -- The objectionable portions of that  
17 exhibit are: Slide 3, Bullet 4; Slide 4; and Slides 46  
18 through 56.

19 Finally, Mr. Reyes' Exhibit DWR-1069 is  
20 objectionable on the same basis, in part. The  
21 objectionable portions of that exhibit are Figures 43  
22 through 52.

23 I can repeat any of that, if necessary.

24 CO-HEARING OFFICE DODUC: Is that the entirety  
25 of your objection, or is this just only on this one

1 particular testimony?

2 MR. BEZERRA: It's this one particular  
3 testimony. I'm happy -- At this point, that's what  
4 I've personally identified as objectionable as water  
5 supply testimony beyond Part 2.

6 CO-HEARING OFFICER DODUC: All right.

7 MR. BEZERRA: Thank you.

8 CO-HEARING OFFICE DODUC: Thank you for  
9 bringing it to our attention.

10 Miss Heinrich.

11 MS. HEINRICH: Mr. Bezerra, would you mind  
12 submitting the list of the specific page numbers and  
13 line numbers that you just read? Maybe by e-mail, just  
14 to make sure that we've got it all right.

15 MR. BEZERRA: I have copies I can hand you  
16 now, if that's what you'd like to do. I can --

17 CO-HEARING OFFICE DODUC: I appreciate  
18 efficiency but will you also make it available to the  
19 rest of the service list?

20 MR. BEZERRA: Sure. I'll e-mail it. Thank  
21 you.

22 CO-HEARING OFFICER DODUC: All right.

23 MS. HEINRICH: Thanks.

24 CO-HEARING OFFICE DODUC: Mr. Mizell, you may  
25 either respond to that now or when Mr. Reyes is up for

1 his direct testimony.

2 MR. MIZELL: Thank you.

3 CO-HEARING OFFICE DODUC: Not seeing anyone  
4 else, Mr. Mizell, you may begin.

5 MR. MIZELL: Thank you and good morning.

6 Today, we're going to hear from Panel 1 of 3.  
7 And based upon the structure of this panel, you'll be  
8 hearing from Ms. Buchholz, Mr. John Bednarski and  
9 Mr. Shanmugam Pirabarooban.

10 They'll go over their preliminary statements,  
11 and we have one correction to make based on the new  
12 panel structure.

13 DIRECT EXAMINATION

14 MR. MIZELL: Mr. Bednarski, is DWR-17 a true  
15 and correct copy of your SOQ?

16 WITNESS BEDNARSKI: Yes, it is.

17 MR. MIZELL: And is DWR-1020 a true and  
18 correct copy of your testimony?

19 WITNESS BEDNARSKI: Yes, it.

20 MR. MIZELL: Mr. Pirabarooban, is DWR-14 a  
21 true and correct of your SOQ?

22 WITNESS PIRABAROOBAN: Yes, it is.

23 MR. MIZELL: And is DWR-1023 a true and  
24 correct copy of your testimony?

25 WITNESS PIRABAROOBAN: Yes, it is.



1 MR. MIZELL: Miss Buchholz, is DWR-32 a true  
2 and correct copy of your SOQ?

3 WITNESS BUCHHOLZ: Yes, it is.

4 MR. MIZELL: And is DWR-1010 a true and  
5 correct copy of your testimony?

6 WITNESS BUCHHOLZ: Yes, it is.

7 MR. MIZELL: Thank you.

8 So I'll turn it over to Miss Buchholz now and  
9 she can walk you through the correction of her  
10 testimony and the PowerPoint based on the new panel  
11 structure.

12 WITNESS BUCHHOLZ: Good morning.

13 I would like to bring up Exhibit DWR-1008:  
14 That's my PowerPoint.

15 (Exhibit displayed on screen.)

16 WITNESS BUCHHOLZ: Good morning. I'm Gwen  
17 Buchholz. I am one of the Deputy Project Managers  
18 Consulting Team assisting the Department of Water  
19 Resources and Bureau of Reclamation since 2007 on the  
20 preparation of primarily the EIR/EIS and other  
21 documents, and part of this process, too, for the --  
22 for the hearings.

23 The next slide. Next slide.

24 (Exhibit displayed on screen.)

25 WITNESS BUCHHOLZ: Thank you.

1           Today, I want to summarize the -- what the  
2 Project is that was adopted by the Department of Water  
3 Resources, including an overview of the facilities that  
4 we are looking at, the Environmental Commitments, the  
5 Operational Criteria, and a discussion of how the  
6 Adopted Project was selected from the range of  
7 alternatives that were discussed in Part 1 of the  
8 hearing.

9           Also, we'll summarize the improvements to the  
10 Delta Flow Criteria and public benefits due to the  
11 implementation of the Adopted Project.

12           And, finally, I'll be introducing the  
13 remaining topics that will be presented by DWR and  
14 Reclamation in Part 2 of this hearing.

15           Next slide.

16           (Exhibit displayed on screen.)

17           WITNESS BUCHHOLZ: The Project adopted by DWR  
18 in July of 2017 consists of the facilities described in  
19 California WaterFix Alternative 4A with the operational  
20 Scenario H3+. We'll be referring to that throughout  
21 the DWR and Reclamation testimony as "CWF H3+."

22           Overall, DWR and Reclamation recognize that  
23 this includes the compliance with the 2008 U.S. Fish  
24 and Wildlife Service and 2009 National Marine Fisheries  
25 Service Biological Opinions, continued operation Under

1 State Water Resource Control Board D-1641 and only as  
2 additional points of diversion to the existing water  
3 right.

4 Next slide.

5 (Exhibit displayed on screen.)

6 WITNESS BUCHHOLZ: This -- This graphic we are  
7 using to explain the -- how the CWF H3+ has evolved  
8 over the period of time.

9 In Part 1 of this hearing -- Let me start with  
10 just sort of talking about the graphic here.

11 The blue box -- boxes in the middle of this  
12 graph represent the initial operations criteria  
13 scenarios for Alternative 4A.

14 The left side of the yellow boxes present the  
15 documents in which these criteria have been described,  
16 and the right side of the yellow boxes present the  
17 changes between each step as the CWF H3+ has been  
18 developed.

19 In Part 1 of this hearing, DWR and Reclamation  
20 described the Proposed Project facilities under  
21 Alternative 4A and the Operational Criteria that would  
22 range between H3 and H4 as shown on the top line of  
23 this graphic.

24 The -- As we look through that, the initial  
25 operations criteria, as we described it in Part 1, were

1 to find as a range primarily a range due to spring  
2 outflow.

3 H3 provided spring outflow per the State Water  
4 Resource Control Board Decision 1641, and H4 had  
5 additional spring outflow that was referred to as  
6 enhanced spring outflow.

7 When we move to completion of the  
8 biological -- And that was actually presented in the  
9 Recirculated Draft EIR and supplemental Draft EIS as  
10 well as Part 1 of this hearing.

11 Subsequently, the Biological Assessment and  
12 the Final EIR/EIS were issued in 2016, and the primary  
13 difference there was that we updated the Spring Outflow  
14 Criteria to -- Because we also at that time were  
15 familiar with what was the -- We looked at just going  
16 through with what we called the Proposed Project in the  
17 Biological Assessment. We referred to that in this  
18 hearing as BA H3+.

19 We moved -- The subsequent move was in 2017  
20 when the Biological Opinions were issued for California  
21 WaterFix by U.S. Fish and Wildlife Service and National  
22 Marine Fisheries Service. They refer -- And also in  
23 the Notice of Determination issued by DWR in 2017.

24 There were -- Through these consultations  
25 through the Biological Opinions, there were

1 clarifications and refinements of the Spring Outflow  
2 Criteria, and updated fall and South Delta out --  
3 excuse me -- South Delta export constraints.

4           The -- Next slide, please.

5           (Exhibit displayed on screen.)

6           WITNESS BUCHHOLZ: We want to reaffirm,  
7 though, that the range of alternatives that were  
8 analyzed in Part 1 included the CWF H3+. It's in the  
9 operational range between Alternative 4A, H3 to H4, and  
10 was within the boundary analysis defined in Part 1 as  
11 Boundary 1 and Boundary 2.

12           We -- As we moved to Part 2 when we received  
13 the U.S. Fish and Wildlife Service and National Marine  
14 Fisheries Service Biological Opinions criteria, they  
15 were fairly defined. That range between H3 and H4  
16 was -- we used, and we weren't sure of what those  
17 criteria were going to be, but now that we have those  
18 criteria, it was no longer a need to consi -- continue  
19 to consider a range of alternatives.

20           And so, therefore, in Part 2, we are only  
21 presenting CWF H3+, which is consistent with the Final  
22 EIR as well as the Biological Opinions.

23           Next slide.

24           (Exhibit displayed on screen.)

25           WITNESS BUCHHOLZ: The CWF Operational

1 Criteria includes the refinements that were identified  
2 through the Biological Opinions consultations. And  
3 these aspects of these -- this criteria are going to be  
4 described in much more detail in the Panel 2 grouping.

5 The CWF H3+ also includes the guiding  
6 principles that will be related for future  
7 consultations, operations and maintenance, mitigations,  
8 adaptive management and monitoring actions.

9 Next, please.

10 (Exhibit displayed on screen.)

11 WITNESS BUCHHOLZ: This graph shows that  
12 CWF H3+ was not only within our range that we presented  
13 in Part 1 but also within the range of the alternatives  
14 analyzed in the EIR/EIS.

15 The green boxes show the range between  
16 Alternative 1 and Alternative 8, which really represent  
17 the range of alternatives especially related to the  
18 differences in Delta outflow requirements as we went  
19 through the different alternatives in the EIR/EIS.

20 Altern -- As we just talked about, CWF H3+ was  
21 certainly within Boundary 1 and Boundary 2 that we  
22 presented in Part 1 of this hearing and the initial  
23 operating criterias presented in Part 1 of this hearing  
24 between H4-H3 and 4A-H4.

25 We went through that process. We -- Again, I

1 just want to iterate that we modified it in the  
2 application, Biological Assessment, and in the 2016  
3 Final EIR/EIS. Subsequent to the Biological Opinions  
4 being issued, it was further refined as CWF H3+.

5 Next slide.

6 (Exhibit displayed on screen.)

7 WITNESS BUCHHOLZ: CWF H3+ Project facilities  
8 are the same as we presented in Part 1 of this hearing.

9 And the additional -- There will be additional  
10 discussions of these by other Panel Members throughout  
11 DWR and Reclamation's presentations.

12 Next slide.

13 (Exhibit displayed on screen.)

14 WITNESS BUCHHOLZ: H3+ also includes the  
15 Environmental Commitments that were presented in the  
16 2017 Certified Final EIR. These commitments were based  
17 on consultation with U.S. Fish and Wildlife Service,  
18 National Marine Fisheries Service and California  
19 Department of Fish and Wildlife.

20 They include Environmental Commitments,  
21 avoidance and minimization measures and mitigation  
22 measures to reduce adverse impacts to a level of less  
23 than significant. They also include best management  
24 practices, including for habitat restoration.

25 Again, more details associated with these will

1 be presented primarily by the biology experts on  
2 Panel 2.

3 Next slide.

4 (Exhibit displayed on screen.)

5 WITNESS BUCHHOLZ: The CWF H3+ also includes  
6 an adaptive management process. It addresses the  
7 potential for long-term changes based upon new  
8 scientific knowledge that will continue to be acquired  
9 and analyzed by an interagency process.

10 It's -- As we will talk again in more detail  
11 about adaptive management in Panel 2, that is, to  
12 promote the use of collaborative science and apply this  
13 new information as sufficient actions occur and  
14 recognize changes in the future as that information --  
15 appropriate information is looked at.

16 Next slide.

17 (Exhibit displayed on screen.)

18 WITNESS BUCHHOLZ: With respect to improved  
19 Delta Flow Criteria, CWF -- we want to emphasize, as we  
20 did in Part 1, CWF H3+ complies with State Water  
21 Resource Control Board Decision 1641, State Water  
22 Resource Control Board 1995 Water Quality Control Plan,  
23 and the Biological Opinions issued in 2008 by the Fish  
24 and Wildlife Service and, in 2009, by National Marine  
25 Fisheries Service.



1 CWF H3+ will also increase Spring Delta  
2 Outflow Criteria as compared to these actions that are  
3 also in our existing conditions and No-Action  
4 Alternative.

5 And the Delta outflow will be addressed more  
6 so in the adaptive -- We anticipate that it will be  
7 addressed more so in the adaptive management process.  
8 Again, that will be discussed in more detail in  
9 Panel 2.

10 Next slide.

11 (Exhibit displayed on screen.)

12 WITNESS BUCHHOLZ: The CWF H3+ also improves  
13 public interest considerations. It -- It improves that  
14 by -- It's -- The current Delta system is limited by  
15 regulatory constraints which frequently limit the water  
16 supply reliability south of the Delta.

17 This will improve water supply reliability  
18 throughout the state and contribute to the restoration  
19 of the Delta ecosystem by providing flexibility through  
20 all types of water rights -- water conditions and  
21 ecological conditions.

22 And it will improve the ecosystem through  
23 reduction and reverse flow occurrences, flow patterns  
24 that will become more consistent with natural flow  
25 patterns, by increasing exports in the wetter periods

1 and decreasing them in the dryer periods, and reduce  
2 entrainment at these South of Delta intakes, charcoal  
3 intakes, due to the use of the North Delta intakes with  
4 advanced fish screen technology.

5           The CWF H3+ also improves public interest  
6 through the implementation of an adaptive management  
7 and monitoring program, and the use of real-time  
8 operations to in -- inform the ongoing operations.

9           The next slide.

10           (Exhibit displayed on screen.)

11           WITNESS BUCHHOLZ: On this slide is the slide  
12 I'd like to indicate that there are some changes from  
13 what we submitted based upon the response to the State  
14 Board -- State Water Resources Control Board.

15           So Panel 1 is now going -- I'm presenting the  
16 Project Description summary. We will also have the  
17 engineering-related construction-based effects on  
18 navigation.

19           And Panel 2 will now include the modeling  
20 approaches for the hydrologic water quality and  
21 biological models, and the State Water Re -- State  
22 Water Project and Central Valley Project operations.

23           Panel 3 remains unchanged.

24           That concludes my testimony -- my summary of  
25 my testimony.

1 CO-HEARING OFFICE DODUC: Actually, I have a  
2 question.

3 It was my understanding that Mr. Bednarski  
4 will be participating on Panel 1 to just discuss the  
5 feasibility of proposing -- of constructing proposed  
6 fish screening.

7 WITNESS BUCHHOLZ: I -- I may be misinformed,  
8 then.

9 CO-HEARING OFFICE DODUC: I don't want to  
10 surprise the other parties who were preparing for  
11 cross-examination, but I might be mistaken.

12 Anyone?

13 MR. MIZELL: In fact, I can provide clarity  
14 for that, yes.

15 Mr. Bednarski is appearing on Panel 1 to  
16 discuss the construction-based effects of the intakes  
17 to navigation. And rec -- As it goes to recreation  
18 will be in Panel 3. It is navigation as it relates to  
19 the construction of fish screens that'll be on Panel 1.

20 And it also should be noted that, based upon  
21 the structuring of the panels, Panel 3 will include a  
22 terrestrial biologist. He will no longer be on  
23 Panel 2.

24 CO-HEARING OFFICER DODUC: All right. Please  
25 continue.

1           MR. MIZELL: That concludes our oral summary  
2 of the cases in chief for Panel 1 and these witnesses  
3 are now available for cross-examination.

4           CO-HEARING OFFICE DODUC: Thank you.

5           The court reporter is okay --

6           THE REPORTER: Um-hmm.

7           CO-HEARING OFFICER DODUC: -- with us  
8 proceeding?

9           THE REPORTER: Go ahead.

10          CO-HEARING OFFICE DODUC: Let's go ahead and  
11 get to the cross-examination.

12          State Water Contractors. Miss Morris.

13          MS. MORRIS: No cross-examination.

14          CO-HEARING OFFICER DODUC: Group Number 4, San  
15 Luis and Delta-Mendota.

16          MR. O'HANLON: Daniel O'Hanlon appearing on  
17 behalf of the San Luis & Delta-Mendota Water Authority.

18          We'll have no cross-examination of this panel.

19          And the next party's Westlands Water District  
20 and I know Mr. Williams is not here today. He has no  
21 cross-examination.

22          CO-HEARING OFFICE DODUC: Thank you.

23          Group Number 6, the Coalition for a  
24 Sustainable Delta . . . is not here.

25          Number 7.

1 MR. BEZERRA: Ryan Bezerra. We'll have  
2 cross-examination.

3 CO-HEARING OFFICE DODUC: Thank you,  
4 Mr. Bezerra.

5 I'll ask Mr. Mizell and Miss Ansley to move.

6 MR. BEZERRA: I just need to hand my thumb  
7 drive to the . . .

8 CO-HEARING OFFICE DODUC: As Mr. Bezerra is  
9 setting up, let me do just a quick rundown.

10 Anyone else intending to cross-examine this  
11 panel? And your time estimate, please.

12 MS. NIKKEL: Good morning. Meredith Nikkel on  
13 behalf of North Delta Water Agency, Group  
14 Number . . . 9?

15 CO-HEARING OFFICE DODUC: We'll say if not,  
16 we'll give you time to figure it out.

17 MS. NIKKEL: There we go. And maybe 20  
18 minutes.

19 CO-HEARING OFFICE DODUC: Thank you.

20 MR. ALADJEM: David Aladjem, City of  
21 Brentwood. I believe it's 11 (sic).

22 Probably 15 minutes, maybe much less depending  
23 on previous questions.

24 CO-HEARING OFFICE DODUC: Thank you.

25 MS. TABER: Good morning. Kelley Taber on

1 behalf of Sacramento Regional County Sanitation  
2 District, Group 13, and City of Stockton, Group 22.

3 Perhaps 15 minutes.

4 CO-HEARING OFFICE DODUC: 15?

5 MS. TABER: Yes.

6 CO-HEARING OFFICE DODUC: Thank you.

7 MR. FERGUSON: Good morning. Aaron Ferguson  
8 on behalf of County of Sacramento.

9 I estimate 10 minutes.

10 CO-HEARING OFFICE DODUC: And your group  
11 number?

12 MR. FERGUSON: 45.

13 CO-HEARING OFFICE DODUC: Thank you.

14 MR. SALMON: John Salmon on behalf of East Bay  
15 Municipal Utility District.

16 Perhaps 20, 25 minutes. Could be less  
17 depending on other questions before me.

18 CO-HEARING OFFICE DODUC: Group number?

19 MR. SALMON: 15.

20 CO-HEARING OFFICE DODUC: 15.

21 I don't mean to delegate to you. Just give me  
22 a number but the affiliation as well.

23 MR. KEELING: Tom Keeling on behalf of the  
24 San Joaquin County Protestants, Group 24.

25 I believe I'll have about 15 minutes.

1 MR. JACKSON: Michael Jackson on behalf of  
2 Group 31 and 33.

3 Approximately an hour.

4 CO-HEARING OFFICE DODUC: Thank you.

5 MR. HERRICK: John Herrick on behalf of  
6 Group 21, Central and South Delta parties.

7 10 to 15 minutes maybe.

8 MR. OBEGI: Doug Obegi on behalf of Group 35.

9 I anticipate 30 minutes maybe less.

10 Thank you.

11 MR. WOLK: Dan Wolk on behalf of Group 25, the  
12 County of Solano.

13 About 10 minutes depending on previous  
14 questions. Thanks.

15 MS. DES JARDINS: Dierdre Des Jardins. I  
16 believe I'm Group 37.

17 About half an hour.

18 CO-HEARING OFFICE DODUC: All right.  
19 Mr. Bezerra, could you give us a brief outline of the  
20 topics you'll be covering.

21 MR. BEZERRA: Absolutely.

22 The first topic is the Project Description.

23 The second topic is CWF H3+ Operational  
24 Criteria.

25 The third is the range of alternatives.

1           The fourth is future water deliveries and  
2 public interest considerations.

3           I anticipate an hour, hopefully less.

4           CO-HEARING OFFICE DODUC: And will there be  
5 any other cross-examination from Group 7?

6           All right. Very efficient. Thank you.

7           MR. BEZERRA: Thank you very much.

8           If we could -- Mr. Baker (sic), if you could  
9 please pull up Miss Buchholz' testimony, which is DWR  
10 Exhibit 1010.

11           (Exhibit displayed on screen.)

12           MR. BEZERRA: And Page 2, Lines 15 through 16.

13           (Exhibit displayed on screen.)

14                           CROSS-EXAMINATION

15           MR. BEZERRA: First of all, good morning,  
16 everyone. Welcome back.

17           Okay. So, Miss Buchholz, on Page 2, Lines 15  
18 through 16, you say (reading):

19                           "The CWF H3+ is the Project adopted  
20 by DWR that is the subject of the  
21 Petition for Change In Point of Diversion  
22 requested by DWR and Reclamation."

23           Just preliminarily, CWF H3+ was not presented  
24 in Part 1 of this hearing; correct?

25           WITNESS BUCHHOLZ: That is correct.



1 MR. BEZERRA: Thank you.

2 And I want -- That sentence is a little  
3 ambiguous to me.

4 So it says that CWF H3+ is a Project adopted  
5 by DWR, and then says that it is the subject of the  
6 Petition for Change in Point of Diversion.

7 Reclamation has not issued a Record of  
8 Decision adopting this Project; correct?

9 WITNESS BUCHHOLZ: That is correct.

10 MR. BEZERRA: Reclamation has not issued a  
11 Record of Decision adopting the Biological Opinions  
12 that have been issued based on this Project; correct?

13 WITNESS BUCHHOLZ: I would believe that  
14 Reclamation has -- has not adopted a Record of Decision  
15 at all for this Project.

16 MR. BEZERRA: Okay. Thank you.

17 I'd like to pull up Exhibit SWRCB-1, which is  
18 the Change Petition, and specifically Page 6 of that  
19 .pdf file.

20 (Exhibit displayed on screen.)

21 MR. BEZERRA: Go back. I think you had it.  
22 It's the one entitled "Environmental Information."

23 (Exhibit displayed on screen.)

24 MR. BEZERRA: There you go.

25 If you could blow up the blue highlighted

1 area, please. Thank you.

2 (Exhibit displayed on screen.)

3 MR. BEZERRA: Miss Buchholz, do you see in  
4 this portion of the Change Petition where it states  
5 that the Project being petitioned is Alternative 4A?

6 WITNESS BUCHHOLZ: Yes.

7 MR. BEZERRA: That is the sole EIR alternative  
8 that the Department of Water Resources and D -- and  
9 Reclamation have petitioned for State Board approval;  
10 correct?

11 WITNESS BUCHHOLZ: As we -- As we moved  
12 through Part 1 and now into Part 2, we have provided  
13 further clarification on Alternative 4A so that H3+ is  
14 part of 4A but now with further clarification with  
15 modifications to the Operational Criteria.

16 MR. BEZERRA: And Alt -- And operational  
17 Scenario CWF H3+ did not exist at the time this  
18 Petition was filed; correct?

19 WITNESS BUCHHOLZ: It did not exist at the  
20 time that document was filed.

21 MR. BEZERRA: Okay. Okay. If we could go  
22 back to Miss Buchholz testimony, DWR-1010.

23 (Exhibit displayed on screen.)

24 And specifically Page 5, Lines 14 through 16.

25 On -- Those lines state that (reading):

1                    "This CWF H3+ facilities description  
2                    is consistent with the facilities  
3                    described in Part 1 of the State Water  
4                    Board hearing."

5                    Correct?

6                    WITNESS BUCHHOLZ: Yes, that is correct.

7                    MR. BEZERRA: Okay. And if we could please  
8 pull up Exhibit DWR-2 Errata.

9                    (Exhibit displayed on screen.)

10                   MR. BEZERRA: And go to Page -- or Slide 11.

11                   (Exhibit displayed on screen.)

12                   MR. BEZERRA: Ms. Buchholz, this is the  
13 Project description you are stating that CWF H3 is  
14 consistent with; correct?

15                   WITNESS BUCHHOLZ: (Examining document.)

16                   I believe that that graphic would still  
17 represent the facilities that we are discussing,  
18 CWF H3+.

19                   MR. BEZERRA: And you are not testifying about  
20 any other possible Project facilities; correct?

21                   WITNESS BUCHHOLZ: No.

22                   MR. BEZERRA: I'm sorry?

23                   WITNESS BUCHHOLZ: These are the -- These are  
24 the facilities that are presented in the -- the Final  
25 EIR that was adopted in 2017 and we reference it as a

1 basis for CWF H3+.

2 MR. BEZERRA: And just for clarity because  
3 this has gotten kind of complicated:

4 When you say the Final EIR, you mean the EIR  
5 that was certified in July 2017, not the Final EIR that  
6 was issued in December 2016; correct?

7 WITNESS BUCHHOLZ: That is correct.

8 MR. BEZERRA: Okay. And Mr. Bednarski -- And  
9 I apologize if I butchered your name there.

10 I saw you nodding your head. Would you agree  
11 with Miss Buchholz' statement that this slide from the  
12 previous DWR exhibit accurately reflects the Project  
13 facilities about which you're testifying?

14 WITNESS BEDNARSKI: Yes, I do agree.

15 MR. BEZERRA: And you're not testifying about  
16 any other possible Project facilities; correct?

17 WITNESS BEDNARSKI: No, I'm not.

18 WITNESS PIRABAROOBAN: If I may, I'd like to  
19 provide clarification there.

20 That's the evidence submitted, but the purpose  
21 of the Project includes Head of Old River Gate.

22 Just wanted to make sure that this is also  
23 part of this Project.

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

25 Mr. Baker (sic), could we please pull up

1 Exhibit BKS-250 from the thumb drive?

2 (Exhibit displayed on screen.)

3 MR. BEZERRA: For the record, this exhibit is  
4 excerpts of Exhibit SWRCB-110, which is the July 2017  
5 Findings of Fact and Statement of Overriding  
6 Considerations DWR adopted.

7 Miss Buchholz, are you familiar with this  
8 document?

9 WITNESS BUCHHOLZ: Yes, I am.

10 MR. BEZERRA: Okay. If we could please go to  
11 the second page of this exhibit.

12 (Exhibit displayed on screen.)

13 MR. BEZERRA: And specifically towards the  
14 bottom, there's highlighted text.

15 (Exhibit displayed on screen.)

16 MR. BEZERRA: Thank you.

17 Miss Buchholz, do you see the highlighted text  
18 which reads (reading):

19 "Through its Acting Director, DWR  
20 finds Alternative 3, with only two north  
21 Delta intakes, and Alternatives 5 and 5A,  
22 with 1 north Delta intake, to be  
23 infeasible based on all of the reasons  
24 discussed below."

25 Do you see that testimony?

1 WITNESS BUCHHOLZ: I see it.

2 MR. BEZERRA: And does -- Does this por --  
3 Does this finding by DWR indicate that Alternatives 3,  
4 5 and 5A were not included in the Project that DWR  
5 certified an EIR for?

6 WITNESS BUCHHOLZ: The Project that -- that  
7 DWR certified the EIR for in 2017 included three North  
8 Delta intakes, so -- And it was based on Alternative 4A  
9 with the operating criteria of H3+ as well as other  
10 alternatives.

11 MR. BEZERRA: So just to confirm: DWR did not  
12 include EIR Alternatives 3, 5 and 5A in the Project for  
13 which it certified an EIR; correct?

14 WITNESS BUCHHOLZ: They were part of the EIR  
15 but the proposed -- the -- the Adopted Project did not  
16 include the basis of Alternatives 3 or Alternatives 5  
17 and 5A.

18 MR. BEZERRA: Okay. Thank you very much.

19 Okay. If we could move back to Ms. Buchholz's  
20 testimony, DWR Exhibit 1010, specifically Page 2,  
21 Lines 26 through 28.

22 (Exhibit displayed on screen.)

23 MR. BEZERRA: Thank you.

24 Ms. Buchholz, do you see the portion of your  
25 testimony in which you state (reading):

1                   "Additional criteria were imposed by  
2                   the . . . Department of Fish and Wildlife  
3                   (CDFW) in the Incidental Take Permit  
4                   (ITP)."

5                   Do you see that?

6                   WITNESS BEDNARSKI: I do.

7                   MR. BEZERRA: Are you testifying that the  
8                   terms of the Incidental Take Permit have or have not  
9                   been included in Project CWF H3+ about which you are  
10                  testifying?

11                  WITNESS BUCHHOLZ: The -- There are -- The  
12                  Department of Water Resources is committed to meeting  
13                  the -- the requirements of the Incidental Take Permit.  
14                  They are concurrent -- They are -- They will be not  
15                  concurrent with the already Adopted Project. CWF H3+  
16                  was described in the Final EIR.

17                  MR. BEZERRA: Okay. Let -- Let me refer to  
18                  the previous sentence in your testimony in which you  
19                  state (reading):

20                         "CWF H3+ includes Operational  
21                         Criteria and Environmental Commitments  
22                         presented in the 2017 Certified FEIR,  
23                         including requirements from the U.S. Fish  
24                         and Wildlife Service . . . and National .  
25                         . . Fisheries Service Biological Opinions

1 for CWF H3+, as summarized in Figure 1."

2 That items in that sentence you are testifying  
3 are included in the CWF H3+; correct?

4 WITNESS BUCHHOLZ: They are. They're  
5 represented in -- in the Final EIR.

6 MR. BEZERRA: All right. Thank you.

7 In the following sentence, you are not stating  
8 that terms of the Incidental Take Permit have been  
9 included in CWF H3+; correct?

10 WITNESS BUCHHOLZ: What we're saying is that  
11 they weren't included in the Final EIR, which is  
12 defined as CWF H3+, due to timing and also the fact  
13 that DWR was fully committed to meeting the  
14 requirements of California Department of Fish and  
15 Wildlife.

16 MR. BEZERRA: So, again, your testimony is not  
17 that you have incorporated the Incidental Take Permit  
18 into the Project about which you are testifying.

19 WITNESS BUCHHOLZ: The Project --

20 MR. MIZELL: Objection: Asked and answered.

21 CO-HEARING OFFICE DODUC: Actually, I need  
22 clarification.

23 Ask again, Mr. Bezerra.

24 MR. BEZERRA: Miss Buchholz, just to clarify:  
25 You are not testifying that the terms of the Incidental



1 Take Permit have been incorporated into the CWF H3+  
2 Project about which you're testifying.

3 WITNESS BUCHHOLZ: The definition of the  
4 CWF H3+ is based upon the Final EIR. And the  
5 Incidental Take Permit was issued subsequent to that  
6 and -- a separate document than that. And so they  
7 would both be met by Department of Water Resources, but  
8 it is not included in the Final EIR.

9 MR. BEZERRA: Thank you very much.

10 Okay. Could we please scroll down to Page 9  
11 of Miss Buchholz's testimony, and Lines 12 through 15.

12 (Exhibit displayed on screen.)

13 MR. BEZERRA: On these lines, you state  
14 (reading):

15 "Due to adaptive management, the  
16 CWF H3+ operations could be refined in  
17 the future. However, the modified  
18 operations would only be an outcome of  
19 the adaptive management process if the  
20 many agencies participating in that  
21 process determined that . . . changes  
22 would be protective of fish and  
23 wildlife."

24 Is it your testimony that, in refining Project  
25 operations, DWR would not consider the impacts on other

1 legal users of water?

2 WITNESS BUCHHOLZ: No, that's not my  
3 testimony.

4 This is specifically to -- with -- with  
5 respect to the adaptive management as it's described in  
6 the Final EIR.

7 It's associated -- The process is associated  
8 with development through the agency process to -- based  
9 upon science associated with the -- with fishery --  
10 fish and wildlife situations.

11 And so we do not mean that this would not.  
12 Any future changes would also need to consider the  
13 effects on legal users of water.

14 MR. BEZERRA: Okay. Let me clarify that:

15 At this point in time, does DWR intend to file  
16 a Water Right Change Petition to this Board to modify  
17 California WaterFix operations if those operations are  
18 changed via adaptive management?

19 WITNESS BUCHHOLZ: My understanding in the way  
20 the adaptive management process works -- and we  
21 actually have their expert on this on -- on Panel 3 --  
22 is that . . . each -- Those kind of changes, you'd  
23 have -- as with any change, you would have to consider  
24 whether or not there would need to be a subsequent  
25 submittal to the State Water Resource Control Board.

1           We don't know what's coming out of adaptive  
2 management. This is a process that's being established  
3 and committed to through this document.

4           MR. BEZERRA: Would you agree that changes to  
5 the operations of the State Water Project and the  
6 Central Valley Project through adaptive management  
7 could affect other legal users of water?

8           MR. MIZELL: Objection: Speculative.

9           WITNESS BUCHHOLZ: I don't know. I really  
10 don't know.

11          MR. BEZERRA: Thank you very much.

12          So moving on to CWF H3+ Operational Criteria.

13          If we could go to Page 7, Lines 13 through 14,  
14 of Ms. Buchholz's testimony.

15          (Exhibit displayed on screen.)

16          MR. BEZERRA: The sentence on those lines  
17 reads (reading):

18                 "CWF H3+ includes some Operational  
19 Criteria presented in the BA and 2016  
20 FEIR/S for Alternative 4A H3+ . . ."

21          What do you mean that some of the operational  
22 criteria were included in the Project you're  
23 presenting?

24          WITNESS BUCHHOLZ: So, some of the -- The  
25 Biological Assessment and the 2016 Final EIR/EIS, those

1 documents were submitted as -- and were considered  
2 through the consultations with U.S. Fish and Wildlife  
3 Service and the National Marine Fisheries Service.

4           Through those consultations and issuance of  
5 the Biological Opinions, some of the items in the  
6 original -- in the 2016 document were . . . were not --  
7 would not be appropriate following the issuance of the  
8 Biological Opinions.

9           So, those -- That's why it's only the ones  
10 that would still be appropriate with the Biological  
11 Opinion criteria as described in -- in those documents  
12 and in the Final EIR.

13           MR. BEZERRA: Okay. So the CWR H3+ Project  
14 about which you're testifying does not include all of  
15 Operational Criteria from the 2016 Final EIR; correct?

16           WITNESS BUCHHOLZ: It was modified by the  
17 Biological Opinions or other information that was  
18 presented in the 2017 Final EIR.

19           MR. BEZERRA: And so, again, those  
20 modifications occurred after Part 1 of this hearing;  
21 correct?

22           WITNESS BUCHHOLZ: Yes.

23           Well, they -- they occurred, yes.

24           I'm trying to think if 1 was still ongoing. I  
25 can't remember if Part 1 was still ongoing at that

1 time.

2 MR. BEZERRA: Okay. Let me ask the question a  
3 different way:

4 Those modifications were not presented as part  
5 of the Project that DWR presented in Part 1 of this  
6 hearing; correct?

7 WITNESS BEDNARSKI: It was not presented in  
8 the -- in the initial Project Description. However,  
9 during Part 1, different information was presented by  
10 DWR but not in -- not in Miss Pierre's presentation of  
11 Project Description.

12 MR. BEZERRA: So did DWR modify the Project  
13 relevant to this hearing while Part 1 was ongoing?

14 WITNESS BUCHHOLZ: As we showed in Part 1,  
15 we -- we presented information as -- as it became  
16 available. And we've subsequently submitted as part of  
17 the exhibits the Biological Assessments, 2016  
18 Final EIR/EIS, the Biological Opinions, and the 2017  
19 Final EIR.

20 MR. BEZERRA: Okay. Thank you.

21 CO-HEARING OFFICE DODUC: Mr. Bezerra, as  
22 you're contemplating your line of questioning, please  
23 keep in mind that I need to give the court reporter a  
24 break --

25 MR. BEZERRA: Yeah.

1 CO-HEARING OFFICE DODUC: -- within the next  
2 10, 15 minutes.

3 MR. BEZERRA: I'm happy to take a break at any  
4 point. I mean, I can stop now.

5 CO-HEARING OFFICE DODUC: Now would be a good  
6 time?

7 MR. BEZERRA: I -- Sure. I'll pick back up on  
8 the subject, but I'm happy to break.

9 CO-HEARING OFFICE DODUC: Let's do that and we  
10 will return at 11:05.

11 (Recess taken at 10:50 a.m.)

12 (Proceedings resumed at 11:05 a.m.):

13 CO-HEARING OFFICE DODUC: It is 11:05. We are  
14 back in session.

15 Thank you, Mr. Bezerra. You may resume.

16 MR. BEZERRA: Thank you very much.

17 Ms. -- First of all, Ms. Buchholz, my -- my  
18 friend Ms. Morris informs me I've been mispronouncing  
19 your name. So I apologize, and I promise to try to get  
20 it correct. So ms. Buchholz.

21 On the operational cri --

22 CO-HEARING OFFICE DODUC: Say that for the  
23 Hearing Officers' benefit as well.

24 MR. BEZERRA: I understand Miss Buchholz is  
25 named -- It's Buchholz rather than Buchholz.

1 CO-HEARING OFFICE DODUC: Buchholz.

2 MR. BEZERRA: So I am going to do my level  
3 best to keep that in mind.

4 WITNESS BUCHHOLZ: Thank you.

5 MR. BEZERRA: So, Miss Buchholz, on the  
6 Operational Criteria, we -- we previously discussed a  
7 little about the possibility of adaptive management.

8 Through the adaptive management process, DWR  
9 and Reclamation would not be constrained to operate to  
10 the CWF H3+ criteria; correct?

11 WITNESS BUCHHOLZ: Through the adapt -- My  
12 understanding of -- And as I said before, I'm not the  
13 expert on adaptive management. That person will be on  
14 Panel 3 later on.

15 My reading and understanding of adaptive  
16 management is that it's a multiagency coordination of  
17 looking at new scientific information, and to recommend  
18 changes in operations. And they would have to come  
19 together with an agreement on that process.

20 MR. BEZERRA: And those changes could occur  
21 anywhere between Boundary 1 and Boundary 2 as presented  
22 by DWR; correct?

23 WITNESS BUCHHOLZ: That is -- That was exactly  
24 how we presented that in the Project Description in  
25 Part 1, yes.

1 MR. BEZERRA: Okay. And so the C -- the  
2 Project you're discussing in your testimony, CWF H3+,  
3 it is not a constraint on DWR and Reclamation's  
4 operations as they may be revised through adaptive  
5 management; correct?

6 WITNESS BUCHHOLZ: The way we presented  
7 Boundary 1 and Boundary 2 in our Part 1 and in the  
8 application is that . . . that that could occur in the  
9 future. However, that process has to be done through  
10 the coordination of the multiagencies and parties.

11 MR. BEZERRA: And are any of those agencies  
12 and parties the State Water Resources Control Board?

13 WITNESS BEDNARSKI: You know, I -- I don't  
14 remember that.

15 As I said, I'm not the expert on adaptive  
16 management. I'm here to present the summary of it and  
17 Panel 3 will be presenting that information.

18 MR. BEZERRA: Okay. Thank you very much.

19 Mr. Baker (sic), if we could pull up  
20 Ms. Buchholz's testimony, DWR-1010, and Page 7, please.

21 (Exhibit displayed on screen.)

22 MR. BEZERRA: Thank you.

23 Ms. Buchholz, do you see the portion of your  
24 testimony on Lines 22 through 27 on Page 7?

25 WITNESS BUCHHOLZ: Yes.



1 MR. BEZERRA: Those are Spring Outflow

2 Criteria; correct?

3 WITNESS BUCHHOLZ: Yes.

4 MR. BEZERRA: And these items derive from the  
5 Biological Opinions that were issued for the California  
6 WaterFix; correct?

7 WITNESS BUCHHOLZ: They were identified in  
8 the -- in the Biological Opinions through consultation  
9 with the Biological Opinions and Incidental Take  
10 Permits, yes.

11 MR. BEZERRA: Well -- Okay. Just to go back:

12 My understanding from your previous testimony  
13 was that the Incidental Take Permit was not  
14 incorporated into Project CWF H3+; correct.

15 WITNESS BEDNARSKI: Right. The consultations  
16 were ongoing prior to the completion of the 2017 Final  
17 EIR, and information from those consultations was  
18 included in the 2017 Final EIR, although the actual  
19 Permit was not.

20 MR. BEZERRA: Okay. I need to unpack that  
21 statement a little bit.

22 Consultations is an activity that occurs under  
23 the Federal Environmental Species -- Endangered Species  
24 Act; correct?

25 WITNESS BEDNARSKI: That is true. That would

1 be a -- It is not the exact word that you would use  
2 under California environmental --

3 MR. BEZERRA: And so there is no -- was no  
4 technical consultation under the California Endangered  
5 Species Act; correct?

6 WITNESS BUCHHOLZ: Right. There were the --  
7 There were discussions as the Incidental Take Permit  
8 was being prepared.

9 MR. BEZERRA: And the Incidental Take Permit  
10 was issued after DWR certified the EIR; correct?

11 WITNESS BUCHHOLZ: True.

12 MR. BEZERRA: Thank you.

13 Okay. Mr. Baker (sic), if you could please  
14 pull up exhibit BKS-251.

15 (Exhibit displayed on screen.)

16 MR. BEZERRA: This exhibit is excerpts of  
17 Appendix A2 of the National Fisheries Service  
18 Biological Opinion. That opinion and all of its  
19 appendices are Staff Exhibit SWRCB-106.

20 Ms. Buchholz, are you familiar with  
21 Appendix A2 of that Biological Opinion?

22 WITNESS BUCHHOLZ: I'm familiar with portions  
23 of Appendix A2.

24 MR. BEZERRA: Okay. Appendix A2 is the  
25 June 2017 description of the proposed action; correct?

1           WITNESS BUCHHOLZ: It is consistent with  
2 the -- Yes, um-hmm.

3           MR. BEZERRA: Okay. Thank you.

4           If we could please go to Page 3-80 in this  
5 exhibit.

6           (Exhibit displayed on screen.)

7           MR. BEZERRA: And, Miss Buchholz, you see the  
8 highlighted text there?

9           WITNESS BEDNARSKI: (Examining document.)

10          MR. BEZERRA: For the record, it reads  
11 (reading):

12                    "To avoid a reduction in overall  
13 abundance for Longfin Smelt, the PA  
14 includes Spring Outflow Criteria, which  
15 are intended to be provided by  
16 appropriate beneficiaries through the  
17 acquisition of water from willing  
18 sellers. If sufficient water cannot be  
19 acquired for this purpose, the Spring  
20 Outflow Criteria will be accomplished  
21 through operations of the CVP/SWP to the  
22 extent an obligation is imposed on either  
23 the SWP or CVP under Federal or  
24 applicable state law."

25          Miss Buchholz, "PA" for these purposes means

1 the "proposed action"; correct?

2 WITNESS BUCHHOLZ: Yes.

3 MR. BEZERRA: To the best of your knowledge,  
4 has DWR identified any willing sellers who will  
5 contribute to the compliance with the Biological  
6 Opinion Spring Outflow Criteria?

7 WITNESS BUCHHOLZ: So, the -- Right now, the  
8 way CWF H3+ has been presented is that these -- the  
9 only -- the spring outflow would be met through changes  
10 in Delta export restrictions, not by providing  
11 additional water releases or acquisitions of water.

12 MR. BEZERRA: So, as of this time, DWR has not  
13 identified any willing sellers who will contribute to  
14 compliance with the Biological Opinion Spring Outflow  
15 Criteria; correct?

16 WITNESS BUCHHOLZ: I am not aware of any  
17 activities in that . . . part.

18 MR. BEZERRA: Has DWR made any assumptions  
19 about acquisitions of water from willing sellers to  
20 contribute to compliance with these criteria?

21 WITNESS BUCHHOLZ: So the assumptions in the  
22 modeling that is presented with the Final EIR is  
23 associated with reductions in Delta exports only.

24 MR. BEZERRA: Delta exports only.

25 WITNESS BUCHHOLZ: Right.

1 MR. BEZERRA: Okay. Thank you.

2 To the best of your knowledge, have DWR and  
3 Reclamation agreed on how to divide responsibility for  
4 meeting the Biological Opinion Spring Outflow Criteria?

5 WITNESS BUCHHOLZ: Not that I'm aware.

6 MR. BEZERRA: Thank you.

7 Okay. If we could go back to Miss Buchholz's  
8 testimony, DWR-1010, Page 8.

9 (Exhibit displayed on screen.)

10 MR. BEZERRA: Lines 2 through 4.

11 (Exhibit displayed on screen.)

12 MR. BEZERRA: Your testimony on those lines  
13 states (reading):

14 "Real-time operations  
15 decision-making process will manage  
16 operations with respect to flow and water  
17 quality monitoring, and aquatic species  
18 protection within the parameters set by  
19 the regulatory requirements, Operational  
20 Criteria, and SWP . . . CVP operations."

21 Ms. Buchholz, in that testimony, what do you  
22 mean by "real-time operations decision-making process"?

23 WITNESS BUCHHOLZ: So, as described in the --  
24 the Final EIR and in the 2016 Final EIR/EIS, real-time  
25 operations would become a continuation of many of

1 the . . . multiagency teams that work together to make  
2 decisions about the Central Valley Project and State  
3 Water Project operations.

4 And, again, Mr. Miller on Panel 2 is more  
5 expert at the participation of those teams because it's  
6 a continuation of ongoing teams as well as some  
7 expansion, as we described in the EIR.

8 MR. BEZERRA: Okay. So, to the best of your  
9 knowledge, have there been any definition of what  
10 actions might result in operation of the CVP and SWP  
11 through these real-time operations about which you've  
12 testified?

13 WITNESS BUCHHOLZ: The -- The EIR does not --  
14 EIR/EIS do not specifically talk about those things in  
15 the sense that that would be speculative about what  
16 changes would occur during to real-time operations, but  
17 it would be a continuation of ongoing teams that make  
18 decisions.

19 MR. BEZERRA: So those speculative potential  
20 future operations are not included in the CWF H3+  
21 Project about which you're testifying; correct?

22 WITNESS BEDNARSKI: CWF --

23 MR. MIZELL: Objection: Misstates the  
24 testimony.

25 CO-HEARING OFFICE DODUC: Miss Buchholz.

1 WITNESS BUCHHOLZ: CWF H3+ --

2 CO-HEARING OFFICE DODUC: Buchholz, sorry.

3 WITNESS BUCHHOLZ: CWF H3+ definition includes  
4 the acknowledgment that real-time operations will  
5 become -- are a part -- will continue to be part of  
6 the -- of the Project Description, just like they are  
7 now.

8 MR. BEZERRA: But there are no specific  
9 real-time operations defined anywhere in the CWF H3+  
10 Project Description; correct?

11 MR. MIZELL: I'm going to object at this  
12 point.

13 Mr. Bezerra is looking at very specific  
14 information about the real-time operations.  
15 Miss Buchholz has indicated that that's truly the  
16 expertise of Mr. Aaron Miller who will appear on  
17 Panel 2 at the request of Bezerra.

18 So I believe we should reserve these questions  
19 for Mr. Miller.

20 CO-HEARING OFFICE DODUC: Mr. Bezerra?

21 MR. BEZERRA: That's fine.

22 If Miss Buchholz has no testimony on this  
23 matter, that's fine, but she did describe this in her  
24 written testimony.

25 CO-HEARING OFFICE DODUC: All right. I will

1 acknowledge Mr. Mizell's objection but will overrule it  
2 and ask Ms. Buchholz to answer to the best of her  
3 ability and just say you don't know if you don't know.

4 WITNESS BUCHHOLZ: I don't know, as is noted  
5 in the next couple lines of my testimony, where I refer  
6 to Mr. Miller's testimony.

7 MR. BEZERRA: Thank you.

8 Okay. Moving on to the next topic regarding  
9 range of alternatives.

10 If we could scroll down farther on this page  
11 to Lines 26 and 27.

12 (Exhibit displayed on screen.)

13 MR. BEZERRA: Miss Buchholz, you see there on  
14 those lines, your testimony (reading):

15 ". . . CWF H3+ is within the range of  
16 alternatives described in Part 1 of the  
17 State Water Board hearing."

18 What do you mean by "range of alternatives"?

19 WITNESS BUCHHOLZ: So the range of  
20 alternatives that were described in Part 1 included  
21 Boundary 1 to Boundary 2. And this CWF H3+ is  
22 within -- those Operational Criteria are within the  
23 criteria that we defined in Boundary 1 and in  
24 Boundary 2.

25 MR. BEZERRA: How do you define whether



1 CWF H3+ is within that range of alternatives? Are you  
2 talking reservoir storage levels? Delta outflow  
3 levels? Specific operational rules? How do you define  
4 that range?

5 WITNESS BUCHHOLZ: All of those, plus other --  
6 other operation criteria.

7 MR. BEZERRA: All of the above. Okay.

8 Could we please pull up Exhibit DWR-71, which  
9 is the testimony of Armin Munévar.

10 (Exhibit displayed on screen.)

11 MR. BEZERRA: And could we please scroll to  
12 the bottom of Page 13.

13 (Exhibit displayed on screen.)

14 MR. BEZERRA: Okay. Yes. There's a sentence  
15 that begins on that line and then continues on to the  
16 next line, so if we could pull that whole sentence up.

17 (Exhibit displayed on screen.)

18 MR. BEZERRA: Okay. Miss Buchholz, you're  
19 familiar with Mr. Munévar's testimony; correct?

20 WITNESS BUCHHOLZ: I remember it from Part 1.

21 MR. BEZERRA: Okay.

22 WITNESS BUCHHOLZ: Relative to 1.

23 MR. BEZERRA: And on lines -- Beginning on  
24 Line 28, Mr. Munévar stated (reading):

25 "The input hydrology and sea level

1           rise assumptions that represent 2025  
2           climate change conditions are consistent  
3           with the methodology described in  
4           SWRCB-4, Appendix 5A."

5           Is it your understanding that the entire range  
6 of alternatives that DWR presented in Part 1 included  
7 an assumption of 2025 climate change conditions?

8           WITNESS BUCHHOLZ: I don't remember if we --  
9 when boundary -- In our analysis in the 2016 -- in the  
10 Recirculated Draft EIR/EIS, we presented the  
11 alternatives both at the levels of 2025 and at 2060.

12           I'm not sure that answers the question, but  
13 I'm not sure what --

14           MR. BEZERRA: No, I --

15           WITNESS BUCHHOLZ: -- the specific question  
16 is.

17           MR. BEZERRA: The question's specifically  
18 about the range of alternatives that DWR presented in  
19 Part 1 of this hearing.

20           Is it your understanding that that entire  
21 range of alternatives was based on an assumption of  
22 2025 climate change?

23           MR. MIZELL: I'm going to object to this  
24 question.

25           Mr. Bezerra's asking Miss Buchholz about

1 modeling testimony and modeling's a part of Panel 2.

2           Specifically, I'd like to point out the fact  
3 that Mr. Bezerra was very conscious about saying he  
4 does not want to cross over panels. So going into  
5 modeling assumption questions here in Panel 1 seems to  
6 be -- be counter to that goal.

7           CO-HEARING OFFICE DODUC: Mr. Bezerra.

8           MR. BEZERRA: Ms. Buchholz has testified  
9 specifically that CWF H3+ is within the range of  
10 alternatives presented in Part 1 of this hearing.

11           She just described that that range is defined  
12 by a great many things, and I want to understand her  
13 understanding of the climate change assumptions made in  
14 defining that range of alternatives.

15           CO-HEARING OFFICE DODUC: Overruled.

16           I will allow him to pursue this.

17           WITNESS BUCHHOLZ: With respect to the climate  
18 change analysis, as we moved forward through the  
19 Biological Assessment and Final EIR/EIS, we focused on  
20 the climate change range through the 20 -- what we like  
21 to refer as 2030 -- 2025 or 2030 criteria.

22           And as we moved forward, that was between our  
23 Boundary 1 and Boundary 2 analysis that was presented  
24 in the Final EIR/EIS and appendices.

25           MR. BEZERRA: Okay. So I just want to make

1 sure I understand the answer.

2 CO-HEARING OFFICE DODUC: Thank you,  
3 Mr. Bezerra.

4 MR. BEZERRA: The gist of the answer is that,  
5 as you moved through DWR's process to reach CWF H3+,  
6 you assumed 2025 to 2030 climate change in all cases;  
7 correct?

8 WITNESS BUCHHOLZ: We did. We also anal --  
9 That was in our quantitative analysis.

10 We also recognized that, in a comparison as we  
11 move forward in the future in the EIR/EIS analysis, or  
12 the Final EIR, we discussed what would happen at  
13 climate change 2060, which we call late long-term.

14 And those climate change assumptions would be  
15 included both the future without the Project and the  
16 future with the Project. And the reference of the  
17 differences was only due to the climate change, not  
18 because of any change in operations of the criteria --  
19 of the Project.

20 MR. BEZERRA: Okay. I have to say I don't --  
21 didn't quite understand the answer.

22 WITNESS BUCHHOLZ: The Operational Criteria,  
23 as we discussed it in the Final EIR and in the 2016  
24 Final EIR/EIS, in the -- in the Project Description, we  
25 would not change the Operational Criteria as you move

1 forward in -- with climate change in 2060, which is the  
2 end of our study period.

3           And our incremental differences at 2060  
4 would -- is similar to -- would be similar to the  
5 incremental differences we saw at 2025-2030.

6           And, again, you need to really get into the  
7 details with the Panel 2 modeling team members.

8           MR. BEZERRA: Okay. Let me slice this a  
9 little differently.

10           In the original Draft EIR, DWR included a late  
11 long-term analysis for climate change as of 2060;  
12 correct?

13           WITNESS BUCHHOLZ: Yes.

14           MR. BEZERRA: DWR did not present that  
15 analysis in Part 1 of this hearing in defining a range  
16 of alternatives; correct?

17           WITNESS BUCHHOLZ: DWR relied upon the  
18 modeling results from the 2025-2030 analysis.

19           But if you read the EIR/EIS, we also  
20 qualitatively described anticipated changes at late  
21 long-term . . . based upon the incremental differences  
22 we showed in the appendices.

23           MR. BEZERRA: Okay. But . . . You just  
24 discussed the Final EIR/EIS.

25           In -- For purposes of this hearing, the

1 CWF H3+ Project you are describing in your testimony --

2 WITNESS BUCHHOLZ: Um-hmm.

3 MR. BEZERRA: -- relies on 2025 to 2030  
4 climate change assumptions; correct?

5 WITNESS BUCHHOLZ: The modeling presentations  
6 are based upon that, yes --

7 MR. BEZERRA: Thank you.

8 WITNESS BUCHHOLZ: -- and they will be  
9 presented in Panel 2.

10 MR. BEZERRA: Thank you very much.

11 Okay. This is just for my clarity that --  
12 Moving on from that subject, this is just for my  
13 clarity.

14 CWF H3+ has a different approach to spring  
15 outflows than the H3 and H4 scenarios presented in  
16 Part 1 of this hearing; correct?

17 WITNESS BUCHHOLZ: As I described in my  
18 testimony and in my presentation today, that Spring  
19 Outflow Criteria were modified as -- but they were  
20 still within the range of H3 and H4 that were presented  
21 in Part 1 of the hearing.

22 MR. BEZERRA: And what do you mean by being  
23 "within the range of H3 and H4"?

24 WITNESS BUCHHOLZ: So, H3, when we presented  
25 in -- We presented a range because we didn't have

1 clarity on many items of -- of where we were -- what  
2 were going to be analyzed back in the Part 1.

3           So H3 was based upon Spring Outflow Criteria  
4 Under State Water Resource Control Board Decision 1641.  
5 And H4 was another bookend based upon what was referred  
6 to in those documents as enhanced spring outflow.

7           The Spring Outflow Criteria that was in  
8 CWF H3+ is within the range of those -- of that  
9 criteria.

10           MR. BEZERRA: How do you define that range?  
11 Is that a numerical Delta outflow? Is it a Project  
12 operations to achieve a result? How do you define that  
13 range?

14           WITNESS BUCHHOLZ: They are describing  
15 criteria by quantitative means of criteria -- of  
16 different timeframes, temporal changes, and volume of  
17 flow, rate of flow.

18           MR. BEZERRA: Okay. Thank you.

19           Mr. Baker (sic), if we could pull up exhibit  
20 BKS-252.

21           (Exhibit displayed on screen.)

22           MR. BEZERRA: This exhibit is excerpts of  
23 Appendix 5D for 2016 Final EIR/EIS. For reference  
24 purposes, this contains modeling results.

25           And if we could please go to -- It is part of

1 Exhibit -- Staff Exhibit SWRCB-102.

2 Miss Buchholz, did you rely on Exhibit  
3 SWRCB-102 in your testimony?

4 WITNESS BUCHHOLZ: Not specifically. I relied  
5 upon my knowledge of this document and other  
6 documents -- other parts of the Final EIR/EIS.

7 MR. BEZERRA: Okay. But you cited SWRCB-102  
8 in your testimony; correct?

9 WITNESS BUCHHOLZ: Um-hmm.

10 MR. BEZERRA: If we could please go to  
11 Page 5G-11.

12 (Exhibit displayed on screen.)

13 MR. BEZERRA: And so I'll have serious  
14 questions about this page.

15 For the purposes of the record, this page  
16 displays the modeling results for end of May and end of  
17 September Folsom Reservoir storage.

18 Okay. If we could go to the top one for end  
19 of May and then blow that up.

20 (Exhibit displayed on screen.)

21 MR. BEZERRA: Thank you.

22 So, Miss Buchholz, I believe you described in  
23 your testimony using the sensitivity -- that DWR relied  
24 on the sensitivity analysis; correct?

25 WITNESS BUCHHOLZ: On a sensitivity analysis,



1 yes, um-hmm.

2 MR. BEZERRA: Okay. Thank you.

3 And so when you describe a range of  
4 alternatives, you're describing range -- this sort of  
5 range of modeling results; correct?

6 WITNESS BUCHHOLZ: The range of alternatives  
7 would depend on which part of the range of alternatives  
8 I was describing.

9 MR. BEZERRA: All right. Well, I need to  
10 understand.

11 This -- This is from the Final EIR; correct?

12 WITNESS BUCHHOLZ: I can't remember if it's  
13 the Final EIR or the Final EIR/EIS. I think this is  
14 the Final EIR/EIS.

15 MR. BEZERRA: Okay. Thank you.

16 So there are four different curves here. The  
17 first two, the blue and the red ones, have a BA  
18 indicator in them.

19 That indicates that those curves are from the  
20 BiOp -- Biological Assessment modeling; correct?

21 WITNESS BUCHHOLZ: That's true.

22 MR. BEZERRA: And the last two, the light blue  
23 and the orange with the blocks, those indicate  
24 Final EIR/EIS.

25 So that's different modeling; correct?

1 WITNESS BUCHHOLZ: It is.

2 MR. BEZERRA: Okay.

3 WITNESS BUCHHOLZ: Well, it's different  
4 criteria, so it's a different model run.

5 MR. BEZERRA: It's different model runs, yes.

6 Thank you.

7 So, do you see the red and the blue lines in  
8 approximately the 5 percent of dryest conditions are  
9 approximately 150,000 acre-feet higher than the light  
10 blue and orange block lines; correct?

11 WITNESS BUCHHOLZ: That's true.

12 MR. BEZERRA: And this is the sort of range of  
13 outcomes that are possible with the various modeling  
14 runs that DWR has prepared; correct?

15 MR. MIZELL: Objection. Not only does this  
16 misstate Miss Buchholz's testimony about the range of  
17 alternatives, but also it's irrelevant.

18 Mr. Bezerra has brought up an index that  
19 applies to the BA alternative, which Miss Buchholz has  
20 already indicated is not the Project before the Board.  
21 CWF H3+ is what was approved in July 2017. The BA  
22 predated that Project.

23 So, to try and compare the BA alternatives on  
24 this graph to the previous testimony and to our Project  
25 is irrelevant.

1 CO-HEARING OFFICE DODUC: Mr. Bezerra.

2 MR. BEZERRA: These are modeling results  
3 contained in DWR's Final EIR that they certified as  
4 being the potential range of impacts resulting from  
5 their Project.

6 I -- I think it's relevant to this given that  
7 there has been no commitment of DWR about how they'll  
8 actually operate.

9 MR. MIZELL: This EIR/EIS contains a whole lot  
10 of data about a number of different Project --  
11 Projects. And to cherry-pick one Project that has not  
12 been adopted, as what's before you today, and try and  
13 make comparisons about it is not relevant to this  
14 hearing, and it is not relevant to Miss Buchholz's  
15 testimony.

16 CO-HEARING OFFICE DODUC: But, Miss Buchholz,  
17 does it reflect the range that you described in your  
18 testimony?

19 WITNESS BUCHHOLZ: No. This is two -- These  
20 are two alternatives. This isn't a range of  
21 alternatives. These are just two of the many  
22 alternatives within the range that we presented in  
23 Part 1.

24 CO-HEARING OFFICE DODUC: Mr. Bezerra.

25 MR. BEZERRA: Ms. Buchholz in her opening

1 presentation went through in detail how this Project in  
2 DWR's mind has evolved through the course of this  
3 hearing.

4           These two modeling runs reflect, first, the  
5 BA, which she previously identified as one of the  
6 iterations of this thing that was produced in Part 1.  
7 And then the other is the Final EIR results, which I  
8 hope DWR thinks reflect its Project.

9           So I'm trying to understand what she thinks  
10 the range is that DWR thinks is sufficient for this  
11 Board to make a decision about.

12           CO-HEARING OFFICE DODUC: Overruled,  
13 Mr. Mizell.

14           We will proceed, and Miss Buchholz will answer  
15 to the best of her ability.

16           WITNESS BUCHHOLZ: The range that we  
17 presented, as we presented in Part 1 and presented also  
18 in the graphic this morning, was the range we presented  
19 for the State Water Resource Control Board proceedings  
20 as Boundary 1 to Boundary 2. These are just two  
21 alternatives within that range.

22           MR. BEZERRA: Precisely, yes.

23           CO-HEARING OFFICE DODUC: Okay.

24           MR. BEZERRA: So, Miss Buchholz, do you see in  
25 approximately the 5 percent of dryest conditions?

1 WITNESS BUCHHOLZ: I do.

2 MR. BEZERRA: There's approximately 100 to  
3 100,500-acre-feet in difference in Folsom Reservoir  
4 storage, depending on the model run.

5 WITNESS BUCHHOLZ: True.

6 MR. BEZERRA: True?

7 WITNESS BUCHHOLZ: True.

8 MR. BEZERRA: Thank you.

9 And are you aware that's approximately  
10 15 percent of the total storage capacity of Folsom  
11 Reservoir?

12 WITNESS BUCHHOLZ: I don't want to quote a  
13 quantitative number off the top of my head. I don't  
14 know.

15 MR. BEZERRA: Thank you.

16 Is it your opinion that this sort of range of  
17 potential outcomes is sufficient for the State Water  
18 Board to make a decision in this proceeding?

19 MR. MIZELL: Objection: Misstates evidence.

20 As Miss Buchholz has indicated, this does not  
21 represent the range alternatives and for clarification  
22 the range of alternatives was exhaustively examined in  
23 Part 1. I'm not sure why we're revisiting that issue.

24 Miss Buchholz has not in her testimony tried  
25 to redefine that range, and so at this point I think

1 this line of questioning has gone beyond what was  
2 permissible scope for Part 2.

3 CO-HEARING OFFICE DODUC: Mr. Bezerra.

4 MR. BEZERRA: Variations in Folsom Reservoir  
5 storage make an enormous difference as to the water  
6 temperature of the lower American River and the  
7 potential effect of this Project on listed species such  
8 as Steelhead, as well as fall-run Chinook Salmon.

9 So the range of possible outcomes of Folsom  
10 Reservoir storage, as presented acceptable by DWR, is  
11 certainly relevant to Part 2.

12 CO-HEARING OFFICE DODUC: Overruled.

13 Continue.

14 MR. BEZERRA: Okay. Moving on to the next  
15 slide -- just scroll down on this page -- for Folsom  
16 Reservoir results for end of September.

17 (Exhibit displayed on screen.)

18 MR. BEZERRA: Or, actually, I didn't get an  
19 answer to the last question.

20 If we could scroll back up.

21 (Exhibit displayed on screen.)

22 CO-HEARING OFFICE DODUC: And remind me: What  
23 was your last question?

24 MR. BEZERRA: The last question was: In  
25 Miss Buchholz's opinion, are the results depicted in

1 this Figure 5G-7 sufficient for the Water Board to make  
2 a decision about whether the California WaterFix  
3 Project is an acceptable change to the water rights of  
4 DWR and Reclamation.

5 CO-HEARING OFFICE DODUC: Do you have an  
6 opinion?

7 WITNESS BUCHHOLZ: I don't have an opinion at  
8 that time.

9 MR. BEZERRA: Okay. Thank you.

10 Okay. If we could scroll down to the --

11 (Exhibit displayed on screen.)

12 MR. BEZERRA: Thank you. And this is  
13 Figure 5G-8.

14 Miss Buchholz, do you see that the red and  
15 blue lines depicting the Biological Assessment model  
16 runs and the orange and light blue blocked lines in  
17 approximately . . . well, part of the 10 percent of  
18 dryest conditions vary by approximately  
19 75,000-acre-feet?

20 WITNESS BUCHHOLZ: Yes.

21 MR. BEZERRA: Are you aware that the Folsom  
22 Reservoir municipal and industrial intake goes dry when  
23 Folsom Reservoir has approximately 9,000-acre-feet in  
24 it?

25 WITNESS BUCHHOLZ: Again, I wouldn't want to

1 cite a number. I don't know that number off the top of  
2 my head.

3 MR. BEZERRA: Thank you.

4 Is -- Is it your opinion that these -- this  
5 range of model results is sufficient for the State  
6 Water Board to make a decision in this proceeding?

7 MR. MIZELL: Objection: Asked and answered.

8 CO-HEARING OFFICE DODUC: Overruled.

9 WITNESS BUCHHOLZ: Again, I -- I don't want to  
10 make a supposition of what the State Water Resource  
11 Control Board would see as adequate information.

12 MR. BEZERRA: I understand that. It's  
13 certainly their -- the Board's decision.

14 But is it your opinion that this range of  
15 results is sufficient for a decision?

16 MR. MIZELL: Objection: Asked and answered.

17 CO-HEARING OFFICE DODUC: Do you have an  
18 opinion?

19 WITNESS BUCHHOLZ: I guess the only thing I'd  
20 like to add -- to add to that is: Throughout the text  
21 in the Final EIR/EIS, that -- and in the Final EIR, the  
22 results -- These are model results, and models have  
23 limitations on trying to represent real-time  
24 operations.

25 And there are the text in the Appendix 5A



1 which describes CalSim model assumptions and the way  
2 CalSim simulates storage in the reservoirs, and  
3 acknowledges that there are times in the model that  
4 dead pool, and that is what would happen if the intakes  
5 could not adequately divert water -- the -- would  
6 occur, but it doesn't necessarily represent, you know,  
7 extreme conditions, actual operations, and that is in  
8 the EIR/EIS.

9 MR. BEZERRA: And your previous testimony was,  
10 you don't have sufficient expertise to explain what  
11 possible real-time operations would be; correct?

12 WITNESS BUCHHOLZ: I do not.

13 MR. BEZERRA: Thank you.

14 Moving on to my fourth subject: Future  
15 deliveries in the public interest.

16 If we could, please, go to -- back to  
17 Miss Buchholz's testimony, DWR-1010, Page 11, please.

18 (Exhibit displayed on screen.)

19 MR. BEZERRA: And specifically Lines 23  
20 through 26.

21 (Exhibit displayed on screen.)

22 MR. BEZERRA: For the record, on -- on these  
23 lines, Miss Buchholz's testimony states (reading):

24 "CWF H3+ will increase average  
25 annual deliveries of water conveyed

1 through the Delta as compared to the  
2 No-Action Alternative over the long-term,  
3 and especially in wetter water years."

4 In that sentence, Miss Buchholz, you're  
5 talking about total Central Valley Project and State  
6 Water Project combined deliveries; correct?

7 WITNESS BUCHHOLZ: Yes.

8 MR. BEZERRA: If we could please go to Exhibit  
9 SWRCB-108.

10 (Exhibit displayed on screen.)

11 MR. BEZERRA: And, for the record, this is  
12 DWR's 2017 developments after publication of the  
13 Proposed Final Environmental Impact Report.

14 Miss Buchholz, you're familiar with this  
15 document; correct?

16 WITNESS BUCHHOLZ: I'm familiar with most the  
17 document, yes.

18 MR. BEZERRA: Okay. Thank you.

19 Could we please go to Page 141 of this  
20 document.

21 (Exhibit displayed on screen.)

22 MR. BEZERRA: And specifically Figure 14,  
23 which is labeled -- if we could scroll down -- back up  
24 a little --

25 (Exhibit displayed on screen.)

1 MR. BEZERRA: Thank you.

2 -- is labeled "Annual October to September CVP  
3 South-of-Delta deliveries."

4 Miss Buchholz, do you see that, as long-term  
5 average, annual CVP South-of-Delta deliveries actually  
6 would be lower with the Project alternatives than with  
7 the No-Action Alternative?

8 MR. MIZELL: I'm going to object to this  
9 question.

10 Mr. Bezerra has filed an objection to the  
11 relevance of that data exactly, and along these same  
12 lines in Mr. Reyes' testimony.

13 Either he's objecting to testimony on  
14 South-of-Delta deliveries or he's not. I'm -- I'm sort  
15 of confused by the fact that he would object to it on  
16 one hand and question us on it on another.

17 CO-HEARING OFFICE DODUC: Since we have not  
18 ruled on his objection, I'm going to allow him to ask  
19 questions on it.

20 Overruled, Mr. Mizell.

21 MR. BEZERRA: Miss Buchholz, do you see this  
22 Figure 14 indicates that it has a long-term average  
23 South-of-Delta CVP deliveries would actually be lower  
24 with the Project alternatives than with the No-Action  
25 Alternative?

1           WITNESS BUCHHOLZ: I see that the actual --  
2 the specific numbers would be compared on 2214 versus  
3 2208, I believe it says. I can't totally read it.

4           And within the -- within the specifics of the  
5 working of the -- of the model operations in our -- in  
6 our -- that would be similar in our process.

7           MR. BEZERRA: That would be. . .

8           WITNESS BUCHHOLZ: Similar. I think those  
9 would be similar as -- similar deliveries south of  
10 Delta.

11           And these are also deliveries -- And I can't  
12 remember the reference that you went back to on my  
13 testimony. If we could bring that back up, I'd like to  
14 see that specific. . .

15           (Exhibit displayed on screen.)

16           WITNESS BUCHHOLZ: Could we -- Is . . . the --  
17 What was the reference of the -- of the text  
18 that you used on this page?

19           MR. BEZERRA: It's -- It's the text there,  
20 Lines 23 through 26.

21           WITNESS BUCHHOLZ: Okay. So I just wanted to  
22 make sure that we were comparing deliveries and  
23 deliveries, because deliveries and exports are  
24 different.

25           So we had compare -- comparable factors, yes.

1 MR. BEZERRA: Okay. Thank you.

2 Just -- Just for -- so we have a clear record,  
3 Figure 14 in DWR's Findings of Fact --

4 WITNESS BUCHHOLZ: Um-hmm.

5 MR. BEZERRA: -- in certifying the EIR  
6 indicates that South-of-Delta CVP deliveries would  
7 actually be lower with the Project than in the  
8 No-Action Alternative; correct?

9 WITNESS BUCHHOLZ: In the long-term averaging.

10 MR. BEZERRA: In the long-term average. Thank  
11 you.

12 Okay. If we could go back to Miss Buchholz's  
13 testimony, DWR-1010, Page 12, and Lines 25 through 26.

14 (Exhibit displayed on screen.)

15 MR. BEZERRA: On those lines, your testimony  
16 is that (reading):

17 "Without implementation of CWF H3+,  
18 the negative economic impact of water  
19 export cutbacks could occur statewide."

20 Is that -- That's your testimony; correct?

21 WITNESS BUCHHOLZ: That is.

22 MR. BEZERRA: And you are not an economist;  
23 correct?

24 WITNESS BUCHHOLZ: I am not an economist, no.

25 MR. BEZERRA: Okay. Thank you.

1           By -- In that testimony, by "water export  
2 cutbacks," did you mean reductions the in water  
3 exported from the Delta?

4           WITNESS BUCHHOLZ: Yes.

5           MR. BEZERRA: Reduced Delta export deliveries  
6 would not affect deliveries or diversion upstream of  
7 the Delta; correct?

8           WITNESS BUCHHOLZ: That was the -- the basis  
9 of our -- of our project objectives, yes.

10          MR. BEZERRA: Okay. And so without  
11 implementation of CWF H3+, that would not affect  
12 deliveries to water users upstream of the Delta;  
13 correct?

14          WITNESS BUCHHOLZ: For a future project with  
15 and without CWF H3+, the project objectives would not  
16 adversely affect upstream water users.

17          MR. BEZERRA: Okay. In your testimony,  
18 beginning on Line 26, you state (reading):

19                 "If Delta water exports are further  
20                 restricted due to continued decline of  
21                 protected species and due to the  
22                 inflexibilities caused by operational  
23                 limitations of existing facilities, local  
24                 water agencies would probably increase  
25                 reliance on potentially overdrawn

1 sources, including local surface water  
2 storage and groundwater."

3 So, we just previously discussed how DWR's  
4 modeling shows that deliveries would be lower to CVP  
5 contractors south of Delta with the Project.

6 Does this conclusion apply to the operation of  
7 CWF in light of those modeling results?

8 MR. MIZELL: Objection: Misstates what we  
9 just went over in the graphics. The comparison was to  
10 the BA alternatives, not to the No-Action Alternative,  
11 which means it's not a proper comparison for this  
12 hearing.

13 CO-HEARING OFFICE DODUC: Mr. Bezerra.

14 MR. BEZERRA: I have to say, I don't  
15 understand the objection.

16 There were three model results: One was the  
17 No-Action Alternative, one was the proposed action  
18 under the BA, and one was, I believe, the revised  
19 Alternative 4A certified in the EIR.

20 MR. MIZELL: I withdraw my question.

21 MR. BEZERRA: Thank you.

22 CO-HEARING OFFICE DODUC: Ask your question  
23 again, please, Mr. Bezerra.

24 MR. MIZELL: Sure.

25 So in light of those modeling results by DWR

1 showing that CVP South-of-Delta deliveries would be  
2 lower with this Project, does your conclusion that  
3 reduced water supplies would result in more demand on  
4 overdrawn sources actually apply to the operations of  
5 CWF H3+?

6 WITNESS BUCHHOLZ: As we talked about in the  
7 EIR and EIR/EIS, specifically to CVP Delta exports, as  
8 you referred to in the question, I believe, you know,  
9 we made the assumption, based upon historical  
10 operations, that frequently when CVP Delta exports have  
11 been reduced to water service contractors, they have  
12 relied upon increased use of groundwater. And in our  
13 document, we discuss that.

14 MR. BEZERRA: Okay. And so you make a broad  
15 statement in your testimony that if water ex -- Delta  
16 water exports are further reduced, it will cause more  
17 reliance on overdrawn water sources.

18 WITNESS BUCHHOLZ: Right. And that's  
19 consistent with our EIR/EIS and Final EIR.

20 MR. BEZERRA: And so does that conclusion  
21 about further reliance on overdrawn sources apply to  
22 CVP service area where the model results show that CVP  
23 deliveries would be lower with this Project than  
24 without?

25 WITNESS BUCHHOLZ: That's true. And that --



1 That is how we represented it in the CV analysis and  
2 the results of our analysis in the EIR/EIS and in the  
3 EIR.

4 MR. BEZERRA: Thank you.

5 That's all I have.

6 CO-HEARING OFFICE DODUC: Thank you,  
7 Mr. Bezerra. That was very efficient and very helpful.

8 Next I have Miss Nickel, I believe.

9 And we will take our lunch break after  
10 Miss Nickel is completed. And when we return,  
11 Mr. Aladjem, you will be up. And you're actually in  
12 Group 10 and not 11.

13 MS. NIKKEL: Thank you.

14 Meredith Nikkel on behalf of the North Delta  
15 Water Agency, Group 9. I think I got it right.

16 CO-HEARING OFFICE DODUC: You did.

17 MS. NIKKEL: I think this will maybe just take  
18 10, 15 minutes.

19 And I have four categories to cover:

20 First, I just have a few preliminary  
21 background questions.

22 Second, followup questions to the questions  
23 Mr. Bezerra was asking regarding the boundary analysis.

24 Third, some questions regarding the Incidental  
25 Take Permit that was issued by the California

1 Department of Fish and Wildlife.

2 And, finally, a question regarding appropriate  
3 Delta Flow Criteria.

4 CROSS-EXAMINATION BY

5 MS. NIKKEL: First, Ms. Buchholz, did anyone  
6 assist you in preparing your testimony?

7 WITNESS BUCHHOLZ: No. I -- I prepared it.

8 MS. NIKKEL: Thank you.

9 Did you discuss your testimony with any of the  
10 witnesses who testified on behalf of DWR during Part 1  
11 of this hearing?

12 WITNESS BUCHHOLZ: Not specifically for the  
13 testimony, no.

14 MS. NIKKEL: So you discussed other things  
15 with them not related to your testimony? Is that what  
16 you mean?

17 WITNESS BUCHHOLZ: People who participated in  
18 Part 1 certainly participated in preparation of the  
19 environmental documentation and, through that process,  
20 I certainly worked with those people.

21 MS. NIKKEL: But you didn't discuss the  
22 contents of your testimony with any of those witnesses?

23 WITNESS BUCHHOLZ: No.

24 MS. NIKKEL: So you also didn't discuss  
25 whether any of the changes that you testified to would

1 change any of the testimony of those witnesses that  
2 participated in Part 1?

3 WITNESS BUCHHOLZ: No.

4 MS. NIKKEL: Thank you.

5 I'll move on to my second topic regarding the  
6 boundary analysis.

7 I -- I heard you testify in your discussion  
8 with Mr. Bezerra that CW -- CWF H3+ is within  
9 Boundary 1 and Boundary 2 that was presented during  
10 Part 1; correct?

11 WITNESS BUCHHOLZ: Correct.

12 MS. NIKKEL: But you also testified that  
13 CWF H3+ does not include the Spring Outflow Criteria  
14 that's contained within the Incidental Take Permit  
15 issued by California Department of Fish and Wildlife;  
16 correct?

17 WITNESS BUCHHOLZ: The CWF H3+, as I said,  
18 already was as justified in the Final EIR and the  
19 Incidental Take Permit was submitted after that  
20 publication.

21 MS. NIKKEL: And I think I also heard you  
22 testify that the Spring Outflow Criteria that was  
23 contained in that Incidental Take Permit is not  
24 included within CWF H3+; correct?

25 WITNESS BUCHHOLZ: CWF H3+ has -- has specific

1 assumptions that was anticipated for some of those  
2 potential Spring Outflow Criteria, but the criteria had  
3 not been issued at the time we did the modeling and the  
4 Final EIR.

5 MS. NIKKEL: So I -- I'm still not sure I'm  
6 hearing an answer.

7 Because it was issued after the -- the  
8 Certified Final EIR which includes CWF H3+, the Spring  
9 Outflow Criteria and the Incidental Take Permit are not  
10 included in CWF H3+; correct?

11 WITNESS BUCHHOLZ: Because of the timing.

12 And I do want to offer, too, to the Board that  
13 Mr. Miller in Panel 2 can answer a lot more questions  
14 on H -- on Spring Outflow Criteria and the results on  
15 that.

16 THE COURT: Okay. Miss Nickel, we've covered  
17 this.

18 MS. NIKKEL: So, bringing you back to the  
19 boundary analysis.

20 If -- If the Incidental Take Permit Spring  
21 Outflow Criteria is not within CWF H3+ --

22 WITNESS BUCHHOLZ: Um-hmm.

23 MS. NIKKEL: -- is the Spring Outflow Criteria  
24 that is contained in the Incidental Take Permit within  
25 Boundary 1 and Boundary 2?

1 WITNESS BUCHHOLZ: Yes.

2 MS. NIKKEL: And have you presented any --

3 WITNESS BUCHHOLZ: Boundary 2 has the enhanced  
4 Spring Outflow Criteria, which is more -- would be  
5 higher than what's in the Incidental Take Permit.

6 MS. NIKKEL: And higher in what respect?

7 What -- What quantitative --

8 WITNESS BUCHHOLZ: I don't have that --

9 MS. NIKKEL: -- criteria --

10 WITNESS BUCHHOLZ: I don't have that in front  
11 of me right now.

12 MS. NIKKEL: Can you -- Can you recall what --  
13 what criteria you're basing that opinion on?

14 WITNESS BUCHHOLZ: I -- When I present --  
15 prepared my testimony, I could look at the appendices  
16 within the Final EIR/EIS that we -- where we looked at  
17 Boundary 1 and Boundary 2.

18 MS. NIKKEL: And that analysis includes an  
19 analysis of the Spring Outflow Criteria that was  
20 contained in the Incidental Take Permit that was issued  
21 after the Final EIR?

22 WITNESS BUCHHOLZ: No. That -- That included  
23 the Spring Outflow Criteria in H4, which was more  
24 protective of spring outflow than what's in the  
25 Incidental Take Permit.

1 MS. NIKKEL: And you're speaking in terms of  
2 which Operational Criteria? What -- What number are  
3 you -- are you basing that opinion on?

4 WITNESS BUCHHOLZ: I'm basing that opinion  
5 when we compared Boundary 2 Operational Criteria for  
6 enhanced spring outflow compared to what's in both  
7 CWF H3+ and the Incidental Take Permit.

8 MS. NIKKEL: On the -- Which Operational  
9 Criteria? On -- On the outflows, the amount of  
10 outflows that were --

11 WITNESS BUCHHOLZ: We're specifically talking  
12 about spring outflow for Delta outflow.

13 MS. NIKKEL: All right. Thank you.

14 That -- Did that analysis also consider how  
15 that spring outflow would be met and whether or not  
16 the -- the way in which the Spring Outflow Criteria was  
17 met would be met and it -- whether that is within or  
18 without Boundary 1 or Boundary 2?

19 WITNESS BUCHHOLZ: It's certainly within  
20 Boundary 1 and Boundary 2.

21 And as I said before, that, in the modeling  
22 that we looked at for this, that we are meeting the  
23 Spring Delta Outflow Criteria through reductions in  
24 Delta exports.

25 MS. NIKKEL: And -- And -- And the reduction

1 in Delta exports is one of the criteria that you  
2 analyzed in determining that it would be within  
3 Boundary 1 and Boundary 2?

4 WITNESS BUCHHOLZ: Yes.

5 MS. NIKKEL: Any other criteria?

6 WITNESS BUCHHOLZ: There were numerous  
7 criteria when I looked at it, because it's within a lot  
8 of the things in boundary, but those are the primary  
9 differences that we're speaking to today for Delta --  
10 Spring Delta Outflow Criteria.

11 MS. NIKKEL: Thank you.

12 I'd like to move to the Incidental Take Permit  
13 that was issued by the California Department of Fish  
14 and Wildlife.

15 Mr. Hunt, I believe, if you could pull up  
16 Staff Exhibit 107, SWRCB-107.

17 CO-HEARING OFFICE DODUC: And thank you,  
18 Miss Nickel, for acknowledging that it's Mr. Hunt  
19 putting up all these documents.

20 Credit where --

21 MS. NIKKEL: Okay.

22 CO-HEARING OFFICE DODUC: -- credit is due.

23 (Exhibit displayed on screen.)

24 MS. NIKKEL: Thank you.

25 So if -- If you can scroll down to the bottom

1 below where it says Attachment 9.

2 (Exhibit displayed on screen.)

3 MS. NIKKEL: If you could click on the link  
4 called "California Department of Fish and Wildlife  
5 Memorandum Re: Clarification of California WaterFix  
6 California Endangered Species Act Incidental Take  
7 Permit."

8 (Exhibit displayed on screen.)

9 MS. NIKKEL: Thank you.

10 And if you could scroll down to the pecked  
11 full paragraph.

12 (Exhibit displayed on screen.)

13 MS. NIKKEL: Yes. Thank you.

14 Miss Buchholz, are you familiar with this  
15 memorandum?

16 WITNESS BUCHHOLZ: I am.

17 MS. NIKKEL: Can you see there in the middle  
18 of the second paragraph the words (reading):

19 "Dedicate water to maintain LFS" --  
20 which I understand to stand for Longfin  
21 Smelt -- "habitat quality and quantity at  
22 levels consistent with recent  
23 conditions."

24 Do you see that?

25 WITNESS BUCHHOLZ: I do.



1 MS. NIKKEL: Can you explain for me what your  
2 understanding is of "consistent with recent  
3 conditions"?

4 WITNESS BUCHHOLZ: I'm trying to remember  
5 this, and it's not coming forward.

6 The -- The -- With respect to the words  
7 "recent conditions," I don't remember those at this  
8 point.

9 MS. NIKKEL: Let me try and -- Let me refer  
10 you to another part of the paragraph and then maybe we  
11 can get to it.

12 At the -- At the last sentence of Paragraph 2,  
13 it reads (reading):

14 "The ITP sets forth outflow targets  
15 in Sub Table B that require export  
16 reductions to achieve outflows consistent  
17 with simulated existing conditions."

18 What is the difference, in your opinion,  
19 between "simulated existing conditions" and "recent  
20 conditions" in the sentence we just looked at?

21 WITNESS BUCHHOLZ: The simulated existing  
22 conditions are based on model run output.

23 MS. NIKKEL: So what is -- And is that  
24 different than "recent conditions"?

25 WITNESS BUCHHOLZ: Our models are

1 representative of assumptions that are included and  
2 applied for for the existing condition model runs.

3           It's . . . We use historical information to  
4 simulate those conditions, but it's not going to be  
5 identical to recent observations.

6           MS. NIKKEL: Thank you.

7           So is it your understanding that the  
8 Incidental Take Permit for California WaterFix requires  
9 DWR to achieve outflow consistent with recent  
10 conditions or simulated existing conditions?

11           WITNESS BUCHHOLZ: The Incidental Take Permit  
12 describes the recent conditions, as you can see in  
13 that. They quote the citation from the Incidental Take  
14 Permit.

15           MS. NIKKEL: And are you aware of whether the  
16 Spring Delta Outflow Criteria provided by CWF H3+, the  
17 Project that was approved by DWR in July of 2017, is --  
18 has more or less than the Spring Outflow Criteria  
19 required by the Incidental Take Permit?

20           WITNESS BUCHHOLZ: The criteria is slightly  
21 different than in the Incidental Take Permit and the --  
22 because it was issued subsequent to the Final EIR.

23           MS. NIKKEL: And do you know if the Spring  
24 Outflow Criteria that was required by the Incidental  
25 Take Permit is more or less than the Spring Outflow

1 Criteria in the approved Project CWF H3+?

2 WITNESS BUCHHOLZ: It is -- It is different.

3 MS. NIKKEL: Do you know if it's more or less?

4 WITNESS BUCHHOLZ: Well, it would be more in  
5 some cases. It is different.

6 MS. NIKKEL: Would it be less in some cases?

7 WITNESS BUCHHOLZ: It could be less in some  
8 cases depending on the re -- on the real-time  
9 conditions.

10 MS. NIKKEL: And switching to my last topic  
11 which I just have maybe one or two questions on.

12 Is DWR proposing that the appropriate flow  
13 criteria required under the Delta -- excuse me -- the  
14 Delta Reform Act be the same or different from the  
15 Spring Outflow Criteria required by the Incidental Take  
16 Permit?

17 WITNESS BUCHHOLZ: With respect -- What --  
18 What we are looking at here for the purposes of this  
19 hearing is CWF H3+ with re -- and plus the Incidental  
20 Take Permit we acknowledge will be -- will be complied  
21 with.

22 I do want to also, if I can, add while we have  
23 this exhibit up, that because maybe this answers that  
24 question: Is that on the next page of this exhibit,  
25 there is a further clarification of how we can meet

1 that Spring Outflow Criteria in the Incidental Take  
2 Permit.

3 MS. NIKKEL: Yes, I understand that.

4 I'm asking a different question. I'm asking  
5 about what DWR is proposing as the appropriate Delta  
6 Flow Criteria. Is it the same or different from what  
7 is contained within the California Incidental Take  
8 Permit for WaterFix?

9 WITNESS BUCHHOLZ: CWF H3+ is the proposed  
10 Delta Flow Criteria plus compliance subsequently and  
11 concurrently that would also be complying with the  
12 Incidental Take Permit.

13 MS. NIKKEL: Thank you.

14 I have nothing further.

15 CO-HEARING OFFICE DODUC: Thank you,

16 Miss Nickel. That also was very helpful.

17 All right. With that, we will take a lunch  
18 break, and I'll give you an extra two minutes.

19 Oh, Mr. Bezerra's going to take up that two  
20 minutes.

21 MR. BEZERRA: Nope. Just want to extend my  
22 profound apologies to Mr. Hunt and Mr. Baker on my  
23 mixup.

24 Sorry about that.

25 THE COURT: All right. With that, we will

1 take our lunch break and we will return at 1 p.m.

2 (Lunch recess at 11:58 a.m.)

3 \* \* \*

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Thursday, February 22, 2017 1:00 p.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICE DODUC: All right. It is  
5 1 o'clock. We are back in session.

6 Mr. Aladjem, you are up. And we had two  
7 excellent cross-examinations so far. You have tough  
8 acts to follow.

9 MR. ALADJEM: Madam Chair, Mr. Bezerra and  
10 Ms. Nikkel are always tough acts to follow.

11 CO-HEARING OFFICE DODUC: Oh, no. I see  
12 Mr. Bezerra.

13 (Laughter.)

14 MR. BEZERRA: I will --

15 CO-HEARING OFFICER DODUC: Here we are heaping  
16 praises on you.

17 What now, Mr. Bezerra?

18 MR. BEZERRA: I promise this is sort.

19 This is a housekeeping matter and because --  
20 because we got the order to start the hearing  
21 yesterday, I'm trying to give as much notice as we can.

22 In relation to cross-examination of Panel 2,  
23 which God knows when we'll get to it, Group 7 would  
24 like to -- would like to do cross-examination in  
25 Group 45, the County of Sacramento's slot.

1 My understanding is County of Sacramento has  
2 no -- has no objection to that, and I don't think they  
3 plan to conduct cross-examination.

4 We have -- We have potentially scheduling --  
5 some scheduling issues with counsel for cross -- for  
6 cross-examination of Panel 7, so it would help us out  
7 if we could slide it to 45.

8 CO-HEARING OFFICE DODUC: So, I'm sorry,  
9 group -- You're switching with?

10 MR. BEZERRA: Group 45, which is just the  
11 County of Sacramento.

12 CO-HEARING OFFICE DODUC: Okay.

13 CO-HEARING OFFICER MARCUS: And that's for  
14 Panel 2.

15 MR. BEZERRA: Just for Panel 2, yes.

16 CO-HEARING OFFICER DODUC: The entirety of  
17 Group 7.

18 MR. BEZERRA: Yes.

19 Thank you very much.

20 CO-HEARING OFFICE DODUC: We're not used to  
21 having you leading off, Mr. Bezerra.

22 MR. BEZERRA: Yeah. I don't know how much you  
23 like that.

24 (Laughter.)

25 CO-HEARING OFFICER DODUC: Okay. Nothing

1 else?

2 We do have a hard stop at 5 p.m. today. And a  
3 reminder: We will start at 10:00 tomorrow. And I  
4 believe -- Where are we on Monday? We're not here on  
5 Monday. We're at the Regional Board office?

6 MR. DEERINGER: Yes.

7 CO-HEARING OFFICE DODUC: So please do check  
8 the address. But you'll get free parking.

9 With that, Mr. Aladjem.

10 MR. ALADJEM: Good afternoon, Madam Chair,  
11 Chair Marcus, members of the staff. David Aladjem here  
12 for the City of Brentwood.

13 Good afternoon, Miss Buchholz,  
14 Mr. Bednarski -- I'm going to butcher your name.  
15 Apologies. Mr. Pirabarooban.

16 Miss Buchholz all, my questions will be  
17 directed to you this afternoon.

18 Mr. Hunt, could you pull up Miss Buchholz's  
19 testimony, Page 7.

20 (Exhibit displayed on screen.)

21 CO-HEARING OFFICE DODUC: And could you give  
22 us a brief rundown of the issues.

23 MR. ALADJEM: Oh, pardon me, Madam Chair.

24 What I'm going to do is to question  
25 Miss Buchholz. She says in her testimony the Project



1 has been refined through this process. I want to  
2 understand better how that Project has been refined  
3 specifically.

4 CO-HEARING OFFICER DODUC: Okay.

5 CROSS-EXAMINATION BY

6 MR. ALADJEM: Miss Buchholz.

7 WITNESS BUCHHOLZ: Um-hmm.

8 MR. ALADJEM: I want to direct your attention  
9 to Page 7 of your testimony, beginning with Lines --  
10 Line 13.

11 (Exhibit displayed on screen.)

12 MR. ALADJEM: Now, I'm going to ask a series  
13 of questions about each of the bulleted items and I'll  
14 read to -- them in turn.

15 And it may well be as a general matter that  
16 these are questions that are better directed to the  
17 Modeling Panel. And if that is the case, we appreciate  
18 your saying so. But I would also appreciate your  
19 answering each of these questions to the best of your  
20 ability.

21 Is that fair?

22 WITNESS BUCHHOLZ: Fair.

23 MR. ALADJEM: Thank you.

24 Miss Buchholz, if I direct your attention to  
25 Line 16. You indicate that refinements have been made

1 in the (reading):

2 "Implementation of the North Delta  
3 Diversion Intake Bypass Flows with  
4 real-time operations approach."

5 Is that correct?

6 WITNESS BUCHHOLZ: That is correct.

7 MR. ALADJEM: What was the purpose of that  
8 change?

9 WITNESS BUCHHOLZ: The purpose of the change  
10 was to add the words "real-time operations approach."

11 MR. ALADJEM: And was that made in response to  
12 a specific regulatory requirement?

13 WITNESS BUCHHOLZ: I don't know. I think you  
14 need to -- Again, that's -- that's something to be  
15 directed to Panel 2, Mr. Miller.

16 MR. ALADJEM: To, pardon me?

17 WITNESS BUCHHOLZ: Mr. Miller on Panel 2.

18 MR. ALADJEM: All right. Any particular  
19 individual?

20 WITNESS BUCHHOLZ: Mr. Miller.

21 MR. ALADJEM: Okay. Did the Department  
22 perform an analysis of the impacts of this particular  
23 refinement as separated out from all other refinements?

24 WITNESS BUCHHOLZ: No, because the -- the  
25 analysis that was done did, in fact, get what those

1 real-time operational changes might be.

2 MR. ALADJEM: Okay. So would it be fair to  
3 say that there was no evaluation --

4 (Cellphone ringing.)

5 CO-HEARING OFFICER MARCUS: I'm sorry.

6 (Laughter.)

7 CO-HEARING OFFICER DODUC: Okay. Let's --  
8 Let's take a moment, as entertaining as that was, and  
9 everyone check your phone and noise-making devices to  
10 make sure they are off.

11 All right. Mr. Aladjem.

12 MR. ALADJEM: So would it be fair to say,  
13 Miss Buchholz, that the Department did not analyze the  
14 indi -- the effect of this particular refinement  
15 specifically on water supplies?

16 WITNESS BUCHHOLZ: I'm not sure I'd -- I'd  
17 state that.

18 One of the things -- Because Mr. Miller is not  
19 on this panel, but I checked his testimony, you know,  
20 that will be presented as part of Panel 2.

21 And he makes an important distinction on  
22 definition of "real-time" that it is actually  
23 real-time -- the changes within the real-time  
24 operations approach -- if I may paraphrase -- are  
25 associated with staying within the Operational Criteria

1 of CWF H3+. It's not an adaptive management process.

2 So in that process, yes, we did analyze it.

3 We analyzed the CWF H3+ through models and omissions.

4 MR. ALADJEM: And was there evaluation of --

5 as you say, between real-time operations and

6 Operational Criteria based upon differential Water

7 Years: Dry years, wet years, et cetera?

8 WITNESS BUCHHOLZ: We analyzed CWF H3+

9 operational criteria by water year types, yes.

10 MR. ALADJEM: Let's move on to the next

11 bullet, and I'll be asking similar questions. The

12 bullet says that there was (reading):

13 "Refined South Delta export criteria

14 for October and November with real-time

15 operations approach."

16 What was the purpose of that change?

17 WITNESS BUCHHOLZ: So the -- the purpose,

18 first of all, is the real-time operations, just as

19 it's -- as I discussed, for the North Delta Diversion

20 Intake Bypass Flows.

21 In addition, the Biological Opinions also made

22 a change in -- under -- with the Biological Opinions.

23 The October through November Old and Middle River

24 criteria and South Delta export restrictions became the

25 same as they are under the No-Action Alternative, or

1 the future-without Project, versus what was in the 2016  
2 CWF H3+ from the 2016 Final EIR/EIS. And that was a  
3 change to the Biological Opinions.

4 MR. ALADJEM: Okay. Let me try this again.

5 WITNESS BUCHHOLZ: Um-hmm.

6 MR. ALADJEM: The purpose, if I understand  
7 that from your answer, is to comply with these various  
8 other regulatory requirements that were imposed after  
9 the Final EIR from 2017; is that right?

10 WITNESS BUCHHOLZ: No. This was to include  
11 the criteria from the Biological Opinions after the  
12 2016 Final EIR/EIS.

13 MR. ALADJEM: Okay. And did the Department  
14 separate out the effects of South Delta export cri --  
15 criteria from other effects in the Project?

16 WITNESS BUCHHOLZ: It's difficult to take one  
17 operation criteria separately, so there -- But in the  
18 Final EIR, there are the results of model simulations  
19 of CWF H3+ with these changes with respect to what I  
20 just said for South Delta export criteria.

21 MR. ALADJEM: Would Mr. Miller be the  
22 appropriate person to ask followup questions on that?

23 WITNESS BUCHHOLZ: He and the other Panel --  
24 Modelers on Panel 2, yes.

25 MR. ALADJEM: And I'm going to infer that

1 there were no analysis of the differing impacts from  
2 year type.

3 WITNESS BUCHHOLZ: The analysis, the model  
4 simulations were by water type, yes.

5 MR. ALADJEM: Let's move on to -- I'm going  
6 to -- Though I know the Chair is very interested in  
7 moving along quickly, in terms of the Head of Old River  
8 Barrier.

9 WITNESS BUCHHOLZ: Yes.

10 MR. ALADJEM: Would the -- Would your answers  
11 be the same as the North and South Delta criteria?

12 WITNESS BUCHHOLZ: There were changes in the  
13 criteria with the Biological Opinions and the addition  
14 of real-time operations, yes.

15 MR. ALADJEM: Then on the Spring Delta  
16 Outflow.

17 Would it be -- After the questioning from  
18 Mr. Bezerra this morning, would it be fair to say that  
19 Spring Delta Outflow was an attempt to deal -- or to  
20 address the regulatory requirements in the Biological  
21 Opinion but not the Incidental Take Permit which was  
22 issued afterwards?

23 WITNESS BUCHHOLZ: Right. Although there  
24 was -- There had been discussions with California  
25 Department of Fish and Wildlife that -- my

1 understanding -- I wasn't in those discussions but my  
2 understanding informed these changes.

3 MR. ALADJEM: Thank you.

4 Madam Chair, no further questions.

5 CO-HEARING OFFICE DODUC: Thank you,  
6 Mr. Aladjem.

7 I believe next up is Group 13. Let me make  
8 sure. Water Forum, County of Colusa.

9 All right. Ms. Taber, you're up.

10 MS. TABER: Good afternoon. Kelley Taber on  
11 behalf of Sacramento Regional County Sanitation  
12 District.

13 My questions will focus on statements in  
14 Ms. Buchholz's testimony regarding Environmental  
15 Commitments of the Project. So the questions will be  
16 directed to Miss Buchholz unless there's someone else  
17 who can answer them.

18 If we could start, please, Mr. Hunt, with  
19 Miss Buchholz's testimony on Page 2. If you're able to  
20 pull that up.

21 Number -- Do you need the number?

22 (Exhibit displayed on screen.)

23 MS. TABER: Thank you.

24 If we could go, please, to Page 2, Line 11.

25 (Exhibit displayed on screen.)

1 CROSS-EXAMINATION BY

2 MS. TABER: Miss Buchholz, starting at  
3 Line 11, your testimony says that it (reading):

4 ". . . Overviews the facilities,  
5 Environmental Commitments, and operations  
6 criteria for CWF H3+."

7 And -- Is that correct?

8 WITNESS BUCHHOLZ: Yes.

9 MS. TABER: And further down in your testimony  
10 on Page 5, starting at Line 22 --

11 (Exhibit displayed on screen.)

12 MS. TABER: -- you -- you state that  
13 (reading):

14 "The Environmental Commitments in  
15 the 2017 Certified EIR (sic) are based on  
16 the commitments in the RDEIR/SDEIS and  
17 2016 FEIR/S; and refined based on  
18 consultation with the U.S. Fish and  
19 Wildlife Service, National Marine  
20 Fisheries Service, and CDFW."

21 Is that correct?

22 WITNESS BUCHHOLZ: Yes.

23 MS. TABER: Thank you.

24 Mr. Hunt, can you please put up Exhibit

25 SWRCB-110. And we'll start -- This is the CEQA



1 Findings of Fact for the Final EIR/EIS and the approval  
2 of the California WaterFix Project.

3 (Exhibit displayed on screen.)

4 MS. TABER: And please scroll to Page 3.

5 (Exhibit displayed on screen.)

6 MS. TABER: Ms. Buchholz, are you familiar  
7 with this document?

8 WITNESS BUCHHOLZ: I'm familiar with the  
9 document, most parts of the document.

10 MS. TABER: Thank you.

11 So, in the last sentence of the first full  
12 paragraph, the CEQA findings state (reading):

13 "Likewise, the Environmental  
14 Commitments . . . included (sic) in  
15 Appendix 3B of (sic) the FEIR/EIS have  
16 been incorporated into the MMRP."  
17 Referring to the Mitigation Monitoring and  
18 Reporting Program.

19 Are you familiar, Miss Buchholz, with the  
20 MMRP?

21 WITNESS BUCHHOLZ: I'm familiar with most  
22 parts of it.

23 MS. TABER: And did you participate in  
24 preparing the MMRP?

25 WITNESS BUCHHOLZ: No.

1 MS. TABER: Did you participate in the  
2 preparation of the CEQA Findings of Fact?

3 WITNESS BUCHHOLZ: No.

4 MS. TABER: Miss Buchholz, in adopting the  
5 MMRP -- which is included here in this proceeding as  
6 SWRCB-111 -- to your knowledge, did DWR adopt every  
7 Environmental Commitment that was identified in the  
8 Final EIR/EIS?

9 WITNESS BUCHHOLZ: I did not personally make a  
10 cross-reference between those two sets of information.

11 MS. TABER: So you don't know if everything  
12 was.

13 WITNESS BUCHHOLZ: It's -- You know, ones that  
14 I did check, because I was involved in the EIR/EIS, and  
15 I saw what the changes were, yes.

16 MS. TABER: Okay. And who would have made  
17 that comparison to see whether the Environmental  
18 Commitments that were identified in the FEIR/EIS were  
19 included in the --

20 WITNESS BUCHHOLZ: I don't know which  
21 individual would have done that.

22 MS. TABER: Okay. To your knowledge, were  
23 there Environmental Commitments that were included in  
24 the Final EIR/EIS that were not adopted in the MMRP?

25 WITNESS BUCHHOLZ: Not to my knowledge.

1 MS. TABER: Miss Buchholz, are you familiar  
2 with Environmental Commitment 3B.3.6 from the  
3 Final EIR/EIS?

4 WITNESS BUCHHOLZ: I would have to look at  
5 my -- If you have it there, that would be great.

6 MS. TABER: Sure.

7 WITNESS BUCHHOLZ: If not, I have --

8 MS. TABER: Mr. Hunt, would you please pull up  
9 Exhibit SWRCB-102, and go -- I'm sorry. It's going to  
10 take a few maneuvers to get here.

11 Go to Appendix 3B of the Final EIR/EIS. I  
12 think it would be in that first link up there,  
13 the -- And so if you go to Chapter 3, appendix 3B.

14 (Exhibit displayed on screen.)

15 MS. TABER: Thank you.

16 And please scroll to Page 3B-81.

17 (Exhibit displayed on screen.)

18 MS. TABER: That's faster. Thank you.

19 So, that's great. If you could scroll down  
20 just a little bit, please, so that that text starting  
21 at Line 27 to the edge of the page is --

22 (Exhibit displayed on screen.)

23 MS. TABER: Thank you.

24 So, Miss Buchholz, this is a page from the  
25 Appendix 3B to the Final EIR/EIS. And, as you can see,

1 the Environmental Commitment I just inquired about is  
2 titled (reading):

3                   "Develop North Delta Intake  
4                   Operations Protocols to Reduce Reverse  
5                   Flow Effects at Regional San Outfall."

6                   Are you familiar, now that you've had a chance  
7 to see this, with that particular Environmental  
8 Commitment?

9                   WITNESS BUCHHOLZ: I remember reading this  
10 Environmental Commitment.

11                   MS. TABER: Okay. But you didn't participate  
12 in drafting this?

13                   WITNESS BUCHHOLZ: No.

14                   MS. TABER: Okay.

15                   WITNESS BUCHHOLZ: This would be better off  
16 discussed with the Water Quality Specialists on Panel  
17 Number 2 --

18                   MS. TABER: Okay.

19                   WITNESS BUCHHOLZ: -- and the Panel Modelers  
20 and -- and Operators on Panel Number 2.

21                   MS. TABER: Okay. So you don't know whether  
22 this environmental panel was included in the Mitigation  
23 Monitoring and Reporting Program.

24                   WITNESS BUCHHOLZ: This was not one of the  
25 ones that I checked.

1 MS. TABER: Okay. Do you know who made the  
2 decisions to which Environmental Commitments would be  
3 included in the Mitigation Monitoring and Reporting  
4 Program?

5 WITNESS BUCHHOLZ: I'm not familiar with all  
6 of those discussions. I'm familiar with the -- with  
7 the ones that I was working on.

8 MS. TABER: Okay. No further questions.

9 Thank you.

10 CO-HEARING OFFICE DODUC: Thank you,  
11 Miss Taber.

12 Next, assuming that County of Yolo, 14, does  
13 not wish to conduct cross, we will now move to 15,  
14 EBMUD, Mr. Salmon.

15 Mr. Mizell, it looks like, at least based on  
16 the estimate that I received earlier, we'll have  
17 another three hours of cross-examination for this  
18 panel. So if you have your Panel 2 witnesses here, I  
19 think we can dismiss them for the day. We won't get to  
20 them until tomorrow.

21 MR. MIZELL: Thank you. I'll let them know.

22 MR. SALMON: Good afternoon. I'm John Salmon  
23 for East Bay MUD. My questions are for Miss Buchholz.

24 Primarily, they concern the Operational  
25 Criteria and how they interact with real-time

1 operations and with adaptive management.

2 I also have a line of questions on Delta flows  
3 and fisheries.

4 Can we see Exhibit DWR-1010, please,  
5 Miss Buchholz's written testimony?

6 (Exhibit displayed on screen.)

7 MR. SALMON: I'd like to see Page 7.

8 (Exhibit displayed on screen.)

9 MR. SALMON: And if you could scroll down  
10 to -- so we can see --

11 (Exhibit displayed on screen.)

12 MR. SALMON: Right there, yes.

13 "Section D. CWF H3+ Operational  
14 Criteria."

15 CROSS-EXAMINATION BY

16 MR. SALMON: Miss Buchholz, are all the  
17 Operational Criteria listed here included within the  
18 CWF H3+ Project?

19 WITNESS BUCHHOLZ: Yes. This is from CWF H3+  
20 definition.

21 MR. SALMON: Do you know whether the  
22 Petitioners are proposing any Terms or Conditions of  
23 Approval in this hearing that would require compliance  
24 with these Operational Criteria?

25 WITNESS BUCHHOLZ: I'm not aware whether there

1 are Terms and Conditions.

2 MR. SALMON: On this list, you included  
3 (reading):

4 "Reduced Delta exports in March  
5 through May . . ."

6 I think you can see it down at the bottom.

7 Is it -- Reduced compared to what?

8 WITNESS BUCHHOLZ: The . . . Let me get my  
9 information here so that I cite this correctly.

10 In -- We eliminated in the March through May  
11 Spring Outflow Objective -- It was going to be similar  
12 to what was presented in the Final EIR/EIS and the --  
13 and the Biological Assessment, except that, instead  
14 of -- In those two documents, we talked about having a  
15 Spring Delta Outflow Criteria that would continue  
16 conditions as under the No-Action Alternative.

17 And in the CWF H3+, we modified the Spring  
18 Outflow Criteria so that it would maintain the  
19 conditions as under the existing conditions to both.  
20 And that would also account for climate changes and  
21 OMRs.

22 MR. SALMON: So the reduction is to maintain  
23 Delta exports similar to existing conditions; is  
24 that --

25 WITNESS BUCHHOLZ: To existing --

1 MR. SALMON: -- correct?

2 WITNESS BUCHHOLZ: -- yes.

3 CO-HEARING OFFICE DODUC: I'm sorry. To  
4 maintain exports?

5 MR. SALMON: Reduce --

6 WITNESS BUCHHOLZ: Reduce Delta exports to  
7 reduce Delta outflow.

8 I didn't mean to mislead you on that point.  
9 Sorry.

10 MR. SALMON: Do you know whether the  
11 California WaterFix H3+ Project will be operated to  
12 consistently comply with those reduced exports?

13 WITNESS BUCHHOLZ: That is the -- the  
14 statement that we used for the Operational Criteria.  
15 However, the methodology to meet those, especially  
16 under the letter that was submitted -- was presented  
17 by -- and the conditions say they may not be able to  
18 meet a total reduction of exports, so there may be  
19 times when those isn't met.

20 MR. SALMON: Do we know when those times are?

21 WITNESS BUCHHOLZ: It would be --

22 MR. SALMON: Is that time to --

23 WITNESS BUCHHOLZ: I don't know specifically  
24 the -- the types of -- of conditions, but you can see  
25 that in the model results.



1 MR. SALMON: Okay. So at times, the Delta  
2 exports may be higher than the criteria.

3 WITNESS BUCHHOLZ: No. The Delta exports  
4 would have -- have been reduced down to public health  
5 and safety exports. And at that time, we still may not  
6 have met the total Delta outflow parts.

7 MR. SALMON: Ah.

8 And you mentioned to Mr. Aladjem earlier that  
9 the criteria were defined to include a real-time -- or  
10 refined to include a real-time operational approach --

11 WITNESS BUCHHOLZ: Yes.

12 MR. SALMON: -- is that correct?

13 WITNESS BUCHHOLZ: Um-hmm.

14 MR. SALMON: And did you tell him that there  
15 had been no attempt to analyze which real-time  
16 decisions might be made?

17 WITNESS BUCHHOLZ: Well, we didn't -- We  
18 didn't attempt to try to describe a range of real-time  
19 operations.

20 But, as I said to Mr. Aladjem, the -- and  
21 Mr. Miller in Panel 2 has this in his testimony -- that  
22 the real-time operations are to provide that  
23 flexibility based on real-time observations within the  
24 operation criteria for CWF H3+.

25 MR. SALMON: Within the operation criteria.

1 WITNESS BUCHHOLZ: Yes.

2 MR. SALMON: On Page 8 --

3 (Exhibit displayed on screen.)

4 MR. SALMON: -- looking at the paragraph  
5 between Lines 2 and 7.

6 In this paragraph, you refer to -- to  
7 real-time operations being managed within the  
8 parameters of regulatory requirements, Operational  
9 Criteria, and SWP and CVP operations; is that correct?

10 WITNESS BUCHHOLZ: That is, yes.

11 MR. SALMON: Which -- Just for clarification,  
12 which Operational Criteria are you referring to in that  
13 sentence?

14 WITNESS BUCHHOLZ: In this case, we're  
15 referring back up to the previous three bullets that  
16 were referring to Head of Old River Gate, the -- on the  
17 previous page --

18 (Exhibit displayed on screen.)

19 WITNESS BUCHHOLZ: -- I mean, so I won't  
20 recite this all.

21 South Delta exports and North Delta Diversion  
22 Intake Bypass Flows.

23 MR. SALMON: And what did you mean by "within  
24 the parameters" of those criteria?

25 WITNESS BUCHHOLZ: Within the Operational

1 Criteria that we used to now analyze the documents.

2 MR. SALMON: Do those criteria include  
3 real-time operations, though?

4 WITNESS BUCHHOLZ: We analyzed a set of  
5 Operational Criteria, as in Mr. Miller's testimony,  
6 which is referenced in that paragraph.

7 He further states that that real-time  
8 operations would stay within those Operational  
9 Criteria.

10 MR. SALMON: Okay. I'd like to --

11 WITNESS BUCHHOLZ: You really need to --

12 MR. SALMON: -- look at it and see --

13 WITNESS BUCHHOLZ: I mean, I'll be honest.

14 Mr. Miller knows a lot more about real-time operations  
15 than I do.

16 MR. SALMON: Understood.

17 I'd like to look at Exhibit DWR-1069, please,  
18 Page 11.

19 (Exhibit displayed on screen.)

20 MR. SALMON: And what I'm interested here is  
21 understanding how this would work to operate within the  
22 parameters of Operational Criteria that are themselves  
23 inclusive of real-time operations.

24 This is Table 1 from Erik Reyes' testimony,  
25 although it's given a separate exhibit number. But I

1 understand it to be Table 1 to his testimony.

2 Are you familiar with this document,  
3 Miss Buchholz?

4 WITNESS BUCHHOLZ: I did not review his  
5 testimony.

6 MR. SALMON: Okay. Have you reviewed . . .  
7 Can you show the first page of this table,  
8 please, this .pdf.

9 (Exhibit displayed on screen.)

10 MR. SALMON: So this is what the beginning of  
11 this looks like.

12 There is also an Exhibit DWR-515 submitted in  
13 Part 1 that had some similarities to this.

14 Are you generally familiar with these  
15 exhibits?

16 WITNESS BUCHHOLZ: I'm generally familiar with  
17 these exhibits. I've seen --

18 MR. SALMON: Okay.

19 WITNESS BUCHHOLZ: -- probably this, if not  
20 similar to this.

21 MR. SALMON: And, for the record, it's labeled  
22 (reading):

23 "Table 1, key CalSim II No-Action  
24 Alternative, H3, H4, BA H3+, and CWF H3+  
25 Scenario Inputs and Assumptions."

1 WITNESS BUCHHOLZ: Correct.

2 MR. SALMON: So it's a table of following  
3 inputs.

4 THE WITNESS: Right.

5 MR. SALMON: Page 11 again, please.

6 (Exhibit displayed on screen.)

7 MR. SALMON: So Page 11 shows the North Delta  
8 Bypass Flow Criteria; is that correct?

9 WITNESS BUCHHOLZ: Yes.

10 MR. SALMON: And do you see the text in the  
11 shaded box right under the heading? It says (reading):

12 "These parameters are for modeling  
13 purposes. Actual operations will be  
14 based on real-time monitoring of  
15 hydrologic conditions and fish  
16 presence/movement."

17 WITNESS BUCHHOLZ: Yes.

18 MR. SALMON: Given that these North Delta  
19 Bypass Flow Criteria do not incorporate potential  
20 changes for real-time modeling -- or for real-time  
21 operational decision-making -- pardon me -- what  
22 exactly are the North Delta Bypass Flow Criteria that  
23 are part of the Cal WaterFix H3+ Project?

24 WITNESS BUCHHOLZ: These are the overall --  
25 overarching Operational Criteria for North Delta

1 Diversion bypass flows for CWF H3+.

2           The -- You need to really relate these  
3 questions to Mr. Miller in Panel 2.

4           My understanding of this is, it would depend  
5 upon the timing, the days, et cetera, of how long you  
6 would look at the different pulse flows coming through.

7           This is an example. And there's very many  
8 more things, but Mr. Miller could speak to that better  
9 than I can.

10           MR. SALMON: Asking only about the Project  
11 Description, though.

12           Would you agree that the -- because the  
13 Project Description includes real-time operational  
14 decision-making within the Operational Criteria, that  
15 the North Delta Bypass Flow Criteria could look  
16 different in reality than is listed on this table and  
17 still fall within the Project Description?

18           WITNESS BUCHHOLZ: I think these -- I would  
19 look at this as being operations criteria, and how you  
20 actually operate in a temporal basis would be based  
21 upon fish presence and real-time observations.

22           And so, no, I look at this as the Operational  
23 Criteria.

24           MR. SALMON: Can we show DWR-1010 again,  
25 please, Miss Buchholz's testimony.

1 (Exhibit displayed on screen.)

2 MR. SALMON: Page 8, Line 25.

3 (Exhibit displayed on screen.)

4 MR. SALMON: This section's header says  
5 (reading):

6 "Reaffirmation of a (sic) Range of  
7 Alternatives."

8 WITNESS BUCHHOLZ: Yes.

9 MR. SALMON: In this context, the alternatives  
10 you're referring to are the different modeled  
11 operational scenarios and not the different EIR  
12 alternatives; correct?

13 WITNESS BUCHHOLZ: Given the model operational  
14 cri -- operational runs that were presented in the  
15 EIR/EIS -- or the Final EIR/EIS and Final EIR.

16 MR. SALMON: Under Alternative 4A?

17 WITNESS BUCHHOLZ: Under different  
18 alternatives. Let's see.

19 The range of alternatives included Boundary 1  
20 and Boundary 2. It included the operations under 4A  
21 also. And also the range of alternatives in the  
22 EIR/EIS was from Alternative 1 Delta 8.

23 MR. SALMON: Okay. What did you mean by  
24 "reaffirmation"?

25 WITNESS BUCHHOLZ: We wanted to -- The word I

1 used was -- there was because I wanted to -- We talked  
2 about it in Part 1 as it being -- as the Proposed  
3 Project or the Adopted Project.

4 We thought at that time the Proposed Project  
5 would be within the range of alternatives that we  
6 looked at, including Boundary 1 and Boundary 2. I used  
7 the word "reaffirmation" that we were still within that  
8 range.

9 MR. SALMON: So you used the word  
10 "reaffirmation" to mean that the Cal WaterFix H3+  
11 Project is within the range of alternatives?

12 WITNESS BUCHHOLZ: That we've -- That we've  
13 evaluated, yes.

14 MR. SALMON: Thanks for clarifying.

15 On Lines -- In Lines 6 through 9 on Page 9 --

16 (Exhibit displayed on screen.)

17 MR. SALMON: -- in that paragraph, there is a  
18 sentence that states (reading):

19 "Boundary 1 and Boundary 2 are not  
20 further discussed in this (sic) Part 2  
21 hearing."

22 WITNESS BUCHHOLZ: Um-hmm.

23 MR. SALMON: Now, what did you mean by "not  
24 further discussed"?

25 WITNESS BUCHHOLZ: Well, as -- as we said



1 before, that we had a large range of Boundary 1 and  
2 Boundary 2 that we presented in Part 1 and that still  
3 stands.

4           And that could represent our range that might  
5 happen under adaptive management, but -- And at that  
6 time also, we weren't sure where the Biological  
7 Opinions were going to req -- what they were going to  
8 require, although we thought we had bounded the  
9 Biological Opinion potential range by H3 and H4.

10           So we have nothing for -- further to add for  
11 Boundary~1 and 2 to represent our adaptive management  
12 range, and that's what that sentence means.

13           MR. SALMON: Well, would you agree that the  
14 adaptive management decisions could still result in  
15 operations that do not exactly resemble H3+ and,  
16 instead, fall elsewhere within that boundary range?

17           WITNESS BUCHHOLZ: That is a possibility. And  
18 that's -- That's why it's a Multi-Task Force Group and  
19 we'd have to look at what the recommendations would be  
20 and see how it fits within CWF H3+ at that time.

21           And, again, I -- I apologize, but we need to  
22 refer to the person who has much more explanation of  
23 adaptive management on Panel 3.

24           MR. SALMON: Understood.

25           So, would you agree that the boundary analysis

1 is still useful and appropriate to understand the  
2 impact of operational changes that could result from  
3 adaptive management?

4 WITNESS BUCHHOLZ: We believe it is.

5 MR. SALMON: Thanks.

6 I -- Finally, I'd like to turn to a few  
7 questions about Delta flows and fisheries.

8 WITNESS BUCHHOLZ: Um-hmm.

9 MR. SALMON: Can we see Page 12 at Line 9,  
10 please.

11 (Exhibit displayed on screen.)

12 MR. SALMON: There's a sentence that reads  
13 (reading):

14 "Overall, CWF H3+ will result in  
15 reduced entrainment of aquatic species,  
16 such as Delta Smelt and Longfin Smelt, at  
17 the South Delta intakes."

18 What is the basis for your opinion in that  
19 sentence?

20 WITNESS BUCHHOLZ: The basis of my opinion was  
21 based upon the Final EIR information, on that and  
22 also -- and it was -- That referred to the fact that we  
23 were reducing the diversions at South Delta intakes,  
24 because we'll increase -- well, because we have  
25 diversions at North Delta intakes during -- during

1 portions of the year.

2 MR. SALMON: Are you relying on the expertise  
3 of fisheries experts?

4 WITNESS BUCHHOLZ: I am, who will be on  
5 Panel 2.

6 MR. SALMON: Thank you.

7 Is this opinion limited to species that are  
8 listed as threatened or endangered?

9 WITNESS BUCHHOLZ: My -- My . . .

10 The reference for this sentence is for Delta  
11 Smelt and Longfin Smelt specifically, as well as the  
12 other -- There were other species that were talked  
13 about in that, in the Final EIR and the EIR/EIRs again  
14 based upon the fact of reduced use of the South Delta  
15 intakes as compared to existing conditions and  
16 No-Action Alternative.

17 MR. SALMON: Are you expressing any opinion  
18 about fish that originate from specific places?

19 WITNESS BUCHHOLZ: I -- I'm not doing that.

20 And, again, any of those questions should be  
21 directed to the fisheries experts on Panel 2.

22 MR. SALMON: Let's look at the Environmental  
23 Commitments table that starts on Page 6.

24 (Exhibit displayed on screen.)

25 MR. SALMON: Scrolling down a bit.

1 (Exhibit displayed on screen.)

2 MR. SALMON: So this table appears in the  
3 Final EIR for Cal WaterFix; correct?

4 WITNESS BUCHHOLZ: Yes.

5 MR. SALMON: Are all of the Environmental  
6 Commitments listed in this table included in the H3+  
7 Project Description?

8 WITNESS BUCHHOLZ: Yes.

9 MR. SALMON: Environmental Commitment 16,  
10 which is on the next page --

11 (Exhibit displayed on screen.)

12 MR. SALMON: -- mentions a nonphysical fish  
13 barrier at Georgiana Slough.

14 WITNESS BUCHHOLZ: Yes.

15 MR. SALMON: Do you know what the purpose of  
16 that barrier is?

17 WITNESS BUCHHOLZ: If I -- If I try to explain  
18 it, it's probably going to be -- I mean, because I'm  
19 not a fisheries expert.

20 But my understanding from reading that is that  
21 it -- it will assist the fish -- fisheries to either  
22 not go in or go in Georgiana Slough.

23 But I'm not that fisheries expert. You need  
24 to speak to the fisheries experts on Panel 2.

25 MR. SALMON: Okay. So you understand it to

1 affect the movement of fish.

2 WITNESS BUCHHOLZ: Movement of fish into the  
3 Mokelumne River system and out of Sacramento River  
4 system. I know that, but I am not the fisheries  
5 expert.

6 MR. SALMON: Okay. Thanks.

7 Finally, Environment -- Environmental  
8 Commitment 15 just before it, titled (reading):

9 "Localized Reduction of Predatory  
10 fishes."

11 Will this commitment to reduce predatory  
12 fishes be implemented only at the North Delta Intakes  
13 and at Clifton Court Forebay?

14 WITNESS BUCHHOLZ: It's -- In the table,  
15 that's the way it's stated. This is an exact copy  
16 from -- from the Final EIR and the Environmental  
17 Commitments. There are other commitments to look at  
18 reduction of predation throughout the Delta.

19 MR. SALMON: Are you aware of specific other  
20 commitments to reduce predation elsewhere in the  
21 interior Delta?

22 WITNESS BUCHHOLZ: I would have to go back and  
23 open up the -- the Mitigation Monitoring Reporting Plan  
24 and finish reading to be able to cite that correctly,  
25 but I do remember that.

1 MR. SALMON: Thank you.

2 No further questions.

3 CO-HEARING OFFICE DODUC: Thank you,  
4 Mr. Salmon.

5 Let me make sure. 17? 18?

6 All right. Miss Meserve has requested to go  
7 last if this panel is still available on Monday.

8 So we're now up to Mr. Herrick.

9 MR. HERRICK: Thank you, Madam Chair, Board  
10 Members.

11 John Herrick on behalf of South Delta and  
12 other parties.

13 The cross so far has covered virtually  
14 everything, but I just have a couple questions on the  
15 various topics, including the Operational Criteria, the  
16 adaptive management, the economic impacts, and changes  
17 in exports, so I'll -- I'll be very quick.

18 CO-HEARING OFFICE DODUC: Thank you.

19 MR. HERRICK: Very fast. One of those two.

20 My questions will be for Ms. Buchholz.

21 CROSS-EXAMINATION BY

22 MR. HERRICK: There have been a number of  
23 questions about the adaptive management portion, and I  
24 understand later witnesses will be more qualified to  
25 answer those things, but I -- I'd like to ask you:

1           Could the adaptive management recommendations  
2 suggest operations outside of the boundary conditions  
3 that have been proposed?

4           WITNESS BUCHHOLZ: I think that my  
5 understanding of how it's written in the  
6 Environmental -- Final Environmental Impact Report is  
7 that it would depend upon what the multiagency team  
8 proposed.

9           MR. HERRICK: And so it's -- I don't want to  
10 get too far into speculation.

11           But it's possible that in a crisis in a -- for  
12 a fishery -- some fishery species that there could be  
13 recommendations for lower exports than are currently  
14 proposed in order to protect that specie.

15           WITNESS BUCHHOLZ: I don't know that.

16           MR. HERRICK: But that decision would be based  
17 upon an agreement or -- excuse me -- a consensus  
18 between the operating agencies and the fishery  
19 agencies?

20           WITNESS BUCHHOLZ: My understanding in the  
21 adaptive management portion of the document is that  
22 it's based upon scientific observations and discussions  
23 between multiagency firm -- teams, which includes  
24 certainly regulatory agencies as well as the DWR  
25 recommendation.

1 MR. HERRICK: Yeah. I'm not trying to beat  
2 this to death.

3 But through that process, using whatever  
4 evidence or science they have and discussions, then do  
5 you know how that decision's made? Is it -- Does it  
6 require some sort of consensus, or does somebody have  
7 the ultimate vote?

8 WITNESS BUCHHOLZ: I don't -- I think all of  
9 the adaptive management framework's pre -- it's  
10 presented in the Final EIR, and they'll be -- those  
11 things will be worked out, my understanding. But,  
12 again, I'd refer to Dr. Earle in Panel Number 3.

13 MR. HERRICK: Ms. Buchholz, when you -- when  
14 you referenced the increased spring outflow, is that  
15 the outflow that's consistent with the current  
16 Biological Opinions?

17 WITNESS BUCHHOLZ: The increased spring  
18 outflows in CWF H3+ was specific to the -- what was in  
19 the Biological Opinions and discussions that had  
20 occurred at the time of the publication -- occurred at  
21 the time in preparation of the Final EIR in  
22 anticipation of what might be in this.

23 MR. HERRICK: And so California WaterFix H3+  
24 anticipates including that spring outflow that's in the  
25 Biological Opinion; is that correct?



1 WITNESS BUCHHOLZ: That's true.

2 MR. HERRICK: And does that mean that the  
3 spring outflow in the Biological Opinions is not being  
4 implemented now?

5 WITNESS BUCHHOLZ: They -- Without the  
6 Project?

7 MR. HERRICK: Current conditions.

8 THE WITNESS: Oh. Under current conditions  
9 without the Project.

10 So the -- the spring outflow would be  
11 different than what is currently being operated to.

12 Am I missing the que -- I misunderstood the  
13 question?

14 MR. HERRICK: I just want to make sure I  
15 understand.

16 I understand that CWF H3+ is proposing to  
17 include spring outflow conditions which are consistent  
18 with the current Biological Opinions.

19 And the question is: That's different than  
20 now. In other words, the current Biological Opinion  
21 mandate for spring outflows is not implemented; is that  
22 correct?

23 WITNESS BUCHHOLZ: So, currently, today, the  
24 Project -- DWR and Reclamation operate the State Water  
25 Project and CVP Project, respectfully, in accordance

1 with the 2008 and 2009 -- 2008 U.S. Fish and Wildlife  
2 Service and 2009 National Marine Fisheries Service  
3 Biological Opinion.

4           The Biological Opinions I'm referring to are  
5 the ones for CWF. And what these will do, though,  
6 in -- in the nexus that comes up to existing  
7 conditions, would be, in March through May, to have a  
8 Spring Outflow Objective that would maintain conditions  
9 as under current conditions even though we would be  
10 operating in the future with climate change and  
11 sea-level rise and the facilities.

12           MR. HERRICK: Okay. Is the adaptive -- Is the  
13 California WaterFix H3+ Operational Criteria expected  
14 to recover species that are currently threatened or  
15 endangered to levels that are -- so that they're not so  
16 threatened?

17           THE WITNESS: I --

18           MR. MIZELL: Objection. This is -- This is  
19 clearly a question for the fisheries biologist.

20           CO-HEARING OFFICE DODUC: Miss Buchholz.

21           WITNESS BUCHHOLZ: I don't -- I don't know  
22 that off -- That needs to be asked of the fisheries  
23 biologist in Panel 2. I don't remember that.

24           MR. HERRICK: That's fine. I will -- I'm not  
25 trying to beat this to death.

1           The followup question: Is the -- Is the  
2 California WaterFix H3+ Scenario expected to result in  
3 a compliance with CVPIA's fish doubling program?

4           WITNESS BUCHHOLZ: Again, you need to talk to  
5 the fisheries biologist.

6           MR. HERRICK: On Page 12 of your testimony.

7           DWR-1010. Sorry.

8           (Exhibit displayed on screen.)

9           MR. HERRICK: On Line 18, you state that  
10 (reading):

11                   "CWF H3+ will also provide  
12                   protections and benefits to California's  
13                   economy."

14           And then you have some other stuff there.

15           Have you or have anybody -- Have you or has  
16 anybody offered by DWR going to present some sort of  
17 benefit cost analysis that supports this?

18           WITNESS BUCHHOLZ: I'm not going to produce  
19 that. I don't believe there's anybody on the panels  
20 that will be presenting information you just cited.

21           This was based upon economic analysis that's  
22 present -- the socioeconomic analysis presented in the  
23 Final EIR and Final EIS.

24           MR. HERRICK: And does that examine the  
25 impacts to California as a whole or the impacts to the

1 Project exports and the fisheries?

2 WITNESS BUCHHOLZ: It talks about regions  
3 throughout California in -- for water users as well  
4 as -- CVP and State Water Project water users as well  
5 as other water users within those regions.

6 MR. HERRICK: But there's no -- There's no  
7 anticipated presentation of a benefit cost analysis for  
8 these proceedings?

9 WITNESS BUCHHOLZ: I --

10 MR. HERRICK: In this part?

11 WITNESS BUCHHOLZ: I don't believe there is.

12 MR. HERRICK: That's all I have.

13 Thank you very much.

14 CO-HEARING OFFICE DODUC: Thank you,  
15 Mr. Herrick.

16 Let me make sure. Group 2? 23?

17 All right. 24, Mr. Keeling.

18 MR. KEELING: Good afternoon. Tom Keeling on  
19 behalf of the San Joaquin County Protestants.

20 And I'll have just a few questions for  
21 Miss Buchholz on her one or two paragraphs on adaptive  
22 management, and a question or two about a statement  
23 later in her testimony concerning the state --  
24 so-called statewide impacts without WaterFix?

25 Could we -- Mr. Hunt, could we have Exhibit --

1 I think it's 1010, Page 8.

2 (Exhibit displayed on screen.)

3 MR. KEELING: The two-paragraph section  
4 entitled "Adaptive Management."

5 (Exhibit displayed on screen.)

6 MR. KEELING: Thank you.

7 CROSS-EXAMINATION BY

8 MR. KEELING: Miss Buchholz, I want to drill  
9 down on some terminology and predication I didn't quite  
10 understand, and you've been -- you're a very erudite  
11 witness so I'm sure you can help me here.

12 In the first sentence, which reads (reading):

13 "Adapt management addresses  
14 potential long-term changes in operations  
15 due to new scientific knowledge."

16 Do you see that sentence?

17 WITNESS BUCHHOLZ: I do.

18 MR. KEELING: Do I infer correctly, then, that  
19 new scientific knowledge could trigger or drive some  
20 sort of adaptive management decision?

21 WITNESS BUCHHOLZ: That's my understanding of  
22 the -- the process.

23 MR. KEELING: Are there other drivers or  
24 triggers besides new scientific knowledge?

25 WITNESS BUCHHOLZ: The -- The framework that

1 was presented in the Final EIR/EIS and Final EIR is  
2 primarily to do that.

3           It's also based upon -- But it's not just the  
4 scientific knowledge itself but also the fact of -- of  
5 using that in a way that would provide insights for  
6 management decisions and other actions.

7           MR. KEELING: When you said "using that" --

8           WITNESS BUCHHOLZ: The new scientific  
9 knowledge.

10           MR. KEELING: Okay. Let's assume a scenario  
11 in which there is no new scientific knowledge but there  
12 are changed conditions. A drought, for example.

13           So, take all -- take new scientific knowledge  
14 off the table.

15           WITNESS BUCHHOLZ: Um-hmm.

16           MR. KEELING: Under those conditions, would an  
17 adaptive management regime kick in or not?

18           MR. MIZELL: I'm going to object.

19           When we started to discuss hypotheticals with  
20 regard to the adaptive management process,  
21 Miss Buchholz has indicated that details of this  
22 process are more really answered by Dr. Earle in  
23 Panel 3. This certain hypothetical would be more  
24 appropriately addressed to him.

25           MR. KEELING: I'm not asking a hypothetical.

1 I'm asking what was meant --

2 CO-HEARING OFFICER DODUC: Enough.

3 MR. KEELING: -- in that sentence.

4 CO-HEARING OFFICE DODUC: Thank you.

5 Miss Buchholz, please answer to the best of  
6 your ability, and if you would prefer to defer, you may  
7 say that.

8 WITNESS BUCHHOLZ: I would prefer to defer on  
9 how to take extreme events like droughts in adaptive  
10 management. I don't know.

11 MR. KEELING: I'd like to direct your  
12 attention to the next paragraph.

13 I'm going to ask you about this first  
14 sentence, which has many moving parts in it. But I'd  
15 like to understand some of the moving parts first.

16 The sentence, beginning at Line 18, reads  
17 (reading):

18 "As part of the adaptive management  
19 process, DWR, Reclamation, CDFW, USFWS,  
20 NMFS, and other appropriate agencies will  
21 coordinate with collaborative science  
22 workgroups . . ."

23 Let's stop right there. That's the middle of  
24 the sentence.

25 What did you mean by the phrase "other

1 appropriate agencies"?

2 WITNESS BUCHHOLZ: So, again, looking at this,  
3 I -- I put together based upon the adaptive management  
4 framework that was part of the Final EIR when I  
5 prepared this overview of the Project Description. And  
6 this is my interpretation of the findings.

7 MR. KEELING: What would those other  
8 appropriate agencies be?

9 WITNESS BUCHHOLZ: I would need to bring up  
10 that framework document. And they -- they talked about  
11 different types of agencies under -- looking at  
12 different issues within the Delta or different --  
13 significant issues or resources within the Delta.

14 So you might have one set of agencies for one  
15 type of resource and another set of agencies for  
16 another type of resource. But, again, it's laid out in  
17 the framework declaration that's in the Final EIR.

18 And, again, Dr. Earle is the one that's  
19 participated in development of that. I'm just  
20 providing an overview of it.

21 MR. KEELING: Well, who would decide what the  
22 other appropriate agencies are? Where is that  
23 decision-making?

24 WITNESS BUCHHOLZ: Again, the framework  
25 agreement is -- is -- sets that framework, per se, in



1 that -- or the framework, not agreement -- the  
2 framework itself is presented in the Final EIR  
3 documentation.

4 And, again, you need to speak to Dr. Earle if  
5 he has any other information outside of that document.

6 MR. KEELING: All right. I'm asking, though,  
7 do you remember if those decision-makers would include  
8 Delta counties?

9 WITNESS BUCHHOLZ: I don't remember off the  
10 top of my head, so I really can't answer that.

11 MR. KEELING: I have a similar question with  
12 the phr -- with respect to the phrase "collaborative  
13 science workgroups."

14 What does that mean?

15 WITNESS BUCHHOLZ: Again, that's a phrase that  
16 I see frequently in -- for adaptive management  
17 processes under many groups. And, again, they work in  
18 a collaborative manner.

19 So, again, that's --

20 MR. KEELING: Well --

21 WITNESS BUCHHOLZ: -- the word --

22 MR. KEELING: -- I agree that you see that  
23 phrase a lot. I'm asking you what it means.

24 WITNESS BUCHHOLZ: I -- I would anticipate  
25 that it means working together.

1 MR. KEELING: Who chooses these collaborative  
2 groups?

3 WITNESS BUCHHOLZ: Again, looking at the  
4 framework documentation, it has some approaches to  
5 develop that but, again, it still needs more  
6 development.

7 MR. KEELING: Well, I know it has some  
8 approaches to develop that.

9 But let me ask you, for example: To your  
10 knowledge, would nongovernmental environmental groups  
11 be part of the decision-making to determine the  
12 composition of those collaborative science workgroups?

13 WITNESS BUCHHOLZ: I -- I do not know.

14 MR. MIZELL: Objection: Asked and answered.

15 MR. KEELING: I thought it best --

16 CO-HEARING OFFICE DODUC: I'm sorry. Hold on.

17 Miss Buchholz, your answer is you do not know.

18 WITNESS BUCHHOLZ: I do not know.

19 MR. KEELING: Well, since we're not sure what  
20 the terms in this sentence mean, maybe we can figure  
21 out from the larger context what the sentence means.

22 Let's look at the whole sentence now

23 (reading):

24 "As part of the adaptive management  
25 process, DWR, Reclamation, CDFW, USFWS,

1 NMFS, and other appropriate agencies will  
2 coordinate with collaborative science  
3 workgroups to identify and prioritize  
4 potential changes to address  
5 uncertainties related to the effects of  
6 State Water Project and Central Valley  
7 Project operations, including California  
8 WaterFix, and other actions intended to  
9 minimize or mitigate effects to protected  
10 species."

11 Do you have -- Have you -- You see that  
12 sentence?

13 WITNESS BUCHHOLZ: I do.

14 MR. KEELING: When you talk about  
15 "uncertainties related to the effects of SWP and CVP  
16 operations," you're talking about what? The effects  
17 of -- of changes to those?

18 WITNESS BUCHHOLZ: On the -- The reason we  
19 have adaptive management is that we are using a series  
20 of models to simulate future conditions with and  
21 without the Project, to compare that, to identify those  
22 effects.

23 As we work forward, not -- not just the  
24 changes due to the Project and Wa -- and California  
25 WaterFix, but other conditions in the environment

1 change also.

2           And that's why they do adaptive management,  
3 to -- Overall, the Wa -- the groups would work together  
4 to minimize and mitigate the effects of -- of all these  
5 different conditions that are changed in the future.

6           MR. KEELING: This sentence talks about  
7 mitigating "effects to protected species."

8           Would these decisions also be designed to  
9 mitigate effects to nonparticipants in the State Water  
10 Project?

11           WITNESS BUCHHOLZ: That would depend upon the  
12 final adaptive management framework and how they make  
13 those decisions.

14           MR. KEELING: I realize that adaptive  
15 management involves decisions to be made in the future,  
16 but I'm asking you about the structure of the mechanism  
17 for making those decisions.

18           WITNESS BUCHHOLZ: Again, I'm not familiar  
19 with the final -- the thoughts that have gone into the  
20 structure of that. You need to talk to Dr. Earle.

21           This is the information as we've used it in  
22 the development of the description of the WaterFix  
23 based upon what's presented in the Final EIR.

24           MR. KEELING: Is it your understanding the  
25 answers to my questions are in the Final EIR?

1           WITNESS BUCHHOLZ: I think that some of the  
2 answers to your questions will be developed as -- as  
3 the adaptive management process and operations go  
4 forward in the future.

5           Not everything's in -- is defined up front.  
6 I'm trying to predict what will happen in the future.  
7 That's why we have adaptive management, is to -- to  
8 deal with those uncertainties.

9           MR. KEELING: Well, I realize that but you --  
10 with all due respect, you shifted my question.

11           My question wasn't about making decisions in  
12 the future in hypothetical situations.

13           WITNESS BUCHHOLZ: Okay.

14           MR. KEELING: My decision -- My -- My  
15 question's about decisions now, about the structure of  
16 that decision-making mechanism.

17           MR. MIZELL: Objection: Asked --

18           CO-HEARING OFFICER DODUC: Enough.

19           MR. MIZELL: -- and answered.

20           CO-HEARING OFFICE DODUC: Enough.

21           Mr. Keeling, she has said multiple times that  
22 she is not familiar to the extent that a later witness  
23 in Panel 3 will be able to answer your question.

24           MR. KEELING: I'd like to direct your  
25 attention to the sentence beginning at the bottom of

1 Page 12 of Exhibit DWR-1010 --

2 (Exhibit displayed on screen.)

3 MR. KEELING: -- and continuing to the top of

4 Page 13.

5 And, in particular, the sentence --

6 Thank you, Mr. Hunt. I'm just rubbing that in

7 for -- for Mr. Bezerra's sake. I could have said

8 "Mr. Baker."

9 The sentence that reads (reading):

10 "If Delta water exports are further  
11 restricted due to continued decline of  
12 protected species and due to the  
13 inflexibilities caused by operational  
14 limitations of existing facilities, local  
15 water agencies would probably increase  
16 reliance on potentially overdrawn  
17 sources, including local surface water  
18 storage and groundwater."

19 Do you see that sentence?

20 WITNESS BUCHHOLZ: I do.

21 MR. KEELING: How did you reach that

22 conclusion?

23 MS. ANSLEY: Objection: Asked and answered

24 earlier today.

25 CO-HEARING OFFICE DODUC: Let's have

1 Miss Buchholz -- I'm practicing saying her name --  
2 answer that one more time.

3 I assume Mr. Keeling is going somewhere with  
4 this.

5 WITNESS BUCHHOLZ: So, we -- What we did in  
6 the -- in the development of the EIR/EIS over the times  
7 looked at existing conditions versus what will happen  
8 in the future without the Project under No-Action  
9 Alternative, is, we based that upon an experienced --  
10 or based upon observations of what had happened in the  
11 past when Delta exports had been reduced within the --  
12 especially within the CVP water service area south of  
13 Delta.

14 The water users increased their use on  
15 groundwater or they increased their use on local  
16 surface water storage. It didn't happen every time  
17 when we had an extensive drought period. There were  
18 limitations on that.

19 But that was -- that was based upon the -- the  
20 information that we analyzed and the conclusions we  
21 drew within the EIR/EIS in water supply, surface water  
22 and groundwater sections.

23 MR. KEELING: What analysis -- In reaching  
24 this conclusion, what analysis did you do of the  
25 increasing trend of communities, such as San Diego and

1 Los Angeles communities, to develop local and regional  
2 water supplies through such efforts as recycling and  
3 re -- and recovery, for example, on the urban  
4 infrastructure.

5 MR. MIZELL: Objection: Well outside the  
6 scope of this hearing.

7 CO-HEARING OFFICE DODUC: No. I actually want  
8 to hear the answer.

9 WITNESS BUCHHOLZ: In the -- That's okay. I  
10 can -- I can do this one.

11 CO-HEARING OFFICE DODUC: Okay.

12 WITNESS BUCHHOLZ: This is in the water supply  
13 chapter of the Final EIR, and we actually acknowledge  
14 that these are assumptions for the analysis. However,  
15 in the future -- and we do cite desalinization,  
16 different recycle and additional local surface water  
17 and groundwater banks, and use -- that that could  
18 change in the future. And this actually was in the  
19 Final EIR.

20 But this was the analysis if something else --  
21 I mean, at least, in my opinion, is a -- is sort of a  
22 worst-case scenario at that point.

23 MR. KEELING: So you do acknowledge that local  
24 water agencies could respond other than relying on  
25 potentially overdrawn sources.



1           WITNESS BUCHHOLZ: We do say that and it's in  
2 the -- it's in the water supply chapter of the  
3 Final EIR/EIS.

4           MR. KEELING: Miss Buchholz, thank you very  
5 much. That's all I have.

6           CO-HEARING OFFICE DODUC: Thank you,  
7 Mr. Keeling.

8           Next up is Group 25, County of Solano.

9           MR. KEELING: Oh, may I?

10          I appreciate -- and especially Miss Meserve  
11 appreciates -- the accommodation she's received but now  
12 it is obvious that this panel -- panel will not be here  
13 on Monday morning.

14          We are making efforts --

15          CO-HEARING OFFICE DODUC: You've just jinxed  
16 this panel, Mr. Keeling. You realize that.

17          MR. KEELING: I'm hoping they'll be here  
18 Monday morning.

19          But we're -- we're trying to make some effort  
20 to see if she can lateral some of those questions to  
21 somebody at the end of today. I don't know if that can  
22 happen or not, but I wanted to give you a heads-up on  
23 that.

24          CO-HEARING OFFICER DODUC: All right. Thank  
25 you.

1           Before you begin, let me check with the court  
2 reporter.

3           After this one, we have a rather lengthy  
4 cross-examination by Mr. Jackson for about 60 minutes,  
5 so we'll take our break before we get to Mr. Jackson.

6           THE REPORTER: (Nodding head.)

7           MR. WOLK: Thank you, Madam Chair, members of  
8 the -- Whoop.

9           Thank you, Madam Chair, members of the hearing  
10 panel. And it shouldn't be too long, so . . .

11           I wanted to ask about two areas.

12           Again, my name is Dan Wolk. I represent the  
13 County of Solano and others in that group.

14           The first is on the Delta Flow Criteria; and  
15 the second is on the CWF H3+ Operational Criteria.

16           So on the Delta Flow Criteria, Mr. Hunt -- I  
17 think we've established that it's Mr. Hunt by now --  
18 per what Mr. Bezerra had to say -- if you could call up  
19 Page 10 of Miss Buchholz's . . .

20           CO-HEARING OFFICE DODUC: Buchholz.

21           MR. WOLK: Buchholz. Sorry.

22           (Exhibit displayed on screen.)

23           CROSS-EXAMINATION BY

24           MR. WOLK: So, Miss -- Miss Buchholz, the --

25 In -- In this -- Starting in -- Well, in this

1 Paragraph IV -- Section IV -- you discuss that  
2 (reading):

3 "CWF H3+ will comply with the Delta  
4 outflow criteria . . ."

5 And my question to you is: Do -- Do those  
6 criteria include the 2010 Delta Flow Criteria that were  
7 developed by this Board?

8 WITNESS BUCHHOLZ: So, as we've discussed in  
9 Part 1 and also within the EIR/EIS, is that those  
10 criteria were established under Delta Reform Act, or  
11 they were -- they were prepared for the State Water  
12 Resource Control Board and Delta Reform Act, and as a  
13 part of this is to inform, but they have not been  
14 adopted yet.

15 And even in that document, 2010, it says that  
16 that's only one part of the information that has to be  
17 considered in development of Delta Flow Criteria by the  
18 State Water Resources Control Board.

19 So, no, these do not -- There's nothing to  
20 comply with at this point in time on that.

21 MR. WOLK: Well, thank you.

22 So, of course, the Delta Reform Act speaks --  
23 you know, Water Quality 5086 -- about, you know, that  
24 that -- that 2010 Delta Flow Criteria would inform the  
25 analysis -- this analysis -- you know, what we're doing

1 today as part of these -- this Part 2 and other parts  
2 of this hearing.

3 And, nonetheless, those haven't been  
4 incorporated into your analysis here for CWF H3+; is  
5 that correct?

6 WITNESS BUCHHOLZ: It -- They're not a  
7 criterion for compliance at this point in time, and so  
8 that's what's listed in this section considering the  
9 Delta Flow Criteria.

10 MR. WOLK: Okay. Now, as you know -- I'm sure  
11 you're aware of those flow criteria, and it speaks  
12 of -- of -- of having 75 percent of unimpaired Delta  
13 outflow from January through June.

14 My question is: For CWF H3+, do -- can you  
15 express that in terms of a percentage of -- of  
16 unimpaired Delta outflow from January through June?

17 WITNESS BUCHHOLZ: I have never calculated  
18 that, so I can't just -- I can't address that.

19 MR. WOLK: Who --

20 CO-HEARING OFFICE DODUC: I'm sorry.

21 Will there be another witness later on that  
22 can address that?

23 WITNESS BUCHHOLZ: I don't know. I don't  
24 know.

25 CO-HEARING OFFICE DODUC: Interesting

1 question.

2 MR. WOLK: Well, thanks.

3 Well, my question -- I guess my question is:  
4 You know, considering the importance of the 2010 Delta  
5 Flow Criteria, both certainly this Board and certainly  
6 the entire process, certainly the Delta Reform Act, my  
7 question is:

8 Look, I understand your answer before if you  
9 didn't incorporate it as part of this analysis, or at  
10 least I can understand that answer.

11 But what went into the decision to not express  
12 CWF H3+ in terms of a percentage of unimpaired flows or  
13 outflows?

14 WITNESS BUCHHOLZ: I don't think it was a  
15 decision. We -- We -- When we look at the analysis in  
16 the modeling analyses, we compare it to the existing  
17 compliance documents for objectives that were  
18 identified for CWF, and we just did not include that.

19 We looked at that document to help inform and  
20 I -- to -- to help inform others in the development of  
21 those criteria, including the other fisheries resource  
22 agencies, but we didn't do that, per se.

23 MR. WOLK: Okay. Now, if you could  
24 estimate -- Or if you could -- I mean, would you say  
25 that it's -- under CWF H3+, that it's -- it's

1 significantly lower than that 77 percent figure? Would  
2 you say it's lower?

3 WITNESS BUCHHOLZ: I -- I -- I -- I'm really  
4 not going to go there because we just did not look it  
5 at that way.

6 MR. WOLK: Okay.

7 CO-HEARING OFFICE DODUC: It was a nice try,  
8 though.

9 MR. WOLK: (Laughing.)

10 My second line of questioning deals with the  
11 Operational Criteria, so, Mr. Hunt, if you could go to

12 Page 7 --

13 (Exhibit displayed on screen.)

14 MR. WOLK: -- of Miss Buchholz's testimony.

15 I'm never going to get that name right.

16 WITNESS BUCHHOLZ: That's fine.

17 (Laughter.)

18 MR. WOLK: So, if you look at Line 28 of that,  
19 it talks -- it states -- I'm just going to read it into  
20 the record. Again, this talks about CWF H3+  
21 Operational Criteria. It talks about -- I'm just going  
22 to quote it (reading):

23 "Refined the minimum flow standard  
24 in the Sacramento River at Rio Vista to  
25 be consistent with D-1641."

1           Now, in the computer simulations scenarios H3  
2 and H4 using CalSim II, DWR assumed that D-1641 minimum  
3 flow at Rio Vista for September through December, and  
4 then equal or greater than 3,000 cfs for January  
5 through August.

6           So I'm trying to get a better understanding of  
7 what you mean here when you say refining the Rio Vista  
8 flow standard for CWF H3+.

9           WITNESS BUCHHOLZ: So when we published a  
10 Biological Assessment and the Final EIR/EIS, we had a  
11 modification of this. And when we moved through to the  
12 Final EIR, it specifically is just consistent with the  
13 D-1641.

14          MR. WOLK: Okay. So . . . meaning that --  
15 What happens to that 3,000 cfs minimum flow requirement  
16 for January through August?

17          WITNESS BUCHHOLZ: So, as I said, we -- we  
18 did -- we did not include that, per se. We're  
19 specifically on D-1641.

20          MR. WOLK: Okay. But the modeling output data  
21 that has been submitted for this Part 2 under DWR-1077,  
22 it's my understanding it shows a required minimum flow  
23 of 3,000 cfs for January through August; is --

24          WITNESS BUCHHOLZ: You --

25          MR. WOLK: -- that correct?

1 WITNESS BUCHHOLZ: You should ask that  
2 question of Mr. Reyes in Panel 2.

3 MR. WOLK: Okay.

4 WITNESS BUCHHOLZ: I'm more familiar with  
5 what's in the -- in the text of the surface water flow  
6 chapters, and I don't remember that specifically in  
7 there.

8 MR. WOLK: Do -- Do you -- I mean, even if  
9 your answer's "I don't know" --

10 WITNESS BUCHHOLZ: I would say this is under  
11 the "I don't know why that's in the modeling."

12 MR. WOLK: Okay. So the -- Okay.

13 Well, then, I guess I'll save my question for  
14 that.

15 Nothing further from me.

16 CO-HEARING OFFICE DODUC: Thank you.

17 With that, we will take a break and we will  
18 return as 2:25.

19 Or, actually, let's go back. Let me make  
20 sure.

21 Group 25 -- I'm sorry. That was 25.

22 27, 28, 29, 30, any cross-examination?

23 No?

24 All right. Then when we return, Mr. Jackson,  
25 you'll be up.



1 (Recess taken at 2:08 p.m.)

2 \* \* \*

3 (Proceedings resumed at 2:25 p.m.):

4 CO-HEARING OFFICER DODUC: It is 2:25. We are  
5 back in session.

6 And we will now turn to Mr. Jackson for his  
7 cross-examination.

8 MR. JACKSON: Thank you.

9 My first questions will be from -- be for  
10 Mr. Bednarski. The -- The -- The things I will cover  
11 is the overview of his testimony, particularly dealing  
12 with the intakes, tunnels, forebays, the pumping plant,  
13 and maybe a question on the Head of Old River.

14 The . . . And his expertise in regard to the  
15 conceptual engineering design, and maybe a couple of  
16 questions on an update as to where the engineering  
17 design is from the last time we talked, which was in  
18 Part 1.

19 CROSS-EXAMINATION BY

20 MR. JACKSON: Mr. Bednarski, my name is  
21 Michael Jackson and I represent some of the fisheries  
22 groups.

23 And so could you, Mr. Hunt, put up DWR-1022.

24 (Exhibit displayed on screen.)

25 MR. JACKSON: And Line 18 is where I'll start.

1 (Exhibit displayed on screen.)

2 MR. JACKSON: Mr. Bednarski, your testimony  
3 says that you're an expert in the CWF Project  
4 conceptual engineering design; is that -- is that  
5 correct?

6 WITNESS BEDNARSKI: That's correct.

7 MR. JACKSON: Are there other witnesses who  
8 are going to testify, to your knowledge, in Part 2 of  
9 this hearing who also are experts in the engineering  
10 design?

11 WITNESS BEDNARSKI: Mr. Pirabarooban is also  
12 here with me today.

13 MR. JACKSON: Excuse me?

14 WITNESS BEDNARSKI: Mr. Pirabarooban.

15 MR. JACKSON: All right. But nobody in any  
16 other panel that you know of?

17 WITNESS BEDNARSKI: I'm not aware of any  
18 others.

19 MR. JACKSON: All right. Thanks.

20 The . . . My first question is: When you  
21 testified before, you indicated that there is an  
22 engineering definition of a conceptual design in terms  
23 of how far you are along in the engineering.

24 And I think you said that was up to about  
25 10 percent?

1           WITNESS BEDNARSKI: That's probably how I  
2 would have characterized it, yes.

3           MR. JACKSON: All right. And I think you  
4 indicated that it would take another three years, maybe  
5 four years, to get to final in the conceptual -- in the  
6 design?

7           CO-HEARING OFFICE DODUC: Hold on. I believe  
8 Mr. Mizell has something to say.

9           MR. MIZELL: Yeah.

10          I'd like to object to this line of  
11 questioning. It's going directly to Part 1 issues that  
12 do not trace to his Part 2 testimony at this point.

13          If Mr. Jackson could provide us some  
14 foundation in the Part 2 testimony, I'm willing to  
15 remove my objection.

16          CO-HEARING OFFICE DODUC: Mr. Jackson --

17          MR. JACKSON: Sure.

18          CO-HEARING OFFICE DODUC: -- can you point us  
19 to where in 1022 you are referring.

20          MR. JACKSON: Yeah. I'm -- I'm referring to  
21 the first paragraph where he says that he par -- has  
22 participated with the California Department of Water  
23 Resource on behalf of Met in the conceptual design and  
24 the overall Engineering Program management of the CWF.

25          CO-HEARING OFFICE DODUC: And he provided that

1 as part of his qualifications, I believe. But his  
2 testimony -- Where in --

3 MR. JACKSON: It's about screens. It's  
4 about -- It's about the Head of Old River Gates. It's  
5 about tunnels. It's about -- It's -- It's got -- It's  
6 some of the same things, but now we're talking about  
7 fish, and now we're talking about the estuary.

8 And so I want to know, before this gets  
9 approved, how far along it is now.

10 CO-HEARING OFFICE DODUC: Has that -- Has your  
11 conceptual planning progressed beyond what was your  
12 testimony previously?

13 WITNESS BEDNARSKI: No, it has not.

14 MR. JACKSON: So I believe you told me that it  
15 would -- it would be four years -- three to four years  
16 from the time you . . . moved along before you had --  
17 before you could begin building.

18 MR. MIZELL: Again, I'm going to renew my  
19 objection to this line of questioning as being directly  
20 pertinent to Part 1 but not to Part 2.

21 CO-HEARING OFFICE DODUC: And I'm trying to  
22 give Mr. Jackson some leeway but I'm having trouble  
23 making the connection myself if he's already answered  
24 that they have not progressed beyond the conceptual  
25 design phase that they were in when he previously

1 testified.

2 MR. JACKSON: Well, the purpose for the  
3 questions, if you want a proffer or an offer of  
4 proof --

5 CO-HEARING OFFICE DODUC: (Nodding head.)

6 MR. JACKSON: -- is that the conclusions that  
7 CWF will be good for fish is not supported by anything  
8 in his testimony, and I was wondering if anything had  
9 changed since the last time.

10 The -- For instance, can I move to the  
11 screens? That -- That probably would give it the first  
12 start.

13 CO-HEARING OFFICE DODUC: Yes, please move to  
14 the screens.

15 MR. JACKSON: On Page 7, Lines 23 and 24.

16 (Exhibit displayed on screen.)

17 MR. JACKSON: You indicate that (reading):

18 "All of the intakes are sized to  
19 provide approach velocity -- velocities  
20 of less than or equal to .20 feet per  
21 second at an intake flow rate of 3,000  
22 cfs at the design water surface  
23 elevation."

24 Correct?

25 WITNESS BEDNARSKI: That's correct.

1 MR. JACKSON: What does a screen like that at  
2 20 feet per second at the intake -- intake flow rate of  
3 3,000 cfs protect against?

4 MR. MIZELL: Objection: Misstates the  
5 evidence.

6 Mr. Jackson misquoted it. It is .2 feet per  
7 second not 20 feet per second.

8 MR. JACKSON: .20 feet per second. I'm sorry.

9 MR. MIZELL: .2 feet per second.

10 MR. JACKSON: What approach velocity is that  
11 designed for in terms of species?

12 WITNESS BEDNARSKI: To the best of my  
13 understanding, that .2 feet per second was set by the  
14 Fish Technical Team before the engineering started, and  
15 it's my understanding that that criteria was set to  
16 protect the Delta Smelt.

17 MR. JACKSON: Does it protect -- protect all  
18 life stages of Delta Smelt?

19 WITNESS BEDNARSKI: I -- I -- I don't know.

20 MR. JACKSON: Does it protect Delta Smelt  
21 larvae?

22 MR. MIZELL: Objection: Asked and answered.

23 CO-HEARING OFFICER DODUC: You may answer  
24 again that you do not know.

25 WITNESS BEDNARSKI: I am not a fish expert.

1 We were given this criteria on the engineering side of  
2 things, and we applied it to the design of the screens,  
3 and I do not know the answer to your question.

4 MR. JACKSON: Do you know whether the -- the  
5 design water surface elevation for each site when it  
6 was established that 99 percent exceedance protects all  
7 species that are in the Sacramento River?

8 WITNESS BEDNARSKI: Perhaps you're -- I do not  
9 know, but perhaps someone on Panel 2 would be able to  
10 answer that question.

11 MR. JACKSON: All right. Where did you get  
12 the information that it would be protected?

13 MS. ANSLEY: Asked and answered. He already  
14 answered he got these criteria from the fish agencies.

15 CO-HEARING OFFICE DODUC: Is that true,  
16 Mr. Bednarski?

17 WITNESS BEDNARSKI: Yes, that's correct.

18 MR. JACKSON: And you received that before  
19 Part 1?

20 WITNESS BEDNARSKI: Yes.

21 MR. JACKSON: And there's been nothing  
22 changed?

23 WITNESS BEDNARSKI: No.

24 MR. JACKSON: You indicate on Page 8 that  
25 the -- some -- something you call similar to -- that

1 already exists on the Sacramento River, and you use  
2 Red Bluff, Freeport and Glenn-Colusa.

3 Did you pick those?

4 I mean, if I ask you questions about Red --  
5 the Red Bluff intake and how it differs from what  
6 you're proposing, could you answer them?

7 WITNESS BEDNARSKI: In -- In general terms, I  
8 could tell you how it answers -- or how it differs,  
9 yes. In specific de -- design details, no.

10 MR. JACKSON: Red Bluff is an Archimedes  
11 screw; is that correct?

12 WITNESS BEDNARSKI: I'm sorry?

13 MR. JACKSON: The diversion at Red Bluff is an  
14 Archimedes screw; isn't it?

15 WITNESS BEDNARSKI: Are you referring to the  
16 way that water is lifted --

17 MR. JACKSON: Yeah.

18 THE WITNESS: -- from one elevation to  
19 another?

20 MR. JACKSON: Yes.

21 WITNESS BEDNARSKI: It could be, but my  
22 example was specifically to talk about the screens, not  
23 the -- the water lifting mechanism.

24 MR. JACKSON: And there is only one of them,  
25 correct, at Red Bluff?



1 MR. MIZELL: Objection: Vague and ambiguous.

2 One of what? One screen?

3 MR. JACKSON: One screen. There's not three  
4 screens that -- as in the California WaterFix -- that  
5 might have additive effects on fish.

6 WITNESS BEDNARSKI: That -- That's correct.  
7 There's one screen structure at Red Bluff.

8 MR. JACKSON: Right.

9 And in terms of the Glenn-Colusa Irrigation  
10 District, in your testimony, you do note that it's --  
11 it's not on the main river. It's located on oxbow off  
12 the main stem.

13 WITNESS BEDNARSKI: That's correct.

14 MR. JACKSON: So are those, in your mind,  
15 similar?

16 WITNESS BEDNARSKI: Again, the purpose of  
17 referencing these three was the construction methods  
18 and the type of screen materials that were used to  
19 construct the screens were the purpose for the examples  
20 of these three, not for their specific locations on the  
21 river and how fish interacted with them.

22 MR. JACKSON: All right. In -- In -- In fact,  
23 there are different species at these locations;  
24 correct? I mean, there's -- there's no Smelt at  
25 Red Bluff or Glenn-Colusa --

1 MR. MIZELL: Objection --

2 MR. JACKSON: -- are there?

3 MR. MIZELL: -- assumes facts not in evidence;  
4 and goes well beyond this expert's testimony and  
5 expertise.

6 MR. JACKSON: He can tell me that.

7 CO-HEARING OFFICE DODUC: Hold on.

8 Mr. Bednarski, do you have knowledge regarding  
9 the fish specie -- fish species involved?

10 WITNESS BEDNARSKI: I do not.

11 CO-HEARING OFFICE DODUC: Thank you.

12 MR. JACKSON: In the -- In the data that you  
13 based your testimony on Page 8, did you -- did you look  
14 at Lamprey Eels?

15 Did you look at any other species that uses  
16 these locations and it would have to pass the CWF  
17 diversions and screens?

18 WITNESS BEDNARSKI: No, we did not.

19 As I mentioned just previously, we looked at  
20 these for the methods of constructing the screen  
21 structure itself and the types of materials that were  
22 used. That was the basis of the comparison and the  
23 conclusion that there were similarities between these  
24 three examples and the CWF intakes.

25 MR. JACKSON: You indicate on Line 19 that

1 (reading):

2 "As part of the (sic) next  
3 engineering phase, extensive  
4 collaborative discussions with the State  
5 and Federal fish agencies will continue  
6 and variety of preconstruction studies  
7 are proposed to aid in refinement of the  
8 fish screen design."

9 Did that come from the same Exhibit 104  
10 that -- Is that where you got it -- got that  
11 information?

12 WITNESS BEDNARSKI: Yes, I believe so.

13 A list of additional studies have been  
14 identified to be undertaken before Final Design of the  
15 fish screen starts, and we plan to conduct those  
16 studies in collaboration with these agencies.

17 MR. JACKSON: So is it fair to say that, as  
18 you sit here today, the fish screens are at the same  
19 conceptual level that we talked about before --

20 MS. ANSLEY: Asked and answered.

21 MR. JACKSON: -- pretty much 10 percent done?

22 WITNESS BEDNARSKI: Yes, they are.

23 MR. JACKSON: So are you operating under the  
24 assumption for your testimony that these screens will  
25 be 100 percent effective?

1 MS. ANSLEY: Objection: Misstates  
2 Mr. Bednarski's testimony which is the feasibility of  
3 construction and perhaps vague and ambiguous as to what  
4 he means by "effective."

5 CO-HEARING OFFICE DODUC: Mr. Bednarski, are  
6 you able to answer the question?

7 WITNESS BEDNARSKI: I would ask for a  
8 definition of what "effective" means as far as the  
9 question.

10 CO-HEARING OFFICE DODUC: Mr. Jackson.

11 MR. JACKSON: Well, if I'm going to give the  
12 definition, it would be 100 percent effective.

13 MR. MIZELL: Objection: Using the word in the  
14 definition doesn't really give any clarity to the  
15 witness.

16 CO-HEARING OFFICE DODUC: Try again,  
17 Mr. Jackson.

18 MR. JACKSON: Sure.

19 At the 10 percent conceptual stage, would no  
20 activity in -- regarding to refining the screening  
21 since you began, could you give a percentage of  
22 effectiveness for the larval stage of Delta Smelt?

23 MS. ANSLEY: Objection.

24 MR. MIZELL: Objection --

25 MS. ANSLEY: Oop.

1 MR. MIZELL: -- asked and answered.

2 MS. ANSLEY: Calls for speculation.

3 CO-HEARING OFFICE DODUC: He can answer, no,  
4 he cannot give a percentage of effectiveness.

5 If that is your answer, Mr. Bednarski.

6 WITNESS BEDNARSKI: I cannot, because I'm not  
7 a fish expert. So I -- I can't offer an opinion or  
8 speculation about how effective it would be for that.

9 MR. JACKSON: Well, your conclusion in Line 16  
10 is that (reading):

11 "Based on the comparison to" these  
12 (sic) "completed intake projects . . .  
13 summarized above and the engineering  
14 completed (DWR-212), the CWF intakes do  
15 not pose any special or unusual  
16 challenges that would hinder similar  
17 successful completion."

18 You -- You can do that at 10 percent  
19 conceptual design on the screens? You can come to that  
20 conclusion?

21 WITNESS BEDNARSKI: That -- That's my  
22 professional opinion based on the data that we have  
23 gathered to date, and understanding what's been  
24 employed to construct other similar screens like the  
25 three examples that we've listed, and understanding the

1 type of studies that would go forward, and our ability  
2 to meet the -- the criteria that's been set forth for  
3 flows, velocities entering into the screens, and the  
4 diversion capabilities of the facilities, yes.

5 MR. JACKSON: If that's the case, then you --  
6 you conclude that (reading):

7 "As part of the next engineering  
8 phase" --

9 And I'll stop there and say, what next  
10 engineering phase would give you the information  
11 necessary for you to come to the conclusion as the  
12 engineer that the screens would be effective?

13 WITNESS BEDNARSKI: That would be the  
14 Preliminary Design phase that I would be referring to.  
15 And at that point, the completion of that phase, we  
16 would have the results of these studies that have been  
17 alluded to, and those would be consolidated into that  
18 Preliminary Design effort.

19 MR. JACKSON: And between your present  
20 conceptual stage, which evidently hasn't moved forward  
21 in the last year, how long would it take before you  
22 would then have the information necessary to come to  
23 the conclusion that the fish screen design would work?

24 MS. ANSLEY: Objection: Calls for  
25 speculation. What does he mean by "the fish screen

1 will work"?

2           Mr. Bednarski has given his testimony here  
3 that he believes it's feasible to construct on the  
4 criteria. He's been given -- Which is what he's  
5 already said today.

6           MR. JACKSON: The attorney is testifying.

7           CO-HEARING OFFICE DODUC: Mr. Bednarski, I  
8 understand that your focus is on the construction of  
9 these screens, but I appreciate Mr. Jackson's effort in  
10 determining the effectiveness of these screens.

11           Can you expand: Are you going to be involved  
12 in the refinement process with fishery agencies to  
13 ensure the effectiveness of these screens?

14           Or are -- Or do you just take their input and  
15 their analysis that this will be effective?

16           WITNESS BEDNARSKI: Well, there's a number of  
17 studies that will be conducted by fish technical teams.  
18 I assume that portions of the engineering staff will be  
19 involved in those.

20           Dr. Greenwood will be talking about this.  
21 He's in Panel 2. So you'll specifically hear about  
22 what those studies are and how they might impact the  
23 specific design or modifications or improvements or  
24 refinements to our existing conceptual design.

25           I do not have personal knowledge of what those

1 refinements might be at this time, but we would  
2 implement those refinements in accordance with the  
3 recommendations of that Team to ensure successful  
4 operations.

5           Again, our goal would be to achieve, you know,  
6 the -- the intake velocities that have been set forth,  
7 and the overall diversion capabilities, and the  
8 long-term maintenance and operation of the screens.

9           CO-HEARING OFFICE DODUC: What assurance can  
10 you provide, based on your professional experience, are  
11 the effectiveness of these screens?

12           If any.

13           WITNESS BEDNARSKI: I --

14           CO-HEARING OFFICE DODUC: Are you relying on  
15 the studies, on the fishery agencies' input?

16           WITNESS BEDNARSKI: We -- We will be relying  
17 on those studies to impart any design criteria that  
18 they feel are necessary into the screen design to  
19 ensure its overall effectiveness, and we will  
20 incorporate that -- those criteria.

21           MR. JACKSON: The -- You -- You seem to be  
22 using the term "we will" as in the future tense; is  
23 that correct?

24           WITNESS BEDNARSKI: For refinements beyond  
25 what we have shown in the conceptual design studies, I



1 can only talk in the future tense, that we will  
2 incorporate those.

3 We have incorporated all the data that we have  
4 from those studies or any input today, and that's  
5 reflected in our 10 percent design effort.

6 MR. JACKSON: You actually work for the Met;  
7 right?

8 WITNESS BEDNARSKI: Yes. I'm an employee of  
9 Metropolitan Water District.

10 MR. JACKSON: Does the Metropolitan have the  
11 authority to commit to future screens that are  
12 effective?

13 MR. MIZELL: Objection: Calls for  
14 speculation; outside his expertise; irrelevant.

15 CO-HEARING OFFICE DODUC: Sustained.

16 MR. JACKSON: To your knowledge, as you sit  
17 here today, has anyone ever considered trying to put  
18 the same kind of screen on the South Delta pumps?

19 MR. MIZELL: Objection: Vague and ambiguous  
20 in terms of his use of the word "anyone."

21 MR. JACKSON: I'll -- I'll change that.

22 Has anyone in authority ever suggested that  
23 screening the other water location, the South Delta  
24 pumps, should be part of the screening program?

25 MR. MIZELL: Objection. Same -- Same

1 objection: It's vague, "anyone in authority."

2 Are we talking about foreign heads of state?

3 More than that, this is really just speculation.

4 CO-HEARING OFFICE DODUC: Mr. Bednarski, do  
5 you have any knowledge at all about this matter?

6 WITNESS BEDNARSKI: No, I do not.

7 MR. JACKSON: Were you part of the -- of  
8 developing the conceptual design?

9 WITNESS BEDNARSKI: Yes, I was.

10 MR. JACKSON: Did you ever hear anyone suggest  
11 that, since half the water was going to come out of the  
12 existing situation, you ought to look at screening it?

13 WITNESS BEDNARSKI: Since I've been on the  
14 Project since 2011, I have not heard that subject  
15 discussed.

16 MR. JACKSON: Thank you, sir.

17 You -- You testified in your testimony on  
18 Page . . . 3 about potential impacts to navigation.

19 What is your expertise in terms of navigation?

20 WITNESS BEDNARSKI: I do not have a particular  
21 expertise in that area.

22 MR. JACKSON: You testify on . . .

23 You testify as to intakes on Page 3.

24 Are the -- Is the description in your  
25 testimony in regard to in -- intakes at a conceptual

1 level?

2 WITNESS BEDNARSKI: Yes. The -- The numbers  
3 that are quoted there refer back to our conceptual  
4 design.

5 MR. JACKSON: And 90 percent of the work is  
6 yet to be done.

7 WITNESS BEDNARSKI: I don't anticipate that  
8 these numbers will change greatly from where they are  
9 right now, even though, yes, we have 90 percent of the  
10 effort to complete the design. It is still ahead of  
11 us, but the major footprints have already been  
12 identified through the 10 percent effort.

13 MR. JACKSON: Do you -- Have you had success  
14 in doing as much core drilling as you -- as you  
15 would -- as you mentioned you would need before you  
16 could get to the Preliminary Design stage?

17 WITNESS PIRABAROOBAN: I would like to answer  
18 that --

19 MR. JACKSON: Sure.

20 WITNESS PIRABAROOBAN: -- question.

21 We have done geotechnical exploration on the  
22 water side. On the land side, we couldn't because we  
23 didn't -- we -- we would not be able to get access to  
24 those properties. But on the water side, where these  
25 intakes are going to be located, we have geotechnical

1 data.

2 MR. JACKSON: Well, the -- the two sides of  
3 the levee are connected; right?

4 WITNESS PIRABAROOBAN: Yes, they are.

5 MR. JACKSON: And -- And levees can fail from  
6 the inside; can't they?

7 WITNESS PIRABAROOBAN: I cannot answer that  
8 the levees fail from the inside. From what cause? It  
9 depends on -- I cannot imagine the failure scenario.

10 MR. JACKSON: Oxidation of peat soil that  
11 causes a decline in -- in ground level?

12 MR. MIZELL: Objection --

13 MR. JACKSON: Does it put pressure --

14 MR. MIZELL: I'm going to object.

15 MR. JACKSON: -- on the levees?

16 MR. MIZELL: Levee failures is nowhere in the  
17 Part 2 testimony of Mr. Bednarski. I believe this is  
18 going back to a Part 1 issue.

19 CO-HEARING OFFICE DODUC: Mr. Jackson, please  
20 point us to where in Mr. Bednarski's testimony. 1022.

21 MR. JACKSON: Mr. Bednarski's testimony says  
22 that -- that California WaterFix consists of five key  
23 pea -- key features. And I'm just trying to  
24 determine --

25 CO-HEARING OFFICE DODUC: Page, please,

1 Mr. Jackson?

2 MR. JACKSON: Yeah. Page 2, overview of his  
3 testimony.

4 (Exhibit displayed on screen.)

5 CO-HEARING OFFICER DODUC: Okay. And please  
6 continue with your point.

7 MR. JACKSON: The -- The -- The -- The point  
8 is that he says that (reading):

9 ". . . The feasibility of constructing  
10 the proposed fish screens (sic) along  
11 with a summary of successfully  
12 constructed intakes . . . are described  
13 in this testimony."

14 I'm trying to determine whether or not he's  
15 included all of the things that would be required to  
16 make the con -- to come to the conclusion that these --  
17 that -- that this is -- that these proposed fish  
18 screens and intakes are going to be -- are certain or  
19 whether we're just postponing into the dim future --

20 CO-HEARING OFFICE DODUC: Certainly in terms  
21 of its construction?

22 MR. JACKSON: Yes.

23 CO-HEARING OFFICER DODUC: Okay. That is  
24 within the scope of his testimony if it's focused on  
25 the construction of the screens.

1           MR. JACKSON: It's hard to focus on the  
2 construction without talking about the purpose of the  
3 construction.

4           CO-HEARING OFFICE DODUC: Well, let's not  
5 revisit to the margin of this Project and everything  
6 that we've already covered in Part 1 so far.

7           MR. JACKSON: But by bifurcating the process,  
8 we never got a chance to talk about what effect that  
9 could have on the environment.

10           Unreasonable effects on fish and wildlife  
11 could happen from collapsed levees, from inefficient  
12 and ineffective screening.

13           CO-HEARING OFFICE DODUC: Screening, yes.  
14 That is the subject of his testimony. The construction  
15 of the screen intake.

16           MR. JACKSON: Well, I mean, a summary of  
17 successfully constructed intakes on the Sacramento  
18 River are described in his testimony.

19           CO-HEARING OFFICER DODUC: Okay.

20           MR. JACKSON: I mean, I don't know how else  
21 to -- to get to it but asking what elements of the  
22 construction he has enough information to conclude now  
23 before you give them the Permit for this Project.

24           CO-HEARING OFFICE DODUC: I'm trying to  
25 understand your question.

1 MR. JACKSON: If they get the Permit to the  
2 Project, I'm not going to ever be able to ask these  
3 questions.

4 And I've only got 10 percent of the -- in a  
5 concept --

6 CO-HEARING OFFICER DODUC: Okay.

7 MR. JACKSON: -- to deal with.

8 CO-HEARING OFFICER DODUC: Okay.

9 MR. JACKSON: He comes to the conclusion that  
10 his description in this testimony is . . . enough to  
11 get a Permit.

12 I'm trying --

13 CO-HEARING OFFICER DODUC: Base --

14 MR. JACKSON: -- to --

15 CO-HEARING OFFICE DODUC: Based on the  
16 construction, construction feasibility, and  
17 construction impacts.

18 MR. JACKSON: Yes.

19 CO-HEARING OFFICE DODUC: And those are the  
20 areas that you will be exploring.

21 MR. JACKSON: You know, I'm almost through. I  
22 wanted to see what he had considered about failure in  
23 the construction process.

24 CO-HEARING OFFICE DODUC: Did you consider  
25 failure in the construction process?

1           WITNESS BEDNARSKI: Can you be more specific  
2 about the term "failure" and where -- where that might  
3 be applied? I -- You know, I don't want to just answer  
4 to an open-ended question.

5           CO-HEARING OFFICE DODUC: Mr. Jackson.

6           MR. JACKSON: Yes.

7           The -- You've -- You've talked about potential  
8 impacts in regard to the screens, the intakes, the  
9 diversion facilities. And I'm trying to determine  
10 whether there's a chance that those could fail and  
11 that -- that our fish could get wiped out.

12           I mean, all the way through the testimony,  
13 you're assuming that building this Project is going to  
14 be good for the fish.

15           MR. MIZELL: Objection: Misstates the  
16 testimony. Nowhere in his testimony does he state  
17 that -- the effects of this Project on fish. That is  
18 reserved for the biology experts that come in Panel 2.

19           Mr. Bednarski is referring to the physical  
20 construction of the structure, similar -- If I want to  
21 draw an analogy, it would be as if you were asking the  
22 guy swinging the hammer if the architect did his job  
23 right.

24           Mr. Bednarski is the engineer who will be  
25 constructing the facility. The effectiveness of the



1 facility and the biological impacts are for Panel 2.

2 CO-HEARING OFFICE DODUC: That is my  
3 understanding as well.

4 Mr. Jackson, how much more can you milk from  
5 Mr. Bednarski on the issue of effectiveness to which he  
6 has deferred to Panel 2?

7 MR. JACKSON: Well, I would normally go  
8 through, if I were allowed, the barges and temporary  
9 barge unloading facilities and how much we know about  
10 those, and how they could affect Snodgrass Slough,  
11 Potato Slough, San Joaquin River, Middle River,  
12 Connection Slough, Old River and West Canal.

13 On Page 4, that was actually the next stage.

14 CO-HEARING OFFICE DODUC: So, this brings up  
15 my confusion earlier this morning when, Mr. Mizell, you  
16 were introducing this panel. And we will take part of  
17 the blame for this confusion because we split  
18 Mr. Bednarski's testimony between Panel 1 and Panel 3.

19 My understanding is, Panel 1 relates to the  
20 design and feasibility of constructing the fish screen  
21 intakes, and he will return in Panel 3 to discuss the  
22 potential impacts to navigation from the construction  
23 of these intake structures.

24 Is that correct?

25 MR. MIZELL: That's correct.

1 CO-HEARING OFFICE DODUC: So --

2 MR. MIZELL: Now, I do recognize that  
3 sometimes it is difficult to draw the line between the  
4 barge landing sites which are associated with the  
5 construction of the screens versus the actual  
6 structures that will be in place after completion of  
7 construction and what that might do to navigation.

8 So I appreciate the challenge that you're  
9 facing but we're willing to have Mr. Bednarski talk  
10 about navigation impacts in Panel 3.

11 CO-HEARING OFFICER DODUC: All right.

12 Mr. Jackson, now back to you.

13 You are trying to explore --

14 MR. JACKSON: His testimony.

15 CO-HEARING OFFICE DODUC: As focused on the  
16 design and feasibility of constructing the fish screen  
17 intakes.

18 MR. JACKSON: Yes.

19 CO-HEARING OFFICE DODUC: And you're trying to  
20 determine to what extent he has explored . . .  
21 potential problems associated with successful  
22 construction and installation of these screen intakes.

23 MR. JACKSON: I'm a lawyer, not an engineer,  
24 but when --

25 CO-HEARING OFFICE DODUC: I'm an engineer, not

1 a lawyer.

2 MR. JACKSON: But when somebody tells me  
3 there's an engineering definition about conceptual  
4 engineering and that's usually out to about 10 percent,  
5 and then preliminary engineering is usually up to about  
6 70 percent?

7 WITNESS BEDNARSKI: I would say 30 percent.

8 MR. JACKSON: 30 percent. And that we're --  
9 How many -- One of the questions: How many years are  
10 we from having the preliminary engineering?

11 MR. MIZELL: Objection: Asked and answered.

12 This was the first line of questioning that we  
13 objected to.

14 CO-HEARING OFFICE DODUC: Mr. Jackson, I think  
15 you've made your point with respect to the whole issue  
16 of conceptual design.

17 Is there something else you would like to  
18 emphasize?

19 MR. JACKSON: Only -- I -- Only -- Yes, there  
20 are.

21 But the -- the barges, the 5,000 barge trip,  
22 the tunnel segment liners from ports yet to be  
23 determined.

24 I'm trying to find out -- We got a bunch of  
25 endangered fish. I'm trying to figure out whether this

1 Project actually helps them or hurts them.

2           This is the hearing. You won't wait till I  
3 get the information from the environmental documents,  
4 so I'm blundering around trying to get as much  
5 information as I can based upon the limited information  
6 that he put forward in his testimony.

7           CO-HEARING OFFICE DODUC: Now, keep in mind  
8 that Mr. Bednarski is only testifying as to the  
9 feasibility of construction.

10           Your question is an important question, which  
11 is where -- why we're here to determine the impact or  
12 benefit to be realized by these -- these -- this  
13 proposal, including to fish and wildlife. He may not  
14 be the best person to answer these questions.

15           Again, his testimony is fixed, based on -- in  
16 my understanding as I read his testimony -- on the  
17 construction activity.

18           MR. JACKSON: Yes. That's the way I read it.

19           The . . . So my remaining questions for him,  
20 before I go to -- to Ms. Buchholz, is:

21           You're going to build -- They're going to  
22 build these temporary barge unloading facilities --  
23 this is Page 4, Lines 23 and 24 --

24           (Exhibit displayed on screen.)

25           MR. JACKSON: -- and there are specific

1 locations.

2           So I was planning on asking him about each  
3 location, because they're different --

4           CO-HEARING OFFICER DODUC: Okay.

5           MR. JACKSON: -- substantially different.

6           If I can do that, I'm through with him.

7           CO-HEARING OFFICE DODUC: Go ahead.

8           MR. JACKSON: What exactly is your concept for  
9 Snodgrass Slough in terms of these barge facilities?

10           WITNESS BEDNARSKI: This is a general comment  
11 for all the barge facilities. We have not made a final  
12 determination at this point in time as to what type of  
13 landing will ultimately be constructed through the  
14 Conceptual Engineering Report.

15           We have identified a series of alternatives  
16 that could possibly be implemented. And I think the  
17 belief through the -- the Final EIR, we've identified  
18 the most impactful one, which is a marina-type landing.  
19 It's not to say that that's what will actually be  
20 installed, but in order to disclose the most impactful  
21 approach, we've used that one.

22           But if there's a less impactful method, we  
23 will certainly look at using those as we go forward.

24           MR. JACKSON: So, as an engineer, you would  
25 know which would be, as you put it, the most impactful

1 in what calendar year?

2 WITNESS BEDNARSKI: I think within a year or  
3 two of starting the Preliminary and Final Design  
4 process, we would have assessed each of these sites  
5 with geotechnical investigations and gained a better  
6 understanding of the types of activities that need to  
7 take place at each of these sites, and any  
8 environmental constraints there, so within the first  
9 year or two.

10 MR. JACKSON: And that would start first year  
11 to from when?

12 WITNESS BEDNARSKI: We haven't been directed  
13 to start Preliminary and Final Design at this point, so  
14 until that happens, I can't give you a Calendar Year.

15 MR. JACKSON: So since this is 2018, it would  
16 be sometime in -- It might be 2020 or 2021?

17 WITNESS BEDNARSKI: Hypothetically, if we were  
18 to receive direction this year that we could start  
19 Final Design, then, yes, by 2020, we would probably  
20 know at each of these locations specifically what we're  
21 going to be doing.

22 MR. JACKSON: Okay. So -- So -- So that I  
23 don't ask too many questions, if I ask you a question  
24 about each of the locations that you describe in your  
25 testimony on Page 4, would you be able to answer?

1 WITNESS BEDNARSKI: I will try my best to  
2 answer --

3 MR. JACKSON: Okay.

4 WITNESS BEDNARSKI: -- depending on the  
5 specificity of your question.

6 MR. JACKSON: What is the -- What unloading  
7 facility for barges do you intend to build on Old  
8 River?

9 WITNESS BEDNARSKI: This would -- I believe  
10 this would be near Victoria Island, the Old River. Is  
11 that the site that you're referring to?

12 MR. JACKSON: I'm reading --

13 WITNESS BEDNARSKI: Yes.

14 MR. JACKSON: -- from your testimony.

15 WITNESS BEDNARSKI: So my recollection is the  
16 Old River site is near Victoria Island and that was to  
17 service an access shaft for some of the tunneling  
18 operations.

19 MR. JACKSON: And what does that require you  
20 to do at Old River at that location, as best you know  
21 today?

22 WITNESS BEDNARSKI: The -- The potential was  
23 that, if we had to do some major maintenance to one of  
24 the tunnel-boring machines, we would do it at that  
25 location. And we may need to bring in spare parts to

1 the tunnel-boring machine via a barge at that location,  
2 so we've identified that as a potential location for  
3 constructing a barge landing.

4           Again, these are potential locations that have  
5 been identified in the EIR/EIS.

6           MR. JACKSON: And on Page 5 at Line 15 --

7           (Exhibit displayed on screen.)

8           MR. JACKSON: -- you indicate that (reading):

9                   "Approximately 5900 barge trips will  
10           carry tunnel segment liners from ports  
11           (locations not yet determined, but likely  
12           in the San Joaquin --  
13           Sacramento-San Joaquin Delta and  
14           San Francisco Bay Area) . . ."

15           Is that as specific as you can be at a  
16 conceptual level of engineering?

17           WITNESS BEDNARSKI: Are you referring to the  
18 number of barge trips or the locations they'll be  
19 coming from?

20           MR. JACKSON: Well, first -- That sounds like  
21 a lot of barge trips. I mean, that's going to take  
22 some time; right?

23           WITNESS PIRABAROOBAN: That's over, like, six  
24 years' construction time it will take, so . . .

25           MR. JACKSON: Okay. And as of today, as we



1 sit here in Part 2 of the hearing, we don't have any  
2 more information on locations, numbers, round-trips per  
3 day, up to 5.5 years.

4 WITNESS PIRABAROOBAN: So on Line 17, if you  
5 see (reading):

6 ". . . Averaging approximately four  
7 round-trips per day for up to 5.5 years."

8 MR. JACKSON: Right. To add up to the 5900  
9 barge trips.

10 WITNESS PIRABAROOBAN: Approximately, yes.

11 MR. JACKSON: Okay.

12 WITNESS BEDNARSKI: Right. And I'd just like  
13 to add that this -- these numbers now include input  
14 from the Biological Opinion that we received.

15 Since we've completed the conceptual design,  
16 we now have the input from the Federal fish -- you  
17 know, wildlife agencies, and that's been factored into  
18 the number of barge trips and the duration and time for  
19 deliveries.

20 MR. JACKSON: Well, since you mentioned that,  
21 and on -- I was planning on saving this for the  
22 biologist, but the . . . the information that you  
23 received from the Federal endangered species agencies  
24 is only a few of the life forms that live in the Delta  
25 Estuary; correct?

1 WITNESS BEDNARSKI: That, I'm -- I'm not aware  
2 of, no.

3 MR. JACKSON: All right.

4 WITNESS BEDNARSKI: I'm not aware of that.

5 MR. JACKSON: The Number 594 doesn't ring any  
6 bells?

7 MR. MIZELL: Objection: Asked and answered.

8 CO-HEARING OFFICE DODUC: Mr. Bednarski, same  
9 answer?

10 WITNESS BEDNARSKI: It doesn't ring a bell,  
11 no.

12 MR. JACKSON: Okay. Thank you, sir.

13 Would you put up DWR-1010, the testimony of  
14 Gwendolyn Buchholz.

15 CO-HEARING OFFICER MARCUS: Make it shorter.

16 (Exhibit displayed on screen.)

17 MR. JACKSON: The -- Yeah, I used to worry  
18 about German. Now I worry about Russian.

19 The -- The . . . Your introduction on -- on  
20 Page 1 indicates that you worked for CH2M Hill?

21 WITNESS BUCHHOLZ: That's right.

22 MR. JACKSON: And CH2M Hill evidently does a  
23 lot of work with the Bureau of Reclamation.

24 WITNESS BUCHHOLZ: We work for many agencies,  
25 including Bureau of Reclamation.

1           MR. JACKSON:  And according to the testimony  
2 on the last line of Page 1 through Page 2, Line 2, you  
3 were (reading):

4           ". . . The principal-in-charge to assist  
5 Reclamation in preparing the . . .  
6 Biological Assessment for the CWF . . ."

7           WITNESS BUCHHOLZ:  That's true.

8           MR. JACKSON:  Has Reclamation finished their  
9 environmental review process?

10          WITNESS BUCHHOLZ:  Reclamation hasn't.  It --  
11 It depends on how you define the completion of any  
12 process, but that's generally defined as adoption of  
13 record and position, and Reclamation has not adopted  
14 record and position yet.

15          MR. JACKSON:  Do you know why?

16          WITNESS BUCHHOLZ:  I do not.

17          MR. JACKSON:  In terms of your knowledge of  
18 Reclamation's system, don't they have most of the  
19 stored water in the Central Valley system under their  
20 control?

21          MR. MIZELL:  Objection:  Beyond  
22 Miss Buchholz's testimony and stated expertise.

23          MR. JACKSON:  I don't know -- I --

24          MS. ANSLEY:  Also, vague and ambiguous as to  
25 "control."

1 CO-HEARING OFFICE DODUC: Where are you going  
2 with this, Mr. Jackson?

3 MR. JACKSON: Where I'm going with it is, if  
4 Reclamation doesn't finish the Record of Decision, are  
5 they going to be -- are they going to be able to  
6 release water that the North Delta Diversions could  
7 pick up?

8 CO-HEARING OFFICE DODUC: Do you have that  
9 knowledge?

10 WITNESS BUCHHOLZ: I do not.

11 MR. JACKSON: Okay. Excuse me. There were an  
12 awful lot of my questions answered earlier and I'm not  
13 going to go back over them.

14 Ah. Calling your attention to Page 7 of the  
15 testimony.

16 (Exhibit displayed on screen.)

17 MR. JACKSON: You indicate on Line 16 that the  
18 (reading):

19 "Implementation of the North Delta  
20 Diversion Intake Bypass Flows . . ." Or

21 (reading):

22 ". . . The North Delta Diversion Intake  
23 Bypass Flows" will be implemented "with  
24 real-time operations approach."

25 WITNESS BUCHHOLZ: Yes.

1 MR. JACKSON: Could you define that for me.

2 MS. ANSLEY: Objection: Asked and answered.

3 CO-HEARING OFFICE DODUC: We have gone over  
4 this, so, Mr. Jackson, what specifically do you want  
5 her to address?

6 MR. JACKSON: I want --

7 CO-HEARING OFFICE DODUC: Keeping in mind that  
8 her previous answer was to defer to someone else in --  
9 I believe it was Panel 3.

10 WITNESS BUCHHOLZ: And 2.

11 CO-HEARING OFFICE DODUC: And 2. Okay.

12 MR. JACKSON: The -- So the -- the testimony  
13 in Section D, the "H3+ Operational Criteria" on Page 7,  
14 and over on Line 1 of Page 8 --

15 (Exhibit displayed on screen.)

16 MR. JACKSON: -- are not things that you can  
17 answer?

18 MR. MIZELL: Objection: Misstates her  
19 testimony.

20 She's answered lots of questions about  
21 Section D in the line numbers. It's the details around  
22 real-time operations that she's deferred to Mr. Miller  
23 on Panel 2.

24 CO-HEARING OFFICE DODUC: So clarified.

25 MR. JACKSON: What I'm trying to find out is

1 whether all of -- whether the outflow is going to be  
2 postponed into some future collaborative meeting after  
3 you approve this Project.

4           So what I'm trying to find out is, first of  
5 all, when real -- real-time operations will be settled  
6 so that someone like me could know what it meant, who  
7 was doing it, and how much actual flow there would be.

8           MR. MIZELL: Objection: Compound.

9           CO-HEARING OFFICE DODUC: I think most of that  
10 requires detailed knowledge, my understanding, based on  
11 your answers to previous line of questioning --

12           WITNESS BUCHHOLZ: (Nodding head.)

13           CO-HEARING OFFICE DODUC: -- from other  
14 witnesses in 2 and 3.

15           WITNESS BUCHHOLZ: Right.

16           There are real-time operations groups, as  
17 they're defined and I think are identified in the  
18 Final EIR and Final EIR/EIS -- in fact, all of the  
19 documents -- that are ongoing and have been ongoing for  
20 many years. They are further defined in these  
21 documents for -- specifically for California WaterFix  
22 operational criteria.

23           And as stated in Mr. Miller's testimony -- he  
24 will be providing that in Panel 2 -- that this will be  
25 dependent upon observations that occur on a real-time

1 basis of when they will instigate different criteria on  
2 a temporal basis, based upon fish presence, water  
3 quality.

4 The participants of those real-time groups are  
5 identified in the EIR/EIS and the Final EIR. And  
6 Mr. Miller is slated to -- to discuss that in more  
7 detail.

8 I just want to say, when I put this testimony  
9 together, Mr. Miller was on the same panel as I am, and  
10 so that was why it was going to be -- I don't -- I  
11 didn't need to go into that that much detail because  
12 he'd be sitting next to me to answer those questions,  
13 and so now he's on Panel 2.

14 MR. JACKSON: Okay. Having run into that  
15 myself, having things separated away, it seemed to me  
16 to relate.

17 My -- I -- I -- I -- I guess my question is,  
18 do you know what the outflow number will be in an  
19 average year in terms of between January and June?

20 MR. MIZELL: Objection: Incomplete  
21 hypothetical.

22 CO-HEARING OFFICE DODUC: Under Scenario H3+.

23 MR. JACKSON: Under Scenario H3+.

24 WITNESS BUCHHOLZ: And, again --

25 CO-HEARING OFFICE DODUC: WaterFix -- CWF H3+.

1           WITNESS BUCHHOLZ:  And, again, all I would  
2 refer -- I don't have the number off the top of my  
3 head.

4           What we do with the models is, we use model  
5 simulations in a comparative manner so we have the same  
6 assumptions in our Future Without-Project, No-Action  
7 Alternative run, and our model run for CWF H3+.

8           And we're anticipating that type of Delta  
9 outflow, but we don't know what will happen because  
10 hydrology is going to be different than what we  
11 simulate.

12          MR. JACKSON:  Will you meet the outflow of  
13 targets?  Will the Project meet the outflow targets of  
14 D-1641?

15          WITNESS BUCHHOLZ:  Again, this is real --  
16 real-time conditions.  I can't predict exactly what the  
17 future will hold.  We will operate to meet those  
18 targets, just like DWR and Reclamation operate to meet  
19 them now.

20          MR. JACKSON:  Well, Ms. Buchholz, in terms of  
21 your -- your analysis on . . .

22          Well, I guess we can start with Page . . . 11  
23 at Line 19.

24          (Exhibit displayed on screen.)

25          MR. JACKSON:  You indicate that (reading):



1           "CWF H3+ will modernize, and add  
2 flexibility to the state's water system  
3 by aligning water operations to reflect  
4 No-Action Alternative seasonal flow  
5 patterns due to the creation of new water  
6 diversions in the North Delta equipped  
7 with state-of-the-art fish screens and  
8 reduced reliance on South Delta exports."

9           WITNESS BUCHHOLZ: Right.

10          MR. JACKSON: Doesn't all of that -- Isn't all  
11 of that determined by what the legislature asked the  
12 State Board to prepare in terms of what it would take  
13 to restore the estuary in terms of outflow and -- and  
14 exports?

15          WITNESS BUCHHOLZ: We -- When we did this  
16 analysis and put together our project objectives and  
17 operational criteria, we based them on -- We did not  
18 include something of future potential regulatory  
19 requirements.

20          As we've responded in the Final EIR/EIS, if  
21 those -- if regulatory requirements change in the  
22 future, including State Water Resource Control Board  
23 changing water quality requirements or flow  
24 requirements, then we'll have to look at that in a  
25 different way, as you would with or without the

1 Project.

2 MR. JACKSON: So wasn't that considered kind  
3 of dangerous for the exporters in terms of, if -- if --  
4 if Mr. Bednarski isn't going to be able to get it built  
5 within the next 10 years, and regulatory things change,  
6 this Project might go from being useful to being a  
7 disaster.

8 CO-HEARING OFFICE DODUC: I can hear the  
9 objection now.

10 Go ahead, Mr. Mizell.

11 MR. MIZELL: Yes.

12 Objection: Calls for speculation; incomplete  
13 hypothetical; assumes facts not in evidence.

14 WITNESS BUCHHOLZ: I will add, though, that --

15 CO-HEARING OFFICE DODUC: Hold on. Hold on.

16 Oh, actually, go ahead.

17 WITNESS BUCHHOLZ: I would just like to add  
18 that, although I don't agree with "disaster" or those  
19 kind of words because that's not the kind of thing we  
20 analyze, but the implementation of updates to the Water  
21 Quality Control Plan were analyzed within the  
22 cumulative impact analysis of the Final EIR/EIS and  
23 show that, you know, that that could modify the  
24 results -- or the -- the results with the WaterFix.

25 MR. JACKSON: So how did the -- Last subject.

1           So how did you as Chief Planner -- I'm -- I  
2 don't know that that's the right word.

3           WITNESS BEDNARSKI: (Shaking head.)

4           MR. JACKSON: But looking at your resumé, I'd  
5 have to almost -- I mean, it's close as I can get.

6           And, so, how did, through this planning  
7 process, through these EIRs, through the EIS, how did  
8 you -- how were you informed by the legislature's -- by  
9 the Board's report to the legislature about the  
10 75 percent unimpaired flow in January to June in order  
11 to look forward to see whether or not this -- this  
12 Project was likely going to be successful or not?

13           WITNESS BUCHHOLZ: Let me -- Let me say that  
14 what we used that report, as the legislature required  
15 in the Act, to inform the analysis.

16           I think you should refer some of those  
17 questions to the fisheries experts on Panel 2, how they  
18 used that information in their analysis.

19           I'm assuming, although I don't know, that it  
20 may have been used as, in terms of looking at -- by the  
21 regulatory agencies in the Biological Opinions and  
22 the -- and the Incidental Take Permit preparations.

23           From our perspective, 2010 report from the  
24 State Water Resource Control Board indicated that this  
25 was -- It -- It answered the question that was in

1 legislation, back to water -- the flows that would be  
2 protective and of fisheries.

3           However, that it was only one part deemed at  
4 the water rights process, and that that process in that  
5 document, it says the State Water Resource Control  
6 Board -- and I will not cite this correctly, but in  
7 paraphrasing -- would have to consider that information  
8 along with other beneficial uses.

9           And so, for us, we looked at that as a  
10 cumulative impact analysis because it hasn't been  
11 decided yet, and we did not include it as part of our  
12 No-Action or part of our other descriptions.

13           MR. JACKSON: Or the -- Or the existing  
14 environmental --

15           WITNESS BUCHHOLZ: Or the --

16           MR. JACKSON: -- set.

17           WITNESS BUCHHOLZ: Or the existing  
18 environmental settings. It has not been adopted.

19           MR. JACKSON: So, there was no attempt to  
20 determine what the projects are now recommending in the  
21 EIR as outflow from January to June in terms of a  
22 percentage. I think you already indicated that you  
23 didn't try that.

24           MS. ANSLEY: Yes. Asked -- Objection: Asked  
25 and answered; retread -- retreading ground we've been

1 over a lot.

2 MR. JACKSON: And -- And the reason I wanted  
3 to -- It was asked, it was answered, but it wasn't as  
4 far as I wanted to go with the answer.

5 CO-HEARING OFFICE DODUC: So go farther.

6 MR. JACKSON: All right. The . . .

7 Do you understand that a collaborative group  
8 of environmental agencies that were working on the  
9 question of endangered species was the same range of  
10 things to consider as the California public trust in  
11 the largest estuary on the West Coast of the Americas?

12 MR. MIZELL: Objection: Calls for  
13 speculation.

14 MR. JACKSON: I'm just asking her if they ever  
15 considered.

16 CO-HEARING OFFICER DODUC: I've given you --

17 WITNESS BUCHHOLZ: Endanger uses a lot of the  
18 terms --

19 CO-HEARING OFFICE DODUC: Hold on.

20 She is well qualified to answer the question  
21 based on her knowledge. If she does not know, she will  
22 say so.

23 WITNESS BUCHHOLZ: And I don't know.

24 MR. JACKSON: Can I ask a final question which  
25 you may not know.

1           Is there going to be somebody testify in this  
2 hearing who would -- could tell me whether or not they  
3 have any infor - information on any critter in the  
4 estuary that is not presently endangered but might be  
5 endangered by the building of this Project?

6           MS. ANSLEY:  Objection:  Calls for  
7 speculation --

8           CO-HEARING OFFICE DODUC:  I assume the answer  
9 is no.

10          MS. ANSLEY:  -- the word "critter."

11          MR. JACKSON:  Well, I'm sorry.  I'm a -- I'm  
12 a -- I'm an Oakey Mountain boy.  What do I know?

13          CO-HEARING OFFICE DODUC:  So is the answer is  
14 no?

15          MS. ANSLEY:  Speculation as to the future.

16          WITNESS BUCHHOLZ:  That would be a question  
17 for Panel 2's biologists, by the research biologist, or  
18 Panel 3's terrestrial biologist.

19          MR. JACKSON:  As you put together the sections  
20 on DWR's EIR --

21          WITNESS BUCHHOLZ:  Um-hmm.

22          MR. JACKSON:  -- did you consider it?

23          WITNESS BUCHHOLZ:  I did not write the biology  
24 sections.

25          MR. JACKSON:  Okay.  You -- You also make the

1 point that I've heard a number of times that, in terms  
2 of the public interest, people ought to consider the  
3 needs of water users and the importance of the economy.

4 WITNESS BUCHHOLZ: (Nodding head.)

5 MR. JACKSON: Did anyone -- And you nodded so  
6 that was --

7 WITNESS BUCHHOLZ: Yes.

8 MR. JACKSON: -- a yes?

9 Did anyone ever consider, in terms of the  
10 public interest, of having an intact, restored  
11 ecosystem in the San Francisco Bay Delta watershed --

12 MR. MIZELL: Objection --

13 MR. JACKSON: -- and the value of that?

14 MR. MIZELL: And objection: Calls for  
15 speculation; outside the scope of the Proposed Project.

16 We're not here to discuss hypothetical  
17 projects that might have been. We have the California  
18 WaterFix H3+.

19 Mr. Jackson is looking for an alternative to  
20 that. That goes beyond Miss Buchholz's testimony and  
21 expertise.

22 MR. JACKSON: I was looking for an alternative  
23 to that, and I may be talking about that in court.

24 But the -- What -- What I'm asking here is  
25 whether or not the -- the conclusion that you came to

1 that there would be costs from reducing exports to  
2 California was also balanced with the benefits of the  
3 75 percent flow recovering the estuary.

4 MR. MIZELL: Objection.

5 CO-HEARING OFFICE DODUC: Mr. Mizell, just let  
6 her answer. It's a "yes" or "no" as to whether or not  
7 that was considered.

8 WITNESS BUCHHOLZ: That was not considered,  
9 again, because we did not -- 2010, the report with the  
10 75 percent in Delta outflow is not part of our  
11 compliance criteria at this point.

12 MR. JACKSON: Thank you.

13 CO-HEARING OFFICE DODUC: So, actually, let me  
14 follow up on that question since we have Page 11 up  
15 here.

16 Lines 27 and 28 talks about the extensive  
17 environmental commitments, reversing the trend of  
18 habitat loss and -- and all that.

19 Was there any economic analysis done on the  
20 gain, the benefit, of reducing habitat loss,  
21 degradation, and improving population of native  
22 species?

23 WITNESS BUCHHOLZ: The economics that I refer  
24 to in my testimony is based on the socioeconomics  
25 chapter, which is not associated with ecosystem



1 economic analysis. It was based on human resources.

2 So, no, not that I'm aware of but maybe

3 Panel 2 would know better --

4 CO-HEARING OFFICER DODUC: Okay.

5 WITNESS BUCHHOLZ: -- or Panel 3.

6 CO-HEARING OFFICE DODUC: We'll save that for  
7 Panel 2.

8 Thank you, Mr. Jackson.

9 Let me look at the court reporter. Can you  
10 use a little break?

11 THE REPORTER: (Nodding head.)

12 CO-HEARING OFFICER DODUC: Okay. You have her  
13 to thank for your 10-minute break. We will resume at  
14 3:40.

15 And, I believe, Mr. Obegi, you're up next.

16 (Recess taken at 3:29 p.m.)

17 (Proceedings resumed at 3:40 p.m.):

18 CO-HEARING OFFICER DODUC: It is 3:40. We are  
19 resuming.

20 Mr. Obegi, please begin by giving us an  
21 outline of the topics you'll be covering.

22 MR. OBEGI: Thank you.

23 Doug Obegi on behalf of Natural Resources  
24 Defense Council, Defenders of Wildlife, and The Bay  
25 Institute.

1 I primari -- I exclusively have questions for  
2 Miss Buchholz.

3 Am I pronouncing that right?

4 WITNESS BUCHHOLZ: You are.

5 MR. OBEGI: As someone whose last name is  
6 mispronounced all the time, I take no offense, and I'm  
7 also terrible at that -- pronouncing names, so I  
8 apologize in advance.

9 WITNESS BUCHHOLZ: No -- No offense taken.

10 CO-HEARING OFFICER DODUC: I just noticed.  
11 It's Obeeji (phonetic) and not Obayji (phonetic) as  
12 I've been saying.

13 MR. OBEGI: And yet half of the family when  
14 they came through Ellis Island is O-B-E-J-I and  
15 pronounce it differently, so there -- You know, there  
16 are lots of things that are lost to the history books.

17 The overview of my cross-examination, I'd like  
18 to talk a little bit about the Project Description, the  
19 operational rules under the Biological Opinions, the  
20 effects on fisheries briefly, and a little bit on the  
21 capture of water during wet periods.

22 Mr. Hunt, if you could bring up DWR-1010.

23 (Exhibit displayed on screen.)

24

25

1 CROSS-EXAMINATION BY

2 MR. OBEGI: To begin with, just to be clear,  
3 your testimony relates to the California WaterFix  
4 Project that would be three intakes, 9,000 cfs  
5 capacity; is that correct?

6 WITNESS BUCHHOLZ: That's true.

7 MR. OBEGI: And when would those projects --  
8 When were the construction supposed to be completed on  
9 this?

10 WITNESS BUCHHOLZ: The EIR talks about  
11 2032-2033 time frame.

12 MR. OBEGI: Could you please pull up State  
13 Water Board 1 and turn to Page 18.

14 (Exhibit displayed on screen.)

15 MR. OBEGI: And if you would . . .

16 (Exhibit displayed on screen.)

17 MR. OBEGI: Yeah. So scroll up just a little  
18 bit, that paragraph that begins "as described in the  
19 Draft EIR/EIS."

20 (Exhibit displayed on screen.)

21 MR. OBEGI: State Water Board 1 is the Permit  
22 Application for this proceeding; is that correct?

23 WITNESS BUCHHOLZ: That's true, um-hmm.

24 MR. OBEGI: And this states that the  
25 construction of the proposed intake and conveyance

1 facilities would be completed within 14 years after  
2 approval; is that correct?

3 WITNESS BUCHHOLZ: That's what this statement  
4 says, yes.

5 MR. OBEGI: Thank you.

6 Can we please turn to State Water Board 1010  
7 (sic), which is the DWR's CEQA findings, and turn to  
8 Page 70.

9 (Exhibit displayed on screen.)

10 MR. OBEGI: And if you'd scroll down to the  
11 bottom of the page for me.

12 (Exhibit displayed on screen.)

13 MR. OBEGI: In DWR's CEQA findings, did DWR  
14 conclude that all projects with less than three intakes  
15 was not feasible?

16 WITNESS BUCHHOLZ: That is what this document  
17 says, yes.

18 MR. OBEGI: And would you please scroll down  
19 to Page 72.

20 (Exhibit displayed on screen.)

21 MR. OBEGI: And scroll to the very bottom.

22 (Exhibit displayed on screen.)

23 MR. OBEGI: And with respect to Alternatives 7  
24 and 8, did DWR conclude that any alternatives that  
25 reduced Delta exports were infeasible, including

1 Alternatives 7 and 8?

2 MS. ANSLEY: Objection: Vague and ambiguous  
3 as to "all alternatives."

4 WITNESS BUCHHOLZ: Right.

5 MS. ANSLEY: I see here we're talking about  
6 Alternatives 7 and 8.

7 WITNESS BUCHHOLZ: That's what I'm suggesting.  
8 "All alternatives" is a big number. But Alternatives 7  
9 and 8, certainly the document shows that -- states that  
10 it's infeasible.

11 MR. OBEGI: Did you ever conclude that every  
12 alternative except for the preferred alternative was  
13 infeasible?

14 WITNESS BUCHHOLZ: This document describes how  
15 the alternatives are infeasible compared to the  
16 proposed project -- or the adopted Project CWF H3+.

17 MR. OBEGI: Thank you.

18 So it's true that all -- the alternatives that  
19 were analyzed that reduced exports were determined to  
20 be infeasible.

21 WITNESS BUCHHOLZ: That's how this document  
22 reads, yes.

23 MR. OBEGI: Now, going back to your written  
24 testimony, it claims that WaterFix increases Delta  
25 outflow; is that correct?

1 WITNESS BUCHHOLZ: That's correct, yes.

2 MR. OBEGI: In what month or months would  
3 Delta outflow be greater than today?

4 WITNESS BUCHHOLZ: I would have to look at the  
5 modeling output, which I don't have at my fingertips  
6 right now. I apologize. But that can be a question  
7 that the modeling team from Panel 2 should have  
8 available in their exhibits.

9 MR. OBEGI: Well, let's bring up State Water  
10 Board 105, which is the Fish and Wildlife Service's  
11 Biological Opinion for the Project.

12 WITNESS BUCHHOLZ: Okay.

13 (Exhibit displayed on screen.)

14 MR. OBEGI: And if you would please turn,  
15 Mr. Hunt, to Page 27.

16 (Exhibit displayed on screen.)

17 MR. OBEGI: And that's great, where it  
18 discusses spring outflow.

19 (Exhibit displayed on screen.)

20 MR. OBEGI: All right. Doesn't this describe  
21 spring outflow as being the same as conditions during  
22 recent years?

23 WITNESS BUCHHOLZ: It's under recent years,  
24 and this one was actually under -- in addition to the  
25 Biological Opinion, would make the -- to maintain the

1 conditions as under the No-Action Alternative, which  
2 would be less than under existing conditions because of  
3 the changes of -- changes in sea level rise.

4 MR. OBEGI: But it's not --

5 WITNESS BUCHHOLZ: CWF H3+, then it would be  
6 March to May. It would look at maintaining conditions  
7 that would be as under existing conditions.

8 MR. OBEGI: We're -- We're effectively  
9 maintaining the status quo for spring outflow.

10 WITNESS BUCHHOLZ: For March through May, yes.

11 MR. OBEGI: But, in fact, the -- the H3  
12 operations would allow outflow to be reduced when  
13 outflows above 44,500 cfs; is that correct?

14 WITNESS BUCHHOLZ: That is true. The -- The  
15 44,500 cfs would -- would be -- they would maintain it  
16 up to that point, yes.

17 MR. OBEGI: And you testified earlier that you  
18 would not -- that, under this operational scenario,  
19 exports would not be curtailed below health and safety  
20 levels to meet these output requirements; is that  
21 correct?

22 WITNESS BUCHHOLZ: That's true.

23 MR. OBEGI: And what were the health and  
24 safety levels that were analyzed here?

25 WITNESS BUCHHOLZ: 1500 cfs.

1 MR. OBEGI: Are you aware that the State Water  
2 Board in 2014-2015 received information from the Bureau  
3 of Reclamation and DWR identifying a much lower level  
4 of health and safety pumping needs?

5 WITNESS BUCHHOLZ: I understand that, in an  
6 extreme drought, that that was true, yes.

7 MR. OBEGI: And so if exports are curtailed to  
8 1500 cfs and outflow -- outflow may not be -- these  
9 outflow targets may not be met; is that correct?

10 WITNESS BUCHHOLZ: That's -- That's what we  
11 show actually in the modeling results, yes.

12 MR. OBEGI: And, in addition, the Project does  
13 not propose to increase reservoir releases to meet  
14 these outflow requirements; is that correct?

15 WITNESS BUCHHOLZ: That's correct.

16 MR. OBEGI: So isn't it fair to say that the  
17 Project actually does not increase Delta outflow but --  
18 and does not actually -- Sorry. Let me strike that.

19 Is it correct to say that the Project does not  
20 actually increase Delta outflow compared to the levels  
21 seen in recent years?

22 WITNESS BUCHHOLZ: It would depend on which  
23 months that you're talking about where we have  
24 increases.

25 But in the March through May, that is -- that



1 is correct.

2 MR. OBEGI: And in December through February,  
3 are there outflow requirements that are applied here?

4 WITNESS BUCHHOLZ: Not necessarily for the  
5 Delta outflow.

6 MR. OBEGI: And if new storage was added to  
7 the system even north of Del -- south of the Delta,  
8 that could result in lower outflow than what is modeled  
9 here today; is that correct?

10 MR. MIZELL: Objection --

11 WITNESS BUCHHOLZ: I --

12 MR. MIZELL: -- speculation.

13 WITNESS BUCHHOLZ: Yeah. I don't know. That  
14 would be new -- new projects, new analysis. We didn't  
15 analyze anything like that.

16 MR. OBEGI: Thank you.

17 So, just to confirm, the -- even though -- Are  
18 you aware the Bureau is examining and has NEPA  
19 documents for additional storage north and south of the  
20 Delta?

21 MR. MIZELL: Objection: Relevance.

22 MS. ANSLEY: Calls for speculation.

23 CO-HEARING OFFICER DODUC: Miss Buchholz --  
24 overruled -- answer if you have knowledge.

25 WITNESS BUCHHOLZ: I have knowledge that

1 there -- that the Bureau of Reclamation has completed  
2 documentation for new storage north and south of the  
3 Delta, yes.

4 MR. OBEGI: And in the WaterFix EIS/EIR or in  
5 any of these permits, did the -- was there analysis of  
6 the oper -- the cumulative impacts of WaterFix with  
7 additional storage projects?

8 WITNESS BUCHHOLZ: We did not do a  
9 quantitative analysis, but they are mentioned in the  
10 cumu -- in the qualitative analysis and human impact  
11 results, yes.

12 MR. OBEGI: But that modeling is -- Are you  
13 aware that that modeling is available?

14 WITNESS BUCHHOLZ: My -- We did not -- As part  
15 of the WaterFix, we did not do any modeling that would  
16 include the operations of those future projects, future  
17 storage both north and south of the Delta, because they  
18 were not considered reasonably certain so we didn't  
19 include them in any of the modeling.

20 MR. OBEGI: Qualitatively speaking, if new  
21 storage was added, that could reduce Delta outflow  
22 below the models that are here; correct?

23 MR. MIZELL: Objection: Speculative.

24 CO-HEARING OFFICER DODUC: Answer to the best  
25 of your knowledge.

1           WITNESS BUCHHOLZ: I don't know that. It  
2 would depend on how those find -- those projects  
3 finally got their -- excuse me -- permits from all the  
4 regulatory agencies, including State Water Resources  
5 Control Board, and I'm not here to say how that's going  
6 to happen.

7           MR. OBEGI: Okay. In your testimony, you also  
8 claim that WaterFix is consistent with the 2008 and  
9 2009 Biological Opinions of the Fish and Wildlife  
10 Service and National Marine Fisheries Service; is that  
11 correct?

12           WITNESS BUCHHOLZ: That's what we started,  
13 yes.

14           MR. OBEGI: Mr. Hunt, will you please pull up  
15 NRDC-31.

16           (Exhibit displayed on screen.)

17           MR. OBEGI: Are you aware that, on  
18 August 17th, the Bureau of Reclamation reinitiated  
19 consultation with the National Marine Fisheries Service  
20 on that 2009 Biological Opinion?

21           WITNESS BUCHHOLZ: I'm aware of that, yes.

22           MR. OBEGI: And are you aware that that was --  
23 that reinitiation occurred --

24           If you could scroll down just a little bit,  
25 Mr. Hunt.

1 (Exhibit displayed on screen.)

2 MR. OBEGI: -- that reinitiation occurred  
3 because of (reading):

4 ". . . The effects of multiple years of  
5 drought, recent data demonstrating  
6 extremely low abundance levels . . . of  
7 winter-run . . . and new scientific (sic)  
8 information . . ."

9 WITNESS BUCHHOLZ: I'm familiar with this  
10 letter.

11 MR. OBEGI: And if you would, Mr. Hunt, pull  
12 in NRDC-32.

13 (Exhibit displayed on screen.)

14 MR. OBEGI: I assume you're also familiar with  
15 the U.S. Fish and Wildlife Services' determination that  
16 reinitiation was warranted under the Endangered Species  
17 Act under the 2008 Biological Opinion?

18 WITNESS BUCHHOLZ: I've seen this letter, yes.

19 MR. OBEGI: And the new information that is  
20 referenced in this letter, including the emerging  
21 science showing the importance of outflows to all life  
22 stages of Delta Smelt?

23 WITNESS BUCHHOLZ: As I said, I'm familiar  
24 with this letter.

25 MR. OBEGI: And if you would pull up,

1 Mr. Hunt, NRDC-34.

2 (Exhibit displayed on screen.)

3 MR. OBEGI: And scroll down to Page 5.

4 (Exhibit displayed on screen.)

5 MR. OBEGI: NRDC-34 is an order of the

6 Secretary of the Interior.

7 And it discusses the -- Bullet Point 2 states  
8 that, quote (reading):

9 "Pursuant to . . . strategy,  
10 Reclamation and DWR will provide up to an  
11 additional 250,000 acre-feet per year of  
12 outflow above the (sic) current State  
13 Water Board requirements."

14 Were you aware of this order?

15 WITNESS BUCHHOLZ: I'm not aware of this  
16 order, no.

17 MR. OBEGI: Does the operational proposal H3+  
18 include the additional outflow discussed in this order?

19 WITNESS BUCHHOLZ: I am not aware of that, but  
20 that doesn't mean that it wasn't considered by  
21 Reclamation or DWR.

22 But I'm -- I'm -- Can we scroll up to the --  
23 the top of this document?

24 (Exhibit displayed on screen.)

25 MS. ANSLEY: Can we see the top of this order?

1 (Exhibit displayed on screen.)

2 MS. ANSLEY: Okay. And maybe lay a foundation  
3 what this order is.

4 MR. OBEGI: Yes. This is the order adopted by  
5 the Secretary of Interior in the end of the Obama  
6 Administration that sets forth the process for  
7 completing the consultation on WaterFix as well as the  
8 Reinitiation of Consultation, signed on the bottom page  
9 and dated.

10 MS. ANSLEY: And the question to  
11 Miss Buchholz?

12 MR. OBEGI: Miss Buchholz, you testified that  
13 this is -- that WaterFix is consistent with the  
14 existing Biological Opinions.

15 However, isn't it true that those existing  
16 Biological Opinions are being revised through the  
17 Reinitiation of Consultation?

18 WITNESS BUCHHOLZ: That's true.

19 MR. OBEGI: And isn't it true that this  
20 secretarial order identifies a need for additional  
21 summer outflow for Delta Smelt?

22 THE WITNESS: This -- It appears -- and I'm  
23 not familiar with this order -- that it talks about  
24 potential actions to address the effects of drought and  
25 climate change in what looks like the future

1 consultations.

2 MR. OBEGI: And so isn't it fair to say that  
3 the existing Biological Opinions are not exactly the  
4 best benchmark to compare to for protecting the  
5 environment?

6 WITNESS BUCHHOLZ: As I've talked about  
7 already today, what we set up with is, we started with  
8 the criteria that is adopted by the regulatory agencies  
9 as of today, and anything in the future changes,  
10 whether it would be Biological Opinions or State Water  
11 Resource Control Board Water Quality Control Plan  
12 changes, those were considered in the cumulative  
13 effects impact assessment and we acknowledge that that  
14 might change the availability of water in CWF H3+.

15 MR. OBEGI: Thank you.

16 Would you pull up, Mr. Hunt, DWR-1008 and turn  
17 to Slide 5.

18 (Exhibit displayed on screen.)

19 MR. OBEGI: And . . .

20 (Exhibit displayed on screen.)

21 MR. OBEGI: There. The second bullet point.

22 Is it your testimony that the Fish and  
23 Wildlife Service in its Biological Opinions define  
24 operational criteria?

25 WITNESS BUCHHOLZ: What we were trying to

1 say -- What I was trying to say in this slide was that  
2 we had talked about, in Part 1, we had presented a  
3 range from 4A H3 to 4A H4.

4 MR. OBEGI: Okay.

5 WITNESS BUCHHOLZ: And the reason we provided  
6 the range of that was that we didn't know what the  
7 results of the consultations would be for Fish and  
8 Wildlife Service and National Marine Fisheries Service  
9 Biological Opinions.

10 And now that we do know that outcome, they're  
11 incorporated in CWF H3+ and there's no need to further  
12 analyze the range of H3 to H4. That was the purpose of  
13 this slide.

14 MR. OBEGI: Thank you.

15 Mr. Hunt, would you pull up again State Water  
16 Board 105.

17 Is it your understanding that the Fish and  
18 Wildlife Service's Biological Opinion authorizes  
19 operation of WaterFix?

20 (Exhibit displayed on screen.)

21 WITNESS BUCHHOLZ: The Biological Opinion lays  
22 out the -- the criteria on -- for WaterFix operational  
23 criteria. However, it -- it is looking potentially  
24 for -- There will be further analysis prior to the  
25 initiation -- around 2030 which could be prior to the



1 initiation of the operations.

2 MR. OBEGI: Would you turn to Page 298 of this  
3 Biological Opinion.

4 (Exhibit displayed on screen.)

5 MR. OBEGI: Sorry. The .pdf numbers and page  
6 numbers are different.

7 (Exhibit displayed on screen.)

8 MR. OBEGI: And scroll up just a little bit.

9 (Exhibit displayed on screen.)

10 MR. OBEGI: Does this say that (reading):

11 "With the implementation the of the  
12 operational scenario . . . overlying  
13 baseline habitat conditions are not  
14 improved?"

15 WITNESS BUCHHOLZ: That's what it states.

16 MR. OBEGI: And that the expectation is that  
17 operations will be revised?

18 WITNESS BUCHHOLZ: (Examining document.)

19 I'm looking for that on the document here.

20 They talk about that there will be further  
21 potential subsequent consultations, as I've already  
22 referred to.

23 MR. OBEGI: And if you would scroll back up to  
24 Page 9.

25 (Exhibit displayed on screen.)

1 MR. OBEGI: So scroll one more page actually.

2 (Exhibit displayed on screen.)

3 MR. OBEGI: Does this full paragraph that  
4 begins with "Portions of the PA" -- that says -- "that  
5 require future approvals" include operations?

6 WITNESS BUCHHOLZ: Yes, that's what's in this  
7 document.

8 MR. OBEGI: And if you would turn to Page 13.

9 (Exhibit displayed on screen.)

10 MR. OBEGI: Is the -- Does this identify  
11 guiding principles for future operations?

12 WITNESS BUCHHOLZ: Yes.

13 MR. OBEGI: And is the first principle to  
14 improve habitat con -- conditions?

15 WITNESS BUCHHOLZ: Yes.

16 MR. OBEGI: And doesn't that indicate that  
17 current habitat conditions are not adequate?

18 WITNESS BUCHHOLZ: I would not state that  
19 without reviewing this document.

20 MS. ANSLEY: And I would say -- I want to  
21 impose an objection as to "current habitat conditions,"  
22 whether that's existing or under CWF.

23 So vague and ambiguous.

24 MR. OBEGI: Current without CWF.

25 And this Biological Opinion already concluded

1 that CWF does not improve those conditions.

2 WITNESS BUCHHOLZ: And I believe on that --  
3 that on that page, that was for Delta Smelt  
4 specifically.

5 And, again, anything that would go into any --  
6 more depth on that subject should be asked of  
7 Dr. Greenwood on Panel 2.

8 MR. OBEGI: And so let's go to State Water  
9 Board 106, which is the NMFS Biological Opinion.

10 (Exhibit displayed on screen.)

11 MR. OBEGI: And if we'd go to Page 1205. And  
12 I think they did us the courtesy of having the page  
13 numbers and .pdf numbers being the same.

14 (Exhibit displayed on screen.)

15 MR. OBEGI: But I probably jinxed it by saying  
16 that.

17 (Exhibit displayed on screen.)

18 MR. OBEGI: Sorry. 1205.

19 (Exhibit displayed on screen.)

20 MR. OBEGI: And, of course, I did jinx it. So  
21 close.

22 Does this page describe the conditions for the  
23 Reinitiation of Consultation?

24 WITNESS BUCHHOLZ: Yes, it does.

25 MR. OBEGI: Would you scroll to the next page.

1 (Exhibit displayed on screen.)

2 MR. OBEGI: And what does the Bullet Point  
3 Number 8 state under the list of reasons that require  
4 Reinitiation of Consultation?

5 THE WITNESS: The -- I'm not sure where  
6 you're -- what you're asking specifically. You want me  
7 to read that bullet?

8 MR. OBEGI: Yeah.

9 Is it -- Is it your understanding that the  
10 re -- the Biological Opinion for WaterFix requires --  
11 generally requires Reinitiation of Consultation in 2030  
12 if they have not already reinitiated consultation?

13 WITNESS BUCHHOLZ: Unless the Reclamation-DWR  
14 can demonstrate the conditions expected. They have a  
15 series of criteria that they would have to show.  
16 Otherwise, it would be reinitiated, yes.

17 MR. OBEGI: And isn't 2030 before construction  
18 is expected to be complete?

19 WITNESS BUCHHOLZ: Yes.

20 MR. OBEGI: Thank you.

21 In your written testimony, you claim that  
22 CWF H3+ will, quote (reading):

23 ". . . Contribute to reversing the trend  
24 of declining populations of native  
25 species."

1 Are you an expert on fisheries biology.

2 WITNESS BUCHHOLZ: No. I took that from the  
3 summaries out of Chapters 11 and Chapter 12 of the EIR.

4 MR. OBEGI: So you're not qualified to give an  
5 opinion that would justify that statement.

6 WITNESS BUCHHOLZ: No. I -- That's based on  
7 the EIR and Dr. Greenwood and Dr. Earle.

8 Dr. Greenwood will be in Panel 2. Dr. Earle  
9 will be in Panel 3.

10 MR. OBEGI: Yeah. And I will have many  
11 questions for them.

12 WITNESS BUCHHOLZ: My -- My role was to  
13 provide an overview of the Project Description.

14 MR. OBEGI: I appreciate that.

15 A couple more questions. We're getting close.

16 In your written testimony, you state that the  
17 existing South Delta pumps will continue to be  
18 operated; is that correct?

19 WITNESS BUCHHOLZ: That's correct.

20 MR. OBEGI: What are the OMR criteria that  
21 would apply to the existing South Delta operations?

22 WITNESS BUCHHOLZ: So for the OMR criteria in  
23 October through November, and the South Delta  
24 restrictions will be as under the No-Action  
25 Alternative.

1 MR. OBEGI: In October and November.

2 WITNESS BUCHHOLZ: October and November.

3 And --

4 MR. OBEGI: Can I stop you there for one  
5 second?

6 WITNESS BUCHHOLZ: Yes.

7 MR. OBEGI: Is it correct that the originally  
8 OMR criteria proposed for October and November were to  
9 protect fall-runs of Salmon?

10 WITNESS BUCHHOLZ: I do not remember why  
11 the -- what the -- what the objective of the ch -- of  
12 the previous OMR criteria was in CWF H3.

13 MR. OBEGI: Okay. Mr. Hunt, would you pull up  
14 State Water Board 105.

15 Sorry to bounce around and keep doing this to  
16 you.

17 (Exhibit displayed on screen.)

18 MR. OBEGI: What is the OMR criteria for the  
19 January to June period under H3+?

20 WITNESS BUCHHOLZ: I knew I would have  
21 something that's not on my list here.

22 I would have to look at the documents.

23 MR. OBEGI: Let's scroll down to Page 25 to  
24 26.

25 (Exhibit displayed on screen.)

1 MR. OBEGI: So this is perfect.

2 So I will admit that I am very confused by  
3 this page, and I'm hoping that you can clarify for me.

4 So, in January and February, it seems to say  
5 that (reading):

6 "OMR flows will not be more negative  
7 than an . . . average of 0 cfs during a  
8 wet period (sic)."

9 WITNESS BUCHHOLZ: Right.

10 MR. OBEGI: Is that correct?

11 WITNESS BUCHHOLZ: That's true. In a three --  
12 In a three-day average, yes.

13 MR. OBEGI: Yeah. And more negative during  
14 above normal and below normal dry.

15 WITNESS BUCHHOLZ: Right.

16 MR. OBEGI: Would you scroll down just a  
17 little bit?

18 (Exhibit displayed on screen.)

19 MR. OBEGI: Would you please explain to me  
20 what Footnote 2 means?

21 WITNESS BUCHHOLZ: (Examining document.)

22 MR. MIZELL: I'm going to object to this.

23 Miss Buchholz is here to talk about Project  
24 Description and the Project components generally  
25 speaking.

1           Mr. Obegi's asking her to interpret the  
2 footnote as drafted by a Federal fish agency. That is  
3 beyond what her testimony states and likely beyond what  
4 her familiarity is with this document. I'm not sure  
5 that she was in the room when they were contemplating  
6 the importance or interpretation of Footnote 2.

7           CO-HEARING OFFICER DODUC: Mr. Obegi?

8           MR. OBEGI: I believe I can make an offer of  
9 proof that this was included in the Biological  
10 Assessment, a footnote to this same effect.

11          WITNESS BUCHHOLZ: It was. And, again, I  
12 would refer to Dr. Greenwood, who would be more up  
13 to -- he would know more information about this, and  
14 Mr. Reyes, and -- and possibly Mr. Miller.

15          MR. OBEGI: Well, they would understand the  
16 biological implications but --

17          WITNESS BUCHHOLZ: Yes.

18          MR. OBEGI: -- this is really a Project  
19 Description question.

20          WITNESS BUCHHOLZ: Yes.

21          MR. OBEGI: Because this is -- Doesn't this  
22 footnote imply that OMR in a wet year in January might  
23 be a range of minus 1250 to minus 5,000?

24          WITNESS BUCHHOLZ: That's -- That's exactly  
25 right.



1 MR. OBEGI: And doesn't the text above say  
2 that OMR would be zero in a wet year in January?

3 WITNESS BUCHHOLZ: It would be allowing for  
4 this initial range, but it would be done under -- My  
5 understanding of this is this that would one of those  
6 things that could be taken account with adaptive  
7 management and analysis.

8 MR. OBEGI: And the analysis and modeling that  
9 was performed in the EIS/EIR and in the Biological  
10 Opinions and ITP, did it analyze effects of operating  
11 to that more negative range?

12 WITNESS BUCHHOLZ: I believe if you -- if --  
13 Mr. Hunt, if you could scroll back up.

14 (Exhibit displayed on screen.)

15 WITNESS BUCHHOLZ: Go to the top of the page,  
16 I think the -- No, the header's gone.

17 So on the -- on the right side of this -- the  
18 right column, those were the model assumptions that we  
19 used to model the criteria.

20 MR. OBEGI: And so you -- The EIS/EIR did not  
21 analyze the effects of operating to the real-time  
22 operations that are described in that footnote.

23 WITNESS BUCHHOLZ: No.

24 MR. OBEGI: And the Biological Opinions do  
25 not.

1           WITNESS BUCHHOLZ: No. Biological Opinions  
2 aren't from the modeling.

3           MR. OBEGI: Yeah.

4           A couple more questions for you. We are very  
5 close.

6           As part of the Project Description, are there  
7 any actions that would reduce reliance on water supply  
8 from the Delta?

9           WITNESS BUCHHOLZ: We did not include those  
10 specifically in the -- the main Project Description.  
11 It is described in appendices of the Final EIR/EIS that  
12 these are actions that could be taken by the water  
13 users, but not from DWR or Reclamation, who -- because  
14 they don't have that capability or to make those  
15 decisions that the water users would make.

16           MR. OBEGI: But there's nothing -- The Bureau  
17 or DWR doesn't provide any funding for local districts  
18 to make those investments as part of WaterFix.

19           WITNESS BUCHHOLZ: As part of WaterFix, that's  
20 true.

21           MR. OBEGI: And it doesn't require them to  
22 improve water use efficiency or improve water recycling  
23 as part of WaterFix.

24           WITNESS BUCHHOLZ: So, what -- what we did  
25 describe in the Project Description, in Chapter 3 of

1 the EIR/EIS and Final EIR, is that we would as -- we  
2 assumed that the --

3 Excuse me. Excuse me for one minute.

4 MR. OBEGI: Of course.

5 WITNESS BUCHHOLZ: Sorry.

6 We did show that -- We assumed that there was  
7 full compli -- or full development of the actions by  
8 the State Water Project and Central Valley Project,  
9 M&I, municipal and industrial water users in accordance  
10 with their published Urban Water Management Plans to  
11 reduce their water demands.

12 And in many of those cases, we did look at all  
13 the Urban Water Management Plans for the water -- for  
14 those water users, and they were consistent with the  
15 demands that we had within the -- the modeling, so we  
16 assumed that their projections would occur.

17 MR. OBEGI: You assumed that, but you didn't  
18 actually require it.

19 WITNESS BUCHHOLZ: We did not require it, no.

20 MR. OBEGI: And are you aware that -- that  
21 Dr. Sunding several years ago did provide initial  
22 contingent value benefit for the value of restoring the  
23 health of the ecosystem?

24 WITNESS BUCHHOLZ: I was not aware of that.

25 MR. OBEGI: We'll produce that later.

1           At the risk of bodily harm, I am going to ask  
2 you a question about the Project Description.

3           If you would go to -- back to DWR-1010.

4           (Exhibit displayed on screen.)

5           MR. OBEGI: Page 2, Line 15 to 16.

6           (Exhibit displayed on screen.)

7           MR. OBEGI: (reading):

8                     "CWF H3+ is the Project adopted by

9                     DWR . . ."

10           Is that true today?

11           WITNESS BUCHHOLZ: That was -- That is the  
12 Project adopted by DWR in the Final EIR, in the Notice  
13 of Determination.

14           MR. OBEGI: And you submitted -- You signed  
15 this testimony on the 28th of November.

16           WITNESS BUCHHOLZ: Yes.

17           MR. OBEGI: Were there discussions about a  
18 Supplemental EIS/EIR at the time that you submitted  
19 your testimony?

20           MR. MIZELL: Objection: This goes against the  
21 ruling that came out last night about the di --  
22 distinction between what goes in Part 1 -- Part 2 and  
23 Part 3. Mr. Obegi's curious about the Supplemental or  
24 subsequent EIR that may come out in the future or any  
25 sort of other staged approach to the construction of

1 the California WaterFix. It's appropriate to do that  
2 in Part 3, not now.

3 MR. OBEGI: It goes to the veracity and  
4 trustworthiness of the witness.

5 I'm not going to discuss the effects of a  
6 phased implementation or subsequent CEQA document.  
7 However, I think there is evidence -- and I'm willing  
8 to make an offer of proof -- that these discussions  
9 were occurring around the time that this testimony was  
10 submitted.

11 MR. MIZELL: And there's been no decision by  
12 the Department to adopt a new project and, therefore,  
13 it doesn't go to the veracity of the witness because  
14 there had been no decision that she would be able to rely  
15 upon to state anything other than what is in her  
16 testimony.

17 CO-HEARING OFFICER DODUC: Mr. Obegi, do you  
18 acknowledge what Mr. Mizell said about no decision  
19 being made?

20 MR. OBEGI: I --

21 CO-HEARING OFFICER DODUC: Just because  
22 they've explored it and perhaps discussed it,  
23 Mr. Mizell is -- has provided in written testimony to  
24 us, and his Director has said in her verbal comment to  
25 us, that they have not made that decision.

1           MR. OBEGI: They have . . . Respectfully,  
2 they have not made a final decision. However, they  
3 have publicly committed to preparation of Sup -- of a  
4 Supplemental EIS/EIR and revised Biological Opinions.  
5 And that is in the Director's statement to the  
6 contractors.

7           CO-HEARING OFFICER DODUC: Mr. Mizell.

8           MR. OBEGI: And it's also discussed in another  
9 exhibit that I have on the flash drive where, as of  
10 December 18th, DWR executed a contract amendment to  
11 execute -- to prepare the subsequent EIS/EIR after  
12 several meetings with Fish and Wildlife agencies and  
13 other meetings.

14          CO-HEARING OFFICER DODUC: Mr. Mizell.

15          MR. MIZELL: Unless Mr. Obegi has a crystal  
16 ball, we do not know what will be in that subsequent or  
17 Supplemental EIR/EIS at this time.

18           It may or may not include a change to the  
19 Project. But as of right now, there's nothing to  
20 indicate that anything in Miss Buchholz's testimony is  
21 incorrect.

22          CO-HEARING OFFICER DODUC: So, Mr. Obegi, help  
23 me understand.

24           How far are you planning to go with this line  
25 of questioning? You have stated you do not intend to

1 get into the substance of what might be in this  
2 Supplemental EIR.

3 MR. OBEGI: (Nodding head.)

4 That is correct. I only wish to introduce two  
5 exhibits into evidence.

6 One is a contract amendment executed by DWR;

7 And the second is meeting minutes from the  
8 Westlands Water District, dated December 8th, 2017,  
9 where they discuss a phased Project that they --

10 CO-HEARING OFFICER DODUC: And, Mr. Obegi,  
11 what significance are those two documents and this line  
12 of questioning specifically to Miss Buchholz's  
13 testimony?

14 MR. OBEGI: It goes to the truth of the matter  
15 asserted on Page 2, Line 15 and 16, and whether that  
16 was true at the time that it was submitted.

17 I fully concede that discussion about whether  
18 that is true today should be reserved for Part 3.  
19 Whether that was true at the time, I think goes to the  
20 veracity of the testimony.

21 MR. MIZELL: Unless Mr. Obegi can produce a  
22 decision document by the Department that indicates we  
23 had changed the Project and not something suspiciously  
24 to exploring options, there's absolutely no merit in  
25 this idea that Ms. Buchholz had stated something

1 incorrect in her testimony.

2 CO-HEARING OFFICER DODUC: Mr. Obegi.

3 MR. OBEGI: I think it is very difficult for  
4 us to prove that. I think that we will be able to show  
5 that over time as a result of Public Record Act  
6 requests.

7 However, I --

8 CO-HEARING OFFICER DODUC: All right.

9 MR. OBEGI: -- merely want to lay the  
10 foundation for future evidence that may come into this  
11 proceeding.

12 CO-HEARING OFFICER DODUC: Let me do this.

13 Everyone sit down.

14 Mr. Mizell, I will take your objection under  
15 consideration. I will allow Mr. Obegi to -- a little  
16 bit of leeway just to set his foundation. I assume you  
17 will object, and we will take that into consideration.

18 MR. OBEGI: Thank you.

19 MR. MIZELL: And thank you.

20 MR. OBEGI: Mr. Hunt, would you please pull up  
21 the exhibit marked NRDC-100.

22 CO-HEARING OFFICER DODUC: Actually, as  
23 Mr. Hunt is doing that, since we've had a lengthy  
24 sidebar, Mr. Obegi, please repeat your question to  
25 Ms. Buchholz with respect to that line and question.



1 MR. OBEGI: Miss Buchholz, were you aware of  
2 meetings to discuss the preparation of Supplemental  
3 EIS/EIR at the time you submitted your testimony?

4 WITNESS BUCHHOLZ: No.

5 (Timer rings.)

6 MR. OBEGI: Nicely timed with the buzzer.

7 NRDC-100 is up here. Have you seen this  
8 contract amendment before?

9 WITNESS BUCHHOLZ: No.

10 MR. OBEGI: What's the purpose of this  
11 amendment under Paragraph 9?

12 MR. MIZELL: Objection: She just answered  
13 she's not familiar with this document.

14 CO-HEARING OFFICER DODUC: And she may say she  
15 does not know.

16 WITNESS BUCHHOLZ: I don't know this document,  
17 nor do I want to go into detail. I've never seen it  
18 before.

19 MR. OBEGI: However, you are one of the prime  
20 consultants managing this Project; correct?

21 WITNESS BUCHHOLZ: We are a -- We are a  
22 subconsultant to ICF.

23 MR. OBEGI: Is there a better witness who  
24 would be able to explain the basis for this contract  
25 amendment that discusses the need for a -- a

1 Supplemental EIS/EIR --

2 If you scroll down a couple lines.

3 (Exhibit displayed on screen.)

4 MR. OBEGI: -- after meetings with Fish and  
5 Wildlife agencies?

6 WITNESS BUCHHOLZ: I'm not aware of any --  
7 anybody, no.

8 MR. OBEGI: Absent a better witness, Your  
9 Honor, I think this is the appropriate line of  
10 questioning. She doesn't need to be familiar with it  
11 to be able to read what it says.

12 CO-HEARING OFFICER DODUC: Well --

13 MR. MIZELL: Again --

14 CO-HEARING OFFICER DODUC: -- a document that  
15 is not familiar to her -- Miss Buchholz?

16 WITNESS BUCHHOLZ: I've never seen this  
17 document. I'm not familiar with the values or the  
18 numbers or anything in it.

19 MS. ANSLEY: And the DWR objects just having a  
20 witness who's not familiar with a document merely read  
21 the words into the record.

22 She can't testify to the purpose of it. She  
23 is not familiar with it. I don't think that this line  
24 of questioning is appropriate for Miss Buchholz.

25 MR. OBEGI: And I would be happy to have

1 another witness to be able to present these questions  
2 to you. However, this is the witness who's describing  
3 the Project and who testified that this -- that that  
4 was the Project, so . . .

5 MS. ANSLEY: And there's -- And we would also  
6 add that this is -- Mr. Obegi, you've given him a  
7 little leeway to show where he's going with this, and  
8 where he's going with this is not something  
9 Miss Buchholz is familiar with and he has not shown  
10 that this is relevant to the current Project  
11 description that she is here to testify about.

12 So I would add that he has not demonstrated  
13 relevance to this portion and this part of the hearing  
14 at this time.

15 CO-HEARING OFFICER DODUC: Mr. Obegi.

16 MR. OBEGI: I think we've laid enough of a  
17 foundation with this document. I would like to  
18 introduce this into evidence as a submission of a party  
19 opponent, exempt from hearsay.

20 MR. MIZELL: And we'd object as to relevance  
21 and indicate that the Board has produced Part 3; that  
22 should a change in the Project occur, this -- documents  
23 like this would be more appropriately introduced at  
24 that time.

25 MS. ANSLEY: And that there is no demonstrated

1 relevance. There's no foundation laid that shows this  
2 is in any way a document relevant to this phase of the  
3 hearing.

4 CO-HEARING OFFICER DODUC: Mr. Obegi, does  
5 this conclude your cross-examination?

6 MR. OBEGI: I had one other document that is  
7 similar to this but it's meeting minutes from the  
8 Westlands Water District.

9 CO-HEARING OFFICER DODUC: Let's let him  
10 proceed with that. Then, at the end of his  
11 cross-examination, I will ask -- direct Petitioners, or  
12 anyone else for that matter, who wish to file an  
13 objection to this line of questioning to do so by  
14 5 p.m. tomorrow.

15 Mr. Obegi and anyone else who wish to respond  
16 to that, you may have until Monday, 5 p.m., to do so  
17 and we'll take it under advisement.

18 MR. OBEGI: Thank you.

19 MR. MIZELL: Will Mr. Obegi be serving this  
20 document and the Westlands notes on all parties so that  
21 we have something to respond to?

22 CO-HEARING OFFICER DODUC: He will do so.

23 MR. OBEGI: Certainly.

24 So, addition to this one, if you -- Mr. Hunt,  
25 if you would please pull up NRDC-102.

1 (Exhibit displayed on screen.)

2 MR. OBEGI: These are the meeting minutes from  
3 the Westlands Water -- or, sorry -- from the San Luis  
4 and Delta-Mendota Water Authority.

5 I'll make an offer of proof that I downloaded  
6 these today from the San Luis Delta-Mendota Water  
7 Authority website.

8 If you scroll to the bottom of Page 2.

9 (Exhibit displayed on screen.)

10 MR. OBEGI: The meeting minutes state that the  
11 (reading):

12 "Executive Director . . . "was --  
13 informed the Board "that the Cal WaterFix  
14 will proceed in stages with the initial  
15 stage to begin" as a "State-only and a  
16 future phase for the benefit of the CVP.  
17 Peltier also reported that efforts to  
18 find a viable option for CVP . . . have  
19 not been successful."

20 MR. MIZELL: Objection: Misstates the text on  
21 the screen.

22 "May make an announcement." It was not  
23 concrete as Mr. Obegi just recited.

24 CO-HEARING OFFICER DODUC: So noted.

25 MR. MIZELL: Thank you.

1 CO-HEARING OFFICER DODUC: Your question,  
2 Mr. Obegi.

3 MR. OBEGI: My only question is whether the  
4 witness was aware that the San Luis Delta-Mendota  
5 Authority was apparently under the impression that the  
6 Governor was going to announce a phased approach as  
7 early as December 2017.

8 MR. MIZELL: Objection: Misstates the  
9 evidence.

10 "Might make an announcement."

11 MR. OBEGI: Did they not make an announcement?

12 CO-HEARING OFFICER DODUC: Slow down.

13 MR. OBEGI: Were you aware of that?

14 WITNESS BUCHHOLZ: No.

15 MR. OBEGI: Thank you.

16 With that, given that my -- our witness may  
17 not be available to testify in this proceeding due to  
18 health concerns, I would like to move these exhibits  
19 into evidence that I used: NRDC --

20 CO-HEARING OFFICER DODUC: Mr. Obegi, weren't  
21 you scheduled to present a case in chief as a witness?

22 MR. OBEGI: I am, but only on the alternative  
23 water supplies, not on any biological information.

24 And the evidence that I presented today was --  
25 I'm happy to authenticate and introduce all of them

1 with my testimony, if that's appropriate.

2 CO-HEARING OFFICER DODUC: Well, for the  
3 purpose of Petitioners responding to -- or at least  
4 filing an objection to what your line of questioning  
5 has been here today, let's state very clearly for the  
6 record your purpose in introducing these exhibits and  
7 the line of questioning directed to Miss Buchholz --

8 I've forgotten how to pronounce your name now.

9 -- as related to her specific testimony here  
10 today.

11 MR. OBEGI: Yes.

12 The purpose of those two exhibits, which are  
13 numbered NRDC-100 and NRDC-102, is to go to the truth  
14 of the matter asserted in Miss Buchholz's testimony,  
15 Page 2, Lines 15 and 16, and whether the Department of  
16 Water Resources had at the time of this testimony  
17 already begun planning for a Supplemental EIS/EIR and  
18 phased Project.

19 CO-HEARING OFFICER DODUC: All right.

20 Mr. Mizell, you may have until 5 p.m. to file  
21 your objection, and other party -- 5 p.m. tomorrow.

22 And everyone else will have until 5 p.m.  
23 Monday to file any responses to those object -- to that  
24 objection.

25 MR. OBEGI: And with that, I am done.

1 Thank you very much.

2 CO-HEARING OFFICER DODUC: And, Mr. Obegi, you  
3 will make available to the Service List these two  
4 documents.

5 MR. OBEGI: Absolutely.

6 CO-HEARING OFFICER DODUC: Thank you.

7 All right. Miss Des Jardins, you are up.

8 Miss Suard, thank you for joining us. I  
9 understand you would like to conduct cross-examination.  
10 Since you were not available earlier today, do  
11 you have a time estimate?

12 MS. SUARD: Nicky Suard, Snug Harbor.

13 Yes. I did e-mail in saying that it'll be 15  
14 minutes at most because most of the questions have been  
15 asked.

16 CO-HEARING OFFICER DODUC: Okay.

17 MS. SUARD: Okay. Thank you.

18 CO-HEARING OFFICER DODUC: Thank you.

19 We may or may not get to you.

20 Miss Des Jardins.

21 MS. DES JARDINS: Can we please pull up  
22 Exhibit SWRCB-112, the Notice of Determination.

23 CO-HEARING OFFICER DODUC: And what are  
24 your --

25 (Exhibit displayed on screen.)



1 CO-HEARING OFFICER DODUC: -- issues that you  
2 will be covering?

3 MS. DES JARDINS: There are some further  
4 questions about clarifying what adaptive project means  
5 with respect to the Notice of Determination; and the  
6 description of the Alternative 4A in the Final EIR/EIS;  
7 some questions specifically about the NBS BiOps; some  
8 questions about Reclamation; and then we have some  
9 questions about instream flows; and some questions for  
10 Mr. Bednarski about maps and water quality impacts from  
11 construction.

12 CO-HEARING OFFICER DODUC: All right. Please  
13 proceed.

14 MS. DES JARDINS: Okay. So let's go to  
15 Page 4.

16 (Exhibit displayed on screen.)

17 CROSS-EXAMINATION BY

18 MS. DES JARDINS: Miss Buchholz --

19 Is that correct: Buchholz?

20 WITNESS BUCHHOLZ: Buchholz.

21 MS. DES JARDINS: Buchholz.

22 I -- You testified that CWF Alt 4A, H3+, is  
23 the adopted Project.

24 This is the Notice of Determination. And all  
25 I can find on the Project Description is

1 Alternative 4A. I do not see anywhere in this Notice  
2 of Determination the term "H3+" in the Project  
3 Description.

4 WITNESS BUCHHOLZ: So it's Alternative 4A  
5 using the operational criteria of H3+ as described in  
6 the Final EIR that is -- This is the Notice of  
7 Determination adopting that document.

8 MS. DES JARDINS: Well, but the -- But it's  
9 not actually in the Project Description or in the  
10 Notice of Determination itself.

11 WITNESS BUCHHOLZ: The -- The Notice of  
12 Determination is reflective of the Final EIR that's  
13 adopted with the notes of determination. It's  
14 Alternative 4A with operational criteria H3+ as  
15 described in the Final EIR.

16 MS. DES JARDINS: Okay. Let's pull up Exhibit  
17 DDJ-229, which is Page 262 from Chapter 3 of the  
18 Final EIR/EIS --

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: -- on descriptions of  
21 alternatives.

22 And it states, starting on Line 9 (reading):

23 "In order to facilitate an efficient  
24 analysis of impacts associated with a  
25 potentially large range of different

1 operations that could be selected between  
2 H3 and H4, the analysis of Alternative 4A  
3 utilized Scenario H3 plus additional  
4 spring outflow . . . as an operational  
5 impact analysis starting point, to be  
6 consistent with the assumptions in the  
7 BA . . .

8 "While the analysis for  
9 Alternative 4A in the resource chapters  
10 utilizes H3+ modeling results, actual  
11 operations will ultimately depend on the  
12 results of the adaptive management  
13 program."

14 WITNESS BUCHHOLZ: And this was in the 2016  
15 Final EIR/EIS. This was -- And if you would refer back  
16 to the -- the graphic that I presented today, which is  
17 also in DWR-1031, the -- this was what we called 4A H3+  
18 in the Biological Assessment, in the Final EIR/EIS, and  
19 then we subsequently developed CW -- refined that to  
20 CWF H3+ in the 2017 Final EIR.

21 So this was superseded by text the Final EIR.

22 MS. DES JARDINS: So, you're saying that it's  
23 been refined more with the Biological Opinions;  
24 correct?

25 WITNESS BUCHHOLZ: That's correct.

1 MS. DES JARDINS: Let's go to Exhibit  
2 SWRCB-106, which is the National Marine Fisheries file.  
3 Yes, pull that up --

4 (Exhibit displayed on screen.)

5 MS. DES JARDINS: -- and go to Page 17.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: And it says . . .

8 .Pdf Page 17.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: Yeah. And it says

11 (reading):

12 "As described in Section 1.3.1.6,  
13 Operational Uncertainties and the  
14 Collaborative Science Process of this  
15 Opinion, the operational criteria for  
16 Delta facilities that are described in  
17 the CWF BA and in this Opinion are likely  
18 to change between the issuance of this  
19 Opinion and when the CWF becomes  
20 operational."

21 Are you aware of that?

22 WITNESS BUCHHOLZ: I am.

23 MS. DES JARDINS: Let's go to Page 20 -- .pdf

24 Page 20 of this document.

25 (Exhibit displayed on screen.)

1 MS. DES JARDINS: Yeah. (Reading):

2 "With respect to operations, DWR --  
3 Reclamation and DWR have described and  
4 analyzed in the BA one scenario for the  
5 CWF, which represents (sic) operational  
6 criteria.

7 ". . . The operational criteria required  
8 to satisfy regulatory requirements for  
9 the CWF at the time operations commence  
10 are likely to be different from those  
11 presented in the BA."

12 WITNESS BUCHHOLZ: That's true. And that's  
13 why we refined it subsequent to the BA based upon  
14 Biological Opinions that we issued in 2017 and also  
15 anticipated criteria that we anticipated could be in  
16 the Incidental Take Permit and that's what was  
17 presented in -- That's why the analysis in the BA and  
18 the 2016 Final EIR/EIS are different than the  
19 analysis -- than the -- excuse me -- the analys -- the  
20 Project Description are different than what's in the  
21 Final EIR.

22 MS. DES JARDINS: Excuse me, but this is the  
23 2017 NBS BiOp.

24 WITNESS BUCHHOLZ: Right. But it's referring  
25 to the Biological Assessment Project Description.

1           And subsequent to issuance of the Biological  
2 Opinion, based upon the -- on the -- that document and  
3 U.S. Fish and Wildlife Service document and anticipated  
4 potential changes that we thought would come in the  
5 Incidental Take Permit, the Project Description was  
6 further refined and presented in the 2017 Final EIR  
7 which was present -- was issued following the issuance  
8 of the Biological Opinions.

9           MS. DES JARDINS: But you're asserting that  
10 the operational criteria in CWF H3+ are regulatory and  
11 implemented by these Biological Opinions; aren't you?

12           WITNESS BUCHHOLZ: We're asserting that  
13 CWF H3+ includes implementation of these Biological  
14 Opinions.

15           MS. DES JARDINS: But these documents are  
16 stating the operational criteria required to satisfy  
17 regulatory requirements for the CWF at the time  
18 operations commence are likely to be different.

19           MR. MIZELL: Objection.

20           MS. DES JARDINS: This isn't referring to this  
21 year.

22           MR. MIZELL: Objection: There's no question  
23 pending.

24           MS. DES JARDINS: All right. Well, the  
25 question is:

1           Is -- Doesn't this say that, when operations  
2 commence, that they're likely to be different than in  
3 the NBS Biological Opinion?

4           WITNESS BUCHHOLZ: In this portion of the NBS  
5 Biological Opinion, they looked at what was submitted  
6 in August of 2016 in the Biological Assessment. And  
7 they anticipate in this part of the -- of the  
8 Biological Opinion, the purpose of this section is to  
9 talk about potential uncertainties.

10           This was one of the uncertainties that they  
11 identified in the Biological Opinion.

12           MS. DES JARDINS: Can we pull up Exhibit  
13 DDJ-227, please.

14           (Exhibit displayed on screen.)

15           MS. DES JARDINS: This is a copy of the  
16 Memorandum of Understanding on the Reinitiation of  
17 Long-term Consultation.

18           Are you aware that DWR and Reclamation and the  
19 fish agencies have done a Reinitiation of Consultation?

20           MR. MIZELL: Objection: Asked and answered.

21           CO-HEARING OFFICER DODUC: The answer is yes.

22           Next question.

23           MS. DES JARDINS: Is -- Are you aware that  
24 this long-term consultation will involve the WaterFix,  
25 potentially?

1 WITNESS BUCHHOLZ: That's what some of the  
2 documents that have been published by Reclamation have  
3 indicated.

4 MS. DES JARDINS: Is CH2M Hill a contractor  
5 for the modeling of operational scenarios for the  
6 long-term consultation?

7 WITNESS BUCHHOLZ: No, we are not.

8 MS. DES JARDINS: Thank you.

9 Then . . . let's go to Exhibit DDJ-230.

10 (Exhibit displayed on screen.)

11 MS. DES JARDINS: This is the Draft Biological  
12 Assessment.

13 And I'd like Page 3-5. This is -- I couldn't  
14 find this table on the old one.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: Scroll down a little  
17 further.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: There we are, 3-5.

20 Keep going. Just scroll down a little  
21 further.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: Yeah, that's fine.

24 So these are existing requirements that are  
25 not included in the Draft Biological Assessment. And



1 they include the Coordinated Operating Agreements, the  
2 CVPIA, VAMP, so there -- there's -- And let's scroll up  
3 a little and show D-1641.

4 (Exhibit displayed on screen.)

5 MS. DES JARDINS: So what of these cri --  
6 The -- The CWF H3+ modeling has specific assumptions  
7 about the column; doesn't it?

8 WITNESS BUCHHOLZ: It does.

9 MS. DES JARDINS: And they're the existing  
10 requirements.

11 WITNESS BUCHHOLZ: Right.

12 MS. DES JARDINS: And this indicates that  
13 those could be subject to change.

14 WITNESS BUCHHOLZ: That's true.

15 MS. DES JARDINS: The CVPIA also, it doesn't  
16 have -- Does the existing CWF H3+ have assumptions  
17 about B2 flows or any other requirements for CVPIA?

18 WITNESS BUCHHOLZ: It does.

19 MS. DES JARDINS: And those also may be  
20 subject to change?

21 WITNESS BUCHHOLZ: That's exactly right.  
22 That's the purpose of this table, is to indicate that.

23 MS. DES JARDINS: And what about D-1641  
24 assumptions?

25 WITNESS BUCHHOLZ: As we noted in this table,

1 there are several things that could have discretionary  
2 operations, and also that the Vernalis Adaptive  
3 Management Plan had expired.

4 MS. DES JARDINS: Yeah.

5 WITNESS BUCHHOLZ: So, again, that was  
6 included.

7 MS. DES JARDINS: What about Water Right Order  
8 90-05, which sets temperature requirements?

9 WITNESS BUCHHOLZ: That was included in the  
10 environmental baseline.

11 MS. DES JARDINS: What -- What -- Again, this  
12 indicates that there may be discretionary actions in  
13 the future.

14 WITNESS BUCHHOLZ: There could be.

15 MS. DES JARDINS: Is that reflected in the  
16 model?

17 WITNESS BUCHHOLZ: We did not include any  
18 potential discretionary actions.

19 And if you have any specific questions about  
20 the discretion of the implementation of these existing  
21 criteria, I would suggest that you should discuss that  
22 with Mr. Miller on Panel 2.

23 MS. DES JARDINS: Thank you.

24 Can you please pull up Exhibit DDJ-225.

25 (Exhibit displayed on screen.)

1 MS. DES JARDINS: This is an e-mail from  
2 Michael Bryan to you about tables and the biological --  
3 in the WaterFix action.

4 Let's go to Page 16.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: And there, it says -- I'm  
7 mostly concerned about the -- So this is a  
8 deconstruction of the action for the WaterFix.

9 I'm mostly concerned about future actions  
10 requiring separate ESA consultation.

11 The one on the left, CVP-wide OCAP we've  
12 discussed. But it also says, "SWRCB minimum instream  
13 flow requirements."

14 WITNESS BUCHHOLZ: Right.

15 MS. DES JARDINS: What are those?

16 WITNESS BUCHHOLZ: We antici -- Those -- Those  
17 were referring -- Whether we used the right words or  
18 not, those were referring to potential changes on a  
19 Water Quality Control Plan to be issued by -- The State  
20 Water Resource Control Board has already announced that  
21 they're in the process of evaluating.

22 MS. DES JARDINS: So let's go to Exhibit

23 DDJ-226 --

24 (Exhibit displayed on screen.)

25 MS. DES JARDINS: -- which is a copy of the

1 Water Quality Certification application for the  
2 WaterFix.

3 Let's go to Page 4.

4 (Exhibit displayed on screen.)

5 MS. DES JARDINS: And scroll down a little.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: That's fine. Stop.

8 And so this list indicates that the instream  
9 flow requirements have yet to be determined for this  
10 process and are pending; is that correct?

11 WITNESS BUCHHOLZ: That would be true.

12 MS. DES JARDINS: And that those will be  
13 determined by the Department of Fish and Wildlife and  
14 the State Water Resources Control Board.

15 WITNESS BUCHHOLZ: That's true.

16 MS. DES JARDINS: And it indicates that they  
17 are different from the Section 2081(b) Take Permit  
18 issued by the Department of Fish and Wildlife.

19 WITNESS BUCHHOLZ: That's correct.

20 MS. DES JARDINS: So, does the H3+ scenario  
21 include any assumptions or any about instream flow  
22 requirements set by the Board?

23 WITNESS BUCHHOLZ: The -- What we've projected  
24 in the Project Description is what we believe the  
25 Project Description is.

1           We -- Our understanding is that the State  
2 Water Resources Control Board could consider that as  
3 part of our water rights application.

4           So we can't predict what --

5           MS. DES JARDINS: I'd like to go to Exhibit  
6 SWRCB-1.

7           MS. ANSLEY: I'm sorry. Were you done with  
8 your answer, Miss Buchholz?

9           Were you complete with your answer before we  
10 move on?

11          WITNESS BUCHHOLZ: Yes. That was referring to  
12 what the State Water Resources Control Board would  
13 issue with any of our water rights permit conditions.

14          MS. DES JARDINS: Thank you.

15          I did want to go to -- yeah -- the Permit  
16 Application.

17          (Exhibit displayed on screen.)

18          MS. DES JARDINS: Page 22.

19          (Exhibit displayed on screen.)

20          MS. DES JARDINS: And scroll down.

21          I'm looking for . . .

22          (Exhibit displayed on screen.)

23          MS. DES JARDINS: Oh, let's scroll back up  
24 just a sec.

25          (Exhibit displayed on screen.)

1 MS. DES JARDINS: Yeah. Let's try -- That's  
2 .pd -- Let's try the document Page 22.

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: Oh, my God. I'm sorry.

5 I did -- This is referring to the pumping  
6 rates are proposed not to be part of the permit.

7 And I'm wondering what are the assumptions  
8 about the maximum North Delta intake diversion rates?

9 MR. MIZELL: Objection. Can the questioner  
10 please direct us to where she is relying --

11 MS. DES JARDINS: Okay.

12 MR. MIZELL: -- what text she's relying on?

13 MS. DES JARDINS: Yeah. It's -- Oh, no, it  
14 does -- Go back up to .pdf Page 22. Maybe I'm just not  
15 seeing it there.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: Scroll down.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: Scroll down.

20 (Exhibit displayed on screen.)

21 MS. DES JARDINS: There it is (reading):

22 "While the larger California  
23 WaterFix conveyance project includes an  
24 additional SWP pumping station in the  
25 South Delta as part of the reconfigured

1 Clifton Court Forebay, water from the  
2 additional Points of Diversion is  
3 delivered to the new station through a  
4 tunnel and . . . water is at all times  
5 isolated from, and not commingled with,  
6 any other supplies. For this reason, the  
7 new SWP pumping station is not part of  
8 this petition, except to the extent  
9 construction impacts of the California  
10 WaterFix are discussed."

11 MS. ANSLEY: Is there a question pending?

12 MS. DES JARDINS: Mr. Mizell asked me to read.

13 And my question is: What are the assumptions  
14 about the maximum North Delta intake diversion rates in  
15 CVP H3+?

16 WITNESS BUCHHOLZ: So if you look at the --  
17 The maximum diversion rates are 3,000 cfs per intake.

18 And they would be if you work for the North  
19 Delta bypass flow criteria that's in the documentation,  
20 that would -- that determined under different  
21 hydrologic conditions, different temporal conditions,  
22 what would be anticipated the -- the pumping patterns  
23 from the North Delta Diversion.

24 This pumping plant, if I may add, is within  
25 Clifton Court Forebay, so the water diverted from the

1 North Delta Diversions comes down through a tunnel  
2 directly to this pumping plant.

3           This pumping plant does not divert from  
4 adjacent water bodies, whether it's Clifton Court  
5 Forebay, or the Old River, Italian Slough, and that's  
6 why this -- the Petition is to add Points of Diversion.  
7 There is no new Point of Diversion associated with this  
8 pumping plant, except for the three North Delta  
9 Diversions.

10           MS. DES JARDINS: But this is the pumping  
11 plant for -- that will lift the water from the tunnels  
12 which carry water from the North Delta Diversion  
13 intakes to Clifton Court Forebay for export.

14           WITNESS BUCHHOLZ: Right.

15           MS. DES JARDINS: And so you said maximum was  
16 9,000 cfs, but doesn't it assume a maximum in  
17 combination with the existing Clifton Court Forebay  
18 diversion limits?

19           WITNESS BUCHHOLZ: The overall diversion  
20 limits -- The overall pumping -- or diversion pattern  
21 for the State Water Project, the Central Valley  
22 Project, certainly depended upon the ability to pump  
23 water at Banks Pumping Plant and Jones Pumping Plant.

24           MS. DES JARDINS: Does the CWF H3+ --

25           WITNESS BUCHHOLZ: And that would include --



1 That would include in some months also using South  
2 Delta intakes.

3 MS. DES JARDINS: Does CWF H3+ include an  
4 assumption about the maximum permanent rate of  
5 diversion?

6 You know, the total --

7 WITNESS BUCHHOLZ: Yes.

8 MS. DES JARDINS: -- permanent rate of  
9 diversion --

10 WITNESS BUCHHOLZ: It includes --

11 MS. DES JARDINS: -- for both plants?

12 WITNESS BUCHHOLZ: It includes that, and it's  
13 presented in different months, in different water year  
14 types, as we put those assumptions together for the  
15 modeling, yes.

16 MS. DES JARDINS: Is the assumption 10,300 cfs  
17 that's there or is it less?

18 WITNESS BUCHHOLZ: It would depend on how much  
19 we're using the North Delta Diversions versus the South  
20 Delta intakes.

21 The South Delta intakes are still -- For the  
22 diversions of South Delta intakes, it would -- it would  
23 not increase the types of diver -- diversion rates that  
24 we have under the existing conditions.

25 MS. DES JARDINS: So the -- Does the CWF H3+

1 assume the current Army Corps of Engineer limits on --  
2 on rate of -- on three-day rate of intake to Clifton  
3 Court Forebay for the South Delta diversions, but the  
4 9,000 cfs for the North Delta Diversions?

5 WITNESS BUCHHOLZ: That's true.

6 MS. DES JARDINS: Okay. Thank you.

7 That completes my questioning.

8 I'd like to go -- I have some questions for  
9 John Bednarski.

10 We're still on Exhibit SWRCB-1.

11 Can we go to Page 25 to 27.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: We can zoom down a little.

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: I'm -- Yeah.

16 Go all the way to the end, and I think it's  
17 Document Page 25.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: Scroll down further. I'm  
20 looking for NBS.

21 (Exhibit displayed on screen.)

22 MS. DES JARDINS: Yeah. Scroll down.

23 (Exhibit displayed on screen.)

24 MS. DES JARDINS: Go to Page 25, please.

25 (Exhibit displayed on screen.)

1 MS. DES JARDINS: Yeah. Zoom out.

2 (Exhibit displayed on screen.)

3 MS. DES JARDINS: Yeah. Thank you.

4 Mr. Bednarski, so, this is a map -- Can we go  
5 down to the bottom with which will show the date on  
6 this?

7 (Exhibit displayed on screen.)

8 MS. DES JARDINS: So, this is -- was submitted  
9 with the Change Petition and was sworn by the agent for  
10 the Department of Water Resources to be true and  
11 correct and complete to the best of their ability when  
12 the Petition was submitted.

13 This -- These maps describe the three proposed  
14 Points of Diversion.

15 Are these still true and correct and complete  
16 to the best of your knowledge?

17 WITNESS BEDNARSKI: Can we scroll down through  
18 the succeeding locations so I can see those?

19 (Exhibit displayed on screen.)

20 WITNESS BEDNARSKI: Those appear to be the  
21 same locations that I made my Part 1 testimony in  
22 relation to.

23 MS. DES JARDINS: Are they true and correct as  
24 of this date and complete to the best of your  
25 knowledge?

1 WITNESS BEDNARSKI: Based on what I can see  
2 here, they appear to . . .

3 MS. DES JARDINS: Of the Project as currently  
4 planned.

5 MR. MIZELL: Objection --

6 WITNESS BEDNARSKI: I believe so.

7 MR. MIZELL: I'd like --

8 WITNESS BEDNARSKI: I believe so.

9 MR. MIZELL: -- to object real quick here.

10 Miss Des Jardins is using SWRCB-1. The  
11 Department filed an amendment to this Petition and it's  
12 SWRCB-2. That also contains maps.

13 I would like the questioner to be specific as  
14 to whether or not she's asking the witness to confirm  
15 the entirety of the Petition or simply the maps  
16 contained in the original Petition that has since been  
17 superseded or added to by the maps in SWRCB-2.

18 CO-HEARING OFFICER DODUC: Miss Des Jardins.

19 MS. DES JARDINS: We can go to -- Let's pull  
20 up SWRCB-2, then.

21 (Exhibit displayed on screen.)

22 MS. DES JARDINS: Go down and find the maps.

23 (Exhibit displayed on screen.)

24 MS. DES JARDINS: Let's go ahead and scroll  
25 down.

1 (Exhibit displayed on screen.)

2 MS. DES JARDINS: These are -- These appear to  
3 still be substantially the same.

4 Are these still true and correct and complete  
5 descriptions of the proposed intake locations that you  
6 are testifying about being constructing?

7 MR. MIZELL: And if the witness needs time to  
8 review these maps side-by-side, I think that might be  
9 an accommodation we would request for our -- our  
10 witness before he makes a conclusive statement that the  
11 maps are identical.

12 CO-HEARING OFFICER DODUC: I don't know that  
13 she's asking whether they're identical. She's asking,  
14 I understand, based on SWRCB-2 and the maps in that.

15 Are you familiar with SWRCB-2 and the maps  
16 that were included as part of that application?

17 WITNESS BEDNARSKI: I am not familiar with the  
18 maps that were submitted as part of the application.  
19 I'm familiar with maps that were included as part of  
20 the Conceptual Engineering Report.

21 But we -- we probably provided information  
22 that went into these specific maps, but I -- I didn't  
23 have any specific knowledge of them being generated for  
24 that purpose, if that makes sense.

25 MS. DES JARDINS: So, you cannot testify that

1 the maps on the actual signed, sworn Petition  
2 application are still true and correct or complete?

3 WITNESS BEDNARSKI: I would -- I would offer  
4 my observation that the locations -- if that's what  
5 you're asking -- appear to be very similar to the ones  
6 that we -- are in the Conceptual Engineering Report  
7 that I testified to in Part 1. But without actually  
8 looking at them in detail side-by-side, I -- I can't  
9 say they're identical.

10 CO-HEARING OFFICER DODUC: And you yourself  
11 did not prepared or in any way familiar with what was  
12 submitted as part of the Petition.

13 WITNESS BEDNARSKI: That -- That's correct.

14 MS. DES JARDINS: Are the locations in the  
15 Conceptual Engineering Report subject to change with  
16 further design or geotechnical exploration?

17 MS. ANSLEY: Objection: Vague and ambiguous.  
18 Are we talking about the location of the  
19 intakes?

20 MS. DES JARDINS: Yes.

21 MS. ANSLEY: Okay.

22 WITNESS BEDNARSKI: As far as I know, the  
23 location of the intakes are locked in their specific  
24 locations that they're in now. I do not anticipate  
25 that, through future studies, that we will be moving

1 the location of the intakes from what is shown now.

2 WITNESS PIRABAROOBAN: I would like to add  
3 that these locations were selected based on the  
4 observation research agencies, and we had this in the  
5 Department testimony, Mr. John Bednarski, in DWR-57.

6 MS. DES JARDINS: I also had a question about  
7 water quality impacts, which is Exhibit SWRCB-107, the  
8 Incidental Take Permit.

9 And if you could pull up --  
10 (Exhibit displayed on screen.)

11 MS. DES JARDINS: Yeah, this one, and then I'd  
12 like Page 45.

13 (Exhibit displayed on screen.)

14 MS. DES JARDINS: And this discusses -- Can we  
15 not -- Scroll back out a little.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: So this says that (reading):

18 "Permittee will store spoils and

19 RTM . . ."

20 Which is short for "reasonable tunnel

21 material"; correct?

22 WITNESS BEDNARSKI: Yes, that's correct.

23 MS. DES JARDINS: (Reading):

24 ". . . According to the following

25 requirements:

1           "Select final locations for storage  
2           of spoils, RTM, and dredged material  
3           based on the guidelines presented in a  
4           Disposal and Reuse of Spoils, Reusable  
5           Tunnel Material and Dredged Material  
6           Plan."

7           Are -- Are any of those plans complete at this  
8 point?

9           MR. MIZELL: Objection.

10           Miss Des Jardins has not established that this  
11 is based upon any testimony submitted in Part 2.

12           This is an issue that we reviewed in Part 1  
13 and absent Miss Des Jardins connecting the two, it's  
14 best reserved for rebuttal material.

15           MS. DES JARDINS: All right. This is  
16 specifically with respect to the construction of this  
17 Project, which will have enormous impacts on Fish and  
18 Wildlife. And while you discussed the design in  
19 engineering, there was not a detailed discussion of  
20 construction.

21           And simply because you haven't discussed where  
22 you're going to put 27 million cubic meters of tun --  
23 tunnel material doesn't mean that it's not relevant to  
24 impacts on fish and wildlife.

25           CO-HEARING OFFICER DODUC: Make the



1 connection, if you could, please, specifically to  
2 Mr. Bednarski's testimony.

3 MS. DES JARDINS: Mr. Bednarski is not  
4 testifying. There is -- There is information -- There  
5 are exhibits being submitted which discuss the disposal  
6 of reusable tunnel material.

7 CO-HEARING OFFICER DODUC: Exhibits tied --  
8 Exhibits relating to Mr. Bednarski's testimony?

9 MS. DES JARDINS: The . . . I . . .  
10 The Final EIR/EIS sections on construction  
11 impacts discuss disposal of reusable tunnel material.

12 CO-HEARING OFFICER DODUC: And where is that  
13 discussed in Mr. Bednarski's testimony?

14 MS. DES JARDINS: Mr. Bednarski doesn't  
15 discuss that.

16 The Department of Water Resources is not  
17 providing anybody to discuss these impacts, which are  
18 considerable on fish and wildlife.

19 CO-HEARING OFFICER DODUC: Mr. Mizell, your  
20 objection is sustained.

21 If you would like to introduce that as part of  
22 your rebuttal or your --

23 MS. DES JARDINS: This was --

24 CO-HEARING OFFICER DODUC: -- own testimony,  
25 you may do so.

1 MS. DES JARDINS: -- discussed in California  
2 Water Resources' case in chief. I was trying to get  
3 some more --

4 CO-HEARING OFFICER DODUC: It was --

5 MS. DES JARDINS: -- information --

6 CO-HEARING OFFICER DODUC: -- discussed in a  
7 previous part. We're now on Part 2.

8 MS. DES JARDINS: The construction was not  
9 discussed. Design was discussed; construction was not  
10 discussed.

11 (Timer rings.)

12 MS. DES JARDINS: And I do -- have raised an  
13 objection to not being allowed to discuss construction  
14 impacts on fish and wildlife in this part of the  
15 proceeding.

16 CO-HEARING OFFICER DODUC: I'm sorry.  
17 Mr. Bednarski, again, I'm going back to the confusion  
18 associated with the splitting of your testimony.

19 The construction impacts associated with  
20 navigation is for discussion in Panel 3?

21 WITNESS BEDNARSKI: Yes.

22 CO-HEARING OFFICER DODUC: And as part of that  
23 discussion, does your testimony -- I'm trying to  
24 remember -- does it include the kind of impacts  
25 Miss Des Jardins is attempting to question you on?

1           WITNESS BEDNARSKI: I believe that we  
2 previously covered those in Part 1, DWR-57. In my  
3 Part 1 testimony, we talked about the excavated  
4 material disposal.

5           So I believe we've touched on this subject  
6 before, and I wasn't planning to repeat it --

7           CO-HEARING OFFICER DODUC: Okay.

8           WITNESS BEDNARSKI: -- in Part 2.

9           CO-HEARING OFFICER DODUC: Thank you.

10          Thank you. With that, we complete your  
11 cross-examination.

12          And I'm sorry, Miss Suard, but we will not get  
13 to you today because we have a hard stop at 5 o'clock,  
14 but thank you for joining us.

15          We will resume at 10 o'clock tomorrow. We  
16 will begin with Miss Suard.

17          I remind everyone that the standing rule for  
18 Casual Friday remains.

19          Mr. Mizell, let me, before we wrap up, take  
20 care of one other housekeeping item.

21          We are going to get to your Panel 2 witnesses  
22 tomorrow, and I have been advised that one of your  
23 Panel 2 witnesses have an unreschedulable medical  
24 appointment --

25          MR. MIZELL: That's correct.

1 CO-HEARING OFFICER DODUC: -- is that correct?

2 MR. MIZELL: That's correct. Every Friday,  
3 one of my witnesses has an immovable medical  
4 appointment.

5 CO-HEARING OFFICER DODUC: All right. We will  
6 proceed, then, with your remaining Panel 2 witnesses,  
7 and should you complete your direct testimony of those  
8 witnesses, we will begin the cross-examination of those  
9 witnesses and circle back to your remaining Panel 2  
10 witness next week.

11 MR. MIZELL: I appreciate the accommodation.  
12 Thank you very much.

13 CO-HEARING OFFICER DODUC: All right. With  
14 that, thank you, everyone. Welcome back. Have a good  
15 evening and we'll see you at 10 o'clock tomorrow.

16 (Proceedings adjourned at 4:56 p.m.)

17

18

19

20

21

22

23

24

25

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  
15 full, true and correct transcript of all proceedings  
16 had and testimony taken;

17 That I am not a party to the action or related to  
18 a party or counsel;

19 That I have no financial or other interest in the  
20 outcome of the action.

21

22 Dated: February 27, 2018

23

24

25

---

Candace L. Yount, CSR No. 2737