

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 Andrew Deeringer, Senior Staff Attorney
10 Conny Mitterhofer, Supervising Water Resource Control
11 Engineer
12 Jean McCue, Water Resources Control Engineer

13 PART 2

14 For Petitioners:

15 California Department of Water Resources:

16 Jolie-Anne Ansley
17 Cathy Cavanaugh

18 The U.S. Department of the Interior:

19 Amy L. Aufdenberge, Esq.

20 INTERESTED PARTIES:

21 For San Luis & Delta-Mendota Water Authority:

22 Daniel J. O'Hanlon
23 Rebecca R. Akroyd

24 For Grassland Water District:

25 Ellen Wehr

1 APPEARANCES (Continued)

2 INTERESTED PARTIES (Continued):

3 For County of San Joaquin, San Joaquin County Flood
4 Control and Water Conservation District, and Mokelumne
5 River Water and Power Authority:

6 Thomas H. Keeling

7 For California Water Research:

8 Deirdre Des Jardins

9 For The Environmental Justice Coalition for Water,
10 Islands, Inc., Islands, Inc., Local Agencies of the
11 North Delta, Bogle Vineyards/Delta Watershed Landowner
12 Coalition, Diablo Vineyards and Brad Lange/Delta
13 Watershed Landowner Coalition, Stillwater
14 Orchards/Delta Watershed Landowner Coalition, Brett G.
15 Baker and Daniel Wilson, SAVE OUR SANDHILL CRANES,
16 Friends of Stone Lakes National Wildlife Refuge, The
17 County of Yolo:

18 Osha Meserve

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

23 Dean Ruiz, Esq.

24 For California Sportfishing Protection Alliance (CSPA),
25 California Water Impact Network (C-WIN), and
26 AquAlliance:

27 Michael Jackson

28 For Restore the Delta:

29 Tim Stroshane

30 For Sacramento County Water Agency, Glenn-Colusa
31 Irrigation District, Biggs-West Gridley Water District,
32 Carmichael Water District as well as Placer County
33 Water Agency and the County of Sacramento:

34 Aaron Ferguson

1 APPEARANCES (Continued)

2 INTERESTED PARTIES (Continued):

3 For State Water Contractors:

4 Stefanie Morris

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I N D E X

1

2 SAN LUIS DELTA-MENDOTA WATER AUTHORITY
and

3 WESTLANDS WATER DISTRICT
WITNESSES

4

5 MIZUNO, FRANCES
GUTIERREZ, JOSE
SHIRES, MICHAEL

6 (Witnesses Previously Sworn)

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I N D E X

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2 SAN LUIS DELTA-MENDOTA WATER AUTHORITY
and

3 WESTLANDS WATER DISTRICT
EXHIBITS

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1 Monday, March 12, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: Good morning
5 everyone. Welcome back. I see that you've all sprung
6 ahead one hour.

7 Welcome back to the Water Right Change
8 Petition for the California WaterFix Project.

9 I am Tam Doduc. Soon to be joining me to my
10 right will be Board Chair and Co-Hearing Officer
11 Felicia Marcus. And to my far right is Board Member
12 Dee Dee D'Adamo.

13 To my right are Andrew Deeringer and Conny
14 Mitterhofer; right? Not expecting anyone else.

15 We're also being assisted by Mr. Baker and
16 Miss Perry today.

17 Before we resume cross-examination of this
18 panel, a couple housekeeping matters that I have, then
19 anything else that you have.

20 First, a reminder that we will be taking a
21 later but longer lunch break today, from 1:00 to 2:30,
22 or thereabouts.

23 And on Wednesday, we will be adjourning early,
24 so we'll be working through lunch but we'll be
25 adjourning around 1 o'clock or thereabouts.

1 I have an estimated four to five hours left
2 for cross-examination of this panel. As always,
3 though, I encourage everyone to be efficient, to not
4 duplicate questions, and perhaps we might even move
5 faster.

6 And my understanding -- and Miss Wehr is
7 here -- is, after this panel, we will hear from
8 Grasslands Water District, first with your Opening
9 Statement, and then your witnesses Ortega and Hansen?

10 MS. WEHR: Yes. Good morning.

11 We don't have an Opening Statement but those
12 witnesses will be available.

13 On Friday, I filed a motion to move
14 Dr. Petrie's testimony to the 16th, this Friday.
15 Unfortunately, I heard yesterday that Dr. Petrie has
16 secured a long-sought medical appointment that date.
17 And so I'd like your permission to refile my motion to
18 move his testimony even further into the future.

19 I apologize. Dr. Petrie travels a lot
20 internationally for his job. He's neither an employee
21 of Grassland Water District nor a paid consultant. And
22 I believe his testimony will be unique to this Board on
23 the impacts of potential reductions of Refuge water
24 supply to avian species.

25 I'd like to file the motion to provide the

1 parties any -- any opportunity to object to moving his
2 testimony to the 26th -- Monday, the 26th.

3 CO-HEARING OFFICER DODUC: It's our practice
4 to not provide a guaranteed date. We will see how
5 things go along. Assuming that no one objects to your
6 request, we will just take things as they go along.

7 MS. WEHR: I understand. Thank you very much.

8 CO-HEARING OFFICE DODUC: Mr. Keeling.

9 I'm sorry. Before Mr. Keeling begins,
10 Miss Wehr, let me make sure I understand:

11 You submitted a written Opening Statement but
12 you will not be providing any verbal Opening Statement.

13 MS. WEHR: Let me confirm: I am happy to --

14 CO-HEARING OFFICE DODUC: I'm not encouraging
15 you, but just to confirm.

16 MS. WEHR: And I apologize. This is -- is our
17 first time participating.

18 If it's helpful to the Board to summarize our
19 Opening Statement in words, we're happy to do so.

20 CO-HEARING OFFICE DODUC: We have it in
21 writing. We've read it. There is no need if you don't
22 feel the urge to.

23 MS. WEHR: I will submit it on the papers.

24 Thank you.

25 CO-HEARING OFFICE DODUC: Thank you.

1 Mr. Keeling.

2 MR. KEELING: Good morning. Tom Keeling for
3 the San Joaquin County Protestants.

4 I wanted to give the Hearing Officers and the
5 parties a heads-up on a scheduling issue that I think
6 we can resolve with respect to the third cluster of
7 witnesses, whom I assume will be up this week and maybe
8 into next week, for Sacramento County Water Agency,
9 Local Agencies of the North Delta, San Joaquin County,
10 et cetera, South Delta Water Agency.

11 And that is, we have four panels. The third
12 panel consists of a single witness, Dr. Jeffrey
13 Michael. And because of some scheduling issues, we
14 want to flip the -- the third and fourth panels so that
15 Dr. Michael can go after the panel that begins with
16 Lambie, Tootle, Foglia, et al.

17 CO-HEARING OFFICE DODUC: All right.

18 MR. KEELING: Okay. I appreciate your
19 accommodation.

20 CO-HEARING OFFICE DODUC: I assume there's no
21 objection, and we will proceed that way.

22 MR. KEELING: Thank you.

23 CO-HEARING OFFICE DODUC: Miss Des Jardins.

24 MS. DES JARDINS: I wanted to ask the Chair
25 about the statement that you do not provide dates for

1 testimony.

2 I have witnesses I want to -- I want to
3 subpoena from Department of Fish and Wildlife, and I
4 can do that for a range of dates, if necessary.

5 So, is that applicable to the -- the
6 subpoenaed witnesses from CDFW?

7 CO-HEARING OFFICE DODUC: I'm sorry. You are
8 what?

9 MS. DES JARDINS: I'm . . .

10 CO-HEARING OFFICE DODUC: Asking for a range
11 of dates.

12 MS. DES JARDINS: No, no. I had earlier asked
13 for a date certain that I might call those witnesses to
14 appear on. That was specified in -- sufficiently in
15 advance that I could issue a subpoena.

16 If, in fact, it's not the Board's -- the
17 Hearing Officers' practice or the Board's practice to
18 provide a date certain, even for subpoenaed witnesses,
19 I can subpoena them for a range of dates. I just
20 prefer to disrupt their schedules as little as
21 possible.

22 MR. DEERING: So, if I understand correctly
23 the issue that you're referencing, is that subpoenas
24 ordinarily require that the form specify a date --

25 MS. DES JARDINS: Yes.

1 MR. DEERING: -- for the subpoenaed witness --

2 MS. DES JARDINS: And -- And --

3 MR. DEERING: -- to appear?

4 MS. DES JARDINS: And CDFW, when I did a -- a
5 Notice to them specifically objected that there weren't
6 dates specified on my Notice to them.

7 So they're -- they're requesting that I serve
8 the subpoenas directly on the CDFW employees, and so
9 I'm going to do that.

10 MR. DEERING: That -- So this is an issue that
11 we anticipated as soon as we found out that some
12 parties were going to be subpoenaing witnesses
13 especially from non-parties.

14 I think we're still formulating how we want to
15 approach that but, for the purposes of filling out the
16 form, I would say go ahead and either just include the
17 order of proceeding as an attachment and the -- with
18 the hearing dates --

19 MS. DES JARDINS: Okay.

20 MR. DEERING: -- so the schedule the
21 hearing -- as a placeholder. And then, you know, you
22 can anticipate that a party like CDFW, or whoever's on
23 the receiving end of the subpoena, is going to object
24 based on lack of specificity.

25 And we're going to have to work out amongst

1 ourselves, you, the subpoenaed party and us how to
2 address this lack of specificity. But it is something
3 that we're willing to work with you and the subpoenaed
4 party to address.

5 But, unfortunately, this isn't something that
6 we can deal with at -- at this point in the hearing,
7 but it's something that we will follow up with you
8 about.

9 MS. DES JARDINS: Thank you. That -- I'll do
10 that.

11 I have a second matter.

12 I did some research over the weekend on the
13 Hearing Chair's reconciliation of the two evidentiary
14 statutes governing this proceeding, Evidence Code 801
15 to 805, and Government Code 11513.

16 And it became clear that the reconciliation
17 was contrary to California's canons of statutory
18 construction which have been held to apply to the
19 interpretation of agency regulations.

20 This was California Drive-in Restaurant
21 Association vs. Clark (1923), 22 Cal. 2d 287, 292.

22 I found it a particularly clear discussion in
23 the ruling of Hobdy vs. Hodby, 20 Cal Reporter 3 -- 3d
24 104, 109 Cal. App. (2004).

25 Hobdy vs. Hodby stated (reading):

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1 ". . . We do not determine the meaning of
2 a statute from a single word or sentence.
3 Instead, we construe the words and
4 sentences in context and in the light of
5 the statutory scheme. In reconciling two
6 inconsistent statutes, a specific statute
7 is properly treated as an exception to a
8 more generally one. Finally, a statute
9 should be construed to avoid implied
10 repeal of another statute."

11 I omitted several citations in this quote.

12 The Hearing Chair's oral ruling on Friday
13 implied that this hearing is not governed by Evidence
14 Code 801 and 802 but only by Government Code 11513, and
15 I believe this was a clear error of law based on this
16 research.

17 For this reason, I'm making a standing
18 objection to the oral ruling on Friday. And I am also
19 making a standing objection to the Hearing Chair's
20 striking my objections and ruling that Motions for
21 Reconsiderations are not allowed.

22 While I appreciate the Hearing Chair's efforts
23 to run an efficient hearing, the Friday hearing ruling
24 threw the baby out with the bath water. Striking the
25 objection and refusing reconsideration precludes a fair

1 trial under Section 1094.5 of the Code of Civil
2 Procedure.

3 It is also a violation of the due process
4 right to freedom from arbitrary adjudicative
5 procedures, which was decided by the Supreme Court in
6 People vs. Ramirez (1979), 25 Cal. 3d 260, 268 to a
7 269.

8 And I thank the Chair for receiving this
9 objection. I'm making -- These are both continuing
10 objections.

11 Thank you.

12 CO-HEARING OFFICE DODUC: Already added to the
13 list.

14 Anyone else?

15 All right. I forgot to do my usual three very
16 important announcements.

17 Please take a moment and identify the exit
18 closest to you. In the event of an emergency, an alarm
19 will sound. We will evacuate using the stairs, not the
20 elevators, down to the first floor and cross to the
21 street -- cross to the park across the street.

22 If you're not able to use the stairs, please
23 flag down one of the fluorescent orange colored-wearing
24 people and they will direct you into a protective area.

25 Secondly, this is being recorded and

1 Webcasted, so please speak into the microphone and
2 begin by stating your name and your affiliation.

3 Our court reporter is back. Please make
4 arrangements with her directly if you would like a copy
5 of the transcript sooner than we would provide one,
6 which would be upon the conclusion of Part 2.

7 And, finally and most importantly, please take
8 a moment and check to make sure that all your
9 noise-making devices are placed on silent, vibrate, do
10 not disturb.

11 All right. With all those excitement out of
12 the way, we will now turn to Miss Meserve for her
13 cross-examination of this panel.

14 MS. MESERVE: Good morning, Madam Chair and
15 everyone.

16 My name is Osha Meserve. I'm with Local
17 Agencies of the North Delta, et al., Group 19 and
18 others.

19 I have questions for this panel, primarily for
20 Mr. Gutierrez and Mr. -- Dr. Shires.

21 The questions include questions about the
22 District's contracts, the acreage served, the cropping
23 patterns, and the desired deliveries from this -- the
24 Petition Project.

25 In addition to -- With respect to Dr. Shires,

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1 jobs, obesity, and the District's response to
2 regulatory restrictions.

3 CO-HEARING OFFICE DODUC: Thank you.

4 Please begin, Miss Meserve.

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FRANCES MIZUNO,
JOSE GUTIERREZ and
MICHAEL SHIRES,
called as witnesses by the San Luis
Delta-Mendota Water Authority and Westlands
Water District, having previously been duly
sworn, were examined and testified further as
follows:

1 CROSS-EXAMINATION BY

2 MS. MESERVE: And starting with Mr. Gutierrez,
3 to begin with, about the Westlands contract.

4 On Page 4 of your testimony, which is WWD-4 --
5 15, Lines 16 through 19, Mr. Gutierrez, you reference
6 the 1963 water contract.

7 Isn't it true that that contract from 1963
8 expired in 2007?

9 WITNESS GUTIERREZ: I don't know that.

10 MS. MESERVE: Let's see. If we could go
11 to . . . to LAND-228, which is the Barcellos judgment.

12 This is on the -- the stick that I gave
13 Mr. Baker.

14 LAND-228 is the Barcellos judgment that's
15 referenced in your testimony on Page 4, Line 22.

16 (Exhibit displayed on screen.)

17 MS. MESERVE: And if you could scroll down,
18 that judgment confirms --

19 (Exhibit displayed on screen.)

20 MS. MESERVE: Whoops. Up on the first page.

21 (Exhibit displayed on screen.)

22 MS. MESERVE: -- that it goes through 2007.

23 Are -- Are you familiar with that, since you
24 cited it in your testimony, Mr. Gutierrez?

25 WITNESS GUTIERREZ: That the contract ran

1 through 2007 or that the Barcellos agreement ran
2 through 2007?

3 MS. MESERVE: This is the Barcellos judgment
4 that's referenced on Line 22, which is just referring
5 back to the contract.

6 Do you see that, where it says "through 2007"?

7 WITNESS GUTIERREZ: Yes.

8 MS. MESERVE: And then on -- at the bottom of
9 Page 4, you mention some renewal agreements with
10 Reclamation that last two or possibly four years.

11 And then you note on Line 28 of Page 4, that
12 the last contract expired on February 28th of 2018.

13 Does Westlands have a water contract for CVP
14 water right now?

15 WITNESS GUTIERREZ: Yes.

16 MS. MESERVE: Has there been an -- an
17 additional interim renewal?

18 WITNESS GUTIERREZ: Yes.

19 MS. MESERVE: And was that subsequent to the
20 submission of your testimony in November?

21 WITNESS GUTIERREZ: Yes.

22 MS. MESERVE: And what is the end date of that
23 contract?

24 WITNESS GUTIERREZ: I believe it is
25 February 28th of 2020.

1 Actually, it could be February 29th, 2020.

2 MS. MESERVE: Oh, it may be leap year.

3 WITNESS GUTIERREZ: Yeah.

4 MS. MESERVE: Thank you.

5 Now, if we could just look at the acres served
6 for a moment here.

7 WITNESS GUTIERREZ: On which page?

8 MS. MESERVE: I would like to look at
9 LAND-230, which is one of the exhibits I provided this
10 morning, which is the Public Law 86-488.

11 (Exhibit displayed on screen.)

12 MS. MESERVE: And according to the -- Are you
13 familiar at all with the Public Law that formed the --
14 the district?

15 WITNESS GUTIERREZ: I -- I mean, I've seen
16 reference to it. I'm not intimately familiar with it.

17 MR. O'HANLON: I'm going to object belatedly
18 that the question mischaracterizes the statute that --
19 Miss Meserve said it formed the District. This is a
20 Federal statute authorizing the San Luis.

21 MS. MESERVE: Thank you for that
22 clarification.

23 And in the top part of that -- the fourth line
24 down, do you see, Mr. Gutierrez, where it says
25 (reading):

1 ". . . For . . . purposes (sic) of
2 furnishing . . . approximately
3 500,000 acres of land . . ."

4 WITNESS GUTIERREZ: Yes.

5 MS. MESERVE: Now, on Page 4, Line 19 --

6 (Exhibit displayed on screen.)

7 MS. MESERVE: -- you -- you state that the
8 legislature in California enacted the merger law which
9 expanded the District by 200,000 acres.

10 But this Congressional authorization appearing
11 in LAND-230 only mentions 500,000 acres; isn't that
12 correct?

13 WITNESS GUTIERREZ: Is it correct that the
14 merger law expanded Westlands? Or is it correct that
15 that says 500,000?

16 MS. MESERVE: My question is just that the --
17 the -- the Congressional -- the Public Law 86-488
18 referenced here on the screen only mentions 500,000
19 acres.

20 WITNESS GUTIERREZ: That's what I see on the
21 screen, yes.

22 MS. MESERVE: And if we could look briefly at
23 LAND-234, which is --

24 (Exhibit displayed on screen.)

25 MS. MESERVE: This is the feasibility report

1 from 1956 that led to some of these documents we just
2 looked at.

3 And just looking at the highlighted language.

4 (Exhibit displayed on screen.)

5 MS. MESERVE: Can you -- Are you familiar with
6 the fact the feasibility report only identified
7 399,000 acres of land that would be served by the
8 Project?

9 WITNESS GUTIERREZ: No, I was not aware of
10 that.

11 MS. MESERVE: And now could we look at
12 Westlands Water District map -- or Exhibit Number 5.

13 (Exhibit displayed on screen.)

14 MS. MESERVE: And this is the map which shows
15 Westlands and some of the other San Luis member
16 agencies.

17 And, Mr. Gutierrez, do you believe that the
18 area shown in blue there for Westlands is consistent
19 with the service area that we just looked at under
20 PL 86-488 in terms of acres?

21 WITNESS GUTIERREZ: No.

22 MR. O'HANLON: I'm going to object to the
23 question as compound and ambiguous.

24 CO-HEARING OFFICE DODUC: Miss Meserve, could
25 you ask it again?

1 MS. MESERVE: Sure.

2 Mr. Gutierrez, do you believe that the service
3 area shown in blue there on WWD-5 is the same as the
4 Congressionally-authorized service area that we looked
5 at in PL 86-488 in terms of acres?

6 MR. O'HANLON: Objection: Lacks foundation.

7 There's been no -- no estimate established
8 that Congress designated any particular service area.

9 CO-HEARING OFFICE DODUC: Miss Meserve, what
10 are you trying to get at here?

11 MS. MESERVE: What I am exploring is the
12 difference in service area authorized by Congress
13 versus the service area that is claimed in WWD-5 and
14 elsewhere in the witness' testimony.

15 CO-HEARING OFFICE DODUC: Can you put up
16 something that -- that demonstrates what you believe
17 was authorized by Congress, or is this it?

18 MS. MESERVE: Certainly. We could look at --
19 One moment.

20 LAND-233 is from the 1977 --

21 (Exhibit displayed on screen.)

22 MS. MESERVE: -- San Luis Task Force.

23 Are you familiar at all, Mr. Gutierrez, with
24 this report?

25 WITNESS GUTIERREZ: No.

1 MS. MESERVE: And there is a map on the
2 following two pages down.

3 (Exhibit displayed on screen.)

4 MS. MESERVE: And perhaps the witness does not
5 know, which is fine.

6 But can you tell, Dr. -- Mr. Gutierrez: Is
7 this yellow area perhaps part of the additional acreage
8 that may go beyond that initial about 400,000 acres
9 from the documents we looked at previously?

10 MR. O'HANLON: Objection: Lacks foundation.

11 The witness isn't -- has testified he's never
12 seen this -- he hasn't seen this report, is not
13 familiar with it. And the conclusions in the -- in the
14 question, there's been no foundation this witness has
15 any knowledge of that.

16 CO-HEARING OFFICE DODUC: Sustained.

17 MS. MESERVE: Under the Interim Service
18 Contracts, Mr. Gutierrez, that we were discussing,
19 isn't it true that they are subject to meeting the
20 water quality standards and protection of Delta
21 outflows and beneficial uses?

22 WITNESS GUTIERREZ: Who are you referring to
23 is responsible?

24 MS. MESERVE: You mention the interim
25 contracts and in testimony just now you mentioned an

1 extension.

2 Are you aware that those contracts require the
3 Bureau to continue to meet water quality standards and
4 protection of beneficial uses?

5 MR. O'HANLON: Objection: Misstates the
6 agreement -- which we don't even have in front of us --
7 that it requires Reclamation to -- to meet water
8 quality standards. The contract does.

9 CO-HEARING OFFICE DODUC: Miss Meserve, do you
10 wish to lay some foundation?

11 MS. MESERVE: I think I'd better keep moving.
12 It would probably take too much time.

13 CO-HEARING OFFICE DODUC: I mean, I'm always
14 encouraging people to be efficient, but if it's a
15 critical point for you . . .

16 MS. MESERVE: One moment.

17 Are you familiar at all with the Coordinated
18 Operations Act of 1986, Mr. Gutierrez?

19 WITNESS GUTIERREZ: Coordinated Operations
20 Act?

21 MS. MESERVE: Yes.

22 WITNESS GUTIERREZ: No.

23 MS. MESERVE: You are familiar, however, with
24 the fact that there are water quality standards in the
25 Delta that -- to which exports are the subject.

1 WITNESS GUTIERREZ: Yes.

2 MS. MESERVE: And so the Westlands' contracts,
3 in your opinion, would be subject and limited by those
4 same restrictions; correct?

5 MR. O'HANLON: Objection: Calls for legal
6 conclusion; lacks foundation.

7 CO-HEARING OFFICE DODUC: If there are water
8 quality standards to which exports are limited, and
9 exports limitations affect your deliveries, which logic
10 indicate that water quality standards -- that your
11 deliveries are affected by water quality standards?

12 WITNESS GUTIERREZ: I -- I would agree with
13 that, but I'm not -- I don't think that was the
14 question.

15 CO-HEARING OFFICE DODUC: Miss Meserve, did I
16 totally misread your questioning?

17 MS. MESERVE: I thought you -- Yes, you have
18 the correct question.

19 CO-HEARING OFFICE DODUC: So objection
20 overruled.

21 Please answer.

22 WITNESS GUTIERREZ: Can you restate the
23 question, please.

24 MS. MESERVE: Shall you or shall I?

25 CO-HEARING OFFICE DODUC: Please do before I

1 get accused of playing attorney again.

2 MS. MESERVE: If there are water quality
3 standards that apply to exports in the Delta, the
4 District's contracts would also be subject to those
5 standards; correct?

6 MR. O'HANLON: I'm going to object -- I'm
7 sorry -- object again. The problem with the question
8 is that she's talking about the contract being subject
9 to standards.

10 Exports are certainly subject to standards.
11 Ultimate deliveries are certainly subject to standards.

12 CO-HEARING OFFICE DODUC: Yes.

13 MR. O'HANLON: The way she's phrasing the
14 question is, it's contract that are the standards.

15 CO-HEARING OFFICE DODUC: Could you replace
16 the word "contract" with something else?

17 MS. MESERVE: With -- The delivery of the
18 allocations and deliveries to Westlands are subject to
19 water quality standards in the Delta; aren't they?

20 WITNESS GUTIERREZ: Yes.

21 MS. MESERVE: Now, I'll move on to some
22 questions about the types of crops grown.

23 On Page 15 of your testimony, Mr. Gutierrez,
24 Lines 11 through 17, you discuss the increase in
25 permanent crops in the District and the fact that they

1 can't be fallowed.

2 (Exhibit displayed on screen.)

3 MS. MESERVE: This -- Sorry. This would be
4 WWD-15, Page 23.

5 And --

6 (Exhibit displayed on screen.)

7 WITNESS GUTIERREZ: Which -- Which lines were
8 you referring to again?

9 MS. MESERVE: Let's see. It starts with
10 Line 10 on Page 23, and it talks about loss of
11 permanent crops.

12 WITNESS GUTIERREZ: Okay. Thank you.

13 MS. MESERVE: Yes.

14 So -- And you note here on Lines 14 and 15
15 that permanent crops can typically use more water,
16 looks like up to about twice as much water, according
17 to your testimony, as the crops that were in place
18 prior to the permanent crops.

19 Is that what you're getting at in your
20 testimony?

21 WITNESS GUTIERREZ: Not exactly.

22 MS. MESERVE: What -- What are you saying?

23 WITNESS GUTIERREZ: The -- The Lines, I guess,
24 13, 14 and 15 were -- I'm talking about the average
25 applied water rate in Westlands when you look at all

1 crops, all crops grown in Westlands, and the amount of
2 water applied in Westlands. If you just divide gross
3 volumes divided by gross acreage, the average
4 allocation in the summer between 2.3 to 2.5 acre-feet
5 per acre.

6 But then when you segregate the permanent
7 crops, like almonds, for example, the applied water
8 could be somewhere between three and a half, four and a
9 half, four acre-feet per acre for that specific crop
10 type.

11 MS. MESERVE: And with applied -- If -- If the
12 water is consumptively used, that water would be taken
13 up by the crop and wouldn't be available for recharge
14 or any other purpose; correct?

15 WITNESS GUTIERREZ: That's not the intended
16 use of the irrigation water. Obviously, when you apply
17 water, some of that area does move beyond the roots in
18 a minimal amount.

19 You might be applying 15 percent more water.
20 That's why irrigation efficiencies might be about
21 85 percent in Westlands.

22 MS. MESERVE: And, then, using your numbers
23 with a midpoint of the water demand of 4.25 acre-feet
24 per year, just going between the two numbers in give on
25 Line 15, if -- Sorry.

1 If we could pull up LAND-232, which is on the
2 thumb drive, first.

3 (Exhibit displayed on screen.)

4 MS. MESERVE: This is the permanent crop
5 detail from the Westlands Water District website that I
6 pulled down.

7 And it's tracking your testimony,
8 Mr. Gutierrez.

9 Do you see there, if you look at the far left
10 column in 2005, Westlands had about 88,000 acre-feet of
11 permanent tree -- permanent crops, and then you can see
12 by 2017, it was up to about 192,000 crops.

13 Is that consistent with your understanding?

14 WITNESS GUTIERREZ: I -- I mean, I -- This
15 doesn't look like a document that Westlands has
16 prepared and put on our website. I'm assuming this
17 information was taken from our crop data.

18 MS. MESERVE: Yes, it was.

19 I -- I believe I got it right off the
20 Westlands website, and if and when I submit it into
21 evidence, I would add the URL to the bottom of that,
22 and it certainly can be objected to if I can't
23 authenticate it.

24 But, just for purposes of our discussion, if
25 this is correct.

1 Now, going back to your numbers on Line 15 of
2 Page 23 in your testimony, if, say, there was 4.25
3 acre-feet average demand from this addition of
4 102,000 acres of permanent crops over the course of the
5 time period shown on this, then that hardened demand
6 would be around 433,000 acre-feet of water per year;
7 wouldn't it, Mr. Gutierrez?

8 WITNESS GUTIERREZ: I mean, your math is --
9 multiplication is probably correct.

10 But in my testimony, the example that I gave
11 for the 4 to 4 and a half acre-feet was specific to
12 permanent crops such as almonds.

13 So if you look at grapes, for example, the
14 applied water rate for grapes might be about 2 to 2 and
15 a half acre-feet per acre.

16 And, again, these are estimates and ranges.
17 Every farmer is different in their efficiencies, and
18 some might be more month efficient, some might be
19 slightly less efficient.

20 So that 4 -- Again, that 4 and 4 and a half
21 would not be a general application rate used for each
22 of these crop types.

23 So I -- I don't think that map works out for
24 this example.

25 MS. MESERVE: So, in general, though, the

1 addition of permanent -- acres of permanent crops in
2 the District would, in general, increase the water
3 demand under your example of these crops generally
4 requiring more water; isn't that true?

5 WITNESS GUTIERREZ: It depends if you're --
6 what types of crops you're converting.

7 If you're converting from tomatoes to, let's
8 say, grapes, then the applied water rate might be the
9 same.

10 If you're going from garlic or garbanzos to
11 almonds, then that would be a true statement.

12 But it really depends on the example that
13 you're -- you're providing or the types of crops that
14 you're comparing going from an annual to a permanent.

15 MS. MESERVE: And, in your opinion, do you
16 believe that the addition of permanent crops over the
17 course of the time period shown in the table has
18 increased water demand in Westlands?

19 WITNESS GUTIERREZ: Not necessarily, because
20 what farmers often do, if they're converting to
21 permanent crops, often they'll set aside or fallow land
22 to shift that water supply to the permanent crops.

23 So the overall demand might stay more or less
24 the same on the mass balance, if you look at our
25 service area.

1 But the permanent crops need water every
2 single year, that's correct. But to accomplish that
3 balance of demand, farmers might fallow land to move
4 that water supply to the crops that need it on an
5 annual basis. Or they may choose not to grow crop --
6 crops that are annual crops in a water-short year.

7 MS. MESERVE: And have you yourself conducted
8 or observed an analysis of this very issue about
9 whether there has been an overall increase in demand or
10 not from this crop shifting?

11 WITNESS GUTIERREZ: I mean, we track permanent
12 crops. But I -- No, I have not looked at the
13 individual crop water demand on an annual basis for
14 this time period. I looked at the hardening of that
15 event, though.

16 MS. MESERVE: Still on Page 23 of your
17 testimony on Page -- I'm sorry -- Line 11 and 12, you
18 state that the shift to permanent crops is a response
19 to the chronic shortage of water; is that correct?

20 WITNESS GUTIERREZ: Yes.

21 MS. MESERVE: Then on Page 17 and 18, you have
22 a table that shows allocations to the District ranging
23 from zero to 100 percent in various years; is that
24 correct?

25 WITNESS GUTIERREZ: Yes.

1 MS. MESERVE: If contract water can't be
2 provided in a given year, then isn't it a gamble to
3 have more permanent crops that can't be fallowed?

4 WITNESS GUTIERREZ: Not -- Not necessarily.

5 MS. MESERVE: And why not?

6 WITNESS GUTIERREZ: Because there are other
7 sources of water.

8 District staff on an annual basis procures
9 supplemental water for our water users. We also work
10 with the Authority to secure water for all the CVP
11 South-of-Delta Ex Service Contractors.

12 Water users individually will go out and
13 procure water on their own, also turn to groundwater
14 during times of water shortages to meet the crop water
15 demand.

16 So to say it's -- it's a gamble, you might
17 think running a business is a gamble, but I think as
18 long as you have staff like Frances working for
19 South-of-Delta Ex Service Contractors, we're confident
20 we can go out and find some water for our water users.

21 MS. MESERVE: And just, again, on this
22 response to the chronic shortage:

23 Why is adding permanent crops a response to a
24 chronic shortage, in your opinion?

25 WITNESS GUTIERREZ: Because water has gotten

1 more expensive. And my understanding is that the only
2 way somebody can stay in business is when they're
3 selling higher-value crops.

4 So to pay for the water, you have to grow
5 higher-value crops. You're not going to be able to pay
6 for that water growing garbanzos or -- or garlic or
7 tomatoes. I mean, those commodity prices have gone
8 down. Even the permanent crops, the commodity prices
9 have come -- have come down, also.

10 But you might be able to make it growing
11 almonds and pistachios. At these water prices, you're
12 going to go out of business trying to survive off
13 garlic or pasture.

14 MS. MESERVE: But, as you note, the permanent
15 crops can't be fallowed if the water doesn't become
16 available somehow.

17 WITNESS GUTIERREZ: That's right.

18 MS. MESERVE: Do you think that the historic
19 increase in permanent crops that we see in the table
20 increases pressure to divert water from the Delta to
21 fulfill the Westlands contract?

22 WITNESS GUTIERREZ: The increased pressure on
23 who?

24 MS. MESERVE: Increased pressure on the
25 Central Valley Project and the regulators of the

1 Central Valley Project.

2 WITNESS GUTIERREZ: I don't know if I can
3 answer that question.

4 There's more pressure on me to go out and buy
5 water for my water users, that's for sure.

6 MS. MESERVE: And, then, does Westlands put
7 more pressure on other people to -- to get that water
8 as a result?

9 WITNESS GUTIERREZ: I mean, I think we're -- I
10 think we're always looking to operate the Projects to
11 provide -- provide supply; right? More or less, I
12 mean, I think we're always in favor of operating
13 projects to provide water South of Delta.

14 MS. MESERVE: Going back to your testimony,
15 Mr. Gutierrez. On Page 15, Line 16, you mention
16 (reading):

17 ". . . The anticipated reduction in CVP
18 allocations (sic) from successive
19 regulatory decisions. . ."

20 So, you are concerned that deliveries from the
21 South Delta intakes may be further reduced; correct?

22 MR. O'HANLON: Objection: Mischaracterizes
23 the testimony.

24 The testimony is referring to anticipated
25 allocations going forward based on existing

1 regulations.

2 CO-HEARING OFFICE DODUC: Miss Meserve,
3 rephrase, please.

4 MS. MESERVE: So, are you concerned,
5 Mr. Gutierrez, about future reductions in allocations
6 that would reduce deliveries from the current South
7 Delta intakes?

8 WITNESS GUTIERREZ: Am I concerned? Yes.

9 MS. MESERVE: And on Page 21, Lines 9 and 10
10 of your testimony, you mention that the south -- that
11 the limits on South Delta exports (reading):

12 ". . . Guarantee that" the plant --
13 "Jones Pumping Plant . . . seldom
14 operates (sic) at maximum permitted
15 capacity."

16 Are you aware that there would be regulatory
17 limits placed on the proposed North Delta diversions
18 that are being discussed in this hearing?

19 WITNESS GUTIERREZ: No. Which -- Which North
20 of Delta diversions?

21 MS. MESERVE: The petitioned points of
22 diversion that are the subject of this hearing, the
23 California WaterFix.

24 WITNESS GUTIERREZ: Oh, okay. I'm sorry.
25 Am I aware that there would be --

1 MS. MESERVE: Regulatory --

2 CO-HEARING OFFICE DODUC: -- restrictions
3 placed on the California WaterFix diversions?

4 MS. MESERVE: Yes.

5 WITNESS GUTIERREZ: Like I said, I don't know
6 that for sure. I assume that's why we're here.

7 I don't know -- I guess I don't know what
8 those restrictions might be at this point.

9 MS. MESERVE: Have you heard, for instance, of
10 the minimum bypass flows, for instance, for the North
11 Delta diversions?

12 WITNESS GUTIERREZ: I've heard that term used,
13 yes.

14 MS. MESERVE: And have you heard about the
15 requirements to meet D-1641 water quality standards for
16 the North Delta diversions?

17 WITNESS GUTIERREZ: That specifically? No.

18 MS. MESERVE: Have you heard of the pulse flow
19 protections for fish that are within some of the fish
20 permits that have been issued for California WaterFix?

21 WITNESS GUTIERREZ: No.

22 MS. MESERVE: Do you believe that the North
23 Delta diversions would operate at their maximum
24 permitted capacity all of the time?

25 WITNESS GUTIERREZ: Would -- I -- I would

1 assume yes, but . . . when you say "maximum permitted
2 capacity," I'm assuming there would be seasonal
3 restrictions depending on hydrologic or existing flow
4 in the Sacramento River. So whatever is governing at
5 that time, I'm assuming California WaterFix would
6 operate to optimize deliveries during that time.

7 MS. MESERVE: So there would be regulatory
8 restrictions on the North Delta diversions somewhat
9 similar to what are on the South Delta diversions?

10 MR. O'HANLON: Objection: Lacks foundation
11 that -- It hasn't been established that Mr. Gutierrez
12 has any familiarity at all with the restrictions at the
13 North Delta diversions.

14 CO-HEARING OFFICE DODUC: He has said he does
15 not know what those might be.

16 Sustained.

17 MS. MESERVE: He was familiar with the minimum
18 bypass flows but --

19 CO-HEARING OFFICE DODUC: Well, ask that
20 specific requirement, then, if that's what you're
21 referring to, Miss Meserve.

22 MS. MESERVE: Certainly.

23 So, just keeping with the example of minimum
24 bypass flows at the North Delta diversions.

25 If those reduced . . . deliveries -- If those

1 minimum bypass flows were perceived to reduce
2 deliveries to Westlands, would Westlands challenge
3 those regulatory restrictions?

4 MR. O'HANLON: Objection on -- on many
5 grounds: Incomplete hypothetical; lacks foundation.

6 There's been nothing established that -- that
7 Westlands is even participating in this Project,
8 et cetera. There's no -- There's no conceivable way
9 that Mr. Gutierrez could answer that question.

10 CO-HEARING OFFICE DODUC: Sustained.

11 MS. MESERVE: Mr. Gutierrez, are you familiar
12 with the efforts of Westlands to try to reduce the
13 restrictions imposed by the Endangered Species Act on
14 the diversion of water from the South Delta?

15 MR. O'HANLON: Objection: Lacks foundation.

16 CO-HEARING OFFICE DODUC: Overruled. She's
17 only asking what he's aware of, so, to the best of your
18 knowledge.

19 WITNESS GUTIERREZ: Can you restate the
20 question.

21 MS. MESERVE: Are you aware of the efforts of
22 the District to try to reduce the restrictions imposed
23 by the Endangered Species Act on diversions of water
24 from the South Delta?

25 WITNESS GUTIERREZ: No. I think

1 everything . . .

2 Well, the only thing I'm familiar with is WIIN
3 Act and that was -- I don't think that -- I think that
4 was operating the Project without impacts to the ESA.

5 MS. MESERVE: Westlands Water District
6 supported the WIIN Act that was passed at the end of
7 2016; correct?

8 WITNESS GUTIERREZ: Correct.

9 MR. O'HANLON: Object on the grounds of
10 relevance. I think we're getting far beyond the scope
11 of the issues for this hearing.

12 CO-HEARING OFFICE DODUC: Miss Meserve, you're
13 response?

14 MS. MESERVE: These questions are relevant to
15 the historic actions of this District with respect to
16 regulatory restrictions at the South Delta diversions.

17 We've heard in the testimony on Fri -- and on
18 Friday that there is a hope that the Petitioned Project
19 would change those restrictions.

20 So I think it's relevant what the expectation
21 is with respect to this District as to how the
22 Petitioned Project would be regulated.

23 CO-HEARING OFFICE DODUC: I'm not sure I
24 follow.

25 MS. MESERVE: Basically what I'm getting at is

1 that history is a good indicator of future action.

2 There's a -- The District has -- And I think
3 we've gotten -- The testimony discusses, and
4 Mr. Gutierrez has discussed, that Westlands does try to
5 minimize the restrictions on the current pumps.

6 So the questions are about how the future
7 operations, if this Project is -- the Petitioned
8 Project is granted, would be viewed by Westlands,
9 assuming it participated.

10 CO-HEARING OFFICE DODUC: With that assumption
11 in mind, I will allow you some leeway but, of course,
12 Mr. Gutierrez can only answer to the extent that he
13 knows.

14 MS. MESERVE: Just going to the issue of
15 pressure to divert from the existing pumps in the South
16 Delta first.

17 Mr. Gutierrez, are you aware that Westlands
18 challenged the 2009 Biological Opinion of the Fish and
19 Wildlife Service for the South Delta in -- in court?

20 WITNESS GUTIERREZ: Yes.

21 MS. MESERVE: And are you aware that Westlands
22 in July of 2016 filed a lawsuit to compel Reclamation
23 to make changes to measures designed to protect
24 endangered species for that -- for -- also for the
25 South Delta operations?

1 MR. O'HANLON: Objection: Lacks foundation.

2 CO-HEARING OFFICE DODUC: What sort of
3 foundation are you --

4 MR. O'HANLON: Well --

5 CO-HEARING OFFICER DODUC: -- looking for,
6 Mr. O'Hanlon.

7 MR. O'HANLON: -- what's -- what is it that
8 she's referring to? I just -- This is a very nebulous
9 description of some action. I have no idea what it is.

10 And, again, I think this entire line of
11 question is very speculative as to, you know, what
12 positions Westland would take assuming lots of things,
13 including participation in the Project.

14 I don't see how it has relevance to Part -- to
15 the Part 2 issues.

16 CO-HEARING OFFICE DODUC: I acknowledge it's
17 speculative in nature.

18 Perhaps you could be more specific,
19 Miss Meserve.

20 MS. MESERVE: I think we've already
21 established with Mr. Gutierrez that Westlands has taken
22 various actions, including the 2009 lawsuit, and I was
23 just referencing the lawsuit filed in 2016 against
24 Reclamation to try to lessen restrictions applicable to
25 the South Delta pumps.

1 CO-HEARING OFFICE DODUC: Are you aware of
2 that 2016 action?

3 WITNESS GUTIERREZ: I'm not.

4 MS. MESERVE: Does Westlands support the
5 passage of H.R. 23, which would remove State law
6 protections applicable to Federal Water Projects?

7 WITNESS GUTIERREZ: I don't think my Board's
8 acted on that.

9 MS. MESERVE: Do you believe that the current
10 restrictions, Mr. Gutierrez, on the South Delta are
11 excessive for -- in -- in terms of environmental
12 requirements?

13 CO-HEARING OFFICE DODUC: Oh, Miss Morris is
14 running.

15 MS. MORRIS: Thank you. Stefanie Morris,
16 State Water Contractors.

17 I'm going to object: It's speculative; it
18 calls for a legal conclusion.

19 In addition, this whole line of questioning is
20 irrelevant because what Mr. Gutierrez thinks does not
21 affect the regulatory requirements that are -- were
22 required under the Endangered -- Endangered Species Act
23 or any Federal law.

24 CO-HEARING OFFICE DODUC: He is here
25 representing his agency. My understanding was

1 Miss Meserve was trying to solicit information about
2 potential future action, recognizing it is speculative
3 at this point.

4 MS. MORRIS: May I -- In addition, it
5 doesn't -- again, it doesn't matter what Westlands
6 Water District thinks. The Bureau of Reclamations
7 operates the CVP, not Westlands Water District.

8 CO-HEARING OFFICE DODUC: Your response,
9 Miss Meserve.

10 MS. MESERVE: I believe my questions are
11 around the issue of, if Westlands is fighting the
12 environmental restrictions of the current South Delta
13 pumps, what -- how are they likely to respond to
14 restrictions if there were new North Delta diversions?
15 And that seems relevant to the hearing issues in terms
16 of public interest, as discussed previously.

17 CO-HEARING OFFICE DODUC: And you stated that
18 before, which is why I allowed the line of questioning
19 with the limitation that, obviously, Mr. Gutierrez does
20 not have all the information at his fingertip and
21 cannot speculate to what his District or what
22 Reclamation might do in the future.

23 So it is -- I -- I acknowledge the relevancy
24 of your line of questioning. However, I -- I would
25 caution you in terms of spending too much time here,

1 since it's obvious there's very little he can provide.

2 MS. MESERVE: Understood.

3 So shall I go back to the question I had
4 posed?

5 CO-HEARING OFFICE DODUC: I've forgotten what
6 that question was, so, yes, please.

7 MS. MESERVE: Thank you.

8 So if the North Delta diversions that are the
9 subject of this hearing were constructed, is it
10 possible that Westlands would view environmental
11 restrictions on diversions from those -- those points
12 to be excessive just as has been argued with respect to
13 the existing South Delta pumps?

14 MR. O'HANLON: Objection: It calls for
15 complete speculation.

16 CO-HEARING OFFICE DODUC: I'm going to have to
17 sustain that.

18 Even we don't know yet what those restrictions
19 might be.

20 MS. MESERVE: Mr. Gutierrez, if there were
21 restrictions that unduly reduced deliveries in -- in
22 your view, as the Assistant General Manager, from the
23 North Delta, would you be inclined to try to challenge
24 those restrictions?

25 MR. O'HANLON: Objection: Again, calls for

1 speculation, and -- and it's an incomplete
2 hypothetical.

3 And what Mr. Gutierrez's position would be
4 would not be the position that would decide what
5 Westlands Water District would do, nor what any
6 relevant agencies involved in operating the Project
7 would do.

8 CO-HEARING OFFICE DODUC: Sustained.

9 MS. MESERVE: Now, going back to the existing
10 South Delta operations that is discussed in your
11 testimony.

12 Mr. Gutierrez, do you think there has been a
13 grassroots response to reductions in allocations and
14 deliveries to the Westlands service area?

15 MR. O'HANLON: Objection: Vague and ambiguous
16 what is meant by "grassroots response."

17 MS. MESERVE: Grassroots movements use
18 collective action from the local level to change local,
19 regional or national policies.

20 That's what I mean.

21 WITNESS GUTIERREZ: Do I think there's been a
22 grassroots -- grassroots response by Westlands?

23 MS. MESERVE: No. In general, do you think
24 there's been a grassroots response in your -- in
25 Westlands' geographic area to reductions in deliveries.

1 MR. O'HANLON: Again, object on grounds of
2 relevance.

3 CO-HEARING OFFICE DODUC: Miss Meserve.

4 MS. MESERVE: I'll -- I'll keep moving.

5 Could we put up LAND-236.

6 (Exhibit displayed on screen.)

7 MS. MESERVE: Are you familiar, Mr. Gutierrez,
8 with this article from the New York Times from the end
9 of 2015 regarding Westlands paying over \$1 million to a
10 New York advertising company to create an ad campaign
11 to reduce environmental protections?

12 WITNESS GUTIERREZ: I've never read this
13 article.

14 MS. MESERVE: Are you aware from your position
15 as Assistant General Manager with respect to budgets
16 that Westlands paid a Latino front group more than
17 \$14,000 a month to testify against ESA and Water Board
18 restrictions?

19 MR. O'HANLON: Objection: Lacks foundation.

20 Again, it's not relevant to the Part 2 issues.

21 CO-HEARING OFFICE DODUC: Miss Meserve, I'm
22 strongly encouraging you to move on.

23 MS. MESERVE: Just . . .

24 Could we look at LAND-237, please.

25 (Exhibit displayed on screen.)

1 MS. MESERVE: And go to the 12th page, which
2 is the final month.

3 (Exhibit displayed on screen.)

4 MS. MESERVE: This is the budget of Westlands
5 from 2015.

6 Are you familiar with the expenditures to the
7 America Hispanic Consulting Group?

8 WITNESS GUTIERREZ: That was not a consultant
9 that I was managing.

10 MS. MESERVE: And are you familiar with the
11 payments made to Brownstein, Hyatt, Farber and Schrack
12 for lobbying?

13 WITNESS GUTIERREZ: That's not a consultant
14 that I manage.

15 MS. MESERVE: Now, moving on to -- On Pages 23
16 through 25 of your testimony, you discuss concerns with
17 groundwater, loss of permanent crops, and soil salinity
18 if the WaterFix was not put in place to increase
19 deliveries.

20 Are you aware of evidence presented in this
21 hearing that makes similar points with respect to
22 concerns of agriculture in the Delta from construction
23 and operation of the California WaterFix?

24 WITNESS GUTIERREZ: No. I'm not aware of any
25 other testimonies.

1 MS. MESERVE: Are you aware that the Delta
2 Tunnels Project would result in permanent conversion of
3 over 5,000 acres or -- I'm sorry -- of 3909 --

4 (Timer rings.)

5 MS. MESERVE: -- of prime farmland in the
6 Delta?

7 WITNESS GUTIERREZ: I'm not aware of that.

8 CO-HEARING OFFICE DODUC: How much additional
9 questioning do you have, Miss Meserve?

10 MS. MESERVE: I'm almost complete with my
11 questions for Mr. Gutierrez, and then I probably have
12 about 20 minutes of questions for Dr. Shires.

13 CO-HEARING OFFICE DODUC: I would encourage
14 you to move quickly to Dr. Shires.

15 MS. MESERVE: Yes.

16 CO-HEARING OFFICE DODUC: Let's give
17 Miss Meserve another 15 minutes. That would be her
18 estimated 45 to 60 minutes.

19 MS. MESERVE: Moving on to Dr. Shires now,
20 which is -- the testimony is Westlands 18.

21 On 20 -- Page 25 and 26 of your testimony,
22 Dr. Shires, you discuss the fact that conversion to
23 permanent crops creates fewer jobs per acre.

24 And -- And why is that?

25 WITNESS SHIRES: It has to do with the labor

1 needed to process crops at different times in the life
2 cycle of the crop.

3 MS. MESERVE: And would you say that the
4 harvesting is more mechanized with respect to the
5 permanent crops in general?

6 WITNESS SHIRES: More mechanized than what?

7 MS. MESERVE: Than the row crops, other crops
8 that might be grown.

9 WITNESS SHIRES: Than some other crops, yes.

10 MS. MESERVE: Whose responsibility should it
11 be, in your opinion, to make up for jobs lost by
12 decreasing acreages of row crops and increasing
13 acreages of permanent crops?

14 WITNESS SHIRES: Whose responsibility?

15 MS. MESERVE: Yes.

16 WITNESS SHIRES: That's a very difficult
17 question to answer.

18 The causes of those changes are re -- related
19 to a myriad of events. I don't know that there's any
20 person who's responsible for making those up.

21 My analysis simply points to the consequences
22 of what happens.

23 MS. MESERVE: And on -- let's see -- Page 20
24 of your PowerPoint, which is Westlands 19, you point
25 out that childhood obesity is a -- is a -- actually, I

1 guess, overall obesity is a -- is a problem.

2 Is -- Are you indicating in your testimony
3 that you think conversion to permanent crops is
4 exacerbating that problem, or how -- how -- what's the
5 relationship?

6 WITNESS SHIRES: I do not at any point in my
7 testimony make a linkage between the conversion of
8 permanent crops to obesity.

9 MS. MESERVE: On Page 27 of your testimony,
10 you discuss that Westlands provides 3.1 percent of the
11 national production of fruits and vegetables.

12 Are you referring to an economic value or a
13 quantity?

14 WITNESS SHIRES: That would be the percentage
15 of the overall economic output in that sector. And the
16 3.1 percent only refers to vegetable and melon crops.

17 MS. MESERVE: And then 3.4 percent is for
18 fresh fruit and nuts.

19 And that's an economic output, not of volume;
20 correct?

21 WITNESS SHIRES: Correct. However, the two
22 things are related.

23 MS. MESERVE: And do you have anything in your
24 testimony that shows the relationship between the
25 economic output and the volume of these crops available

1 for consumption?

2 WITNESS SHIRES: No.

3 MS. MESERVE: Just looking at the 3.4 percent
4 that is applicable to fresh fruit and nuts, isn't it
5 true that much of the nut crop grown in Westlands is
6 exported to other countries and not available to the
7 U.S. market?

8 WITNESS SHIRES: I'm not sure what you mean by
9 "not available."

10 The production is available for export and for
11 internal consumption.

12 MS. MESERVE: And do you know what percent of
13 the nut crop from Westlands are exported versus sold in
14 the U.S.?

15 WITNESS SHIRES: I don't have those figures in
16 front of me at the moment.

17 MS. MESERVE: But the amount of fruit and nuts
18 from Westlands actually sold in the U.S. is less than
19 the 3.4 percent of production you mentioned; correct?

20 WITNESS SHIRES: That is true.

21 MS. MESERVE: You're not sure how much less?

22 WITNESS SHIRES: I -- I don't have the exact
23 figures in front of me.

24 MS. MESERVE: On Page 30 of your testimony,
25 Lines 12 through 14, you mention that California's

1 production of healthy fruit and vegetables is a
2 critical component of reversing destructive health
3 trends in general.

4 What is the relationship between agricultural
5 produce supplies from Westlands and reducing obesity
6 directly?

7 WITNESS SHIRES: Well, first, you
8 characterized my testimony as saying that it -- that
9 it -- that it only reverses it. The statement is that
10 it slows and possibly reverses.

11 The mechanism about agriculture production is,
12 if you reduce agricultural production in Westlands or
13 in California, across the state, that it will drive the
14 prices of those goods up, which will make them less
15 accessible and available to households.

16 And the fresh fruits and produce by --
17 recognized by all dieticians is a critical component of
18 helping reduce obesity.

19 So by restricting agriculture production in
20 Westlands, in that region in the California Central
21 Valley, you end up making that more difficult to do
22 because produce and vegetables are less accessible.

23 MS. MESERVE: But you haven't done any
24 specific calculations about a specific relationship
25 between these two factors; have you?

1 WITNESS SHIRES: I have not.

2 MS. MESERVE: On Page 34 of your testimony,
3 Lines 18 through 19, you begin a discussion about
4 higher standards of accountability.

5 On -- And then on Page 35, you mention that
6 environmental regulations are often lacking in non-U.S.
7 markets; is that correct?

8 WITNESS SHIRES: I do, yes.

9 MS. MESERVE: But aren't the environmental
10 restrictions referenced in your testimony on Page 13,
11 for instance, also designed to ensure environmental
12 impacts are minimized?

13 WITNESS SHIRES: What specific reference on
14 Page 13 do you mean?

15 MS. MESERVE: I apologize.

16 Just going back to Page 13 of your testimony
17 on Line 10, for instance.

18 You mention the combined state and regulatory
19 actions hampering the functioning of the system.

20 And then on Page 18, Line 12, you discuss
21 State and Federal regulatory limits.

22 So my question is: Aren't the regulatory
23 limits on the current -- that affect current
24 allocations to Westlands also designed to produce
25 minimal impacts on the environment, like you mention on

1 Page 35, with respect to other regulations?

2 WITNESS SHIRES: Those regulations are part of
3 the portfolio that I refer to in that part of the
4 testimony where I talk about the fact that those are
5 often lacking in other places.

6 In terms of the specific regulations you're
7 talking about in those other instances, we're talking
8 about regulations that sometimes affect water flow.

9 In the case of this section, I think the --
10 the discussion is broader.

11 MS. MESERVE: But some of the regulations that
12 you appear to criticize on Pages 13 and 18, those do
13 minimize impacts on the environment and ecosystems;
14 don't they?

15 WITNESS SHIRES: I think that mischaracterizes
16 my description of the regulations.

17 I'm not criticizing the regulations. I'm
18 describing their impact.

19 MS. MESERVE: So is it your opinion that the
20 regulations that you discuss on Page 35 are positive,
21 whereas the ones that you mentioned earlier in your
22 testimony are unnecessary?

23 WITNESS SHIRES: Again, I believe that
24 mischaracterizes my testimony on the earlier pages. I
25 nowhere say these are unnecessary regulations.

1 My testimony on Page 35 is talking about the
2 overall regulatory scheme in the United States and its
3 impact on the environment.

4 MS. MESERVE: And part of that overall
5 regulatory scheme would be the current Endangered
6 Species Act and other restrictions on allocations from
7 the South Delta pumps; correct?

8 WITNESS SHIRES: That is correct. But I take
9 no specific positions on any specific provisions of
10 those regulations, other than to point out that they
11 exist and that they are something that's lacking in
12 other places.

13 MS. MESERVE: Thank you.

14 No further questions.

15 CO-HEARING OFFICE DODUC: Thank you,
16 Miss Meserve.

17 I'll now ask Mr. Ruiz to come up, and we will
18 take a break upon completion of Mr. Ruiz's
19 cross-examination.

20 MR. RUIZ: Good morning. Dean Ruiz, Group 21,
21 for the South Delta Water Agency parties.

22 And I have about 20 minutes, 10 minutes
23 probably for Mr. Gutierrez, five for Dr. Shires, just a
24 couple for Miss Mizuno.

25 I'll start with Mr. Gutierrez.

1 CROSS-EXAMINATION BY

2 MR. RUIZ: Referring you to your testimony,
3 which is Westlands Water District 15, if we can look at
4 Page 3 --

5 (Exhibit displayed on screen.)

6 MR. RUIZ: -- Line 18.

7 And I'm not going to belabor this, but it has
8 to do with your comments with regard to area-of-origin
9 principles, and I know there's quite a bit of testimony
10 about that today, so I just have a couple of questions.

11 You're aware that there are actually
12 area-of-origin statutes; is that correct?

13 WITNESS GUTIERREZ: Yes.

14 MR. RUIZ: And what is your understanding of
15 where the area of origins are for the water that
16 Westlands exports from the Delta?

17 WITNESS GUTIERREZ: I don't know exactly the
18 area of origin for those exports.

19 MR. RUIZ: Do you know if the Delta is an area
20 of origin?

21 WITNESS GUTIERREZ: No.

22 MR. RUIZ: You don't know, or you don't think
23 it is?

24 WITNESS GUTIERREZ: I don't know if it's an
25 area -- that it's defined as an area of origin.

1 MR. RUIZ: Thank you.

2 Do you know -- Or what is your understanding
3 if Westlands is an area-of-origin Contractor relative
4 to the water it receives from the Delta?

5 WITNESS GUTIERREZ: I don't know if it -- how
6 it's defined for Westlands.

7 MR. RUIZ: Okay. Referring you, again, to
8 Page 3, Line 21, you say that (reading):

9 "Different allocations are made to
10 Contractors in one region versus another
11 only in circumstances where Reclamation
12 is (sic) unable to (sic) because of
13 regulatory constraints to move CVP water
14 from one region to another."

15 And I don't remember you getting into that on
16 Friday, but if you did, forgive me.

17 But my question is: What do you specifically
18 mean by that?

19 WITNESS GUTIERREZ: I think the easiest
20 example to give is the export restrictions at Jones
21 Pumping Plant and the effects that that has had on
22 South-of-Delta CVP acts of its contract allocation.

23 MR. RUIZ: That's what you mean by that?

24 WITNESS GUTIERREZ: Yes.

25 MR. RUIZ: Again, looking at Page 3, Line --

1 Line 24, you say (reading):

2 "Unlike other (sic) water agencies
3 with . . . abundant supplies, Westlands
4 must . . . ration . . . to its
5 farmers . . ."

6 What's your understanding of the
7 characterization of Westlands -- of the water rights
8 that Westlands receives from the Delta relative to
9 whether or not they are considered to be junior water
10 rights or senior water rights?

11 MR. O'HANLON: Objection: Lacks foundation;
12 calls for a legal conclusion.

13 CO-HEARING OFFICE DODUC: Mr. Gutierrez.

14 I'm sorry. Go ahead, Mr. Ruiz.

15 MR. RUIZ: I'm just asking for his opinion,
16 his understanding.

17 CO-HEARING OFFICE DODUC: That's what I
18 thought.

19 Do you have an opinion?

20 WITNESS GUTIERREZ: I don't have an opinion on
21 junior versus senior on water rights.

22 MR. RUIZ: Okay. I want to take you over to

23 Page 10 of your testimony --

24 (Exhibit displayed on screen.)

25 MR. RUIZ: -- at about Line 19.

1 (Exhibit displayed on screen.)

2 MR. RUIZ: And you say (reading):

3 "In 2016, Reclamation did not pump
4 sufficient water from the Delta, even
5 though excess water was flowing through
6 the Delta during certain periods."

7 What exactly do you mean by "excess water"?

8 WITNESS GUTIERREZ: During certain hydrologic
9 periods, the Delta's defined as being in excess
10 conditions. That's what I meant.

11 MR. RUIZ: Do you know if that water that you
12 were referring to was in excess of public trust needs
13 of the species whose habi -- whose habitat is found in
14 the Delta?

15 WITNESS GUTIERREZ: I don't know that.

16 MR. RUIZ: Do you know if that water is in
17 excess of the public trust needs of species whose
18 habitat is found in the bay, San Francisco Bay?

19 WITNESS GUTIERREZ: I don't know that, either.

20 MR. RUIZ: Do you know if that water you're
21 referring to as excess is an excess of water needed to
22 flush salts out of the root zones in the South Delta?

23 WITNESS GUTIERREZ: I don't know that, either.

24 MR. RUIZ: Do you know if there are Temporary
25 Urgency Permits in place in 2016?

1 WITNESS GUTIERREZ: I don't know if there were
2 TUCPs in place at that time.

3 MR. RUIZ: Looking at Page 22 of your
4 testimony -- And there's been quite a bit of talk about
5 this, so I won't go through all of that again. But
6 looking at about Line 9 --

7 (Exhibit displayed on screen.)

8 MR. RUIZ: -- where you had talked about
9 the -- if CDF (reading):

10 ". . . CWF can be part of a comprehensive
11 strategy to restore Westland --
12 Westlands' CVP allocation to an average
13 of 70 percent . . ."

14 You remember your testimony about that on
15 Friday?

16 WITNESS GUTIERREZ: Yes.

17 MR. RUIZ: And I think that you said that you
18 just chose that number hypothetically; is that -- is
19 that correct?

20 WITNESS GUTIERREZ: As -- I'm not sure if I
21 would use the word "hypothetically." I mean, I would
22 use it as an example.

23 MR. RUIZ: Why -- Why that figure? Why that
24 percentage? Why not 60 or 50 or 100?

25 WITNESS GUTIERREZ: I guess when you look at

1 the mass balance of supplies of what the CVP allocation
2 at 70 percent could provide, plus the sustainable yield
3 of our site subbasin, groundwater subbasin, managed
4 sustainably, water that we can procure on the open
5 market, water that water users can procure on the open
6 market, when you look at that overall mass balance, it
7 could potentially support enough water for us to grow
8 crops in Westlands and minimize the amount of
9 fallowing.

10 MR. RUIZ: The 70 percent figure you're
11 talking -- you're speaking of.

12 WITNESS GUTIERREZ: Mixed with other sources
13 of water.

14 MR. RUIZ: And looking at Page 16 of your
15 testimony --

16 (Exhibit displayed on screen.)

17 MR. RUIZ: -- you provided a graph.

18 And isn't the -- The 70 percent figure, isn't
19 that consistent with mid-'90s level in terms of
20 Westlands' CVP allocation?

21 WITNESS GUTIERREZ: Looks -- Yeah, looks
22 correct.

23 MR. RUIZ: Did that have anything to do with
24 why you chose the 70 percent as a -- as a basis for
25 discussion?

1 WITNESS GUTIERREZ: No.

2 MR. RUIZ: Has the water rights upon which
3 Westlands received its CVP allocations changed or, I
4 should say, been enhanced since the mid-'90s?

5 MR. O'HANLON: Objection: Lacks foundation;
6 calls for legal conclusion.

7 CO-HEARING OFFICE DODUC: Are you even
8 familiar with the water rights --

9 WITNESS GUTIERREZ: No.

10 CO-HEARING OFFICE DODUC: No? Okay.

11 MR. RUIZ: Do you know how many acres in
12 Westlands have been converted to permanent crops since
13 the mid-'90s?

14 WITNESS GUTIERREZ: Since the mid-'90s?

15 MR. RUIZ: Yes.

16 WITNESS GUTIERREZ: No. No.

17 MR. RUIZ: Do you know -- have -- Since 2000,
18 do you know?

19 WITNESS GUTIERREZ: I think that -- Well, the
20 example was provided in the last cross; right? If I
21 could look back at that.

22 MR. RUIZ: You know what? That's okay. I --
23 I don't want to have that repeated.

24 My question was really if you know since the
25 mid-'90s and you said you don't know; right?

1 WITNESS GUTIERREZ: No.

2 MR. RUIZ: And you talked a lot about it on
3 Friday with regard to this 70 percent as being part of
4 a -- a comprehensive strategy, if combined with a
5 comprehensive strategy that could restore Westlands'
6 allocation to a level that you would deem, I guess,
7 sustainable.

8 How dependent would you say overall is that
9 strategy? How dependent is that on the 70 percent
10 allocation versus -- versus the other parts of that
11 strategy?

12 If you -- If you could assign a percentage to
13 it or a proportion of it.

14 WITNESS GUTIERREZ: I -- I don't think I
15 understand the question. Can you --

16 MR. RUIZ: Well --

17 WITNESS GUTIERREZ: -- rephrase it?

18 MR. RUIZ: -- you say it's part of an overall
19 strategy.

20 And how -- how much of that overall strategy
21 involves the allocation of Westlands' historic
22 allocation being returned to 70 percent?

23 WITNESS GUTIERREZ: Why 70 percent?

24 MR. RUIZ: About 70 percent?

25 WITNESS GUTIERREZ: That's -- I mean, I guess

1 in the example that I gave, I'm assuming that -- the
2 CVP allocation of about 70 percent in that overall mass
3 balance calculation.

4 CO-HEARING OFFICE DODUC: Mr. Ruiz, do you
5 mean to ask what percentage Mr. Gutierrez would place
6 on the California WaterFix Project --

7 MR. RUIZ: That's what I'm --

8 CO-HEARING OFFICE DODUC: -- contributing to
9 that 70 percent?

10 MR. RUIZ: Thank you. That's what I was
11 trying to get.

12 WITNESS GUTIERREZ: Oh. You know, I was
13 looking at CVP overall. I didn't break out a
14 contribution from the Cal WaterFix.

15 MR. RUIZ: Okay. Do you agree that exports to
16 South-of-Delta CVP Contractors are limited to water
17 that is -- that is surplussed to the current needs of
18 the beneficial users in the area of origin?

19 MR. O'HANLON: Objection: Lacks foundation;
20 calls for legal conclusion.

21 CO-HEARING OFFICE DODUC: I'm going to
22 overrule to the extent, Mr. Gutierrez, that you know.

23 WITNESS GUTIERREZ: I -- Can you . . . Can
24 you repeat that question?

25 MR. RUIZ: Sure.

1 Do you agree that exports to South-of-Delta
2 CVP Contractors are limited to water that is surplussed
3 to the current needs of the beneficial users in the
4 area of origins from which the water is derived?

5 WITNESS GUTIERREZ: I don't know that.

6 MR. RUIZ: A quick couple questions or several
7 questions for Dr. Shires at this point.

8 If we can pull up his testimony.

9 (Exhibit displayed on screen.)

10 MR. RUIZ: Dr. Shires, I just had mentioned or
11 talked to Mr. Gutierrez about his testimony.

12 Looking at Page 12 of Mr. Gutierrez's
13 testimony, it showed a crop acreage report for 2017 and
14 it showed there had been -- there was 88,000 acres of
15 almonds in 2017 within Westlands.

16 Do you recall that? Are you familiar with
17 that?

18 WITNESS SHIRES: I remember -- I remember that
19 from prior testimony this morning.

20 MR. RUIZ: Do you know how much of that
21 acreage has been converted since the mid-'90s into
22 almonds?

23 WITNESS SHIRES: I don't have the detailed
24 numbers in front of me.

25 MR. RUIZ: Looking at Page 20 of your

1 testimony, about Line 18.

2 (Exhibit displayed on screen.)

3 MR. RUIZ: You say that the transition by
4 Westland Water District farmers to higher-margin crops
5 is accelerated and amplified by the recent drought.

6 Westlands' Water District farmers are in the
7 business to make as much money as possible; correct?

8 WITNESS SHIRES: I would assume that's the
9 case.

10 MR. RUIZ: And the higher-margin crops or,
11 rather, the intent of the higher-margin crops you
12 referenced is to result in the most profit possible;
13 correct?

14 WITNESS SHIRES: I -- That's the definition of
15 higher margin.

16 MR. RUIZ: And if the -- these permanent crops
17 that you've talked about don't receive water, they die.
18 I mean, in other words, your indication is that,
19 logically, they can't be fallow; correct?

20 WITNESS SHIRES: That is correct.

21 MR. RUIZ: And you --

22 WITNESS SHIRES: Actually, that -- that's not
23 completely correct.

24 MR. RUIZ: Okay. Go on.

25 WITNESS SHIRES: You can -- You can do

1 structures.

2 MR. RUIZ: You can do what?

3 WITNESS SHIRES: You can take trees out of
4 production --

5 MR. RUIZ: Sure. But in order --

6 WITNESS SHIRES: -- that you would normally
7 fallow.

8 MR. RUIZ: But in order to -- To keep trees in
9 production, the ones that you're going to keep in
10 production have to have water or they die, obviously.

11 WITNESS SHIRES: Correct.

12 MR. RUIZ: In your professional opinion and
13 based on your background, do you believe it's wise
14 economic policy or wise economic choice for Westlands
15 Water District to significantly add to their permanent
16 crops while their water allocations have been
17 decreasing?

18 WITNESS SHIRES: I -- I'm not aware that
19 Westlands actually makes crop decisions.

20 MR. RUIZ: Okay. How about Westlands'
21 farmers?

22 WITNESS SHIRES: The decision of what crops to
23 plant is a combination of margins, resource
24 availability, labor availability, you know, whether
25 that land has been fallowed recently, and a whole range

1 of things. I mean, in recent years, I believe the
2 price of water has driven some of that economic
3 decision to force them to pursue higher economic crops.

4 But the wisdom or non-wisdom of those crop
5 decisions is something the farmers live with and some
6 of them go out of business and some of them don't.

7 MR. RUIZ: Looking at Page 25 of your -- I'm
8 sorry -- 26 of your testimony --

9 (Exhibit displayed on screen.)

10 MR. RUIZ: -- looking at Lines 5 through 6.

11 You reference the fact that, as trees mature,
12 the intensity and demand for labor could decline over
13 time; right?

14 WITNESS SHIRES: Right.

15 MR. RUIZ: Isn't it true that the need for
16 labor for tree crops and wine grapes is, in fact,
17 significantly less than is needed for the farming of
18 row and annual crops?

19 WITNESS SHIRES: Yes and no.

20 Initially, tree crops require significant
21 labor, and then over time that labor demand goes down,
22 whereas row crops have a more level labor demand on an
23 annual basis.

24 MR. RUIZ: Would you agree that, after the
25 third year of the planting of an almond orchard that

1 the amount of labor decreases significantly relative to
2 what's needed for the first three years of that -- to
3 tend to that orchard?

4 WITNESS SHIRES: Yes.

5 MR. RUIZ: Do you have an understanding of how
6 much water will cost per acre-foot for Westlands'
7 farmers if the WaterFix is implemented?

8 WITNESS SHIRES: I do not.

9 MR. RUIZ: Do you have an understanding of
10 what they pay on average per acre-foot for water now?

11 WITNESS SHIRES: Today?

12 MR. RUIZ: Yeah.

13 WITNESS SHIRES: No. Remember, the study was
14 done in 2015-2016.

15 MR. RUIZ: Do you know if it's different today
16 than it was in 2015 or 2016? I know -- I understand
17 you don't know the exact dollar amount but . . .

18 WITNESS SHIRES: I -- No, I don't know.

19 MR. RUIZ: Looking at Page 6 of your
20 testimony.

21 (Exhibit displayed on screen.)

22 MR. RUIZ: I think it's Figure -- Figure 3. I
23 think it was also a PowerPoint slide, maybe PowerPoint
24 Slide 7, but we can stick with the testimony.

25 This slide shows decreasing median household

1 income between 2011 and 2014 as reported by the U.S.
2 Census Bureau; correct?

3 WITNESS SHIRES: Correct.

4 MR. RUIZ: Why does the table stop at 2014?

5 WITNESS SHIRES: Again, the study was
6 completed in 2016 and it was the most recent year
7 available.

8 MR. RUIZ: Are you aware of whether or not
9 household income in Fresno and Kings County increased
10 in 2015 and 2016 relative to the 2011 through 2014
11 period?

12 WITNESS SHIRES: I'm not aware of 2016s.

13 MR. RUIZ: What about 2015?

14 WITNESS SHIRES: 2015 is the last year for
15 which data are available. And it remained -- It lipped
16 up slightly.

17 MR. RUIZ: By "slightly," what do you mean by
18 that?

19 WITNESS SHIRES: Fresno County, for example,
20 was in the high 45,000 range, about 45,900.

21 MR. RUIZ: But you don't -- you didn't check
22 on 2016?

23 WITNESS SHIRES: It's not available.

24 MR. RUIZ: The increase in 2015 you mentioned,
25 2015 was also a year when there was -- described the

1 following in Westlands of having been at a high level;
2 is that correct?

3 WITNESS SHIRES: Yes.

4 MR. RUIZ: Just a couple questions for . . .

5 Oh, I'm sorry, Dr. Shires, I have just a
6 couple other quick questions.

7 Have you done a benefit cost analysis of the
8 CWF H3+ scenario which would include the benefits and
9 costs to all California beneficial users?

10 WITNESS SHIRES: I have not.

11 MR. RUIZ: Are you aware of anyone who has
12 done that study, that analysis?

13 WITNESS SHIRES: I haven't seen a complete
14 analysis, no.

15 MR. RUIZ: All right. Also, your testimony
16 emphasizes the benefits resulting from water delivered
17 to Westlands and other San Luis and Delta-Mendota
18 entities.

19 Have you examined the cost or detriments
20 resulting from the export of water from the CVP pumping
21 facilities in the Southern Delta?

22 WITNESS SHIRES: First, I only looked at the
23 impacts on Westlands in my analysis. But I have not
24 looked at the -- I have not looked at that.

25 MR. RUIZ: You haven't looked at anything

1 outside of that analysis.

2 WITNESS SHIRES: Correct.

3 MR. RUIZ: Miss Mizuno, are you aware of
4 any -- any modeling of the CWF H3+ scenario that
5 segregates the amount of new yield, i.e., the
6 additional annual averages, annual deliveries for CWF
7 as compared to the No-Action Alternative that will
8 indicate how much water will go to CVP South-of-Delta
9 Contractors?

10 WITNESS MIZUNO: I am aware there are modeling
11 that were done but I don't have the details of any of
12 the results of the modeling.

13 MR. RUIZ: In your view, is knowledge of how
14 much new yield would go to CVP South-of-Delta
15 Contractors necessary for CVP South-of-Delta -- Delta
16 Contractors to decide if they will participate in CWF?

17 WITNESS MIZUNO: Can you repeat the question,
18 please.

19 MR. RUIZ: Yes.

20 In -- In your -- In your opinion, based on
21 your experience, is knowledge of how much new yield
22 will go to CVP South-of-Delta Contractors necessary --
23 is that necessary for CVP South-of-Delta Contractors to
24 know in order to decide if they will ultimately
25 participate in the CWF?

1 WITNESS MIZUNO: Yes.

2 MR. RUIZ: Do you have an expectation as to
3 when you will have that information?

4 WITNESS MIZUNO: I do not have an expectation.
5 (Timer rings.)

6 MR. RUIZ: I just have a couple of other
7 questions.

8 CO-HEARING OFFICE DODUC: (Nodding head.)

9 MR. RUIZ: And this is for anybody on the
10 panel.

11 Do you -- Actually, it's for each of you but
12 it's the same question.

13 Do you allege that Westlands or the San Luis
14 and Delta-Mendota Water User Authority will suffer
15 injury for the implementation of the California
16 WaterFix?

17 WITNESS MIZUNO: I don't have an answer for
18 that question. I don't know.

19 MR. RUIZ: Dr. Shires?

20 WITNESS SHIRES: I don't have an answer for
21 that.

22 MR. RUIZ: Mr. Gutierrez?

23 WITNESS GUTIERREZ: Do I allege that the
24 California WaterFix will harm Westlands Water District?

25 MR. RUIZ: Yes.

1 WITNESS GUTIERREZ: No, I do not allege that.

2 MR. RUIZ: Same question but just a little bit
3 differently.

4 Do either of you -- or as to each one of you:

5 Do you allege that Westlands and San Luis and
6 Delta-Mendota Water User Authority will suffer injury
7 from the addition of a point of diversion or points of
8 diversion in the North Delta?

9 WITNESS SHIRES: No.

10 WITNESS GUTIERREZ: No.

11 WITNESS MIZUNO: At this point, based on what
12 I know, I -- I don't think so.

13 MR. RUIZ: No further questions.

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

15 Always efficient, always a pleasure.

16 Since we're going long today, let's take two
17 shorter breaks, if that's okay with the court reporter.

18 THE REPORTER: (Nodding head.)

19 CO-HEARING OFFICE DODUC: We will return at
20 11:10.

21 (Recess taken at 11:02 a.m.)

22 (Proceedings resumed at 11:10 a.m.:)

23 CO-HEARING OFFICE DODUC: All right. Please
24 take your seats. We are back in session.

25 And, Mr. Keeling, it is your turn.

1 And after Mr. Keeling will be Mr. Jackson.

2 MR. KEELING: Tom Keeling for the San Joaquin
3 County Protestants.

4 Most of my questions are for Dr. Shires, going
5 to his statements about demographics in Fresno and
6 Kings County, agricultural production and the like.

7 I may have one or two questions for
8 Mr. Gutierrez as well about his understanding on water
9 quality standards and such in the Delta.

10 CO-HEARING OFFICE DODUC: (Nodding head.)

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1 CROSS-EXAMINATION BY

2 MR. KEELING: Good morning, Dr. Shires.

3 WITNESS SHIRES: Good morning.

4 MR. KEELING: I'd like to direct your
5 attention to Exhibit WWD-18, Mr. Baker, Page 5 --

6 (Exhibit displayed on screen.)

7 MR. KEELING: -- Lines 22 through 26.

8 (Exhibit displayed on screen.)

9 MR. KEELING: Do you have that in front of you
10 now?

11 WITNESS SHIRES: Yes, sir.

12 MR. KEELING: This section of your direct
13 testimony concerns an income gap between the state
14 overall and -- well, be -- between the state overall
15 and two counties in the Westlands Service District; is
16 that correct?

17 WITNESS SHIRES: Yes.

18 MR. KEELING: To what do you attribute this
19 income gap?

20 WITNESS SHIRES: I think part of it's related
21 to the overheating of the Bay Area economy, where wages
22 are skyrocketing dramatically.

23 And part of it has to do with sort of the
24 long-term instability of the Central Valley economy.

25 MR. KEELING: Does it -- Does this have to do

1 in large part with the fact that this is an
2 agricultural community, or at least an
3 agriculture-based community?

4 WITNESS SHIRES: Agriculture is certainly an
5 important contributor to the economy.

6 MR. KEELING: Is the income disparity
7 referenced in this part of your testimony unique to
8 Fresno and Kings Counties?

9 WITNESS SHIRES: Are you asking me are there
10 other counties that have similar disparities?

11 MR. KEELING: Yes. I'm -- I'm asking you if
12 there's something about this observation that's unique
13 to these two counties that wouldn't be true, for
14 example, in other small agricultural counties in
15 California.

16 WITNESS SHIRES: I haven't looked at the
17 detailed data for those counties but I would expect
18 similar trends.

19 MR. KEELING: You would expect to find similar
20 disparities there?

21 WITNESS SHIRES: I'd expect to find similar
22 trends. The magnitude of the disparities may vary.

23 MR. KEELING: Let me ask you: Is this income
24 profile that -- that you've presented for the
25 agricultural industry in Fresno and Kings Counties

1 something you think the State Board should consider in
2 deciding whether to grant the Petition for Change in
3 Point of Diversion?

4 WITNESS SHIRES: Could you repeat the
5 question?

6 MR. KEELING: Is this income profile that
7 you've presented in your testimony for the agricultural
8 communities -- industry in Fresno and Kings Counties
9 something that you think the State Board should
10 consider in deciding whether to grant the Petition for
11 Change in Point of Diversion?

12 WITNESS SHIRES: I think it's certainly a
13 variable that should be part of the consideration, yes.

14 MR. KEELING: Why?

15 WITNESS SHIRES: I think that the Board's
16 responsibility is to make trade-offs between various
17 uses across the state. And clearly any kind of
18 restrictions which would reduce or adversely affect
19 agriculture in this region will have impacts on these
20 communities.

21 MR. KEELING: So, then, based on that,
22 wouldn't you agree that the Board should, by the same
23 logic, also consider the likely impact of its decision
24 on agricultural communities other than the ag --
25 agricultural communities of Fresno and Kings Counties?

1 WITNESS SHIRES: It's my assumption that they
2 will.

3 MR. KEELING: Mr. Baker, can you turn our
4 attention to Page 8 --

5 (Exhibit displayed on screen.)

6 MR. KEELING: -- Lines -- Line 17 through
7 Page 9, Line 6.

8 (Exhibit displayed on screen.)

9 MR. KEELING: Dr. Shires, could you take a
10 look at that text, beginning on Page 8, Line 17 and
11 going through Page 9, Line 6.

12 And let me know when you've refreshed your --
13 yourself on that.

14 WITNESS SHIRES: (Examining document.)

15 CO-HEARING OFFICE DODUC: Mr. Baker, could we
16 make it a bit larger?

17 (Exhibit displayed on screen.)

18 CO-HEARING OFFICE DODUC: Thank you.

19 WITNESS SHIRES: Okay.

20 MR. KEELING: My understanding, Dr. Shires, is
21 that here you are explaining the larger economic and
22 employment impacts of the agricultural industry in
23 Fresno and Kings Counties beyond direct farm
24 employment.

25 Am I correct in that understanding?

1 WITNESS SHIRES: Yes.

2 MR. KEELING: Is this pattern unique to Fresno
3 and Kings Counties?

4 WITNESS SHIRES: I assume not.

5 MR. KEELING: Thank you.

6 Mr. Baker, can you move on to Lines 18 through
7 24 on Page 9.

8 (Exhibit displayed on screen.)

9 MR. KEELING: Dr. Shires, if you could take a
10 brief look and refresh your -- yourself on those
11 lines --

12 WITNESS SHIRES: (Examining document.)

13 MR. KEELING: -- beginning with the words, "As
14 agricultural employment," and let me know when you're
15 ready?

16 WITNESS SHIRES: I'm ready.

17 MR. KEELING: Okay. Are you claiming that
18 these potential impacts of diminished supplies of
19 usable water are unique to Fresno and Kings Counties?

20 WITNESS SHIRES: I do not make that claim.

21 MR. KEELING: So, you would agree, would you
22 not, that the same or similar economic pattern would
23 hold for other agricultural communities that could
24 experience a diminishment in supplies of usable water
25 as a result of the decision of the State Board with

1 respect to the WaterFix Petition?

2 WITNESS SHIRES: I have not examined other
3 counties, and so I -- I suspect that the answer to that
4 question would vary depending on the county.

5 MR. KEELING: Mr. Baker, could you move on to

6 Page 13 --

7 (Exhibit displayed on screen.)

8 MR. KEELING: -- Lines 10 through 14.

9 (Exhibit displayed on screen.)

10 MR. KEELING: Dr. Shires, my question with
11 respect these lines:

12 I'm -- I'm just looking to understand. I'd
13 like you to explain to me what you mean by adaptation
14 (reading):

15 ". . . Through the use of technology and
16 modified planting strategies."

17 What did you mean by that as used here?

18 WITNESS SHIRES: In -- In some ways, it has to
19 do with crop mix. But mostly what I'm talking about in
20 the use of technology portion is the changes that
21 Westlands Water District growers have -- the advances
22 that they've implemented in the use of water, not
23 having open-trench irrigation, you know, moving water
24 directly to the roots of trees, things like that.

25 Scarcity has forced them to be, I think, very

1 efficient in the use of the water that they have.

2 MR. KEELING: Drip irrigation, for example?

3 WITNESS SHIRES: Yes.

4 MR. KEELING: You're not suggesting that use
5 of drip irrigation is unique to the Westlands farmers;
6 are you?

7 WITNESS SHIRES: I am not. I -- I make no
8 claims about uniqueness in this case. I'm talking
9 specifically about the attributes of the District.

10 MR. KEELING: Any other technologies that you
11 had in mind in this sentence?

12 WITNESS SHIRES: Metering; the -- the pumping
13 strategies; the fact that they track groundwater
14 pumping very efficiently, wirelessly.

15 I mean, there's a range of technology. Use of
16 satellites.

17 There's a wide use of technology the farmers
18 have turned to to make their use of water more
19 efficient.

20 MR. KEELING: These practices vary from farmer
21 to farmer; do they not?

22 WITNESS SHIRES: They do.

23 MR. KEELING: Mr. Baker, if we could go to

24 Page 14, Lines 1 through 14.

25 (Exhibit displayed on screen.)

1 MR. KEELING: Dr. Shires, as I understand it,
2 this -- these 14 lines, including the blue and white
3 flowchart of sorts, further explain the -- what you
4 refer to as the ripple effect in -- in the economy; am
5 I correct?

6 WITNESS SHIRES: Yes.

7 MR. KEELING: Recent . . .

8 Again, I want to make sure: You're not
9 claiming, are you, that this ripple effect pattern is
10 unique to Fresno and Kings Counties?

11 WITNESS SHIRES: I do not.

12 MR. KEELING: Mr. Baker, could we have
13 Page 18, Lines 9 through 14.

14 (Exhibit displayed on screen.)

15 MR. KEELING: Dr. Shires, I'd like to direct
16 your attention to the second sentence in that
17 paragraph, which reads -- And you can read the whole
18 paragraph. I know I'm reading a sentence out of
19 context, so take your time.

20 That sentence reads (reading):

21 "This has been driven by the
22 decision of (sic) the state and federal
23 regulators for regulatory reasons to
24 limit the share of the overall -- the
25 overall water allocation that the

1 District receives."

2 I want to know: What sources did you consult
3 in making that statement?

4 WITNESS SHIRES: A combination of some of the
5 decisions, the media accounts, and the statements of
6 the agencies.

7 MR. KEELING: Oh. Which decisions did you
8 consult for this?

9 WITNESS SHIRES: The statements by the CVP on
10 the amount of water available . . . in the interior.

11 MR. KEELING: Central Valley Project?

12 WITNESS SHIRES: Yes, amongst others.

13 MR. KEELING: What other statements or reports
14 did you rely on?

15 WITNESS SHIRES: There were some internal
16 documents provided by Westlands on the history of the
17 Projects, having to do with the agreements.

18 MR. KEELING: And what kind of internal
19 reports?

20 WITNESS SHIRES: Not in -- I'm sorry. Not
21 internally. They were on the website. They're
22 publicly available.

23 MR. KEELING: These are publicly available
24 Westlands Water District website materials?

25 WITNESS SHIRES: They're just materials that

1 document the history of Westlands water, access to
2 water.

3 MR. KEELING: You mentioned media statements.

4 Are there media statements in addition to what
5 you found on the Westlands website?

6 WITNESS SHIRES: I did not find the media
7 citations on the Westlands website.

8 MR. KEELING: What other media statements,
9 then, are you referring to?

10 WITNESS SHIRES: Accounts of the general media
11 describing the plans.

12 MR. KEELING: What is your understanding --
13 And I'm -- I'm -- I know you're not a lawyer. I'm not
14 asking you for a legal opinion.

15 I -- I know you're not a biologist. I'm not
16 asking you for a biological opinion.

17 I'm asking for your understanding, Dr. Shires.

18 What is your understanding of the term
19 "regulatory reasons" as you used those words in this
20 sentence?

21 WITNESS SHIRES: Regulatory reasons are the
22 factors that go into a decision. Typically public
23 agencies make decisions based on laws and as a result
24 of those decisions and trade-offs and the directions
25 that are created by those that make decisions about

1 what policies are presented.

2 MR. KEELING: Do you have any more specific
3 understanding of those regulatory reasons than that?

4 WITNESS SHIRES: I do, but I don't have a
5 specific legal opinion about any decision by the
6 agencies.

7 MR. KEELING: I'm not asking for a specific
8 legal opinion. I'm asking for your understanding.

9 WITNESS SHIRES: My understanding is that
10 agencies interpret the laws as they see them and make
11 policy decisions that are related. And they have staff
12 lawyers that make -- that -- that make those decisions
13 and inform them.

14 MR. KEELING: Mr. Baker, if we can go down to
15 Lines 18 through 19 on Page 18.

16 (Exhibit displayed on screen.)

17 MR. KEELING: Dr. Shires, do you -- you see
18 that we're -- you're -- you're discussing the fallowing
19 of ground -- farmland here?

20 WITNESS SHIRES: I do.

21 MR. KEELING: This pattern, the fall -- the
22 fallowing of farmland during water shortages, is not
23 unique to Westlands; is it?

24 WITNESS SHIRES: I don't believe so, no.

25 MR. KEELING: In their farmland fallowing

1 decision-making process, isn't it true that Westlands'
2 farmers typically fallow less productive soil before
3 they fallow their most productive soil?

4 WITNESS SHIRES: I mean, I have no specific
5 knowledge of that. I would assume that's the case.

6 MR. KEELING: Are you familiar with the term
7 "prime farmland"?

8 WITNESS SHIRES: Yes.

9 MR. KEELING: Hmm?

10 WITNESS SHIRES: Yes.

11 MR. KEELING: How much of Westlands Water
12 District consists of prime farmland?

13 WITNESS SHIRES: I don't know.

14 MR. KEELING: Do you know how much prime
15 farmland lies in the Delta?

16 WITNESS SHIRES: I do not know.

17 MR. KEELING: Have you ever heard it said that
18 the largest contin -- contiguous swath of prime
19 farmland in California is in the Delta?

20 WITNESS SHIRES: I have not heard that.

21 MR. KEELING: Mr. Baker, could we take a look
22 at Lines 22 through 23 on the same page.

23 (Exhibit displayed on screen.)

24 MR. KEELING: What is your source for this
25 statement that "Westlands Water District farmers have

1 become global leaders in water-efficient farming,"

2 Dr. Shires?

3 WITNESS SHIRES: A combination of statements
4 in the media and an understanding of the efficiency of
5 Westlands water.

6 MR. KEELING: And what is the basis for
7 understanding the efficiency of Westlands water?

8 WITNESS SHIRES: Personal observation.

9 MR. KEELING: Have you read any studies or
10 reports on this subject?

11 WITNESS SHIRES: None that I can recall at the
12 moment.

13 MR. KEELING: Hmm?

14 WITNESS SHIRES: None that I recall at the
15 moment.

16 MR. KEELING: Have you consulted any experts
17 in water efficiency in making this statement?

18 WITNESS SHIRES: No.

19 MR. KEELING: Mr. Baker, let's move on to
20 Page 27, Lines 21 through 24.

21 (Exhibit displayed on screen.)

22 MR. KEELING: Dr. Shires, did you -- Do you
23 have that in front of you?

24 WITNESS SHIRES: I do.

25 MR. KEELING: These -- These numbers, these

1 statistics you gave here, are statewide; are they not?

2 WITNESS SHIRES: Yes, they are.

3 MR. KEELING: So they would include
4 agricultural production in the Delta; would they not?

5 WITNESS SHIRES: They would.

6 MR. KEELING: Not unique to Westlands.

7 WITNESS SHIRES: What is -- What is not unique
8 to Westlands.

9 MR. KEELING: These statistics are not
10 particular to Westlands; are they?

11 WITNESS SHIRES: They represent California.

12 MR. KEELING: Thank you.

13 Mr. Baker, let's move on to Page 30, Lines 11
14 through 14.

15 (Exhibit displayed on screen.)

16 MR. KEELING: Dr. Shires, I believe here
17 you're talking about the importance of healthy fresh
18 fruit and vegetables in what has become the nationwide
19 battle against obesity; am I correct?

20 WITNESS SHIRES: Yes.

21 MR. KEELING: I believe this touches on some
22 of -- some of the exchange with Miss Meserve this
23 morning.

24 Your observation -- Well, your observation
25 here is not unique to fruits and vegetables coming from

1 Westlands; is it?

2 WITNESS SHIRES: It's -- It's California's
3 production.

4 MR. KEELING: So it would be true -- equally
5 true of fruits and vegetables from the Delta.

6 WITNESS SHIRES: Yes.

7 MR. KEELING: Let's go to Page 32 of this
8 exhibit, Mr. Baker --

9 (Exhibit displayed on screen.)

10 MR. KEELING: -- Lines 22 through 25.

11 (Exhibit displayed on screen.)

12 MR. KEELING: I -- I'd like to invite your
13 attention to these sentences, Dr. Shires.

14 Quote (reading):

15 "These are important points --
16 California's farms create jobs for
17 low-skill and low-educational attainment
18 workers. These workers are not easily
19 transferred into other roles in the
20 economy. In many instances, these
21 workers have acquired specialized skills,
22 experience and training that is uniquely
23 specific to the agricultural industry."

24 Do you see that language?

25 WITNESS SHIRES: Yes.

1 MR. KEELING: Well, that statement is not
2 particular to Westlands Water District; is it?

3 WITNESS SHIRES: No.

4 MR. KEELING: So you would concede that this
5 statement applies to other agricultural communities in
6 California besides Westlands.

7 WITNESS SHIRES: That's what the statement
8 says.

9 MR. KEELING: And that would include the
10 Delta?

11 WITNESS SHIRES: Yes.

12 MR. KEELING: Let's go to Page 33, Line 17,
13 Mr. Baker.

14 (Exhibit displayed on screen.)

15 MR. KEELING: As I understand it, Dr. Shires,
16 your point here is that a stable and robust domestic
17 food supply is important to national security; is that
18 right?

19 WITNESS SHIRES: Yes.

20 MR. KEELING: And that observation is not
21 unique to Westlands Water District; is it?

22 WITNESS SHIRES: No.

23 (Timer rings.)

24 MR. KEELING: You would concede, would you
25 not, that this observation on Page 33 is also true with

1 respect to productive agricultural communities
2 elsewhere in California?

3 WITNESS SHIRES: I . . . I'm not sure how to
4 answer that question. Would you restate it?

5 MR. KEELING: Well, would you concede that
6 this observation of a stable and robust food supply is
7 one of the first of these in importance.

8 WITNESS SHIRES: It would --

9 MR. KEELING: You would concede that it's true
10 of other productive ag -- agricultural communities in
11 California?

12 WITNESS SHIRES: I guess my concern is that
13 the statement doesn't say anything about communities.

14 MR. KEELING: Thank you.

15 How about agricultural production elsewhere in
16 California?

17 WITNESS SHIRES: Yes.

18 MR. KEELING: And that would include the
19 agricultural production in the Delta.

20 WITNESS SHIRES: Yes.

21 CO-HEARING OFFICE DODUC: How much additional
22 time do you need, Mr. Keeling?

23 MR. KEELING: No more than two minutes.

24 CO-HEARING OFFICE DODUC: All right. Lets
25 proceed.

1 I was going to offer you 10 but I'll take two.

2 MR. KEELING: I'm negotiating against myself
3 here.

4 I have just one for Mr. Gutierrez.

5 This morning, in response to a question from
6 Ms. Meserve, you acknowledged that water deliveries
7 from the Delta to Westlands are affected by water
8 quality standards in the Delta.

9 Do you recall that testimony?

10 WITNESS GUTIERREZ: Yes.

11 MR. KEELING: What is your understanding, if
12 you have one, as to why -- why those water quality
13 standards exist?

14 WITNESS GUTIERREZ: My understanding is, to
15 maintain a certain salinity level in the Delta.

16 MR. KEELING: What is your understanding, if
17 you have one, as to why anyone would want to maintain a
18 certain salinity level in the Delta?

19 WITNESS GUTIERREZ: I'm assuming it would be
20 to ensure that higher -- waters with higher
21 concentrations of total dissolved solids are not
22 exported when diverted.

23 MR. KEELING: You think that those water
24 quality standards are going to protect water going to
25 Westlands?

1 WITNESS GUTIERREZ: I don't know that.

2 MR. KEELING: Okay. Did anybody ever tell you
3 that they exist to protect agriculture in the Delta?

4 WITNESS GUTIERREZ: I have heard that.

5 MR. KEELING: Did anyone ever tell you that
6 they pro -- they exist also to protect species in the
7 Delta?

8 WITNESS GUTIERREZ: No. I've only . . . I
9 believe I've only heard it referred to as protecting
10 the water quality when diverted for consumptive use.

11 MR. KEELING: Mr. Gutierrez, thank you very
12 much, and Dr. Shires, thank you.

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

15 Mr. Jackson.

16 Mr. Jackson has estimated about 60 minutes.
17 If he keeps to that, Candace, just wave whenever you
18 need a break.

19 THE REPORTER: (Nodding head.)

20 MR. JACKSON: Mr. Baker, could you pull up
21 San Luis and Delta-Mendota Water Agency Number 19.

22 CO-HEARING OFFICE DODUC: While he's doing
23 that, Mr. Jackson, an outline of your cross, please.

24 MR. JACKSON: Yes. I have questions --

25 (Exhibit displayed on screen.)

1 MR. JACKSON: -- for Mr. Gutierrez which deal
2 with Westlands' sources of water; the 1963 long-term
3 Water Service Contract; water transfers; groundwater;
4 Central Valley Project operations as they affect
5 Westlands' water supply; the limits of drought; and the
6 section historic Federal reservoir levels; and then how
7 he imagines -- or what he knows about how things would
8 change if the WaterFix was approved.

9 For Dr. Shires, I have less questions because
10 of the last cross-examination by Mr. Keeling and
11 Miss Meserve's previous questions.

12 But there will be questions in regard to the
13 Sacramento Valley section instead of the Delta.

14 CO-HEARING OFFICE DODUC: (Nodding head.)

15 MR. JACKSON: The . . .

16 There will be a series of questions about
17 how -- whether or not he's factored in drought to any
18 of his numbers in terms of the long-term averages;
19 specific questions in regard to almonds.

20 And I think I can leave out the -- the
21 questions dealing with the differentiation between
22 Westlands and the rest of agriculture in California.

23 CO-HEARING OFFICE DODUC: Yes. Mr. Keeling
24 did that quite well.

25 MR. JACKSON: I thought he did, too.

1 And I will start with Ms. Mizuno.

2 And the questions for her will start with the
3 San Luis and Delta-Mendota Water Agency support for
4 improved conveyance; the reliability and quantity of
5 water and why it's diminished; and a few questions in
6 regard to the -- the general background on the San Luis
7 and Delta-Mendota Water Authority; and its control and
8 operation of the Delta-Mendota Canal; the Bill Jones
9 Pumping Plant; the O'Neill Pumping Plant; and the
10 operation of the Mendota Pool.

11 And I'll start with Ms. Mizuno.

12 Could you go to the end of the testimony.

13 (Exhibit displayed on screen.)

14 MR. JACKSON: Paragraph 20.

15 (Exhibit displayed on screen.)

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1 CROSS-EXAMINATION BY

2 MR. JACKSON: Ms. Mizuno, what is your present
3 job with San Luis and Delta-Mendota?

4 WITNESS MIZUNO: I'm the Assistant Executive
5 Director.

6 MR. JACKSON: I'm sorry, ma'am. I -- I
7 couldn't hear that.

8 WITNESS MIZUNO: Yes. I am the Assistant
9 Executive Director.

10 MR. JACKSON: Your testimony indicates that
11 you . . . that San Luis and Delta-Mendota supports the
12 WaterFix because it's intended to move water in a way
13 that will have much reduced environmental impacts; is
14 that correct?

15 WITNESS MIZUNO: I don't believe that's what
16 it says. But what it says is, the WaterFix is
17 proposed -- intended to be a much reduced environmental
18 impact. It does not say the Authority supports the
19 WaterFix.

20 MR. JACKSON: Line 16 and 17 reads (reading):

21 "The WaterFix is intended to move
22 water in a way that will have much
23 reduced environment impacts."
24 Correct?

25 WITNESS MIZUNO: That's correct.

1 MR. JACKSON: And how do you -- How do you
2 understand the WaterFix is going to move water in a way
3 that will cause reduced environmental impacts?

4 WITNESS MIZUNO: I don't have the specifics on
5 that. But my understanding is, this Project is being
6 proposed because it will -- it's intended to reduce
7 environmental impacts; otherwise, it would not be
8 proposed.

9 MR. JACKSON: What evidence do you rely on to
10 come to that conclusion?

11 WITNESS MIZUNO: My -- That conclusion is
12 based on my understanding and what I've heard, read
13 through the media, on the Water Plan -- on the Project.

14 MR. JACKSON: Do you know which environmental
15 impacts it's designed to resolve?

16 WITNESS MIZUNO: Fishery impacts and water
17 quality impacts.

18 MR. JACKSON: And how would it -- How would
19 the WaterFix . . . assist in rev -- resolving water
20 quality impacts in the Delta, to your knowledge?

21 WITNESS MIZUNO: The water quality in the
22 Sacramento River is of higher quality than the water
23 that is moved through the Delta. So, therefore, by
24 having a North Delta convey -- excuse me -- having a
25 North Delta intake, you are able to convey water that

1 is of a higher quality.

2 MR. JACKSON: And that has to do with the fact
3 that it no longer travels through the Delta?

4 WITNESS MIZUNO: That's my understanding.

5 MR. JACKSON: So the way they would -- that it
6 would increase -- would improve water quality is
7 basically for people south of the Delta.

8 Is that fair to say?

9 WITNESS MIZUNO: I -- I don't -- I don't have
10 enough information to say that specifically.

11 MR. JACKSON: By removing the . . . the . . .
12 the less saline water from the Sacramento River, would
13 not that have effects on people downstream of the point
14 of diversion?

15 WITNESS MIZUNO: I don't know the answer to
16 that because I think it all -- it's a matter of how the
17 Project is operated.

18 MR. JACKSON: Does -- Has San Luis and
19 Delta-Mendota Water Agency made any recommendations for
20 the consideration by the State Board for how much water
21 could be taken in the North Delta diversion without
22 affecting the existing water quality downstream of that
23 point?

24 WITNESS MIZUNO: The Water Authority itself
25 has not made any recommendations.

1 MR. JACKSON: Calling your attention to
2 the . . . the second sentence in Paragraph 20. You say
3 (reading):

4 "Whether the WaterFix will be a
5 Project that also improves water supply
6 conditions for member agencies of the
7 San Luis and Delta-Mendota Water Agency
8 through new conveyance remains to be
9 seen."

10 What do you mean by "remains to be seen"?

11 WITNESS MIZUNO: The -- The Bureau of
12 Reclamation has not taken any -- a position on how the
13 CVP would participate in the WaterFix. And without
14 that information, our member agencies have not taken a
15 position on whether they're going to be able to
16 participate in the WaterFix. So, therefore, how the
17 WaterFix may improve their position or not is unknown
18 at this time.

19 MR. JACKSON: Has the . . . Is the San Luis
20 and Delta-Mendota Water Agency a participant in this
21 Petition in any fashion?

22 WITNESS MIZUNO: No.

23 MR. JACKSON: Has the Bureau of Reclamation
24 indicated how the new North Delta facilities would be
25 operated in conjunction with your existing South Delta

1 diversions at Jones Pumping Plant?

2 WITNESS MIZUNO: I don't believe the operating
3 criteria has been established.

4 MR. JACKSON: In your opinion, as the
5 Assistant Manager of the San Luis and Delta-Mendota
6 Water Agency, would your -- if -- if the North Delta
7 facilities were established, would you receive less
8 water from the existing South Delta Jones Pumping Plant
9 facility?

10 WITNESS MIZUNO: I don't know that.

11 MR. JACKSON: So your . . .

12 Has anything changed since the time your
13 testimony was submitted in regard to Reclamation
14 defining a role for the WaterFix for the Central Valley
15 Project?

16 WITNESS MIZUNO: I'm not aware of any changes.

17 MR. JACKSON: Has there been any consideration
18 by the San Luis and Delta-Mendota Water Agency member
19 agencies as to whether or not they would receive more
20 or less supply in droughts if the water -- if the -- if
21 the California WaterFix new facilities in the Northern
22 Delta were approved?

23 WITNESS MIZUNO: Can you repeat that question,
24 please.

25 MR. JACKSON: Sure. It was kind of

1 convoluted.

2 WITNESS MIZUNO: Um-hmm.

3 MR. JACKSON: Have the San Luis and
4 Delta-Mendota Water Agen -- Agency's member agencies
5 defined how -- how they would operate the South Delta
6 facilities in the event of the improve -- approval of
7 the new North Delta diversions called for in the
8 WaterFix?

9 WITNESS MIZUNO: I'm not aware of any of our
10 member agencies making that determination.

11 MR. JACKSON: Could you scroll -- Mr. Baker,
12 could you scroll up just a bit to 19.

13 (Exhibit displayed on screen.)

14 MR. JACKSON: You indicate in your testimony
15 on Line 1 on . . . Excuse me.

16 You indicate in your testimony that -- on
17 Line 15 that (reading):

18 "A new approach is needed."

19 Do you see that?

20 WITNESS MIZUNO: Um-hmm. Yes.

21 MR. JACKSON: What is your understanding of
22 your organizational's -- your organization's . . .
23 conclusion that a new approach is needed?

24 WITNESS MIZUNO: The Water Authority Board has
25 not taken any on the WaterFix. However, our goal has

1 always been to look for opportunities, ways, to improve
2 the water supply to our member agency. We don't have
3 any specific approach in mind.

4 MR. JACKSON: Would -- Has there been any
5 discussion among the member agencies of the San Luis
6 and Delta-Mendota Water Agency in regard to
7 improvements in the existing system, such as building
8 state-of-the-art screens to protect the diversion --
9 to -- to protect the ecosystem from the diversion at --
10 at Jones Pumping Plant?

11 WITNESS MIZUNO: The Water Authority has not
12 taken any position on that.

13 MR. JACKSON: Do you know of any studies done
14 by the Water -- Water Agency about why the existing
15 facilities are constrained?

16 WITNESS MIZUNO: When you say "Water Agency,"
17 you're referring to the Water Authority?

18 MR. JACKSON: Yes, I am. I'm sorry.
19 Could we agree that I just call it the Water
20 Authority from now on and --

21 WITNESS MIZUNO: Sure.

22 MR. JACKSON: -- I'm -- because I'm butchering
23 it when I try to do the whole thing.

24 WITNESS MIZUNO: We have not taken -- We
25 have -- Repeat the question, please.

1 MR. JACKSON: Sure.

2 Has the Water Authority initiated planning for
3 improvements in the existing diversion in the South
4 Delta?

5 WITNESS MIZUNO: No.

6 MR. JACKSON: Mr. Baker, could you go up to
7 paragraph -- the bottom of Paragraph 17.

8 (Exhibit displayed on screen.)

9 CO-HEARING OFFICE DODUC: 17.

10 MR. BAKER: Yeah. The bottom is here.

11 MR. JACKSON: I -- I guess -- Move up a little
12 from . . .

13 (Exhibit displayed on screen.)

14 MR. JACKSON: Thanks.

15 You're -- You're talking here about a set of
16 tables that Exhibit SLD -- Water Authority Exhibit
17 Number 14 that shows his -- historic CVP contract
18 allocations for various groups of CVP Contractors for
19 the period from 1997 to 2017.

20 It's also indicated that allocations for Water
21 Rights Settlement Contractors have remained at
22 100 percent.

23 Isn't that a reflection of the difference in
24 status of various water users within the Central Valley
25 Project system?

1 WITNESS MIZUNO: It's a between -- It's a
2 difference between the types of contracts that they
3 have.

4 MR. JACKSON: And do those types of contracts
5 in -- in times of shortage have different rankings in
6 terms of how much water they can get?

7 WITNESS MIZUNO: I believe so, yes.

8 MR. JACKSON: And what are the Bureau of
9 Reclamation -- What is the Bureau of Reclamation's
10 ranking system within the overall distribution of CVP
11 water?

12 WITNESS MIZUNO: I don't understand your
13 question regarding the ranking system.

14 MR. JACKSON: Is -- Are any of the member
15 agencies of the Water Authority Settlement Contractors?

16 WITNESS MIZUNO: Yes.

17 MR. JACKSON: And that would be the Exchange
18 Contractors?

19 WITNESS MIZUNO: That's correct.

20 MR. JACKSON: Do the Exchange Contractors get
21 more water than the rest of the Water Authority members
22 in times of drought?

23 WITNESS MIZUNO: Yes.

24 MR. JACKSON: And why is that, to your
25 knowledge?

1 WITNESS MIZUNO: Under their contract, they
2 get their full supply based on a Shasta Index. And the
3 only time that they are reduced is when -- in direct
4 critical Shasta Index. So that is during a time of
5 drought is the only time they are reduced.

6 MR. JACKSON: Is it the -- the allegation of
7 the Water Authority that -- that the Bureau of
8 Reclamation is mismanaging the water by supplying
9 larger amounts in seasons that are dryer?

10 WITNESS MIZUNO: The Bureau of -- The
11 Authority's stand -- stands on that is that Reclamation
12 is meeting its obligations.

13 MR. JACKSON: Is what?

14 WITNESS MIZUNO: Meeting its obligation.

15 MR. JACKSON: So there is an obligation to
16 Settlement Contractors that's different than there
17 would be to Westlands, for instance.

18 WITNESS MIZUNO: Yes.

19 MR. JACKSON: And which Settlement Contractors
20 are -- Which CVP Contractors, other than the Exchange
21 Contractors, are -- have a higher priority than
22 Westlands, to your knowledge?

23 WITNESS MIZUNO: I believe the Sacramento
24 River Settlement Contractors.

25 MR. JACKSON: And do you know why they have a

1 higher priority?

2 WITNESS MIZUNO: Again, based on their
3 contract that they have with Reclamation.

4 MR. JACKSON: Has Reclamation ever cut the
5 Water Authority's . . . contracts, other than based
6 upon the difference in the contracts, to your
7 knowledge?

8 WITNESS MIZUNO: I am not aware of any.

9 MR. JACKSON: So part of the problem -- Is it
10 fair to say that part of the problem in Westlands
11 getting water is the Bureau's contracting procedures
12 have different classes of contracts?

13 WITNESS MIZUNO: Prior to 1991, the South of
14 Delta Ag Service Contractors were able to receive
15 100 percent, with the exception of 1977, of their
16 contract amounts.

17 Those same contract obligations existed prior
18 to 1991, as they do today. So I'm -- I -- I guess I
19 don't agree that the contract itself is the primary
20 reason as to why the South-of-Delta Contractors are
21 being shorted today.

22 MR. JACKSON: The . . .

23 Prior to testifying, did you review
24 Mr. Gutierrez's testimony?

25 WITNESS MIZUNO: I did not.

1 MR. JACKSON: Okay. And would he be the
2 appropriate person to ask about the time periods and
3 the amount of water and that that sort of thing rather
4 than you?

5 WITNESS MIZUNO: Yes, please.

6 MR. JACKSON: Thank you.

7 I'll move to Mr. Gutierrez now.

8 WWD-15, Page 3.

9 (Exhibit displayed on screen.)

10 MR. JACKSON: Line 13.

11 (Exhibit displayed on screen.)

12 MR. JACKSON: Mr. Gutierrez, this testimony
13 identifies the water rights holder for the contracts
14 that Westlands operates on as being held by the United
15 States; is that correct?

16 WITNESS GUTIERREZ: Yes.

17 MR. JACKSON: Does Westlands have any water
18 rights of its own?

19 WITNESS GUTIERREZ: No.

20 MR. O'HANLON: Objection: Legal conclusion --
21 Calls for legal conclusion.

22 CO-HEARING OFFICE DODUC: Overruled.

23 To the extent he's able to answer.

24 WITNESS GUTIERREZ: My -- My understanding is
25 that Westlands does not hold any water rights.

1 MR. JACKSON: The -- You describe Reclamation
2 as operating the CVP as an integrated project; is that
3 correct?

4 WITNESS GUTIERREZ: Yes.

5 MR. JACKSON: What do you mean by an
6 "integrated project"?

7 WITNESS GUTIERREZ: My opinion of an
8 integrated project is that Reclamation uses water
9 stored in multiple reservoirs in California to provide
10 supply to CVP Contractors.

11 MR. JACKSON: What is the role of San Luis
12 Reservoir in the operation of the -- first, the
13 Westlands Water District, and then, second, the other
14 agencies in the Water Authority?

15 WITNESS GUTIERREZ: Well, the role of San Luis
16 Reservoir, as Reclamation utilizes San Luis Reservoir,
17 is to store water that is exported by Jones Pumping
18 Plant that is not used to meet the outside demands when
19 the water is pumped.

20 MR. JACKSON: So during the summer, you -- you
21 run Jones to deliver water straight to the farms, and
22 the rest of the year you store it; is that correct? I
23 mean, that's simplistic but is that what happens?

24 WITNESS GUTIERREZ: Westlands doesn't run
25 Jones Pumping Plant. The --

1 MR. JACKSON: The Authority does.

2 WITNESS GUTIERREZ: -- Authority does.

3 The water is -- During the summer, I guess it
4 depends which month you're talking about. And if
5 pumping at Jones is enough to meet the outside demands,
6 then it could either be used directly to meet demands.

7 But at certain periods, the demands might be
8 high, higher than Jones Pumping, at which time water
9 would be drained from San Luis Reservoir to supplement
10 the supply that could not be met by Jones.

11 MR. JACKSON: Are there times in which that
12 operation results in inability to meet demand?

13 WITNESS GUTIERREZ: Do you mean when both
14 Jones Pumping and San Luis draining are not sufficient
15 to meet demands? Is that the question?

16 MR. JACKSON: No. I mean, are there times in
17 which you can't both store and do direct diversion
18 for -- for on-farm use?

19 WITNESS GUTIERREZ: Yes, there are times when
20 you could both store and meet the outside demands.

21 MR. JACKSON: In the storage at -- at
22 San Luis, is all of San Luis is a Bureau facility or is
23 it shared with the State Water Project?

24 WITNESS GUTIERREZ: It is a shared facility.

25 MR. JACKSON: How would the operation of the

1 San Luis Reservoir change if WaterFix was approved?

2 WITNESS GUTIERREZ: I don't know how it would
3 change.

4 MR. JACKSON: Is there a possibility that the
5 approval of WaterFix would affect the ability of
6 San Luis to be used for the South-of-Delta purposes
7 that we've talked about, direct irrigation and storage?

8 MR. O'HANLON: Objection: Calls for
9 speculation.

10 CO-HEARING OFFICE DODUC: To the best of your
11 knowledge, Mr. Gutierrez. And if you cannot answer,
12 then just say so.

13 WITNESS GUTIERREZ: Yeah. I cannot answer
14 that question.

15 MR. JACKSON: Can you -- Can you tell me
16 whether or not you would expect any improvement for
17 your existing water supply situation if the North Delta
18 diversions were permitted and built from today?

19 WITNESS GUTIERREZ: I guess it depends on the
20 restrictions that are placed on the Project. I -- I
21 can't answer whether supplies would increase or
22 decrease.

23 MR. JACKSON: Are the facilities -- Are there
24 facilities limitations as the Project exists today?

25 WITNESS GUTIERREZ: Do you mean the proposed

1 two-tunnel project?

2 MR. JACKSON: No. I'm -- I'm talking about,
3 are -- In your existing Project today, from the South
4 Delta pumps and the Jones Pumping Plant, do those
5 facilities limit your ability to get water at any time
6 during the season?

7 WITNESS GUTIERREZ: The physical capacity of
8 the Jones Pumping Plant, if operated at its maximum
9 capacity, should be sufficient.

10 MR. JACKSON: By itself.

11 WITNESS GUTIERREZ: If you had no regulatory
12 restrictions, it should be sufficient.

13 MR. JACKSON: So, in other words, the only
14 thing that affects the ability for you to meet demand
15 is regulatory restrictions? Is that true?

16 WITNESS GUTIERREZ: Well, the upper DMC does
17 have a conveyance constraint, and I -- I assume that
18 could also limit the supply during certain times.

19 But, like I say, the assumption that you're
20 making, if Jones could operate unrestricted, could it
21 provide enough supplies South of Delta to meet
22 Westlands Water District demands, I -- I think my
23 answer would be yes.

24 MR. JACKSON: Is there any way that you can
25 envision a . . . an improvement to your water supply

1 that would not require reduction of today's
2 environmental restrictions?

3 WITNESS GUTIERREZ: I -- I can't envision a
4 scenario at this time.

5 MR. JACKSON: Do you know how much the
6 restrictions have to be reduced to give you your
7 70 percent supply?

8 WITNESS GUTIERREZ: Like I say, I would have
9 to look at not just Westlands Water District but all
10 the other Authority members and Refuges and M&I
11 customers to answer that question. I can't answer that
12 right now.

13 MR. JACKSON: And to change restrictions, the
14 restrictions would have to be changed on the Bureau of
15 Reclamation and not on the Authority or the District;
16 correct?

17 WITNESS GUTIERREZ: I mean, the restrictions
18 would have to be placed on, I'm assuming, the agency
19 that holds the water rights.

20 MR. JACKSON: Now, you indicate in your
21 testimony on Page 4 at Line 6 --

22 (Exhibit displayed on screen.)

23 MR. JACKSON: -- that (reading):

24 "Reclamation has allocated
25 Westlands' full contractual entitlement

1 to CVP water in only three of the last
2 (sic) 28 years."

3 Correct?

4 WITNESS GUTIERREZ: That's in my statement,
5 correct.

6 MR. JACKSON: Were those all critical water
7 years?

8 WITNESS GUTIERREZ: You mean critically dry
9 water years?

10 MR. JACKSON: Yes. Yes.

11 WITNESS GUTIERREZ: When Westlands received
12 its full contractual entitlement, were those critically
13 dry water years?

14 MR. JACKSON: Yes.

15 WITNESS GUTIERREZ: No.

16 MR. JACKSON: All right. Were those all
17 normal years?

18 WITNESS GUTIERREZ: No.

19 MR. JACKSON: Were those all wet years?

20 WITNESS GUTIERREZ: I assume, yes.

21 MR. JACKSON: So in the years -- You -- You --
22 You talk about, at Line 9 through 2017 -- excuse me --
23 through Line 15, that Westlands received a zero percent
24 allocation in 2015, and a 5 percent allocation in 2016.

25 You see that?

1 WITNESS GUTIERREZ: Yes.

2 MR. JACKSON: Was that during the drought?

3 WITNESS GUTIERREZ: I believe 2015 was during
4 the drought, and I'm not sure if the drought's
5 designation continued into 2016. I -- I believe it
6 did, but I'm not 100 percent sure.

7 MR. JACKSON: And you note that, in 2016
8 (reading):

9 ". . . Westlands received approval to
10 use . . . water with only two months left
11 in the contract year . . ."

12 Do you see that?

13 WITNESS GUTIERREZ: Yes.

14 MR. JACKSON: And who -- who made . . . that
15 decision that you would get your water so late you
16 probably couldn't use it?

17 WITNESS GUTIERREZ: The Bureau of Reclamation.

18 MR. JACKSON: Not State Water Board.

19 WITNESS GUTIERREZ: No. The Bureau of
20 Reclamation.

21 MR. JACKSON: Right.

22 Mr. Baker, Page 7 --

23 (Exhibit displayed on screen.)

24 MR. JACKSON: -- Lines 15 through 23 has a
25 figure.

1 (Exhibit displayed on screen.)

2 MR. JACKSON: Thank you.

3 All right. Calling your attention to the 2006
4 and to 2017 years, there are only two years, 2006 and
5 2011, and then 2017 -- I guess, three -- that are over
6 50 percent; correct?

7 WITNESS GUTIERREZ: Yes.

8 MR. JACKSON: So were all those years that
9 were under 50 percent either dry or -- or critical
10 water years for everyone in California?

11 WITNESS GUTIERREZ: I don't know that answer.

12 MR. JACKSON: Is there any reason to believe
13 that Reclamation was just picking on you, your
14 agencies?

15 MR. O'HANLON: Objection: Just improper
16 question.

17 CO-HEARING OFFICE DODUC: Mr. Jackson, please
18 rephrase.

19 MR. JACKSON: Were there lawsuits that
20 prevented Reclamation from delivering you water, to
21 your knowledge?

22 WITNESS GUTIERREZ: Not to my knowledge.

23 MR. JACKSON: Were there . . .

24 Well, was the only possible reason for that
25 the fact that there just wasn't water to deliver?

1 MR. O'HANLON: Objection: Calls for
2 speculation.

3 CO-HEARING OFFICE DODUC: Mr. Gutierrez, do
4 you have any information about why, for the years that
5 are under 50 percent allocation, those allocations were
6 made?

7 WITNESS GUTIERREZ: I'm assuming it had to do
8 with the regulatory restrict -- constraint --
9 regulatory restraints -- constraints that were
10 preventing Jones from operating at its maximum
11 permitted capacity during certain times and probably
12 other times, it could have been because of drought.

13 But I don't think there was any one single --
14 one single reason why Jones was operating at less than
15 its perfect capacity in --

16 MR. JACKSON: So --

17 WITNESS GUTIERREZ: -- all those years.

18 MR. JACKSON: So when you talk about
19 regulations, are you talking only about endangered
20 species?

21 WITNESS GUTIERREZ: No.

22 MR. JACKSON: What regulations do you believe
23 caused this lack of delivery in most of the years
24 between 2006 and 2017?

25 WITNESS GUTIERREZ: (Examining document.)

1 I guess on Page 16 of my testimony, the figure
2 pre -- prepared --

3 (Exhibit displayed on screen.)

4 WITNESS GUTIERREZ: -- by the San Luis and
5 Delta-Mendota Water Authority list the different
6 regulations that impact the operation of the Project.

7 I would point to -- point to those.

8 MR. JACKSON: Well, I'll -- I'll move ahead.

9 The . . . There's an indication that,
10 beginning in -- from 1952 to 1990, as a long-term
11 average, you were getting a little over 90 percent of
12 your water; correct?

13 WITNESS GUTIERREZ: Correct.

14 MR. JACKSON: When did the State Project come
15 online and begin to take a substantial amount of water?

16 WITNESS GUTIERREZ: I don't know that answer.

17 MR. JACKSON: Well, was it in 1952?

18 WITNESS GUTIERREZ: I don't know when the
19 State Water Project came online.

20 MR. JACKSON: All right. Do you know that the
21 Bureau Project at -- at Tracy was for, a number of
22 years, the only water user taking water to the -- to
23 the south out of the Delta?

24 WITNESS GUTIERREZ: I don't know what you mean
25 by "a number of years," but I know that it was the

1 first project online.

2 MR. JACKSON: Do you consider the State Water
3 Project system in the South Delta to be a competitor
4 for the available water?

5 MR. O'HANLON: Object -- Objection: Vague and
6 ambiguous.

7 MR. JACKSON: I don't know how to make it
8 any . . .

9 CO-HEARING OFFICE DODUC: Overruled.

10 WITNESS GUTIERREZ: I -- I -- I said I don't
11 have an opinion on whether they're a competitor or not.
12 The two projects that operate coordinate together.

13 MR. JACKSON: Do you know when they began to
14 be operated in a coordinated fashion?

15 WITNESS GUTIERREZ: I believe there's a 1960
16 Coordinated Operations Agreement, so I'm assuming at
17 that point.

18 MR. JACKSON: Do you know when the Clifton
19 Court Project was finished?

20 WITNESS GUTIERREZ: No.

21 MR. JACKSON: Now, on this chart at -- you
22 have for 1991 a winter-run Salmon temperature control
23 that I guess, in Mr. Boardman's chart, was the first
24 step down below 90; correct?

25 WITNESS GUTIERREZ: According to this chart,

1 that's correct.

2 MR. JACKSON: Do you know why the temperature
3 control device -- I take it at Shasta -- caused the
4 drop?

5 WITNESS GUTIERREZ: No.

6 MR. JACKSON: Then I notice that the next drop
7 was in 1992, and that was a Congressional action
8 under -- that we call CVPIA; correct?

9 WITNESS GUTIERREZ: Correct.

10 MR. JACKSON: And the Bureau obeyed Congress'
11 law; correct?

12 WITNESS GUTIERREZ: I'm assuming Reclamation
13 obeys all Congress' laws.

14 MR. JACKSON: And then the next thing that you
15 point out is the Endangered Species Act, the Delta
16 Smelt Biological Opinion.

17 How did the Delta Smelt Biological Opinion
18 in -- in your -- in the position of your organization
19 affect the availability of water for you in 1993 or --
20 excuse me -- 1994.

21 WITNESS GUTIERREZ: I don't know specifically
22 about the 1994 decision.

23 MR. JACKSON: Okay. Then I notice that the
24 next drop is the Water Quality Control Plan, D-1641,
25 which lowered the average to 70 or so; correct?

1 WITNESS GUTIERREZ: According to this chart,
2 that's correct.

3 MR. JACKSON: What about the Water Quality
4 Control Plan caused that decline?

5 WITNESS GUTIERREZ: My understanding is,
6 the -- maintaining a -- a certain salinity level in the
7 Delta, which required more outflow, which reduced
8 exports.

9 MR. JACKSON: Have you ever read the Purpose
10 section of the CVP -- original CVP Act?

11 WITNESS GUTIERREZ: I'd say that I've read
12 different pieces of the original CVP. I -- I'm not
13 sure if I read specifically that section.

14 MR. JACKSON: Wasn't the building of Shasta
15 Dam and the other Federal facilities, one of the main
16 purposes was salinity control?

17 MR. O'HANLON: Objection: Lacks foundation;
18 calls for a legal conclusion.

19 MR. JACKSON: I'm just asking if he's --

20 CO-HEARING OFFICE DODUC: If he's aware. I
21 understand.

22 Overruled.

23 WITNESS GUTIERREZ: I'm not aware.

24 MR. JACKSON: Hypothetically, if the -- one of
25 the Bureau's purposes was to meet salinity control in

1 the Delta, they would have to obey the law; correct?

2 WITNESS GUTIERREZ: Hypothetically, if that
3 was in the Act, I'm assuming that Reclamation -- I'm
4 assuming that Reclamation obeys all laws passed my
5 Congress.

6 MR. JACKSON: And then the -- the next decline
7 you show is the Anadromous Fish Restoration Program
8 CVPIA B2 which brings it down below your 70 percent
9 almost to 60 percent; correct?

10 WITNESS GUTIERREZ: Yes.

11 MR. JACKSON: Do you know the status of B2 at
12 this -- at this point?

13 WITNESS GUTIERREZ: No.

14 MR. JACKSON: Do you know whether it would be
15 any different if -- if the Anadromous Fish Restoration
16 Program was not in existence?

17 WITNESS GUTIERREZ: No.

18 MR. JACKSON: So you're not really blaming
19 these programs. You're talking about the steady
20 decline; correct?

21 WITNESS GUTIERREZ: Yeah. I'm -- When I
22 referenced this cart, it was primarily to show the
23 trend of the decline in the reliability in the Central
24 Valley Project South-of-Delta exports allocation.

25 MR. JACKSON: Did anyone ever put together a

1 trend about water availability over this same set of
2 years?

3 WITNESS GUTIERREZ: Not to my knowledge.

4 MR. JACKSON: So, this is to highlight your
5 position that it's the fault of the environment that
6 you're not getting your water; correct?

7 MR. O'HANLON: Objection.

8 CO-HEARING OFFICE DODUC: Grounds?

9 WITNESS GUTIERREZ: I -- I'm not -- I'm not
10 pointing out fault. I'm simply identifying a trend
11 pointed out by the Authority.

12 CO-HEARING OFFICE DODUC: So did -- You
13 withdrew your objection, Mr. O'Hanlon?

14 MR. O'HANLON: I'm sorry?

15 CO-HEARING OFFICE DODUC: Did you -- Did you
16 object?

17 MR. O'HANLON: I did object, yes.

18 CO-HEARING OFFICE DODUC: And I asked for
19 grounds and then --

20 MR. O'HANLON: And -- I'm sorry -- And then he
21 answered the question.

22 CO-HEARING OFFICE DODUC: He answered the
23 question.

24 Let's move on.

25 MR. JACKSON: So I'll go -- I'll go quickly

1 over the rest of them.

2 The Trinity River Restoration Plan was, again,
3 a -- a Bureau decision on -- to keep more water in the
4 Trinity River, not send it into the Sacramento;
5 correct?

6 WITNESS GUTIERREZ: I believe so.

7 MR. JACKSON: And then the next one you talk
8 about is the Delta Smelt Biological Opinion in 2008 and
9 the Salmon Biological Opinion in 2009.

10 Are you aware that the present testimony in
11 regard to the WaterFix is that those two Biological
12 Opinions will be obeyed?

13 WITNESS GUTIERREZ: I -- I don't know that for
14 certain.

15 MR. JACKSON: Phrasing it a slightly different
16 way:

17 Are you aware that the -- the Biological
18 Opinions for the Delta Smelt and the Salmon are
19 proposed as parts of the WaterFix in the environmental
20 documentation for the Project?

21 WITNESS GUTIERREZ: I was not aware of that,
22 but if that's the case . . .

23 MR. JACKSON: And that leaves us pretty much
24 where we are today; correct? We're at 43 percent, I
25 believe you say in your testimony, of -- of -- of the

1 long-term average of the Delta Ag Service Contract
2 allocation.

3 WITNESS GUTIERREZ: I think I assume, for
4 rounding, 40 percent.

5 MR. JACKSON: Okay. On Page 17 -- And I --
6 I'll go faster now because I went slower on the other
7 one because you mentioned it first.

8 (Exhibit displayed on screen.)

9 MR. JACKSON: From 1968 -- except for the
10 horrible water year of 1977-78 -- to 1990, you got the
11 final CVP South of Delta Ag Service Contract allocation
12 was 100 percent in all water years; correct?

13 WITNESS GUTIERREZ: Correct.

14 MR. JACKSON: What happened in 8 -- in 1989
15 and 1990 that seems to have changed that?

16 WITNESS GUTIERREZ: From my understanding,
17 it's the Central Valley Project Improvement Act was one
18 thing that happened.

19 MR. JACKSON: Well, that wasn't passed till
20 '92, was it, '91?

21 WITNESS GUTIERREZ: '91.

22 At that time, I think we also experienced a
23 drought.

24 MR. JACKSON: Okay. Now, in that -- And that
25 was kind of where I was going.

1 In the years after 1991, '91-92, '92-93,
2 '93-94, '94-95, that was very close to the drought of
3 record; was it not?

4 WITNESS GUTIERREZ: I believe so.

5 MR. JACKSON: And then '95 and '96, it began
6 to rain again -- thank goodness -- and you were
7 100 percent, 95, 90, and 100 because those were all wet
8 years; correct?

9 WITNESS GUTIERREZ: Are you talking about the
10 Sacramento or the San Joaquin Index for those years?

11 MR. JACKSON: For the purpose of the record,
12 do we agree that the Sacramento supplies approaching
13 90 percent of the water into the Delta every year and
14 that the San Joaquin is about 10 percent?

15 WITNESS GUTIERREZ: I don't know those
16 statistics.

17 MR. JACKSON: Okay.

18 WITNESS GUTIERREZ: But I think -- During that
19 period, I think they were both characterized as wet.

20 MR. JACKSON: Excuse me?

21 WITNESS GUTIERREZ: I think for those years
22 that you identified, I think both the Sacramento and
23 San Joaquin were both classified as wet years.

24 MR. JACKSON: All right. And starting in
25 1990, there were less good years, but until 2006, which

1 was a wet year, you were receiving over your 70 percent
2 number except in 2000 and 2001, which was slightly
3 dryer; correct?

4 WITNESS GUTIERREZ: So if you're going from
5 1995 through 2001?

6 MR. JACKSON: No. I'm -- I'm now going
7 from . . . I'm now going from 2000 to 2007. And those
8 were pretty good water years and you got what you were
9 talking about, 70 percent of your water -- correct? --
10 from the existing situation.

11 WITNESS GUTIERREZ: So for those years, 2000
12 to 2007, Westlands received a 70 percent allocation in
13 one, two, three, four, five -- Five of those years, we
14 received a 70 percent or greater allocation.

15 MR. JACKSON: And the other two years were
16 lower -- lower quality water years; right?

17 WITNESS GUTIERREZ: Lower quality?

18 MR. JACKSON: Well, less water.

19 If it doesn't rain in Plumas County, we
20 consider it -- or snow, we consider it low quality.

21 WITNESS GUTIERREZ: Those were below -- Yes,
22 those were all -- Actually, in 2000, it was an
23 above-normal year on both the Sacramento and the
24 San Joaquin, and we only received a 65 percent
25 allocation. And that was following a wet year and an

1 above-normal year for the Sac and the San Joaquin
2 respectively. Yeah, respectively.

3 MR. JACKSON: Okay. And so if we -- if we
4 start at 2008 -- just to make this go a little
5 faster -- and end up at 2017 -- 2016-17, there was one
6 big water year in which you received 80 percent
7 allocation, and the rest of them were not so good in
8 terms of precipitation; correct?

9 WITNESS GUTIERREZ: Those were primarily
10 below-normal or lower.

11 MR. JACKSON: Now, in that same length of
12 time, do you know whether or not the fish got less
13 water as well as the Water Authority got less water?

14 MR. O'HANLON: Objection: Vague and ambiguous
15 what -- what is meant by that.

16 CO-HEARING OFFICE DODUC: Mr. Jackson.

17 MR. JACKSON: What I mean by that is that all
18 different kind of water users were in the same position
19 during that of period unless their water rights were
20 superior to somebody else's. And the fish don't have
21 contracts, so . . .

22 CO-HEARING OFFICE DODUC: And your question
23 was again?

24 MR. JACKSON: Isn't it true that these very
25 low water years were being suffered by all other water

1 users and by the environment?

2 CO-HEARING OFFICE DODUC: Do you have a guess,
3 Mr. Gutierrez?

4 WITNESS GUTIERREZ: I would suspect that I
5 could probably find Sac Valley Settlement Contractors
6 that received 100 percent. I would expect during that
7 period I could find municipal and industrial customers
8 that received 100 percent. I could probably even find
9 Refuges that received 100 percent during that period.

10 MR. JACKSON: So let's --

11 WITNESS GUTIERREZ: And I think that I could
12 probably provide you lost of examples where
13 South-of-Delta Ag Contractors were -- were some of the
14 lowest to receive an allocation in those years.

15 MR. JACKSON: All right. So let's talk about
16 those.

17 Are -- Is it your position that the Water
18 Authority should receive the same benefits as the
19 Settlement Contractors in every year?

20 WITNESS GUTIERREZ: Which Settlement
21 Contractors are you referring to?

22 MR. JACKSON: The -- Let's start in the
23 Sacramento Valley with the Sacramento Settlement
24 Contractors.

25 WITNESS GUTIERREZ: Well, I guess I'm going to

1 rely on the contracts that Reclamation has with them
2 and . . . I mean, I don't know if I have an opinion
3 beyond I just want Reclamation to follow the contracts.

4 MR. JACKSON: All right. And the same thing
5 would be true for the Exchange Contractors who are a
6 kind of Settlement Contractor?

7 WITNESS GUTIERREZ: I think Reclamation
8 provides water according to its contracts.

9 MR. JACKSON: So while there are many of the
10 things that Mr. Shire talked about and that you've
11 talked about in your testimony about the -- the really
12 good things that the farmers are doing individually to
13 stay in business, it's the contracts that seem to be
14 controlling.

15 Is that fair to say?

16 MR. O'HANLON: Objection: Controlling as to
17 what?

18 MR. JACKSON: As to how much water you get.

19 WITNESS GUTIERREZ: I mean, the contracts set
20 the limit. I mean, they provide the maximum amount.

21 But as far as the distribution of the water,
22 no, the contracts do not control the amount of water
23 that Westlands receives. We receive less than our
24 contract in most years.

25 MR. JACKSON: And is that because of Westlands

1 was sort of last on to the system?

2 WITNESS GUTIERREZ: I don't believe that's the
3 reason.

4 MR. JACKSON: I'm going to wait for it to --
5 Well . . .

6 CO-HEARING OFFICE DODUC: How much additional
7 time do you need to question Dr. Shires or Mr. --
8 Doctor.

9 MR. JACKSON: Yes. I have two more questions
10 for Mr. Guti -- Gutierrez. I have others, but I'll
11 just ask two.

12 And then Dr. Shires, I would think 15 minutes.

13 CO-HEARING OFFICE DODUC: All right. Let's do
14 that.

15 Then give Mr. Jackson another 15 minutes.

16 MR. JACKSON: Calling your attention to . . .

17 Page 23 of Mr. Gutierrez's --

18 (Exhibit displayed on screen.)

19 MR. JACKSON: -- testimony.

20 On Lines, oh, let's say, 13 to 17.

21 (Exhibit displayed on screen.)

22 MR. JACKSON: It's been indicated in the
23 testimony that Westlands has taken part in the shift to
24 higher-value and -- and more permanent crops over the
25 last decade.

1 Is that fair to say?

2 WITNESS GUTIERREZ: Yes.

3 MR. JACKSON: And I'm going to call your
4 attention to almonds because you highlight them here.

5 And you talk about (reading):

6 "The shift to permanent crops has
7 hardened the demands in Westlands because
8 permanent crops cannot be fallowed . . ."

9 That's true everywhere in California that
10 almonds are grown; correct?

11 WITNESS GUTIERREZ: Everywhere in California?

12 MR. JACKSON: That almonds are grown.

13 WITNESS GUTIERREZ: I -- I'm not sure if
14 they're grown everywhere in California. They're grown
15 in the Central Valley.

16 MR. JACKSON: All right. Let -- Let me locate
17 it for the purposes of the questions more specifically.

18 On the west -- On -- On the east side of
19 the -- of Highway 99 in the counties of Yuba and Butte,
20 people have been growing almonds for a hundred years;
21 correct?

22 WITNESS GUTIERREZ: I don't know that.

23 MR. JACKSON: All right. Let's assume that
24 people have been growing almonds for a long time, and
25 they're doing it on groundwater, not on CVP water, so

1 they're not a competitor for water.

2 If the WaterFix collects more water from the
3 small streams and the groundwater that that almond
4 industry has developed around, would you expect that
5 that would cause losses to farmers?

6 MR. O'HANLON: Objection: Incomplete
7 hypothetical; calls for speculation.

8 CO-HEARING OFFICE DODUC: Are you able
9 to . . .

10 WITNESS GUTIERREZ: I guess I'm not sure the
11 linkage between the general morphology that he's
12 pointing to and the link of Cal WaterFix and how those
13 two are integrated for water-passed-down standpoint.

14 MR. JACKSON: Well, you -- Going back to your
15 testimony, I -- you -- you have a whole section on
16 transfers; correct?

17 WITNESS GUTIERREZ: Yes.

18 MR. JACKSON: And are transfers important to
19 your water supply?

20 WITNESS GUTIERREZ: Yes.

21 MR. JACKSON: And they come from someone;
22 correct?

23 WITNESS GUTIERREZ: Willing sellers, yes.

24 MR. JACKSON: And . . . if there is an almond
25 industry that is self-sufficient on their own

1 groundwater, do you believe that it would make sense to
2 transfer water from them to new almond crops grown in
3 Westlands?

4 MR. O'HANLON: Objection. Objection: Again,
5 incomplete hypothetical; lacks foundation.

6 CO-HEARING OFFICE DODUC: Mr. Jackson.

7 MR. JACKSON: Well, the -- the -- the idea
8 is -- And -- And I'll -- It'll be a question for
9 Mr. Shires so he can think about it.

10 The idea of moving agriculture around that is
11 operating already on -- on the same water supply
12 doesn't seem to make sense. And I just want to get
13 his -- Westlands is a competitor to these people in
14 Butte County. They have markets in the same place.

15 CO-HEARING OFFICE DODUC: I understand that.
16 I don't know to what extent Mr. Gutierrez can answer
17 these questions.

18 WITNESS GUTIERREZ: I mean, I -- Whenever
19 we've purchased water on the open market, we've
20 purchased water from willing sellers. And they either
21 make these transfers available through groundwater
22 substitution, so they continue farming on groundwater
23 and they bypass or they forebear their surface water
24 allocation.

25 So my understanding is that the farming

1 continues.

2 We also -- We don't do this as often but we
3 buy fallowed water also. Those arrangements -- Let's
4 say, for example, rice is fallowed, but there are --
5 there are CEQA and NEPA documents that approve these
6 transfers. If there are impacts, those impacts are
7 mitigated.

8 MR. JACKSON: I can be even more specific, if
9 you'd like.

10 CO-HEARING OFFICE DODUC: What I would like is
11 for you to start wrapping up your questions with
12 Mr. Gutierrez because you still have Dr. Shires to go.

13 MR. JACKSON: I understand.

14 CO-HEARING OFFICE DODUC: So be as direct as
15 you can.

16 MR. JACKSON: In a substituted groundwater
17 transfer, you purchase water from someone who foregoes
18 a contract, if they have one -- say, a Settlement
19 Contractor in Butte County -- and they then pump
20 groundwater from all of their neighbors' systems who do
21 not have contracts.

22 Is that how it used to operate in the
23 San Joaquin when the groundwater tables were hundreds
24 of feet higher?

25 MR. O'HANLON: Objection: Lacks foundation;

1 calls for speculation.

2 WITNESS GUTIERREZ: I'm not -- I'm not sure
3 what he's referring to in the San Joaquin.

4 MR. JACKSON: Well --

5 CO-HEARING OFFICE DODUC: Mr. Jackson.

6 MR. JACKSON: -- they -- San Joaquin
7 groundwater has dropped over the last 50 years;
8 correct? Groundwater table?

9 WITNESS GUTIERREZ: I mean, can you be more
10 specific? Where exactly are you referring to?

11 MR. JACKSON: In Westlands -- In the southern
12 part of the Westlands Water District.

13 WITNESS GUTIERREZ: Has groundwater -- Have
14 groundwater levels declined? They decline when we lack
15 surface water and they increase when we have sufficient
16 surface water. They increased 100 feet this year.

17 MR. JACKSON: They declined when you lacked
18 surface water because people were using the
19 groundwater; correct?

20 WITNESS GUTIERREZ: That's -- Yeah. It's
21 called conjunctive use.

22 MR. JACKSON: Yeah.

23 So . . . isn't a groundwater substitution
24 transfer causing someone's groundwater to drop?

25 WITNESS GUTIERREZ: Possibly, when that ground

1 water's being pumped. But my understanding, even when
2 those have happened, water does re -- the groundwater
3 does recover.

4 My understanding is that when we purchased
5 surface water and the settlement turned to groundwater,
6 following those transfers, the groundwater levels do
7 recover in those areas.

8 MR. JACKSON: And what do you base that on?

9 WITNESS GUTIERREZ: Information provided by
10 the sellers.

11 MR. JACKSON: Specific sellers?

12 WITNESS GUTIERREZ: Yes.

13 MR. JACKSON: What?

14 WITNESS GUTIERREZ: Yes, specific sellers.

15 MR. JACKSON: And who are they?

16 WITNESS GUTIERREZ: Oh, I believe the latest I
17 heard was from Yuba County Water Agency.

18 Actually, not -- I'm sorry. Not Yuba County
19 Water Agency, but the members of the Yuba County Water
20 Agency.

21 MR. JACKSON: Well, we'll put that on as
22 evidence when we get to our direct.

23 Thank you, Mr. Gutierrez.

24 Dr. Shires, you answered a series of questions
25 from Mr. Keeling about the figures that you have here

1 and whether or not they -- the . . . the concepts that
2 you testified to would be the same if we were talking
3 about San Joaquin County in terms of agriculture;
4 correct?

5 WITNESS SHIRES: I did answer that series of
6 questions, yes.

7 MR. JACKSON: Would that be true for the 10 or
8 15 counties in the Sacramento Valley as well?

9 WITNESS SHIRES: It's possible. I mean, in
10 general, some of those things are likely true.

11 The challenges -- I haven't analyzed the
12 specific economies of those geographies, so I would
13 have to caveat any specific details about those
14 processes.

15 But, generally, agricultural does -- agri --
16 agricultural production does produce the kind of
17 effects that I talked about in my report.

18 MR. JACKSON: In -- In terms of the . . .

19 In terms of the WaterFix, are you assuming
20 that it's going to deliver more water to South of Delta
21 than the present system?

22 WITNESS SHIRES: My analysis makes no
23 assumptions about the WaterFix.

24 MR. JACKSON: So your analysis is simply based
25 on what's happened in the past and the data you've

1 looked at.

2 WITNESS SHIRES: My analy -- My analysis is
3 current as of the time it was published.

4 MR. JACKSON: Okay. Did you look at the cost
5 to delivering -- the cost to the rest of California to
6 delivering water south of the Delta?

7 WITNESS SHIRES: No.

8 MR. JACKSON: So you have -- This is not Cost
9 Benefit Statement? This is just a Benefit Statement
10 for one group of people.

11 WITNESS SHIRES: This is an analysis of the
12 economic impact of the agriculture production and other
13 activities of the Westlands Water District.

14 MR. JACKSON: And how much does water
15 availability play into that analysis?

16 WITNESS SHIRES: It's a significant variable.

17 MR. JACKSON: All right. As a -- a professor
18 and . . . agricultural water expert, the benefits
19 follow the water; correct?

20 WITNESS SHIRES: Do you mean geographically or
21 do you mean --

22 MR. JACKSON: Yes.

23 WITNESS SHIRES: The availability of water
24 brings benefits to the geography, yes.

25 MR. JACKSON: Right.

1 Food is important. Did you consider fish as
2 food in your analysis?

3 WITNESS SHIRES: I did not.

4 MR. JACKSON: So none of the Salmon fisheries
5 were considered in the benefits that go from
6 potentially harming them to move the water?

7 WITNESS SHIRES: That was not part of the
8 analysis.

9 MR. JACKSON: Right.

10 Did you consider the loss of recreation caused
11 by moving the water South of Delta?

12 MR. O'HANLON: Objection: Lacks -- Excuse me.

13 Objection: Lacks foundation.

14 CO-HEARING OFFICE DODUC: What was the
15 question? I thought he considered it.

16 Overruled.

17 Did you consider it?

18 WITNESS SHIRES: No.

19 MR. JACKSON: Did you consider the tourism
20 industry in the areas of the Delta where the water's
21 coming from?

22 WITNESS SHIRES: I did not look at any impacts
23 on the Delta.

24 MR. JACKSON: Did you consider the impacts of
25 the WaterFix at all as a . . . detriment to the state

1 economy.

2 WITNESS SHIRES: As I indicated before, this
3 analysis did not analyze the impacts of the WaterFix.

4 MR. JACKSON: Thank you, sir.

5 CO-HEARING OFFICE DODUC: Thank you,
6 Mr. Jackson.

7 Mr. Stroshane, with your indulgence, I suggest
8 we wait until after our lunch break to get to your
9 cross-examination.

10 Let me also ask, since I have Mr. Stroshane
11 and Miss Des Jardins here:

12 Do you still anticipate, Mr. Stroshane,
13 needing 45 to 60 minutes for your cross?

14 MR. STROSHANE: No. I anticipate perhaps
15 30 --

16 CO-HEARING OFFICE DODUC: Thank you.

17 MR. STROSHANE: -- because of the efficient
18 questioning that has been done already.

19 CO-HEARING OFFICE DODUC: Excellent.

20 Miss Des Jardins.

21 MS. DES JARDINS: My questions have not been
22 covered and I may need 60 minutes.

23 I will endeavor to be as efficient as
24 possible.

25 CO-HEARING OFFICE DODUC: Thank you.

1 Does anyone else intend to cross-examine this
2 panel?

3 MR. FERGUSON: Yeah. Aaron Ferguson, County
4 of Sacramento, Group 45.

5 I'd say 20 minutes.

6 CO-HEARING OFFICE DODUC: Okay.

7 MR. FERGUSON: And also on behalf of Regional
8 Sanitation, I raised the question last week about the
9 request they had to reorganize the order so that
10 Regional San can go with Antioch and San Joaquin
11 Tributaries Authority.

12 And my understanding is, when I left, that
13 Mr. Deeringer indicated it was still considered under
14 consideration.

15 I know there was no --

16 CO-HEARING OFFICE DODUC: I thought we ruled
17 on that.

18 MR. FERGUSON: -- opposition but maybe I
19 misunderstood so I -- I just want to be clear about
20 whether that's been accepted or not.

21 MR. DEERING: Thanks for following up on that.

22 Can we check on that while we're breaking
23 during --

24 MR. FERGUSON: Yes.

25 MR. DEERING: -- closed section and when we

1 come back?

2 CO-HEARING OFFICE DODUC: So, Miss Wehr,
3 let's -- let's check in with you because right now, I
4 am -- We're going to take a lunch break until 2:30.

5 And Mr. Stroshane is estimating 30 minutes.
6 That takes us to 3:00. Miss Des Jardins is estimating
7 60 minutes. That'll take us to 4:00. And Mr. Ferguson
8 just requested 20.

9 So unless your witnesses really want to get
10 their direct in today, I suggest we get to them
11 tomorrow.

12 MS. WEHR: Is there a hearing schedule for
13 tomorrow or are we going home?

14 CO-HEARING OFFICE DODUC: I'm sorry. Yes, we
15 are; aren't we? We're on Tuesday? Yes.

16 I think we have a full day tomorrow; don't we?

17 MS. WEHR: Let me briefly check with my
18 witnesses.

19 Yes, we can go tomorrow.

20 CO-HEARING OFFICE DODUC: Let's do that.

21 And at this time, do you -- how much time do
22 you anticipate needing for direct?

23 MS. WEHR: I believe we'll need approximately
24 30 minutes for direct.

25 CO-HEARING OFFICE DODUC: And at this time,

1 can I get a showing of how much cross to expect? I'm
2 trying to give Miss Meserve an estimate for her -- her
3 direct.

4 MS. ANSLEY: Jolie-Anne Ansley for Department
5 of Water Resources.

6 We are coordinating with Miss Morris of the
7 State Water Contractors, and she'll give you her
8 estimate for our combined questions.

9 MS. MORRIS: 30 minutes.

10 CO-HEARING OFFICE DODUC: All right.

11 MR. JACKSON: 45.

12 MR. STROSHANE: 30 at the most.

13 MS. MESERVE: And 30 minutes.

14 CO-HEARING OFFICE DODUC: Okay. So that's
15 roughly three hours with direct. So, Miss Meserve, I
16 guess we'll get to your group after the lunch break.

17 MS. MESERVE: I (Nodding head.)

18 CO-HEARING OFFICE DODUC: Miss Wehr?

19 MS. WEHR: Thank you.

20 CO-HEARING OFFICE DODUC: All right. We are
21 going to adjourn to closed session on the WaterFix and
22 we will reconvene at -- Actually -- I'm sorry --
23 we're -- we will -- what is the word -- start closed
24 session at 1 p.m. and we will return here at 2:30.

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(Lunch recess at 12:52 p.m.)

* * *

1 Monday, March 12, 2018 2:30 p.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: Good afternoon,
5 everyone. It is 2:30. We are back in session.

6 And now we'll turn -- Actually, before we
7 begin, any other housekeeping matters?

8 If not, we will turn it over to Mr. Stroshane.

9 MR. STROSHANE: Well put.

10 So my subjects, Ms. Doduc, are:

11 I have questions primarily for Mr. Shires and
12 for Mr. Gutierrez. And some of the ones for
13 Mr. Gutierrez I will also direct to Miss Mizuno.

14 For Mr. Shires, the subjects I plan to cover
15 include comparative data on employment; household
16 income and wages for farm workers and laborers for
17 California; and the cost of living in the two counties
18 of Fresno and Kings. And my goal is to provide
19 additional context for a portion of Dr. Shires'
20 testimony.

21 And then for Mr. Gutierrez and Miss Mizuno, I
22 want to cover water transfers and supplemental water
23 sources; CVP and SWP deliveries; and Central Valley and
24 State Water Project water demand; CVP allocations; and
25 Westlands General Manager's Policy Statement of

1 February 7th, 2018.

2 I have a brief question about it and it is --

3 My hunch is that it's inbounds but --

4 CO-HEARING OFFICER DODUC: Okay.

5 MR. STROSHANE: -- can we just --

6 CO-HEARING OFFICER DODUC: We'll get to it.

7 I'm sure counsel will object if they feel necessary.

8 MR. STROSHANE: Right.

9 CROSS-EXAMINATION BY

10 MR. STROSHANE: With that, I would like to

11 start with Dr. Shires.

12 Ms. Gaylon, can -- Are you doing the honors

13 today? Okay.

14 Dr. Shires -- Could you please bring up

15 Westlands Water District Exhibit 18, WWD-18, and go to

16 Page 5, Lines 24 through 28.

17 (Exhibit displayed on screen.)

18 MR. STROSHANE: And, Dr. Shires, would you

19 please look at this passage briefly which addresses

20 transient household income in Fresno and Kings

21 Counties.

22 WITNESS SHIRES: (Examining document.)

23 I have.

24 MR. STROSHANE: Okay. Dr. Shires, do I

25 understand correctly that you used 2010 dollars instead

1 of, for example, 2014 dollars to do the real dollars
2 comparison in Figure 3 on -- on -- which I think is on
3 the next page.

4 (Exhibit displayed on screen.)

5 WITNESS SHIRES: That is correct.

6 MR. STROSHANE: Okay. Am I correct also in
7 understanding that using 2014 dollars for the
8 comparison would change the real values of household
9 incomes in this figure?

10 WITNESS SHIRES: It would change the numbers
11 but the -- in the first four columns, but the fifth
12 column would remain the same.

13 MR. STROSHANE: It would. Okay. Okay.

14 WITNESS SHIRES: They would all change by the
15 same amount.

16 MR. STROSHANE: Okay. Would you -- Can you
17 give us a brief ex -- qualitative explanation of how
18 the whole -- of how they would change and -- and why it
19 is that the percent change would not alter.

20 WITNESS SHIRES: All the numbers would be
21 changed by exactly the same percentage. And so when
22 you're looking at a change over time, you divide the
23 first by the second, and so you'd be dividing a number
24 by itself, which is one.

25 MR. STROSHANE: Okay. The American

1 Communities Survey, or ACS for short, was the source
2 you used in Figure 3; is that correct?

3 WITNESS SHIRES: That is correct.

4 MR. STROSHANE: And this is sample survey data
5 that is obtained by the U.S. Census Bureau; is that
6 correct?

7 WITNESS SHIRES: That is correct.

8 MR. STROSHANE: In using the ACS Median
9 Household Income Survey data, did the Census Bureau
10 report a plus or minus error range for the results that
11 you drew on?

12 WITNESS SHIRES: There's always an intrinsic
13 plus or minus error range.

14 MR. STROSHANE: And they -- And they report it
15 as part of the display of the data?

16 WITNESS SHIRES: In -- Not in the display of
17 the data necessarily. In the technical appendices.

18 MR. STROSHANE: What was the last part?

19 WITNESS SHIRES: In the technical appendices.

20 MR. STROSHANE: Oh, okay. Okay.

21 Do you recall what the error range was for
22 these counties and for California, approximately?

23 WITNESS SHIRES: I do not right now. It's
24 usually in the range of 1 percent --

25 MR. STROSHANE: Okay.

1 WITNESS SHIRES: -- 1 to 2 percent.

2 MR. STROSHANE: Okay. Can we go now to
3 Figure 4 now on Page 7.

4 (Exhibit displayed on screen.)

5 MR. STROSHANE: That's the one, yes.

6 Dr. Shires, did the employment category of
7 Farm Jobs grow or contract in Fresno County between
8 2011 and 2014?

9 WITNESS SHIRES: I'm sorry. I couldn't hear
10 the question.

11 MR. STROSHANE: Did -- Did the employment
12 category of Farm Jobs grow or contract in Fresno County
13 between 2011 and 2014?

14 WITNESS SHIRES: It grew. Well, it grew and
15 it contracted, actually.

16 MR. STROSHANE: Thank you.

17 Now Figure 5, please, next -- which I believe
18 is the next page.

19 (Exhibit displayed on screen.)

20 MR. STROSHANE: Thank you.

21 Did farm jobs grow or contract in Kings County
22 during this same period?

23 WITNESS SHIRES: They grew.

24 MR. STROSHANE: They grew.

25 And now can we go, please, to Page 9.

1 (Exhibit displayed on screen.)

2 MR. STROSHANE: Yes, Page 9, Line 18 through
3 24.

4 (Exhibit displayed on screen.)

5 MR. STROSHANE: Dr. Shires, would you please
6 read this passage aloud.

7 WITNESS SHIRES: 18 to 24?

8 (Reading):

9 "As agricultural employment in the
10 region declines, as is seen in Figure 4
11 in Fresno County, agricultural workers
12 are forced to migrate to other regions of
13 the state or nation. This in turn leads
14 to fewer residents in (sic) the region
15 and thus lower enrollment in local
16 schools and thus fewer dollars to hire
17 teachers and staff and purchase materials
18 and supplies in the local school district
19 (sic). These impacts are likely to be
20 exacerbated as limited access to water
21 supplies and shifting crop mixes put
22 downward pressure on the core
23 agricultural employment base in the
24 region."

25 MR. STROSHANE: Thank you.

1 How many years back in Figure 4 do you recall
2 there was a decline in employment?

3 WITNESS SHIRES: The last two.

4 MR. STROSHANE: The last two?

5 And do you know what the trend has been since
6 then, since 2015?

7 WITNESS SHIRES: I haven't looked at this
8 year's data. I would expect it to be relatively flat.

9 MR. STROSHANE: Okay. And did you provide
10 enrollment data in your testimony for any point in this
11 period for Fresno County schools?

12 WITNESS SHIRES: I did not.

13 MR. STROSHANE: And the same question for
14 Kings County:

15 Did you supply enrollment data in this -- in
16 your testimony?

17 WITNESS SHIRES: I did not.

18 MR. STROSHANE: Miss Gaylon, please bring up
19 RTD-1026.

20 (Exhibit displayed on screen.)

21 MR. STROSHANE: Thank you.

22 This is an exhibit I hope to introduce -- I'm
23 introducing.

24 It summarizes six years of occupation and wage
25 survey data results compiled by the California

1 Depart -- Employment Development Department from 2012
2 to 2017 for farm workers and laborers in Fresno County,
3 Kings County, and California as a whole.

4 These data rely on the standard occupational
5 classification code system which is employed by, I
6 believe -- well, the Federal government at least.

7 This system includes a code specific to farm
8 workers and laborers as the note at the bottom of this
9 exhibit indicates.

10 If authentication by counsel is desired for
11 the survey results, it's available directly from the
12 URL provided in RTD-1026.

13 And I have also provided RTD-1027 as an
14 abridged authentication drawn from the original Excel
15 files that I obtained from the EDD website.

16 Dr. Shires, please take a look -- If we could
17 back out just a little bit and . . .

18 (Exhibit displayed on screen.)

19 MR. STROSHANE: Can you read the -- the large
20 version of that? Because it shows all three areas that
21 I wanted you to see.

22 Is that legible to you?

23 WITNESS SHIRES: Yes.

24 MR. STROSHANE: Okay. Have you heard --
25 Dr. Shires, have you heard of this survey and its

1 results?

2 WITNESS SHIRES: Yes.

3 MR. STROSHANE: Have you used its results?

4 WITNESS SHIRES: Yes.

5 MR. STROSHANE: Okay. Do you agree that the
6 change in the mean and median hourly wage results here
7 are relatively flat for farm workers and laborers from
8 the first quarter of 2012 through the first quarter of
9 2015 for both Fresno and Kings County?

10 WITNESS SHIRES: I guess --

11 MR. STROSHANE: Which is the --

12 WITNESS SHIRES: -- the question is: What do
13 you mean by "relatively flat"? I mean --

14 MR. STROSHANE: Do they change --

15 WITNESS SHIRES: -- there's a 3 percent
16 increase --

17 MR. STROSHANE: -- a lot? Do they increase
18 dramatically?

19 WITNESS SHIRES: There's a 3 percent increase.
20 I don't know if you would count that as relatively flat
21 or not.

22 MR. STROSHANE: Okay. Am I correct in
23 understanding that these changes in the mean and median
24 hourly farm worker and laborer wage for Fresno and
25 Kings Counties suggest a trend that could be construed

1 as similar to the unadjusted household income decline
2 depicted in Figure 3 of your testimony?

3 And would you -- If you'd like, we could go
4 back and look at Figure 3.

5 WITNESS SHIRES: So could you repeat the
6 question.

7 MR. STROSHANE: Sure.

8 Am I correct in understanding that these
9 changes in the mean and median hourly farm worker and
10 laborer wage for Fresno and Kings Counties suggest a
11 trend similar to the unadjusted household income
12 decline depicted in Figure 3 of your testimony?

13 WITNESS SHIRES: In fact, these do not.

14 MR. STROSHANE: They do not?

15 WITNESS SHIRES: They do not. I mean, these
16 show a general rising trend over that time.

17 MR. STROSHANE: Uh-huh.

18 WITNESS SHIRES: The household numbers show a
19 general decline in trend.

20 MR. STROSHANE: Uh-huh. Okay.

21 And -- And -- Oh, we've already established
22 that.

23 Can you explain why farm worker and laborer
24 wages -- hourly wages that are in this exhibit
25 increased in the first quarters of both 2016 and 2017?

1 WITNESS SHIRES: I haven't done definitive
2 research on it. There's probably a variety of factors
3 that could influence that.

4 MR. STROSHANE: Can you suggest -- If -- If
5 you were doing a study about this, to look into the
6 background why -- why the hourly wage information
7 increased for these two years, these two -- in these
8 quarters of these two years, what factors would you
9 want to examine?

10 WITNESS SHIRES: I mean, I think you would
11 want to look at labor supply. You'd want to look at
12 demand for workers.

13 MR. STROSHANE: Um-hmm.

14 WITNESS SHIRES: You would want to look for
15 competition for workers in other sectors possibly.

16 MR. STROSHANE: Okay.

17 WITNESS SHIRES: I think those -- I mean, that
18 would drive the wages. That wouldn't be the main
19 drivers necessarily.

20 MR. STROSHANE: Are there any other, say,
21 cost-of-living factors you might look at as well?

22 WITNESS SHIRES: Labor markets tend to lag
23 consumer markets. So if there was a major spike in
24 inflation in the late part of this period, I would look
25 for that.

1 MR. STROSHANE: Um-hmm.

2 WITNESS SHIRES: I mean, aside for housing in
3 California, there really hasn't been a major spike.

4 MR. STROSHANE: You said aside from housing?

5 WITNESS SHIRES: Yes.

6 MR. STROSHANE: Yeah. Thank you.

7 Dr. Shires, the quarterly mean annual wage
8 that's shown -- pardon me -- in this exhibit appear to
9 be derived, by my examination of it, by multiplying the
10 mean hourly wage by 2,080 hours for a year, which
11 assumes a wage worker works 40 hours a week for 52
12 weeks in a year. In other words, this -- this middle
13 column of data is -- is derived from the -- the
14 first -- the first column of wage -- hourly wage data.

15 Am I correct in understanding that many farm
16 workers and laborers are employed in seasonal work and
17 often may not work 52 weeks a year?

18 WITNESS SHIRES: Yes.

19 MR. STROSHANE: Am I correct also in
20 understanding that if farm workers work less than 52
21 weeks a year at these wages, their annual income may be
22 less than that shown here in the EDD survey data?

23 WITNESS SHIRES: I can't come to that
24 conclusion.

25 MR. STROSHANE: Why not?

1 WITNESS SHIRES: Well, for one, I'd want to
2 verify the assumption you made about -- I mean, I
3 understand that, mathematically, that these are
4 calculated that way.

5 What I don't know is if this is based on
6 actual hourly wages worked and whether they worked in
7 other sectors.

8 And so when you talk about mean annual wages,
9 you need to look at that data and see how they interact
10 with other sectors because many -- some of these
11 workers will likely have second jobs.

12 MR. STROSHANE: Okay. Yeah. Thank you for
13 that explanation.

14 Can we please turn to Figure 4 on Page 7 in
15 Dr. Shires' testimony for a moment.

16 (Exhibit displayed on screen.)

17 MR. STROSHANE: So this table shows the
18 percentage of -- of jobs in different sectors.

19 I'm sorry. I meant Figure 3. Could we go
20 back to Figure 3.

21 (Exhibit displayed on screen.)

22 MR. STROSHANE: Sorry.

23 So, Dr. Shires, from your professional
24 experience, what economic factors or trends in the
25 Fresno and Kings County economies would help explain

1 this apparent increase in households with incomes below
2 \$25,000 per year?

3 WITNESS SHIRES: There's a range of variables.
4 Possible unemployment might be one.

5 MR. STROSHANE: Unemployment?

6 WITNESS SHIRES: Yes.

7 MR. STROSHANE: Uh-huh.

8 WITNESS SHIRES: It could be wages were
9 driving down or the availability of hours to work
10 declined.

11 MR. STROSHANE: Um-hmm.

12 WITNESS SHIRES: In the case of 2011-12, you
13 might actually see a surge related to the greater
14 section.

15 MR. STROSHANE: Okay. Now I'd like to place
16 the household income and wage information into just a
17 little bit more context.

18 Ms. Gaylon, could you please bring up
19 RTD-1032. This table --

20 (Exhibit displayed on screen.)

21 MR. STROSHANE: Yeah, thank you.

22 This table compares the first quarter farm
23 worker median wage for 2017 from the EDD data that we
24 were just considering in the earlier RTD exhibit with
25 living wage, poverty wage, and legal minimum wage

1 indicators in effect for 2016.

2 This table summarizes these wage indicators
3 and standards from the -- from the MIT, Massachusetts
4 Institute of Technology, living wage calculator
5 website.

6 These indicators are often used in economic
7 analysis as additional information about the cost of
8 living in an economic region.

9 And, again, for authentication, RTD intends
10 also to submit into evidence at the proper time the
11 original source data on which the living wage, hourly
12 wage, et cetera, et cetera, are -- are based.

13 CO-HEARING OFFICER DODUC: (Nodding head.)

14 MR. STROSHANE: And I supply those right --
15 I've supplied them with your staff over there as RTD --
16 Exhibits RTD-1028, -1029, and -1030 for Fresno and
17 Kings Counties, and for the State of California.

18 The technical documentation that defines and
19 supports interpretation of these data are also provided
20 in RTD-1031.

21 These supporting exhibits are intended to
22 provide authen -- authentication for the data that are
23 shown in this exhibit here.

24 MR. O'HANLON: I'd like to respond that,
25 presumably, that will be presented in their case in

1 chief and we can follow up with that then.

2 For purposes of the questions, I have no
3 problem with him assuming that that's the case, but
4 nothing that's been said by counsel, of course, is
5 currently evidence that that's --

6 CO-HEARING OFFICER DODUC: Understood.

7 MR. O'HANLON: -- accurate.

8 CO-HEARING OFFICER DODUC: Mr. Stroshane is
9 just covering all the bases. Thank you.

10 MR. STROSHANE: Yes. Thank you.

11 Dr. Shires, if you've had a chance to look
12 this over just a little bit.

13 Does the farm worker median hourly wage in
14 Fresno County exceed the living wage for that county
15 for either of the selected households shown in
16 RTD-1032?

17 WITNESS SHIRES: I mean, are you asking me if
18 the fourth row on this table is smaller than the first
19 row?

20 MR. STROSHANE: Well, whether --

21 WITNESS SHIRES: I mean --

22 MR. STROSHANE: Whether there's --

23 WITNESS SHIRES: -- is that your question?

24 MR. STROSHANE: Yes, that is my question.

25 WITNESS SHIRES: Yes.

1 MR. STROSHANE: Does the farm worker median
2 hourly wage for Kings County exceed the living wage for
3 that county for either of the selected households shown
4 in RTD-1032?

5 WITNESS SHIRES: Given this model's definition
6 of "living wage," the -- the wage is lower.

7 MR. STROSHANE: I'm -- I'm sorry. I couldn't
8 hear.

9 WITNESS SHIRES: I said given this model's
10 definition of the living wage, which I don't know what
11 that is, I haven't seen the methodology, the materials
12 or how it interacts with this sector, so it's hard for
13 me to judge what "living wage" means. But the fourth
14 line is smaller than the first line.

15 MR. STROSHANE: Thank you.

16 No further questions for Dr. Shires.

17 I'm really starting to croak so I need to
18 drink.

19 Okay. The next set of questions are for --
20 mainly for Mr. Gutierrez and some for Miss Mizuno.

21 And the first category of questions I have are
22 for -- concern water transfers and supplemental water
23 sources.

24 Ms. Gaylon, could you bring up -- I believe
25 it's WWD . . . I forget. I -- I think it's 15 for

1 Mr. Gutierrez's testimony. That's what I'm after.

2 (Exhibit displayed on screen.)

3 MR. STROSHANE: And could you take us to
4 Page 7, Lines 3 through 8.

5 (Exhibit displayed on screen.)

6 MR. STROSHANE: So in this passage,
7 Mr. Gutierrez, I did not get a clear sense of what the
8 difference is between supplemental water and water user
9 transfers.

10 But, first, I'd like to know what -- what you
11 mean by "supplemental water" as -- as you intend in
12 this passage.

13 WITNESS GUTIERREZ: My intent in this passage
14 is that supplemental waters that Westlands Water
15 District and its staff acquire for delivery to our
16 water users, and that this water is not our CVP
17 contract-allocated water.

18 MR. STROSHANE: Okay. And what are water user
19 transfers?

20 WITNESS GUTIERREZ: Water user transfers, the
21 manner in which I use it in this paragraph, are tran --
22 water transfers that our water users bring in on their
23 own behalf, either through acquisition or through -- if
24 they farm in a neighboring district, they'll bring
25 water levels -- transfer water in from that district

1 into Westlands for their use within Westlands.

2 MR. STROSHANE: So for the water user
3 transfers, it doesn't involve a deal -- a -- a deal
4 with a willing seller north of the Delta? Am I correct
5 on that?

6 WITNESS GUTIERREZ: That --

7 MR. STROSHANE: Usually?

8 WITNESS GUTIERREZ: That I don't know. Some
9 water users procure water on their own behalf.

10 When I'm talking about water user transfers,
11 these are transfers that Westlands staff, or through
12 the Authority, did not go out and procure.

13 MR. O'HANLON: Okay. So the difference -- It
14 sounds to -- Correct me if I'm wrong.

15 But is the difference between supplemental
16 water and water user transfers whether Westlands Water
17 District is involved in procuring it or not? Is that
18 the key difference?

19 WITNESS GUTIERREZ: That's -- That's probably
20 the key difference, yes.

21 MR. STROSHANE: Okay. Thank you.

22 Am I correct to understand that supplemental
23 water does not include groundwater, then, pumped
24 from -- pumped within Westlands' service area?

25 WITNESS GUTIERREZ: No. There have been some

1 instances where we have purchased groundwater as -- and
2 coupled it together with our supplemental water pool --

3 MR. STROSHANE: Oh, okay.

4 WITNESS GUTIERREZ: -- within Westlands.

5 MR. STROSHANE: Thank you for that.

6 Could we go to Page 8 and Figure 1.

7 (Exhibit displayed on screen.)

8 MR. STROSHANE: In looking at the -- Mr. --
9 Mr. Gutierrez, in looking at the sequence of water
10 deliveries and sources between 1995 through 1996 and
11 2007 to 2008, do you agree that, with only a couple of
12 exceptions, most of these water years received
13 65 percent allocations and above?

14 WITNESS GUTIERREZ: For that time period that
15 you point out, yes, that's true.

16 MR. STROSHANE: In looking -- Let's see.

17 What is the calendar year -- This -- And this
18 is a question about the same figure.

19 What is the calendar-based definition of
20 "water year" in this chart?

21 WITNESS GUTIERREZ: In this chart, the water
22 year . . .

23 I want to make sure I get this right because
24 contract year and water year are often different.

25 When you say "water year," can you point out

1 on this page where -- where you are referring to or --

2 MR. STROSHANE: Yeah.

3 WITNESS GUTIERREZ: -- are you talking about
4 water contract year?

5 MR. STROSHANE: It says -- In the lower
6 left-hand corner, it says, "Sacramento Valley Water
7 Year Type Index (SVI)."

8 WITNESS GUTIERREZ: Okay.

9 MR. STROSHANE: And then below that, it says
10 "Water Year." So there's -- it -- it's referenced
11 actually twice.

12 But my question really is the focus on water
13 year '88-89, the lower line of those two.

14 WITNESS GUTIERREZ: Okay. So the water year,
15 actually to be consistent with my text, that water year
16 should actually be water contract year. So that's our
17 CVP contract year.

18 MR. STROSHANE: And what's the calendar basis
19 of that?

20 WITNESS GUTIERREZ: From March 1 of a given
21 year through --

22 MR. STROSHANE: The end of February.

23 WITNESS GUTIERREZ: -- the end of February the
24 following year.

25 MR. STROSHANE: Okay. Thank you.

1 And this chart has two categories in its
2 legend called "Additional Water (sic) Supply" and
3 "Water User Acquired."

4 Are these categories the same as or different
5 from the supplemental water and water user transfer
6 categories from the table on Page 7 that you just
7 discussed with me?

8 WITNESS GUTIERREZ: Those would be -- Yeah.
9 The "Additional District Supplied," I would be
10 referring to the supplemental water. And "Water User
11 Acquired" would be the water user transfers from the
12 previously page.

13 MR. STROSHANE: So those are essentially the
14 same categories that we discussed prior.

15 WITNESS GUTIERREZ: It's the same category but
16 Figure 1, the way we use it in this illustration, is
17 how the water is delivered in the year that it's used,
18 not necessarily the year at which it's acquired.

19 MR. STROSHANE: Understood.

20 Okay. Thank you for that explanation.

21 My last questions about this figure:

22 Do you see the small red and yellow water
23 source bars in the water years 2014 through 2015 -- or,
24 rather, 2014, 2015, and 2016 through -- I'm sorry. Let
25 me start that over again.

1 Do you see the small red and yellow water
2 source bars in water years 2014-15 through 2016-17?

3 Am I correct in understanding that these
4 sources of water for Westlands were very small because
5 of low-water supplies throughout the Central Valley in
6 those years?

7 WITNESS GUTIERREZ: When you say "low-water
8 supply," you're referring to the CVP allocation or just
9 in general?

10 MR. STROSHANE: I'm referring to those
11 specific red and -- red and yellow bars because I
12 believe they represent the Additional District Supply
13 with the Water User Acquired.

14 WITNESS GUTIERREZ: So, in those years, yes,
15 there was -- there wasn't as much water available for
16 transactions.

17 MR. STROSHANE: Okay. Thank you.

18 Okay. My next set of questions deal with CVP
19 and SWP deliveries and Central Valley and State Water
20 Project water demand. These questions are mainly for
21 Mr. Gutierrez but involve Miss Mizuno as well.

22 In this part of my cross-examination, I intend
23 to place Westlands' Water District's water service
24 contract deliveries into the context of both CVP and
25 SWP der -- deliveries.

1 Miss Gaylon, could you please bring up
2 RTD-1034.

3 (Exhibit displayed on screen.)

4 MR. STROSHANE: And scroll down.

5 (Exhibit displayed on screen.)

6 MR. STROSHANE: Yeah. That's -- That's pretty
7 good there. Thank you.

8 Mr. Gutierrez, can you read this chart okay or
9 do we need to blow it up just a little? Would that
10 help?

11 WITNESS GUTIERREZ: I can -- No. I can see it
12 okay.

13 MR. STROSHANE: Okay. This is a table of CVP
14 delivery data for two large Sacramento Valley
15 Contractor groups, Tehama-Colusa Canal and the
16 Sacramento River Settlement Contractors.

17 The column at right is the sum of the two
18 delivery numbers in the other columns for each year
19 between 1990 and 2016. The source of these data is the
20 U.S. Bureau of Reclamation Central Valley Project
21 Operations website.

22 At the bottom of this delivery data, I
23 calculated a few descriptive statistics of these groups
24 of Contractors' deliveries, including average
25 deliveries for certain decades and the seven-year

1 period from 2010 to 2016.

2 Mr. Gutierrez, so -- Have you had a chance to
3 look over the averages at the bottom of the table?

4 WITNESS GUTIERREZ: Yes.

5 Point of clarification: Are these deliveries
6 or allocations?

7 MR. STROSHANE: These are deliveries.

8 WITNESS GUTIERREZ: Okay. Actual diversions
9 and delivery?

10 MR. STROSHANE: These are deliveries. They're
11 obtained from the Bureau's website, yeah.

12 WITNESS GUTIERREZ: Okay. Thank you.

13 MR. STROSHANE: Let's see.

14 If you look at the averages, can you tell me:
15 Did the average for North-of-Delta deliveries for 2000
16 to 2009 increase over the average for 1990 to 1999?

17 WITNESS GUTIERREZ: That looks like it
18 increased.

19 MR. STROSHANE: And did the average for the
20 seven years from 2010 to 2016, which included four very
21 dry years, exceed that of the 1990s decade? In other
22 words, 1990 to 1999.

23 WITNESS GUTIERREZ: Yes. The 2010 to 2016
24 looks greater than the 1990 to '99 period.

25 MR. STROSHANE: Thank you.

1 Miss Gaylon, could you bring up RTD-1035.

2 (Exhibit displayed on screen.)

3 MR. STROSHANE: This exhibit is a table of SWP
4 and CVP South-of-Delta deliveries for Kern County Water
5 Agency, State Water Project, San Joaquin Valley
6 Project -- rather -- San Joaquin Valley Contractors,
7 Metropolitan Water District of Southern California, and
8 all Southern California SWP Water Contractors and
9 Westlands' deliveries compared with total Delta-Mendota
10 and San Luis Canal deliveries, the latter of which
11 Westlands is already a significant part in that data.

12 I excluded the Exchange Contractors'
13 deliveries from this table. I excluded the water
14 pumped to Federal storage in San Luis Reservoir from
15 this table. I excluded the water pumped to Fed -- I'm
16 sorry. I just said that.

17 And I excluded Refuge water deliveries to the
18 extent I could identify them from the data that the
19 Bureau makes available.

20 I made these in -- exclusions as an attempt to
21 approximate deliveries to San Luis and Delta-Mendota
22 Water Authority member agencies with CVP contracts,
23 which includes Westlands Water District.

24 The data in this exhibit covers the period
25 1988 through 2016. I also note for the record that

1 RTD-1036 is the supporting delivery data summarized in
2 the CVP portion --

3 (Timer rings.)

4 MR. STROSHANE: -- of RTD-1035.

5 And I'm getting close to being done.

6 CO-HEARING OFFICER DODUC: (Nodding head.)

7 MR. STROSHANE: I also included the same
8 descriptive average calculations for the same decadal
9 periods that I calculate for RTD in 10 -- in RTD-1034.

10 So I hope you've had a chance -- both
11 Miss Mizuno and Mr. Gutierrez have had a chance to look
12 over the -- the results in this table, especially the
13 averages.

14 WITNESS GUTIERREZ: Point of clarification?

15 MR. STROSHANE: Yeah.

16 WITNESS GUTIERREZ: Is this a calendar year or
17 CVP con -- contract year or --

18 MR. STROSHANE: These appear to be calendar
19 year. That's how the Bureau puts these data together.

20 So I have taken essentially January through
21 December data for each of those years that you see
22 here.

23 WITNESS MIZUNO: And this is total deliveries?
24 Doesn't make a di -- This is total deliveries? Doesn't
25 make a distinction between CVP water or other acquired

1 water?

2 MR. STROSHANE: This is from the Bureau's
3 website and so I assume that it was CVP deliveries
4 because that's what they would -- they would be
5 monitoring, I anticipate.

6 WITNESS GUTIERREZ: That might not be correct,
7 at least not for Westlands.

8 CO-HEARING OFFICER DODUC: Hold on a second.

9 Miss Aufdemberge.

10 MS. AUFDEMBERGE: Yeah. I just want to object
11 to this.

12 He's apparently testifying that he's derived
13 these numbers and putting this information before these
14 witnesses for the first time. I haven't heard any
15 foundation for much, if any, of it.

16 CO-HEARING OFFICER DODUC: I think he's
17 articulated where he obtained these numbers and what
18 his calculations for -- were in order to develop this.

19 And as it's standard practice on
20 cross-examination, we will proceed with his question
21 predicated on the fact that these were calculated
22 correctly and were obtained correctly and were from the
23 source that he alleged they were from.

24 MS. AUFDEMBERGE: He's also including a lot of
25 testimony in describing this -- these documents.

1 MR. STROSHANE: I would -- I would differ that
2 I'm offering testimony. I'm describing where the data
3 came from and what I excluded. I think I'm being
4 forthright about what's in the table and what's not.

5 CO-HEARING OFFICER DODUC: Miss Morris.

6 MS. MORRIS: Thank you.

7 I would join the objection. The witnesses
8 appear to be confused about what -- what year this is,
9 how it's been calculated, and I just don't think that
10 it's a productive line of questioning.

11 If the -- If the questioner wants to present
12 this in their own case in chief, they can, and describe
13 it.

14 But to ask witnesses to look at a summary that
15 has been compiled by another person, while it is
16 efficient, and I know the Hearing Officers appreciate
17 efficiency, it's not effective if the witnesses don't
18 know where the data is and if it's been calculated or,
19 sorry -- tabulated correctly.

20 CO-HEARING OFFICER DODUC: If they're unable
21 to answer the questions, they will say so. If they're
22 confused by the numbers, they will say so.

23 Objection's overruled.

24 Mr. Stroshane, ask your questions and we'll
25 see where this goes.

1 MR. STROSHANE: Okay. Mr. Gutierrez, do you
2 agree that Kern County's agricultural water deliveries
3 increased in 20 -- in 2000-to-2009 period over the
4 1990-to-99 period?

5 CO-HEARING OFFICER DODUC: Based solely on the
6 chart that is before you.

7 MR. STROSHANE: Based on, yes.

8 WITNESS GUTIERREZ: I'm sorry. Can't -- I
9 can't see. Can you pan up on the averages?

10 (Exhibit displayed on screen.)

11 WITNESS GUTIERREZ: So can you ask that
12 question again?

13 MR. STROSHANE: Sure.

14 Do you agree that Kern County's agricultural
15 water deliveries increased in the 2000-to-2009 period
16 over the 1990-to-99 period.

17 WITNESS GUTIERREZ: I mean, according to this
18 chart, that's what the data demonstrates.

19 But, I mean, just looking at Westlands'
20 deliveries during that, I -- I guess I'm speculative --
21 or I -- I'm not certain that this data's accurate.

22 MR. STROSHANE: Okay.

23 WITNESS GUTIERREZ: So it's hard for me to
24 agree with that when I'm questioning the results for
25 Westlands over here.

1 MR. STROSHANE: Well, the -- As I say, the
2 Westlands data came directly from the Bureau's website.
3 The Bureau accounts for the information, and I have
4 faithfully reproduced the -- the data in this
5 spreadsheet and --

6 CO-HEARING OFFICER DODUC: We are not going to
7 argue back and forth on this.

8 MR. STROSHANE: Okay.

9 CO-HEARING OFFICER DODUC: Mr. Stroshane,
10 you've asked a question. The witness has answered.

11 Let's move on.

12 MR. STROSHANE: Okay. Do you agree that
13 Metropolitan's State Water Project deliveries -- And I
14 should at this point warrant that I obtained the State
15 Water Project delivery data from the most recent
16 Bulletin 132-16, and that Table B5B, and have
17 incorporated both Metropolitan's and the total
18 for . . . for all of Southern California in -- in this
19 section.

20 CO-HEARING OFFICER DODUC: Miss Morris.

21 MS. MORRIS: Objection: Lacks foundation.

22 CO-HEARING OFFICER DODUC: He's --

23 MR. STROSHANE: The foundation, I would argue,
24 is that I'm trying to indi -- I'm trying to give
25 context to the overall demand for Central Valley water

1 supplies as developed by -- by both the State Water
2 Project and the Central Valley Project.

3 In relation to that, it has been claimed by
4 witnesses on this panel that allocations are
5 decreasing, but the data in -- that I developed -- the
6 averages I developed show that, for at least two full
7 decades --

8 CO-HEARING OFFICER DODUC: Okay. Now you're
9 starting to testify.

10 MR. STROSHANE: Okay. But you see where --
11 That's the foundation.

12 CO-HEARING OFFICER DODUC: I understand.

13 Miss Morris, Miss Ansley, Miss Aufdemberge,
14 your objections are overruled.

15 I'm going to allow Mr. Stroshane to pursue his
16 line of questioning. You may, of course, object when
17 he introduced this -- or when he moves this into the
18 record, which I -- he stated several times that he
19 will.

20 MS. ANSLEY: May I add for the record one
21 objection that goes to the whole line, then?

22 CO-HEARING OFFICER DODUC: I'm sorry. I can't
23 hear you very well.

24 MS. ANSLEY: I'm sorry.

25 May I add an objection, then, to the record as

1 it goes?

2 CO-HEARING OFFICER DODUC: Sure.

3 MS. ANSLEY: I would object because I think
4 that he hasn't laid the foundation of asking this
5 witness for the various sites he's looked at to derive
6 this data, whether they're familiar with the data from
7 the sources he's derived from. And perhaps that would
8 clear up whether they understand the calculations that
9 he's herein made.

10 So I think that it does lack foundation.

11 Thank you.

12 CO-HEARING OFFICER DODUC: Okay. Thank you.

13 But I understood from what Mr. Gutierrez said
14 that he already questions the calculation of this table
15 because he noted in responding to Mr. Stroshane's last
16 question that he questioned the calculations for
17 Westlands.

18 So we'll take this on face value. We'll allow
19 Mr. Stroshane to proceed with his questioning with all
20 the caveats and all the objections in the record.

21 MR. STROSHANE: And I'm happy to make
22 available the Excel spreadsheet that -- for counsel on
23 all sides to -- to examine.

24 CO-HEARING OFFICER DODUC: I'm sure that would
25 be appreciated.

1 MR. STROSHANE: Okay. So, do you agree that
2 Metropolitan's State Water Project deliveries as
3 reported in this table increased in the 2000-to-2009
4 period as -- as compared with 1990 to 1999?

5 CO-HEARING OFFICER DODUC: Mr. Stroshane,
6 would you object to revising your question from "do you
7 agree" to "do you see" or "do you" -- rather than
8 asking if they agree to something that they are not
9 sure about --

10 MR. STROSHANE: What -- What was your first --

11 CO-HEARING OFFICER DODUC: -- the calculation.

12 MR. STROSHANE: What was your first option? I
13 couldn't quite hear it.

14 CO-HEARING OFFICER DODUC: Does he see that
15 there's difference --

16 MR. STROSHANE: Does he see. Thank you.

17 CO-HEARING OFFICER DODUC: -- on this table
18 rather than agree with it.

19 MR. STROSHANE: I shall revise my question.

20 Mr. Gutierrez, do you see that Metropolitan's
21 State Water Project deliveries increased in this table
22 in the 20 -- in the 2000-to-2009 period compared with
23 1990 to 1999?

24 WITNESS GUTIERREZ: I guess I see that the
25 average -- the calculated average for the period

1 2000-2009 is greater than the calculated average for
2 1990 to 1999.

3 MR. STROSHANE: Do you agree that
4 Metropolitan's -- Sorry.

5 Do you see that Metropolitan's SWP deliveries
6 increased as a percent share of total SWP Southern
7 California deliveries in each decadal period? In other
8 words, the percents that are reported at the bottom of
9 the table.

10 CO-HEARING OFFICER DODUC: Miss Morris.

11 MS. MORRIS: Objection: Lacks foundation.

12 There's nothing in this table, nor has he laid
13 the foundation with this witness, that these numbers
14 are purely SWP deliveries and do not include transfer
15 water or other sources of water.

16 CO-HEARING OFFICER DODUC: Understood.

17 MR. STROSHANE: I'm sorry. I didn't hear what
18 you said.

19 CO-HEARING OFFICER DODUC: No. I understood
20 her objection. She said it for the record.

21 MR. STROSHANE: Okay.

22 CO-HEARING OFFICER DODUC: It goes to all the
23 other objections they've had to these line of
24 questioning and to your tables, Mr. Stroshane, which
25 I'm sure will be repeated when you try to move this

1 into evidence.

2 MR. STROSHANE: Do you see that --

3 Actually, I didn't get an answer to that last
4 question.

5 So do you see that Metropolitan's SWP
6 deliveries increased as a percent share of total
7 Southern California deliveries to -- by the SWP in each
8 of the decadal periods?

9 WITNESS GUTIERREZ: Well, I -- I guess I see
10 that the calculation shows an increase, but . . . I
11 guess I don't know what you mean by --

12 MR. STROSHANE: The decadal periods? I'm
13 referring -- I'm sorry. I was referring to 1990 to
14 '99 and 19 -- and 2000 to 2009.

15 WITNESS GUTIERREZ: But you referred
16 specifically to State Water Project deliveries.

17 Again, I don't know that this data only
18 represents State Water Project deliveries.

19 MR. STROSHANE: Okay. Well, as I warrant --
20 We have an argument about the veracity of the data and
21 I've offered to make that data -- that -- the
22 spreadsheet on which it is based available for
23 confirmation.

24 But do you agree that the 77.5 percent of the
25 1990-to-1999 average for Metropolitan and -- as a

1 percent of total Southern California deliveries is less
2 than the 8 -- 82.5 percent reported for the next
3 decade?

4 WITNESS GUTIERREZ: Yes, it is less.

5 CO-HEARING OFFICER DODUC: Are you --

6 MR. STROSHANE: Mr. Gutierrez --

7 CO-HEARING OFFICER DODUC: I'm sorry. Are you
8 about to wrap up?

9 MR. STROSHANE: I'm nearly done --

10 CO-HEARING OFFICER DODUC: Okay.

11 MR. STROSHANE: -- yeah.

12 CO-HEARING OFFICER DODUC: Because, again,
13 I -- I -- Even though I overruled the objection, I will
14 again remind you, Mr. Stroshane, that all these
15 witnesses can do as affirm what they see on the screen,
16 which is a table you pulled together and calculated.
17 So there is limited value in that.

18 MR. STROSHANE: Okay. Then I'll move on.

19 Could we turn to WWD-15, Page 16.

20 (Exhibit displayed on screen.)

21 CO-HEARING OFFICER DODUC: So, do you estimate
22 15 minutes?

23 MR. STROSHANE: Yes.

24 CO-HEARING OFFICER DODUC: All right.

25 MR. STROSHANE: No more than, I would think.

1 CO-HEARING OFFICER DODUC: All right.

2 MR. STROSHANE: Yeah.

3 Okay. And I want the chart. So you have it
4 there. Thank you.

5 As you saw earlier, there were questions asked
6 about this chart, and I have some different questions.

7 This appears to be a chart of CVP allocations
8 affecting South-of-Delta Contractors.

9 Am I correct in understanding that these CVP
10 South-of-Delta agricultural service allocations are
11 obtained from various CalSim operational studies and
12 do -- do not necessarily reflect Bureau of
13 Reclamation's annual allocation decisions?

14 WITNESS GUTIERREZ: I -- I'm not familiar with
15 how Mr. Boardman developed this chart.

16 MR. STROSHANE: Okay. Miss Mizuno, do you
17 have anything to add about that?

18 Do you -- Are you familiar with how this chart
19 was developed, since Mr. Boardman works for SLDMWA?

20 WITNESS MIZUNO: No. I -- I don't know
21 exactly how he derived these numbers.

22 MR. STROSHANE: Okay. Okay. My final section
23 of my questions:

24 Ms. Gaylon, could you please bring up
25 RTD-1033.

1 (Exhibit displayed on screen.)

2 MR. STROSHANE: This is the Policy Statement
3 from Westlands Water District General Manager --

4 CO-HEARING OFFICER DODUC: And you --

5 MR. STROSHANE: -- Thomas Birmingham.

6 CO-HEARING OFFICER DODUC: -- understand that
7 a Policy Statement is not evidentiary in nature.

8 MR. STROSHANE: I'm sorry?

9 CO-HEARING OFFICER DODUC: You understand that
10 the Policy Statement is not evidentiary in nature.

11 MR. STROSHANE: Right. May I ask the question
12 and see what happens?

13 CO-HEARING OFFICER DODUC: All right.

14 Mr. O'Hanlon --

15 MR. O'HANLON: I'll object.

16 CO-HEARING OFFICER DODUC: -- will object, I'm
17 sure, if he feels it's appropriate.

18 MR. O'HANLON: And just looking at the letter,
19 it looks like it relates to staged implementation which
20 is -- you've made very clear is not within the scope of
21 this part of the proceeding.

22 CO-HEARING OFFICER DODUC: Well, let's see
23 what the question is, then.

24 MR. STROSHANE: The question: Are you
25 familiar with this Policy Statement, Mr. Gutierrez?

1 Have you seen it before?

2 WITNESS GUTIERREZ: Yes, I've seen this
3 before.

4 MR. STROSHANE: Okay. The statement uses the
5 phrases "this hearing process" and "this hearing" in
6 the last paragraph at the bottom of the page.

7 Do you see that?

8 WITNESS GUTIERREZ: The last paragraph.

9 I'm sorry. I've got a -- I have a different
10 statement.

11 I apologize. I was looking at a different
12 statement.

13 Can I see the -- the heading on this?

14 (Exhibit displayed on screen.)

15 WITNESS GUTIERREZ: I don't think I've seen
16 this statement before.

17 When was this entered? Oh, last month.

18 No, I don't think I've seen this statement.

19 MR. STROSHANE: Okay. So, my next question
20 is: Are you aware that the portion of this hearing
21 that might address what Mr. Birmingham refers to as the
22 staged project -- which he mentions in the first
23 paragraph, I think, first or second paragraph.

24 Let me start over again since I was
25 interrupting myself.

1 Mr. Gutierrez, are you aware that the portion
2 of this hearing that might address what Mr. Birmingham
3 refers to as the staged project to which Mr. Birmingham
4 refers in this statement is actually for Part 3 of this
5 hearing process?

6 WITNESS GUTIERREZ: No, I was not aware of
7 that.

8 MR. STROSHANE: Is it your understanding that
9 Part 3 will definitely occur?

10 CO-HEARING OFFICER DODUC: Are you . . .

11 MR. O'HANLON: Objection: We're -- I think
12 we're definitely now into Part 3. I don't know what
13 the relevance of staged implementation is with this
14 witness.

15 CO-HEARING OFFICER DODUC: Hold on.

16 Since Mr. Gutierrez has said he's not aware of
17 this policy in the letter, he's not even familiar with
18 Stage 3, I don't know that he's able to answer any
19 additional question, Mr. Stroshane.

20 MR. STROSHANE: Okay. No further questions.

21 CO-HEARING OFFICER DODUC: And I wanted to
22 say, Mr. Stroshane: I really appreciate you doing your
23 homework and writing your questions down, and writing
24 your -- the statements that you make. It's -- I think
25 it really helps, because it helps you prepare your

1 cross-examination in a logical manner, and it really
2 helps me -- helps us -- follow you in conducting your
3 cross-examination.

4 I just wanted to acknowledge that and thank
5 you for that.

6 MR. STROSHANE: It's easier said than done.

7 CO-HEARING OFFICER DODUC: I appreciate, which
8 means you took a lot of time, so I appreciate that.

9 CO-HEARING OFFICER MARCUS: That's a hint.

10 CO-HEARING OFFICER DODUC: Yes, that was a
11 hint.

12 CO-HEARING OFFICER MARCUS: You're a role
13 model now.

14 MR. STROSHANE: Uh-oh.

15 MR. DEERINGER: Hearing Officer Doduc, before
16 we start the next set of questions, I was thinking I
17 might invite Mr. Ferguson up just to follow up on that
18 request he had before closed session.

19 CO-HEARING OFFICER DODUC: Ah.

20 MR. DEERINGER: Make sure we close the loop on
21 that for the rest of --

22 CO-HEARING OFFICER DODUC: Housekeeping.

23 MR. DEERINGER: So I -- We went back through
24 our e-mails, and we apologize for any confusion. We
25 get a lot of procedural requests.

1 And my questions have to do with CVP contract
2 amounts; and . . . also soil and groundwater conditions
3 in the District that may be contributing to the
4 fallowing; and . . . the District's land retirement
5 program, as well as . . .

6 I think that's most -- most of it.

7 So, first, I'd like to go to Exhibit
8 DDJ-258 --

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: -- which is -- This is
11 a -- Let -- And let's scroll down to the appropriate
12 part of the state.

13 (Exhibit displayed on screen.)

14 MS. DES JARDINS: But . . . this is a map from
15 the California Department of Forestry's Fire and
16 Resource Assessment Program, precipitation.

17 And it shows --

18 CROSS-EXAMINATION BY

19 MS. DES JARDINS: Would it be correct,
20 Miss Mizuno and Mr. Gutierrez, that the west side of
21 the San Joaquin Valley is one of the dryer areas in the
22 state, at least with this annual precipitation map?

23 WITNESS MIZUNO: Based on this map that I see,
24 that would be correct.

25 MS. DES JARDINS: Yeah. And so you're fairly

1 dependent on irrigation water for growing the crops
2 that you grow, either -- either from groundwater or --
3 or imported water; correct?

4 WITNESS MIZUNO: Can you restate your
5 question.

6 MS. DES JARDINS: Are -- So, because of the --
7 the -- the dryness, does that mean the District is
8 fairly dependent upon supplemental irrigation water?

9 WITNESS MIZUNO: Well, to grow crops, you do
10 need --

11 MS. DES JARDINS: Yes.

12 WITNESS MIZUNO: -- irrigation water, yes.

13 MS. DES JARDINS: Okay. Thank you.

14 So then I'd like to go to WWD-17, Page 13.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: Which is your graph of
17 deliveries.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: And this is Tom Boardman's
20 map.

21 So, Mr. Gutierrez, this implies that, prior to
22 1990, South-of-Delta ag got more than 90 percent of
23 contract amounts, as -- as far as you know?

24 WITNESS GUTIERREZ: That's what the chart
25 predicts.

1 MS. DES JARDINS: Okay. I'd like to pull up
2 Exhibit DDJ-259, which is a copy --

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: -- of the 2017 CVP water
5 deliveries.

6 And I'm just introducing this.

7 So the total Water Service Contract for
8 South-of-Delta ag is -- This state -- This is the
9 Central Valley Project Statement of Water Quantities
10 for Delivery in 2017.

11 Do you recognize that?

12 MR. O'HANLON: Who is the question directed
13 to?

14 MS. DES JARDINS: Mr. Gutierrez, yeah.

15 WITNESS GUTIERREZ: Do I recognize this table?

16 MS. DES JARDINS: Yeah.

17 WITNESS GUTIERREZ: I . . . I mean, if I've
18 seen it before, it's not -- No, it doesn't look
19 familiar to me.

20 MS. DES JARDINS: Does the quantity of or --
21 Ms. Mizuno, does the quantity of -- Are you familiar
22 with this table?

23 WITNESS MIZUNO: I'm not familiar with this
24 particular table, no.

25 MS. DES JARDINS: Does the quantity

1 reported -- This is a Statement -- Official Statement
2 of Reclamation.

3 Does the maximum contract amount of 2,112,890
4 acre-feet for South-of-Delta ag sound familiar as the
5 total CVP South-of-Delta contract amounts?

6 WITNESS MIZUNO: I believe that's in the
7 right . . .

8 MS. DES JARDINS: Yeah.

9 And the water rights below that, there's a
10 total of 875,623 acre-feet.

11 WITNESS MIZUNO: That's in the ballpark.

12 MS. DES JARDINS: Yeah.

13 And so the water rights is for the San Joaquin
14 Exchange Contractors; is that correct?

15 WITNESS MIZUNO: That would be for the
16 Exchange Contractors and other Settlement Contractors.

17 MS. DES JARDINS: Other Settlement
18 Contractors.

19 So their -- The Settlement Contractors receive
20 a substitute water supply for what they would have
21 drawn from the San Joaquin River; is that correct?

22 WITNESS MIZUNO: For the Exchange Contractors,
23 that's correct.

24 MS. DES JARDINS: Yes.

25 Okay. And so those -- The water rights

1 contracts are priority contracts? Is that the case?
2 That Reclamation will deliver those contracts first
3 before the South-of-Delta ag deliveries?

4 WITNESS MIZUNO: That's what they have
5 historically done.

6 MS. DES JARDINS: Okay. So I'd like to pull
7 up Exhibit DDJ-260.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: And are you aware that the
10 California Data Exchange Center maintains a record of
11 CVP exports dating back to 1956?

12 WITNESS MIZUNO: I'm aware of CDEC, but I'm
13 not specifically aware that they actually keep this
14 record.

15 MS. DES JARDINS: There -- There is a record,
16 and it's maintained in data flow.

17 This shows the total CVP exports through the
18 Delta-Mendota Canal from those records.

19 Do you see that, prior to 1976, it was less
20 than the total of 3 million acre-feet?

21 WITNESS MIZUNO: That's what the chart shows.

22 MS. DES JARDINS: So -- And it shows, in 1956,
23 it was somewhere -- somewhere between 500 and a million
24 acre-feet, and that it -- it grew slowly from 1956 to
25 1976?

1 WITNESS MIZUNO: That's what the chart shows,
2 yes.

3 MS. DES JARDINS: So, is it possible that
4 contract -- contracted amounts grew during this period
5 as well until . . .

6 MR. O'HANLON: Objection: Calls for
7 speculation; lacks foundation.

8 MS. DES JARDINS: Is it -- This -- If this is
9 correct, then the -- the total, then, San Luis and
10 Delta-Mendota -- South-of-Delta Contractors could not
11 have gotten 90 percent of 2 million acre-feet between
12 1956 and 1975, because it would have involved more
13 water being exported than -- than was physically
14 exported by the plant.

15 CO-HEARING OFFICER DODUC: Was that a
16 question?

17 MR. O'HANLON: There's -- I don't --

18 MS. DES JARDINS: So --

19 MR. O'HANLON: I haven't --

20 MS. DES JARDINS: So --

21 MR. O'HANLON: -- heard a question.

22 MS. DES JARDINS: So is it possible that
23 Mr. Boardman's graph, when it shows percentage of total
24 contract amounts, isn't telling the whole story?

25 CO-HEARING OFFICER DODUC: Are you able to

1 answer, Miss Mizuno?

2 WITNESS MIZUNO: I'm not sure what her
3 question is getting at.

4 MS. DES JARDINS: If . . . If the . . .

5 Is it possible that -- that Mr. Boardman's
6 graph showing 90 percent of CVP deliveries does not
7 mean that there was 1.8 million acre-feet of water
8 delivered to South-of-Delta ag for every year between
9 1976 -- 1956 and 1975?

10 MR. O'HANLON: Objection: Lacks foundation;
11 calls for speculation.

12 CO-HEARING OFFICER DODUC: I don't think the
13 witness can answer in any case.

14 Can you?

15 WITNESS MIZUNO: What I can answer is that the
16 90 percent -- slightly greater than 90 percent that's
17 on Tom Boardman's chart from 1956 -- excuse me -- to
18 1990 is based on the fact that Ex Service Contractors
19 have received 100 percent from their allocation each
20 and every year, with the exception of 1977.

21 MS. DES JARDINS: Is it possible that the
22 allocations changed over time?

23 WITNESS MIZUNO: Not during that period of
24 time.

25 MS. DES JARDINS: Okay. Well, we have a

1 discrepancy.

2 I'll move on.

3 Mr. Gutierrez --

4 I'd like to go to Page 11 of WWD-17.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: And this shows historic
7 groundwater pumping.

8 So, the District was very -- Mr. Gutierrez,
9 the District was very dependent on groundwater up
10 through -- through the '60s, it looks like, and then
11 became less dependent when -- in the early '70s; is --
12 is that correct?

13 According to this graph? But with it
14 spiking -- With -- The groundwater use since then has
15 spiked during droughts?

16 WITNESS GUTIERREZ: We became less dependent
17 on groundwater when we initially started taking CVP
18 deliveries, which I believe started in very small
19 increments in 1962 and then grew from there.

20 MS. DES JARDINS: Okay. So, the -- the first
21 CVP exports in the previous graph from 1956 to '62
22 weren't going to Westlands? Based on what you said.

23 WITNESS GUTIERREZ: That's my understanding.

24 MS. DES JARDINS: Okay. So . . . I'd like to
25 pull up Exhibit DDJ-261, which I'll ask you about

1 your --

2 (Exhibit displayed on screen.)

3 MS. DES JARDINS: -- deep groundwater
4 conditions.

5 This is -- Zoom out.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: This is a copy of your Deep
8 Groundwater Conditions Report from December 2015.

9 Do you recognize this?

10 WITNESS GUTIERREZ: Yes.

11 MS. DES JARDINS: Let's go to Page 6.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: And this goes -- Let's zoom
14 out a little so we can see the key.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: Yeah.

17 So, Mr. Gutierrez, this shows the electrical
18 conductivity of the Sub-Corcoran groundwater.

19 Can you explain what "Sub-Corcoran" means?

20 WITNESS GUTIERREZ: I think "Sub-Corcoran," as
21 referred to this figure, refers to groundwater that is
22 pumped from the aquifer that lies underneath the
23 Corcoran clay within the Westlands Water District
24 service area.

25 MS. DES JARDINS: And this shows that

1 the . . . there is a significant -- The -- The orange
2 part of the map shows that the -- There's a -- There's
3 a large area that's orange where the electrical
4 conductivity between 2 and 4 decisiemens per meter; is
5 that correct?

6 WITNESS GUTIERREZ: Yes.

7 MS. DES JARDINS: And there's a red area that
8 is south of Mendota that is more than 4 decisiemens per
9 meter of electrical conductivity?

10 WITNESS GUTIERREZ: I -- I'm assuming, yes,
11 according to this figure.

12 MS. DES JARDINS: Yeah.

13 So, this means that -- Can -- Can you tell me:
14 Doesn't this mean that you have some problems with just
15 using straight groundwater to irrigate crops?

16 WITNESS GUTIERREZ: No, not necessarily.

17 MS. DES JARDINS: Doesn't it depend on how
18 salt sensitive the crop is?

19 WITNESS GUTIERREZ: That, and other factors.

20 MS. DES JARDINS: Isn't one of the factors the
21 salinity of the soil as well?

22 WITNESS GUTIERREZ: No, not necessarily.

23 MS. DES JARDINS: Okay. I'd like to go to
24 Exhibit DDJ-265, please.

25 (Exhibit displayed on screen.)

1 MS. DES JARDINS: This is a copy of a
2 "Technical Advisor's Manual for Managing Agricultural
3 Irrigation Drainage Water, A Guide For Developing
4 Integrated On-Farm Drainage Management Systems." It
5 was developed for the State Water Resource Control
6 Board by the Westside Resource Conservation District.

7 Are you aware of this manual?

8 WITNESS GUTIERREZ: I -- I believe I am. I
9 may have seen a version of this.

10 MS. DES JARDINS: Let's go to Page 45.

11 There's a table --

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: -- which shows the salinity
14 tolerance of various plants.

15 And it shows that salt-sensitive vegetables
16 require below 4 decisiemens per meter, and
17 salt-tolerant vegetables and flowers require below 4
18 decisiemens per meter.

19 Do you see that?

20 WITNESS GUTIERREZ: Yes.

21 MS. DES JARDINS: And so, as I said, the --
22 So, the groundwater in that large orange area, that's
23 between 2 and 4 decisiemens per meter, according to
24 this table, may be too saline for salt-sensitive
25 vegetables.

1 Wouldn't that be correct?

2 WITNESS GUTIERREZ: If you are using
3 100 percent of that groundwater, then that might be
4 correct.

5 MS. DES JARDINS: And so don't you need to --
6 You would need to blend it with less saline water;
7 correct?

8 WITNESS GUTIERREZ: That's one strategy that
9 somebody could employ.

10 MS. DES JARDINS: For -- Which would be
11 imported irrigation water?

12 Correct?

13 WITNESS GUTIERREZ: Again, I mean, that's one
14 strategy that somebody could use.

15 You could also treat the water, remove the
16 salts using an RO system or other treatment technology.

17 MS. DES JARDINS: Okay. I'd like to go to
18 Exhibit DDJ-262, please.

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: This is known as "A
21 Management Plan for Agricultural Subsurface Drainage
22 and Related Problems on the Westside San Joaquin
23 Valley" in 1990. This is also known as the Rainbow
24 Report.

25 Are you familiar with this?

1 WITNESS GUTIERREZ: I've heard it mentioned
2 but I don't . . . I don't think I've ever studied this
3 report.

4 MS. DES JARDINS: Let's go to Page 15, .pdf
5 Page 28.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: Let's try Page 15.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: So, one of the useful things
10 in this report, it states (reading):

11 "Inadequate drainage and
12 accumulating salts have been persistent
13 problems in parts of the valley for more
14 than a century, making some cultivated
15 land unusable as far" --

16 Keep going. Next page.

17 (Exhibit displayed on screen.)

18 MS. DES JARDINS: (Further reading):

19 -- "back as the 1880s and 1890s.
20 Widespread acreages of grain, first planted on
21 the western side of the valley in the 1870s
22 and 1880s, were irrigated with water from the
23 San Joaquin and Kings Rivers. This type of
24 farming spread until, by the 1890s, the
25 rivers' natural flows were no longer adequate

1 to meet the growing agricultural demand for
2 water. Poor natural drainage conditions,
3 coupled with rising groundwater levels and
4 increasing soil salinity, meant that land had
5 to be removed from production and some farms
6 ultimately abandoned."

7 Are you familiar with that history of the
8 westside of the San Joaquin Valley?

9 WITNESS GUTIERREZ: I am familiar with the
10 shallow groundwater problems on the westside.

11 MS. DES JARDINS: Yeah.

12 So let's skip down. Let's give some history,
13 which is useful.

14 Authorization. It talks about (reading):

15 "The CVP's San Luis Unit and the
16 State Water Project . . . began
17 delivering Northern California water to
18 agricultural lands in the . . .
19 San Joaquin Valley in 1968."

20 MR. O'HANLON: Excuse me. I'm -- I'm going to
21 object at this point. We're now in the -- Seems that
22 we're reading large sections of documents into the
23 record.

24 MS. DES JARDINS: Let me just read one
25 section.

1 MR. O'HANLON: I -- I think --

2 MS. DES JARDINS: I apologize.

3 MR. O'HANLON: -- it's --

4 CO-HEARING OFFICER DODUC: Hold on.

5 MR. O'HANLON: -- better to proceed by

6 question and answer.

7 And I -- There doesn't seem to be any purpose

8 to these -- to the -- reading these quotes other than

9 to read them.

10 MS. DES JARDINS: I would like to ask, then,

11 about the San Luis Unit-mandated construction of an

12 interceptor drain to collect drainage water.

13 CO-HEARING OFFICER DODUC: What about it?

14 MS. DES JARDINS: Are you aware of that drain?

15 WITNESS GUTIERREZ: The San Luis Drain?

16 MS. DES JARDINS: Yes.

17 WITNESS GUTIERREZ: Am I aware that it exists?

18 MS. DES JARDINS: That it -- Yeah. That it

19 was authorized under -- by Reclamation and was proposed

20 to be constructed.

21 WITNESS GUTIERREZ: Yes, I'm aware that that

22 was authorized. I'm also aware that it's not used

23 today.

24 MS. DES JARDINS: Yes.

25 Okay. And so let's go to Page 17.

1 (Exhibit displayed on screen.)

2 CO-HEARING OFFICER DODUC: And what is your
3 question here?

4 MS. DES JARDINS: My question is -- Let's go
5 down.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: It said (reading):

8 "In 1985, the Secretary of the
9 Interior ordered that discharge of
10 subsurface drainage . . . be halted,
11 and . . . feeder drains leading to
12 San Luis Drain and the reservoir in
13 plugged in 1986."

14 So are -- are you aware of that history that,
15 in 1986, the drains in the District -- feeder drains in
16 the District were closed? Does that sound about right?

17 WITNESS GUTIERREZ: Yes.

18 MS. DES JARDINS: Okay. I'd like to go to

19 Page 20 --

20 (Exhibit displayed on screen.)

21 MS. DES JARDINS: -- Page 33.

22 And it's -- And there was concern about the
23 closing of this drain.

24 The reason the study was done, it says

25 (reading):

1 "If current irrigation practices
2 continue, areas in which groundwater
3 levels are 5 feet or less from the
4 surface of irrigated lands will continue
5 to expand . . . Westlands, Tulare, and
6 Kern subareas."

7 Let's go -- Go -- Scroll to the next page,
8 please.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: And they projected that
11 (reading):

12 "By 2000, high groundwater levels
13 may be adversely affecting about
14 1 million acres of irrigated land . . ."

15 Are you familiar with that issue?

16 WITNESS GUTIERREZ: Actually, if you go back
17 to the previous page.

18 MS. DES JARDINS: Let's scroll back. Okay.

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: Okay.

21 WITNESS GUTIERREZ: It said, "If current
22 irrigation practices continue."

23 I'm happy to report that current irrigation
24 practices do not occur. We've implemented conservation
25 measures. We have over 90 percent of drip irrigation

1 in Westlands.

2 Groundwater levels and shallow groundwater
3 have declined. That's demonstrated most perfectly in
4 the Broadview Water District that no longer receives
5 surface water allocation. Groundwater levels there
6 have continued to decline over time. That's something
7 that we've experienced in Westlands also with flood
8 irrigation.

9 MS. DES JARDINS: Let's go to Exhibit DDJ-263.

10 (Exhibit displayed on screen.)

11 MS. DES JARDINS: Let's zoom out, please.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: This is a fact sheet for the
14 CV-SALTS Program by the Water Board.

15 Are you familiar with this program?

16 WITNESS GUTIERREZ: Yes.

17 MS. DES JARDINS: Let's -- And it -- This says
18 (reading):

19 "CV-SALTS releases new and
20 innovative plan to address salt . . .
21 nitrates in groundwater."

22 CO-HEARING OFFICER DODUC: Since he is
23 familiar with the program, I suggest you go ahead and
24 just ask your questions.

25 MS. DES JARDINS: Let's scroll down.

1 (Exhibit displayed on screen.)

2 MS. DES JARDINS: The next map.

3 So Figure 2 shows salt concentrations in
4 Central Valley groundwater. And it shows high
5 concentrations of greater than 1 milligram per liter in
6 the west -- entire westside of the San Joaquin Valley.

7 Are you familiar with this issue?

8 WITNESS GUTIERREZ: I wouldn't characterize it
9 as an issue. CVS concentrations of 1,000 milligrams
10 per liter can be used to irrigate many crops in
11 Westlands.

12 MS. DES JARDINS: Yeah.

13 So, Miss Mizuno, are you familiar with this
14 issue, that it affects land through -- throughout
15 San Luis and Delta-Mendota?

16 WITNESS MIZUNO: Can you clarify the question,
17 please.

18 MS. DES JARDINS: Are you familiar with the
19 issue of saline groundwater?

20 WITNESS MIZUNO: As Mr. Gutierrez said, it's
21 not necessarily an issue.

22 MS. DES JARDINS: Let's go to Exhibit DDJ-269,
23 please.

24 (Exhibit displayed on screen.)

25 MS. DES JARDINS: This is a Westside

1 Conservation District map.

2 Let's scroll down to Page 2.

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: Scroll down.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: Up a -- Up a little, please.

7 (Exhibit displayed on screen.)

8 MS. DES JARDINS: This is a map of land that's
9 been retired in Westlands Water District from various
10 settlements. It's probably old, but at the time, they
11 estimated about 77,000 acres.

12 Are you familiar with that, Mr. Gutierrez?

13 WITNESS GUTIERREZ: With our Land Retirement
14 Program? Yes.

15 MS. DES JARDINS: Yes.

16 So Wet -- Westlands -- There were -- This
17 lists Britz and Sumner Peck, and then there's -- Those
18 were two settlements with the Federal government, I
19 believe?

20 WITNESS GUTIERREZ: Yes.

21 MS. DES JARDINS: And then Westlands' retired
22 lands were acquired by the District -- the District's
23 Land Retirement Program.

24 WITNESS GUTIERREZ: Yes, but it's incorrect to
25 refer to it as retired lands. That was part of the

1 Sagouspe settlement which was required for water
2 supplies. Those lands can still be irrigated today.

3 MS. DES JARDINS: Okay. Let's go to Exhibit
4 DDJ-271, please.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: Let -- Zoom out, please.
7 Let's not have it 200 percent.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: So this is a copy of an
10 agricultural lease for Westlands, the master lease.

11 Do you recognize this, or is it similar to
12 what Westlands uses?

13 WITNESS GUTIERREZ: Yes, it's similar to what
14 we use today. It may have been revised a little bit
15 but it's principally the same.

16 MS. DES JARDINS: Let's go down to Page 2,
17 please.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: Under Water Supply, it
20 states (reading):

21 "The property herein leased shall
22 not be eligible for an allocation, for
23 the lessee's benefit, of water made
24 available to the District pursuant to the
25 1963 contract between the United States

1 and Westlands Water District . . . or
2 long-term water supplies made available
3 to and acquired by the District, and
4 lessee hereby waives -- expressly waives
5 any right to receive such water."

6 It states (reading):

7 "Lessee may irrigate the property
8 using available groundwater or other
9 water obtained by lessee, subject to the
10 District's rule and regulations and terms
11 and answer for agricultural water
12 service."

13 So -- So, when -- This master lease would
14 indicate that when you lease a retired land, that
15 generally you lease it subject to the lessee either
16 acquiring their own water supply or using groundwater?

17 MR. O'HANLON: What's the question?

18 MS. DES JARDINS: So, this would indicate that
19 when Westlands leases retired land --

20 Westlands leases retired land; correct? Or, I
21 guess --

22 WITNESS GUTIERREZ: No. As I mentioned
23 earlier, I think it's incorrect to refer to the land
24 acquired for water supply as retired land, because that
25 land can still be irrigated, as mentioned in this

1 agreement.

2 MS. DES JARDINS: But this --

3 WITNESS GUTIERREZ: The retired land for Britz
4 Pack --

5 MS. DES JARDINS: Yeah.

6 WITNESS GUTIERREZ: -- is a non-irrigation.
7 That -- Those lands have non-irrigation covenants that
8 run with the land. So those can be dry-land farmed;
9 they just can't be irrigated.

10 MS. DES JARDINS: So -- So this other land can
11 be irrigated but the lease -- these lease terms
12 indicate that you don't use the long-term water supply
13 of the District. They don't -- They don't have a claim
14 on the long-term water supply. The lessee does not
15 have a claim on the long-term water supply of the
16 District; correct?

17 WITNESS GUTIERREZ: There is no CVP water that
18 is allocated on this land.

19 MS. DES JARDINS: Okay. Thank you.

20 Next, I'd like to go to Exhibit DDJ-266,
21 please.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: Let's scroll -- Scroll out,
24 please.

25 (Exhibit displayed on screen.)

1 MS. DES JARDINS: This is an early Study of
2 Socioeconomic Impacts of Land Retirement in Westlands
3 Water District.

4 And it dates back to when it was a formal Land
5 Retirement Program proposed.

6 Do you -- Do you -- Do -- Are you aware that a
7 formal land retirement of 200,000 acres was proposed in
8 the '90s?

9 WITNESS GUTIERREZ: No, I was not aware of
10 that.

11 MS. DES JARDINS: And . . . let's -- let's
12 scroll down.

13 (Exhibit displayed on screen.)

14 MS. DES JARDINS: Keep going.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: I'm not sure I have the
17 page.

18 So keep going.

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: So, it states -- Scroll down
21 just a little bit more.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: And it -- This states that,
24 in a land retirement scenario, CVP water deliveries are
25 assumed to be increased . . .

1 (Reading):

2 "Plantings and perennial crops,
3 which were assumed to be less sustainable
4 in other scenarios, are maintained as a
5 reflection of the more reliable water
6 supply . . ."

7 So are -- Are you familiar with the concept
8 that retiring some of the land provides a more reliable
9 water supply for the better land in the District?

10 WITNESS GUTIERREZ: I -- I -- I guess I don't
11 see a relationship between retiring lands and Westlands
12 improving the reliability of CVP deliveries.

13 MS. DES JARDINS: Just internally, that is,
14 the District acquires land that's impaired, that --
15 that improves the water allocations for -- internally
16 for the rest of the land.

17 WITNESS GUTIERREZ: So as land is retired in
18 Westlands, the -- You're asking does the allocation
19 that would have been applied to that land gets
20 redistributed to other lands in Westlands?

21 MS. DES JARDINS: Yeah. And thereby increases
22 the allocation for the other lands than what would have
23 been --

24 WITNESS GUTIERREZ: On a -- On an
25 acre-foot-per-acre basis?

1 MS. DES JARDINS: Yeah.

2 WITNESS GUTIERREZ: I suspect it would
3 increase if we were to shift that allocation to the
4 remaining irrigated lands within Westlands.

5 MS. DES JARDINS: Okay. And I'd like to go to
6 Exhibit DDJ-267, please.

7 (Exhibit displayed on screen.)

8 MS. DES JARDINS: Let's zoom out.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: Zoom out.

11 (Exhibit displayed on screen.)

12 MS. DES JARDINS: This is a copy of California
13 Crop and Soil, Evapotranspiration.

14 Scroll down.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: From the Irrigation
17 Training & Research Center.

18 Mr. Shires or Mr. Gutierrez, are you familiar
19 with this kind of irrigation, the ET tables?

20 MR. O'HANLON: Objection: He clarifies -- The
21 question whether they're familiar with this report?

22 MS. DES JARDINS: Are you familiar with --
23 Yes.

24 Are you familiar with this report?

25 WITNESS GUTIERREZ: I -- I'm not.

1 WITNESS SHIRES: I am not.

2 MS. DES JARDINS: Let's go to Page 59, please.

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: This is a table of
5 irrigation water, estimated needs for irrigation water
6 in a dry year in Zone 15.

7 Are you familiar with this kind of water
8 demand ET table?

9 CO-HEARING OFFICER DODUC: Could we rotate it,
10 please?

11 MS. DES JARDINS: Let's go --

12 CO-HEARING OFFICER DODUC: I'm asking
13 Miss Gaylon to rotate it.

14 MS. DES JARDINS: I have a rotated copy so --

15 CO-HEARING OFFICER DODUC: Oh.

16 MS. DES JARDINS: -- let's -- let's go to
17 Exhibit DDJ-268.

18 CO-HEARING OFFICER DODUC: I think we've been
19 kind of torturous to . . .

20 MS. DES JARDINS: Okay. I apologize. I was
21 laying foundation.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: So are you familiar with
24 this kind of table, Mr. Shires or Mr. Gutierrez?

25 WITNESS GUTIERREZ: I -- I've seen similar ET

1 tables but I'm not sure where Zone 15 is or not sure
2 what's meant by "dry year" or . . .

3 MS. DES JARDINS: Let's go back to Exhibit
4 DDJ-267, please.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: And Page 22.

7 (Exhibit displayed on screen.)

8 MS. DES JARDINS: And this is a map. And it
9 shows Zone 15 and Zone 16 in Fresno and Kings County on
10 the westside; correct?

11 WITNESS GUTIERREZ: Yes.

12 MS. DES JARDINS: Okay. Let's go back to
13 Exhibit DDJ-268 --

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: -- which is Zone 15 dry
16 year.

17 According to that map, this would be
18 applicable to Westlands; correct?

19 WITNESS GUTIERREZ: Yes.

20 MS. DES JARDINS: All right. So let's look at
21 almonds.

22 And it shows that they take a total annual
23 ir -- annual ET of 42.55 inches in a dry year; correct?

24 WITNESS GUTIERREZ: Yeah. Yes.

25 MS. DES JARDINS: Let's go to small

1 vegetables, and it shows 19.89 inches; correct?

2 WITNESS GUTIERREZ: That's what the table
3 shows, yes.

4 MS. DES JARDINS: And onions and garlic use
5 18.42 inches per -- per acre.

6 And melons, squash and cucumbers use
7 20.23 inches.

8 Correct?

9 WITNESS GUTIERREZ: 20.23? Yes.

10 MS. DES JARDINS: So, almonds use almost twice
11 the amount of water per -- inches per acre per year in
12 a dry year than those -- the vegetables I listed;
13 correct?

14 WITNESS GUTIERREZ: That's what it appears,
15 yes.

16 MS. DES JARDINS: But are -- Mr. Shires --
17 Allstate's go to WWD-19, Page 14.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: And it shows the crop mix.

20 (Exhibit displayed on screen.)

21 MS. DES JARDINS: So this shows that tree nuts
22 have been successively increasing.

23 Mr. Shires, is this because, although they use
24 a lot more water, they're a higher-profit crop?

25 WITNESS SHIRES: There's a range of reasons.

1 MS. DES JARDINS: Yeah.

2 And what are those reasons? What is that
3 range of reasons?

4 WITNESS SHIRES: Part of it is has to do with
5 economic return. Other factors would include status of
6 the soil, quality of the soil, whether you have a prior
7 investment in the crop, what labor resources are
8 available, what process infrastructure's available.

9 MS. DES JARDINS: So -- So, one of the issues
10 is, if you've got a lot of almonds being grown and you
11 have an almond processing plant nearby, then it's --
12 it's profitable; correct?

13 WITNESS SHIRES: I -- I can't comment on the
14 profitability of any given crop.

15 MS. DES JARDINS: Yeah. Okay.

16 So I would like to go back to . . . Just a
17 sec.

18 Exhibit DDJ-264.

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: This is a Natural Resources
21 Conservation system -- Service Soil Survey of Fresno
22 County.

23 Are you familiar with this, Mr. Shires,
24 Mr. Gutierrez?

25 WITNESS GUTIERREZ: What year is this report?

1 MS. DES JARDINS: This is from 2006.

2 WITNESS GUTIERREZ: No, I'm not familiar with
3 it.

4 MS. DES JARDINS: Let's go to Page 350.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: This -- Page 350 has a map
7 of drainage. It shows that the soil -- easternmost
8 west -- easternmost part of the District is very poorly
9 drained; correct?

10 MR. O'HANLON: Objection: Lacks foundation.

11 The witness has already indicated he's not
12 familiar with this report.

13 CO-HEARING OFFICER DODUC: So where are you
14 going with this, Miss Des Jardins?

15 MS. DES JARDINS: Just to ferret -- Just how
16 the soil conditions are affecting the crops that are
17 grown in the District and the -- the retire --
18 retirement of land.

19 CO-HEARING OFFICER DODUC: I'll allow you to
20 proceed, but, again, recognizing that this witness is
21 not familiar with this document, so that he may be
22 limited in his ability to answer.

23 MS. DES JARDINS: Thank you.

24 CO-HEARING OFFICER DODUC: Actually,
25 Miss Des Jardins, I'd like to ask you to hold that

1 thought. I do want to give the court reporter --

2 MS. DES JARDINS: Oh, let's -- let's do that.

3 CO-HEARING OFFICER DODUC: Let's resume at --

4 Actually, you still have 20 minutes, and then,

5 Mr. Ferguson, you have 20 minutes, so that's 40

6 minutes.

7 Do you have redirect?

8 MR. O'HANLON: Just three questions.

9 CO-HEARING OFFICER DODUC: All right. I'm
10 hoping to get you guys done today, so let's take a
11 shorter break, if that's okay, Candace.

12 THE REPORTER: Um-hmm.

13 CO-HEARING OFFICER DODUC: We will return at
14 4:10.

15 (Recess taken at 4:01 p.m.)

16 (Proceedings resumed at 4:10 p.m.):

17 CO-HEARING OFFICER DODUC: All right. It's
18 2:00 -- it's 4:10 and we are back in session.

19 Miss Des Jardins, please continue.

20 MS. DES JARDINS: Okay. So I'd like to go to
21 the next page, which is Page 351.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: It shows minimum depth to
24 water saturation.

25 Mr. Gutierrez, you're most familiar with --

1 with ground -- with water saturation conditions in the
2 District.

3 Is -- This is the conditions in 2006.

4 Has it gotten better? They show a significant
5 amount of the western edge of the District is affected.

6 Has it gotten better or worse?

7 WITNESS GUTIERREZ: The western edge of the
8 District?

9 MS. DES JARDINS: I'm sorry. Eastern -- The
10 eastern part of the District around Firebaugh, Mendota,
11 east of Three Rocks, and around Five Points is -- shows
12 saturated soils between 48 to 60 inches down to water
13 saturation.

14 MR. O'HANLON: Objection: The witness has
15 already indicated he's not familiar with this report.
16 Is the question whether conditions have generally
17 gotten better since then, or are you asking
18 specifically --

19 MS. DES JARDINS: Yeah. Have conditions
20 gotten better since then?

21 WITNESS GUTIERREZ: When you say "better," I'm
22 assuming you mean has the depth to shallow groundwater
23 increased over time?

24 MS. DES JARDINS: Yeah.

25 WITNESS GUTIERREZ: Yes.

1 MS. DES JARDINS: And I'd like to go to

2 Page 353.

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: It shows soils --

5 saline-affected soils.

6 Mr. Gutierrez, it shows some of the soils

7 south of Mendota are very strongly saline.

8 Would these be -- These are where the land --

9 some of the land retirement happened; correct?

10 WITNESS GUTIERREZ: Yes. The majority of land

11 retirement is concentrated in these properties

12 southwest of Mendota, south and southeast of Mendota.

13 MS. DES JARDINS: Okay. Thank you.

14 Mr. Shires, I'd like to go back to Page 13 of

15 your PowerPoint, WWD-19.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: And you -- Your graph shows

18 increasing fallowed acreage . . . starting around 2007.

19 Did you take into account the District's

20 retired land in -- in interpreting this graph?

21 WITNESS SHIRES: Yes.

22 MS. DES JARDINS: How so?

23 WITNESS SHIRES: This does not include the

24 retired lands.

25 MS. DES JARDINS: I . . .

1 There is a discrepancy with the Crop Reports,
2 but I can . . . I can . . . I can . . . do that.

3 So your assertion is that these -- these are
4 the -- this is the acreage from the Crop Reports;
5 correct? The fallowed acreage reported on Westlands
6 Crop Reports?

7 WITNESS SHIRES: I should correct that. I --
8 This does not include the lands of retirees or the
9 settlement. So, to the extent there's operational
10 changes throughout the year, this is based on data from
11 Westlands Water District, yes.

12 MS. DES JARDINS: This is based on data from
13 Westlands Crop Acreage Reports; correct?

14 WITNESS SHIRES: This is not -- I'm not sure
15 which Crop Acreage Reports you're referring to. Can
16 you be more specific?

17 MS. DES JARDINS: Westlands produces annual
18 Crop Reports and they -- then they report the amount of
19 acreage fallowed in the District.

20 WITNESS SHIRES: Yes.

21 MS. DES JARDINS: Okay. Thank you.

22 That's -- I would -- Finally, I'd like to go
23 to Exhibit D -- DDJ-273.

24 (Exhibit displayed on screen.)

25 MS. DES JARDINS: Zoom out.

1 (Exhibit displayed on screen.)

2 MS. DES JARDINS: This is an early Deep
3 Groundwater Conditions Report.

4 And I'd like to go to Page 6.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: And the reason . . .
7 Scroll . . .

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: I'm not seeing it.
10 Scroll up.

11 (Exhibit displayed on screen.)

12 MS. DES JARDINS: There it is. Apologies.
13 Page 4.

14 Are -- The reason I pull this up is, it shows
15 that there were -- in December 2001, there were
16 significantly fewer areas of highly-saline Sub-Corcoran
17 groundwater.

18 Mr. Gutierrez, are you aware of -- Have --
19 Have you looked at older deep groundwater condition
20 maps such as this one?

21 WITNESS GUTIERREZ: Yes.

22 MS. DES JARDINS: Are you aware that, in
23 general, the electrical conductivity of the
24 Sub-Corcoran groundwater appears to be increasing?

25 WITNESS GUTIERREZ: That's not necessarily the

1 case.

2 I think what might be happening also is that
3 we're collecting more samples from more groundwater
4 wells so we have better coverage. And in 2001, we
5 may -- might not have completed as much analysis.

6 MS. DES JARDINS: Let's -- Let's go back and
7 compare it with DDJ-261.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: So this shows a much larger
10 area with groundwater between 2 and 4 decisiemens per
11 meter; correct?

12 WITNESS GUTIERREZ: Well, it shows -- it shows
13 more area, but the reasons behind it might not be the
14 conclusions that you've drawn.

15 MS. DES JARDINS: So it might be better --
16 better sampling?

17 WITNESS GUTIERREZ: That's more possibility.

18 MS. DES JARDINS: I'd like to bring up Exhibit
19 DDJ-274, please.

20 (Exhibit displayed on screen.)

21 MS. DES JARDINS: And this was a study done at
22 U.C. Davis. They had modeling of -- of the groundwater
23 in Westlands.

24 And I'd like to go to Page 5.

25 (Exhibit displayed on screen.)

1 CO-HEARING OFFICER DODUC: Are you familiar
2 with this study?

3 WITNESS GUTIERREZ: No.

4 MS. DES JARDINS: It showed . . . It showed
5 that -- It estimated -- The modeling estimated flow
6 through the Corcoran clay at the rate of 80 million
7 cubic meters per year with a load of .12 megatons,
8 increasing the salt -- average salt concentration of
9 the groundwater.

10 So you're not familiar with this study or that
11 it showed that irrigation will increase -- increase the
12 Sub-Corcoran salinity?

13 WITNESS GUTIERREZ: No. I'm not familiar with
14 this study or those findings or the analysis.

15 MS. DES JARDINS: And it stated (reading):

16 "We conclude salinization issues are
17 critical to the sustainability of
18 irrigated agriculture in the San Joaquin
19 Valley."

20 So you're completely unfamiliar with this
21 issue?

22 MR. O'HANLON: Objection: Mischaracterizes
23 the witness' testimony to the extent that's what you
24 were attempting to do.

25 MS. DES JARDINS: All right. So do you -- Do

1 you -- Do you believe that salinization issues are
2 critical to the sustainability of irrigated agriculture
3 on the westside?

4 WITNESS GUTIERREZ: I -- I'm having trouble
5 answering the question the way you posed it.

6 MS. DES JARDINS: Is manage -- proper
7 management of soil and groundwater salinization
8 critical to the sustainability of irrigated agriculture
9 on the westside?

10 (Witness confers with counsel.)

11 WITNESS GUTIERREZ: I -- I'm not sure what you
12 mean by "salinization."

13 MS. DES JARDINS: It means increasing salinity
14 in the groundwater or increasing salinity in the soil.

15 WITNESS GUTIERREZ: Okay. So is your -- Is
16 your question: Is salinity management important to
17 irrigated agriculture on the westside?

18 MS. DES JARDINS: Yes.

19 WITNESS GUTIERREZ: Yes.

20 MS. DES JARDINS: I'd like to pull up Exhibit
21 DDJ-276, please.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: Zoom out.

24 (Exhibit displayed on screen.)

25 MS. DES JARDINS: There was a suspension of

1 Reclamation's drainage activities within Westlands.

2 Are you aware of that, Mr. Gutierrez?

3 WITNESS GUTIERREZ: Yes.

4 MS. DES JARDINS: Let's scroll down to Page 2.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: Number 5.

7 (Exhibit displayed on screen.)

8 MS. DES JARDINS: And it states that

9 (reading):

10 ". . . A suspension of drainage
11 activities by the United States within
12 Westlands is needed because it will
13 prevent further . . . expenditures.

14 "I am informed and believe Federal
15 defendants would seek reimbursement of
16 those funds from Westlands. That would
17 impede settlement because it would
18 adversely change the economics of the
19 settlement for Westlands, because
20 Westlands will likely take an approach to
21 drainage management that is different
22 from the Federal approach."

23 Does -- Is that -- Is -- This was a statement
24 by Tom Birmingham.

25 Is that consistent with your understanding of

1 the Westlands -- why Westlands suspended Reclamation's
2 drainage activities within Westlands?

3 WITNESS GUTIERREZ: I'm not sure if that's why
4 Reclamation suspended the activities, but that
5 statement is consistent with Westlands' position on --
6 on this matter.

7 MS. DES JARDINS: So Westlands is -- Westlands
8 wants to take over management of drainage within the
9 District?

10 MR. O'HANLON: Objection. I'm going to object
11 on the grounds of relevance. I'm not seeing how this
12 is tied in any way to Part 2 issues.

13 CO-HEARING OFFICER DODUC: Miss Des Jardins.

14 MS. DES JARDINS: It's . . . The economics of
15 this impaired land is relevant to Part 2 issues, I
16 would argue.

17 CO-HEARING OFFICER DODUC: In what way?

18 MS. DES JARDINS: If it's not -- If there's a
19 feasible way forward at the -- at the current time to
20 bring this land back into production, and -- and what
21 is proposed for it.

22 MR. O'HANLON: And --

23 CO-HEARING OFFICER DODUC: And how is it
24 relevant to what are the key hearing issues?

25 MS. DES JARDINS: To the extent that the

1 testimony about the productivity of this land is
2 relevant at all, questions about how the productivity
3 is being maintained is relevant.

4 CO-HEARING OFFICER DODUC: Fair enough.

5 Ask your question and -- just so we can move
6 on, Mr. O'Hanlon.

7 MS. DES JARDINS: Okay. Yes.

8 So Westlands is proposing to take over
9 drainage management within the District?

10 WITNESS GUTIERREZ: That's the position we
11 took in our settlement with the United States.

12 MS. DES JARDINS: Okay. I'd like to bring up
13 Exhibit DDJ-277.

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: No. DDJ-278, please.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: No. Never mind.

18 That concludes my questioning.

19 CO-HEARING OFFICER DODUC: Thank you.

20 Mr. Ferguson.

21 As Mr. Ferguson's getting ready, Mr. O'Hanlon,
22 we do have a hard stop at 5:00 so I would encourage you
23 to be very judicious in your redirect unless you want
24 your witnesses to come back tomorrow.

25 MR. O'HANLON: I don't an -- I don't

1 anticipate it will take very long at all.

2 CO-HEARING OFFICER DODUC: I'm thinking more
3 about the recross.

4 All right. With that, Mr. Ferguson, your
5 issues that you'll be exploring.

6 MR. FERGUSON: Yes. Thank you.

7 I'm going to ask questions about the potential
8 benefits of the WaterFix to these parties; the terms
9 and conditions that Mr. Gutierrez discusses in his
10 testimony; and then I'm going to ask a few questions
11 about Mr. Gutierrez's comments on the impacts of
12 reduced deliveries.

13 CO-HEARING OFFICER DODUC: (Nodding head.)

14 CROSS-EXAMINATION BY

15 MR. FERGUSON: I'm going to start with
16 Miss Mizuno.

17 Just real quickly. I'm not sure I introduced
18 myself. Aaron Ferguson for the County of Sacramento.
19 Thank you.

20 Miss Mizuno, in your testimony at
21 Paragraph 20, I believe, you -- you state that
22 (reading):

23 "At this (sic) time . . .
24 Reclamation has (sic) not defined a role
25 in . . . WaterFix for the Central Valley

1 Project . . ."

2 Correct?

3 WITNESS MIZUNO: That's correct.

4 MR. FERGUSON: Okay. Are there any potential
5 ways that the San Luis Delta-Mendota Water Authority
6 members might benefit from the CWF even without
7 Reclamation's participation?

8 MR. O'HANLON: Objection: Calls for
9 speculation.

10 CO-HEARING OFFICER DODUC: I'm not --

11 MR. FERGUSON: Do you believe there are
12 anyways that the member agencies of the Water Authority
13 could benefit if Reclamation does not participate?

14 WITNESS MIZUNO: Yes.

15 MR. FERGUSON: Can you please explain how that
16 would be the case.

17 WITNESS MIZUNO: If they find it to be
18 economical, they could contract with DWR to -- for
19 conveyance of WaterFix to move the CVP water supply.

20 MR. FERGUSON: To move their CVP water supply?
21 How about any other supplies.

22 WITNESS MIZUNO: It could possibly be used to
23 move transfer water.

24 MR. FERGUSON: Okay. Assuming, as you just
25 said, that the WaterFix was to -- used to move those

1 sorts of supplies, do you have an opinion about whether
2 the water -- the California WaterFix and -- and moving
3 into those sorts of supplies would be in the public
4 interest?

5 MR. O'HANLON: Objection: Calls for
6 speculation; incomplete hypothetical.

7 CO-HEARING OFFICER DODUC: Do you have --
8 Overruled.

9 Do you have an opinion on it, Miss Mizuno?

10 WITNESS MIZUNO: If the WaterFix can move
11 additional water supply to its member agencies, I do
12 believe that would be a public interest. It would
13 improve the public interest for South-of-Delta
14 Contractors.

15 MR. FERGUSON: Okay. I'm going to quickly
16 turn to Page 5 of Miss Mizuno's testimony --

17 (Exhibit displayed on screen.)

18 MR. FERGUSON: -- at Lines 6 through 8.

19 (Exhibit displayed on screen.)

20 MR. FERGUSON: Do you see those -- that
21 language there regarding access to groundwater?

22 WITNESS MIZUNO: Um-hmm. Yes.

23 MR. FERGUSON: And you state that (reading):

24 "Access to groundwater in future
25 years will likely be more limited than it

1 was in the past, with implementation of
2 the Sustainable Groundwater Management
3 Act."

4 Correct?

5 WITNESS MIZUNO: Access to groundwater will
6 probably be less as a result of SGMA in order to --

7 MR. FERGUSON: Yeah. It would be more
8 limited; correct?

9 WITNESS MIZUNO: More limited, that's correct.

10 MR. FERGUSON: Okay. Can we turn quickly to
11 Mr. Gutierrez's testimony at Page 9, Lines 20 and 21.

12 (Exhibit displayed on screen.)

13 MR. FERGUSON: Is this Page 9? Oh, yeah.

14 There, Mr. Gutierrez, states that (reading):

15 "Based on historic data it is
16 anticipated that the groundwater surface
17 elevation should recover or stabilize
18 with the implementation of the
19 Sustainable Groundwater Management Act."

20 Miss Mizuno, do you have any explanation for
21 this inconsistency?

22 MR. O'HANLON: Objection: Mischaracterizes
23 the testimony as being inconsistent.

24 CO-HEARING OFFICER DODUC: Mr. Ferguson, do
25 you wish to rephrase?

1 MR. FERGUSON: Miss Mizuno, do you agree that
2 Mr. Gutierrez's testimony is inconsistent with yours on
3 this point of the -- SGMA's impacts on future
4 groundwater availability?

5 WITNESS MIZUNO: I believe Mr. Gutierrez's
6 testimony refers to Westlands Water District specific.

7 My testimony is more specific to the other
8 member agencies within the Water Authority.

9 MR. FERGUSON: Okay. Is there something
10 unique about the other agencies as compared to
11 Westlands that would make it so that your statement is
12 not inconsistent with his in terms of the groundwater
13 conditions?

14 MR. O'HANLON: And I'll object to the
15 characterization in terms of the testimony being
16 inconsistent.

17 CO-HEARING OFFICER DODUC: Sustained.

18 WITNESS MIZUNO: The other member agen . . .

19 MR. FERGUSON: I'm sorry, Mr. O'Hanlon. I
20 didn't hear the first part of that.

21 MR. O'HANLON: I said I object as
22 mischaracterization of the testimony being
23 inconsistent.

24 You might ask Mr. Gutierrez what he meant by
25 his statement.

1 MR. FERGUSON: Fair enough.

2 CO-HEARING OFFICER DODUC: Actually, if I may
3 add, Mr. Ferguson. Since you're asking these
4 questions, in your mind, how are their statements
5 inconsistent?

6 MR. FERGUSON: Well, one says that SGMA is
7 likely to restrict availability of groundwater, and the
8 other says that SGMA is likely to stabilize groundwater
9 conditions.

10 CO-HEARING OFFICER DODUC: Yes, because you're
11 drawing less.

12 CO-HEARING OFFICER MARCUS: Yeah.

13 CO-HEARING OFFICER DODUC: You've got two
14 Hearing Officers here confused because we don't see the
15 statements as conflicting.

16 MR. FERGUSON: So more stable at a lower level
17 is what you're suggesting.

18 CO-HEARING OFFICER DODUC: No.

19 CO-HEARING OFFICER MARCUS: You pump less, the
20 levels will go up and become more stable.

21 Maybe you can just rephrase your question.

22 CO-HEARING OFFICER DODUC: I mean, we are
23 seeking clarification from you, Mr. Ferguson.

24 MR. FERGUSON: Yeah.

25 CO-HEARING OFFICER DODUC: Is --

1 MR. FERGUSON: I --

2 CO-HEARING OFFICER DODUC: -- there --

3 MR. FERGUSON: I --

4 CO-HEARING OFFICER DODUC: -- something --

5 MR. FERGUSON: I can move on. I --

6 CO-HEARING OFFICER DODUC: No. But if --

7 MR. FERGUSON: I understand --

8 CO-HEARING OFFICER DODUC: -- you're saying

9 something.

10 MR. FERGUSON: -- it says something different.

11 CO-HEARING OFFICER DODUC: -- that we're not

12 understanding, it would help us understand.

13 MR. FERGUSON: Well, maybe I -- maybe I simply

14 misread it. I apologize. And I -- I took them to mean

15 something different.

16 But I -- I see your point, that that can be

17 read another way, so . . .

18 Let me move on to Mr. Gutierrez.

19 At Page 22, Line 9 of your testimony --

20 (Exhibit displayed on screen.)

21 MR. FERGUSON: -- you say (reading):

22 "The potential benefits to

23 Westlands' farmers by restoring CVP water

24 supplies are tremendous."

25 Correct?

1 WITNESS GUTIERREZ: Yes.

2 MR. FERGUSON: And I understand by --

3 WITNESS GUTIERREZ: Yes.

4 MR. FERGUSON: -- some of your -- your
5 previous testimony in the last few days that, by
6 restoration of CVP supplies, I believe you testified
7 that that means restoration to 70 percent of contract
8 total.

9 Is that -- is that an accurate statement?

10 WITNESS GUTIERREZ: That was an example that I
11 provided. If we could restore it to 70 percent,
12 then --

13 MR. FERGUSON: That would be restoration in
14 your mind; correct?

15 Is that correct?

16 MR. O'HANLON: Mischaracterizes the witness'
17 testimony.

18 MR. FERGUSON: Well, I'm asking him is that
19 correct?

20 Would -- Is 70 percent of -- of contract total
21 restoration of Westlands' CVP supplies, in your mind?

22 CO-HEARING OFFICER DODUC: We've been --

23 WITNESS GUTIERREZ: Are you saying --

24 CO-HEARING OFFICER DODUC: We've been through
25 this, Mr. Ferguson, in terms of Mr. Gutierrez picking

1 70 percent as an example and his premise on that.

2 So, do you want to take the next step --

3 MR. FERGUSON: Sure.

4 CO-HEARING OFFICER DODUC: -- in your line of
5 questioning?

6 MR. FERGUSON: So, do -- do you have any
7 reason to believe that WaterFix would result in average
8 CVP deliveries to Westlands on the order of 70 percent
9 in the District's contract?

10 WITNESS GUTIERREZ: No, I have no reasons to
11 believe it would be.

12 MR. FERGUSON: Okay. So is it, therefore,
13 fair to say that WaterFix will not result in the type
14 of -- type of benefits you indicate could be tremendous
15 to the Westlands Water District?

16 WITNESS GUTIERREZ: Except, at this point, I'm
17 not sure how much water could result from the
18 California WaterFix.

19 MR. FERGUSON: So is it fair to say now, as --
20 as you're sitting here today, that WaterFix will not
21 result in the type of benefits you indicate could be
22 tremendous?

23 WITNESS GUTIERREZ: Well, it could just as
24 equally they it could not. Like I said, at this point,
25 I don't know.

1 MR. FERGUSON: You don't know. Okay.

2 So on that same page at Lines 16 and 17.

3 (Exhibit displayed on screen.)

4 MR. FERGUSON: Well, starting back with 13
5 through 17.

6 You make a comment about if certain supplies
7 were to become available, then (reading):

8 ". . . There should be sufficient supply
9 to harvest the remaining irrigable acres
10 in Westlands."

11 Correct?

12 WITNESS GUTIERREZ: Yes.

13 MR. FERGUSON: Okay. And by "remaining
14 irrigable acres in Westlands," what do you mean by
15 that?

16 WITNESS GUTIERREZ: The -- The irrigable acres
17 in Westlands that receive a CVP allocation are about
18 465,000 acres in the District.

19 So I took that, multiplied it by the average,
20 applied water rate in Westlands, and then considering
21 all the different supply sources that we have in
22 Westlands, under these certain conditions that I
23 explained in my testimony, we could potentially
24 irrigate up to 465,000 acres in Westlands.

25 MR. FERGUSON: So has Westlands made a

1 determination that it would support WaterFix if -- if
2 WaterFix results in increase in CVP supplies to
3 70 percent in combination with groundwater and
4 supplemental water such that it would allow Westlands
5 to harvest the remaining irrigable acres in Westlands?

6 WITNESS GUTIERREZ: No. The only action that
7 my Board has considered was the action that they
8 considered back in September 2017.

9 MR. FERGUSON: I'd like to ask you real
10 quickly about your comments about terms and conditions
11 that might be imposed through this proceeding.

12 So on Page 22 at Lines 20 through 24.

13 (Exhibit displayed on screen.)

14 MR. FERGUSON: Do you see that language?

15 WITNESS GUTIERREZ: Yes.

16 MR. FERGUSON: You suggest that (reading):

17 ". . . If the Change Petition is approved
18 it (sic) does not provide terms and
19 conditions necessary to protect and
20 restore water supplies to Westlands as a
21 CVP South-of-Delta Ag Water Service
22 Contractor, there is a significant risk
23 of adverse impacts to Westlands' water
24 supply above and beyond those adverse
25 impacts already described from

1 existing . . . shortages."

2 Correct?

3 WITNESS GUTIERREZ: Correct.

4 MR. FERGUSON: So what sort of terms and
5 conditions by the State Board provide in any approval
6 of the Change Petition to protect and restore water
7 supplies to Westlands?

8 WITNESS GUTIERREZ: I mean, the one example I
9 could bring up would be if -- through this process, if
10 California WaterFix is approved, but if the Board
11 places a requirement for an increased outflow, that's
12 one example where an increase in the outflow
13 requirements could potentially reduce the amount of
14 exports that Westlands currently experiences -- or
15 receives, I mean.

16 MR. FERGUSON: Okay. Well, I understand your
17 statement to say that . . . you would see potential
18 risks to the District if the Board were -- did not
19 impose terms and conditions that would protect
20 Westlands, say, through a process like you just
21 described, or to a Delta outflow scenario like you just
22 described.

23 So, my understanding from your testimony --
24 and please correct me if I'm wrong -- is that if,
25 through an outflow requirement, the Board did not

1 impose certain terms and conditions that would protect
2 Westlands from potential risks, that there could be
3 issues for Westlands; is that correct?

4 WITNESS GUTIERREZ: If I understood your
5 question correctly -- I mean, my concern is that,
6 through these hearings, if there are conditions placed
7 on the Project that reduce exports to Westlands Water
8 District, and the example that I provide is if those
9 restrictions required more -- or if those conditions
10 required more outflow that for whatever reason resulted
11 in less exports to Westlands Water District, that would
12 be a concern of mine.

13 MR. FERGUSON: So are you aware of specific
14 terms and conditions that the State Board could impose
15 in that sort of scenario that would protect Westlands?

16 WITNESS GUTIERREZ: No.

17 MR. FERGUSON: Do you know if Westlands will
18 be requesting that the State Board impose such terms
19 and conditions?

20 WITNESS GUTIERREZ: At this point, no.

21 MR. FERGUSON: Do you have any basis . . .
22 Well, strike that.

23 Have you evaluated any terms and conditions
24 that you believe could successfully protect Westlands?

25 WITNESS GUTIERREZ: No.

1 MR. FERGUSON: Okay. And are -- So, I take it
2 that these terms and conditions that you've
3 contemplated in your testimony, they're not part of
4 California WaterFix H3+; correct?

5 WITNESS GUTIERREZ: Not to my knowledge.

6 MR. FERGUSON: Okay. Then is Westlands
7 contemplating a WaterFix Project that's different than
8 CWF H3+?

9 MR. O'HANLON: I'm going to object to the
10 extent that that goes into staged implementation, which
11 is a Part 3 issue, beyond the scope of this part.

12 CO-HEARING OFFICER DODUC: Mr. Ferguson, was
13 that where you were going?

14 MR. FERGUSON: No.

15 CO-HEARING OFFICER DODUC: Then perhaps you
16 could clarify.

17 MR. FERGUSON: The potential terms and
18 conditions that you mentioned, Mr. Gutierrez, you --
19 you suggested they're not part of H -- CWF H3+;
20 correct?

21 WITNESS GUTIERREZ: I don't know whether they
22 are or not. I -- I'm not familiar.

23 MR. FERGUSON: Because you haven't articulated
24 exactly what those might be to be protective of the
25 District; correct?

1 WITNESS GUTIERREZ: Correct.

2 MR. FERGUSON: Okay. Okay. I'm going to move
3 on to -- to that same page, Line 25, where you talk
4 about (reading):

5 ". . . Adverse impacts of a reduced CVP
6 water supply flowing (sic) into other
7 areas of concern to the public interest."

8 Correct?

9 WITNESS GUTIERREZ: Correct.

10 MR. FERGUSON: So when you say "a reduced CVP
11 water supply," are you referring to a reduction in
12 supply relative to what Westlands assumes to be its
13 long-term average CVP supplies, which I believe you've
14 articulated at roughly 40 percent?

15 WITNESS GUTIERREZ: Yes.

16 MR. FERGUSON: Okay. So have you evaluated
17 what sort of future reductions in CVP supplies relative
18 to the 40 percent growers would need to realize for
19 there to be adverse impacts to these areas of the -- of
20 concern to the public interest?

21 WITNESS GUTIERREZ: No. I -- I mean, any
22 reduction in service water supply is going to
23 increase -- or could increase groundwater pumping until
24 we implement SGMA.

25 After SGMA, implementation of any reduction in

1 CVP water supplies may increase water fallowing. So
2 just through the mass balance.

3 MR. FERGUSON: But you're not aware of
4 whether -- Well . . .

5 With respect to all the areas of public
6 concern that you've articulated, you haven't done any
7 sort of specific analysis to know that, if water
8 supplies were to be reduced by -- CVP water supplies
9 would be reduced by a certain percentage, it would
10 all -- it would all of a sudden trigger one of these
11 areas of concern; right?

12 WITNESS GUTIERREZ: Well, I mean any reduction
13 in service water supply will or could increase land
14 fallowing.

15 MR. FERGUSON: How about loss of permanent
16 crops?

17 WITNESS GUTIERREZ: It could also do that. I
18 mean, provided your -- Once you run out of land to
19 fallow, then you start cutting into your permanent
20 crops.

21 MR. FERGUSON: But you also -- If you're
22 figuring out whether you're going to cut into permanent
23 crops, you also need to evaluate the other supplies
24 versus -- too; right? Groundwater. Transfer supplies.

25 WITNESS GUTIERREZ: Yes.

1 MR. FERGUSON: And there are probably certain
2 triggers on the available -- availability of CVP
3 water . . . in terms of reductions that would, for
4 example, trigger loss of permanent crops at some point;
5 correct?

6 WITNESS GUTIERREZ: Well, I guess -- I guess
7 that depends on the access to the supplemental water.
8 If that dries up, too, then, yes, we start impacting
9 permanent crops. But those supplemental water sources,
10 they vary year to year, so it's hard to say whether one
11 year it's going to be request it and the next year's
12 not.

13 MR. FERGUSON: Is that the same for
14 subsidence?

15 WITNESS GUTIERREZ: Is what the same for
16 subsidence? The . . .

17 MR. FERGUSON: No, excuse me.

18 So you -- You've indicated that, due to
19 increased reliance on groundwater, there could be
20 increased subsidence; correct?

21 WITNESS GUTIERREZ: There could be, yes.

22 MR. FERGUSON: But you haven't in your
23 testimony articulated what sort of reduction in CVP
24 supplies would need to occur such that you'd increase
25 groundwater pumping that would ultimately increase

1 subsidence; correct?

2 WITNESS GUTIERREZ: I have not articulated
3 that, no.

4 MR. FERGUSON: Okay. How about with respect
5 to soil salinity? Would that be the same?

6 WITNESS GUTIERREZ: That's correct.

7 MR. FERGUSON: Okay. How about increased
8 energy use?

9 WITNESS GUTIERREZ: Energy use is tied to
10 groundwater overdrafts. I mean, the more you pump, the
11 lower your groundwater levels drop, the higher your
12 energy cost, so it's all tied together.

13 MR. FERGUSON: How about the impacts to air
14 quality?

15 WITNESS GUTIERREZ: That's tied to -- to the
16 amount or the number of fallowed acres, so . . .

17 MR. FERGUSON: So do you have any reason to
18 believe that, with -- without WaterFix in place, there
19 will be further reductions in Westlands' CVP supplies?

20 (Timer rings.)

21 MR. O'HANLON: Objection: Calls for
22 speculation.

23 CO-HEARING OFFICER DODUC: Overruled.

24 Just based on what you know, Mr. Gutierrez.

25 WITNESS GUTIERREZ: Can you repeat the

1 question?

2 MR. FERGUSON: Yeah.

3 Do you have any reason to believe that
4 Westlands will realize reductions in CVP supplies
5 without WaterFix?

6 WITNESS GUTIERREZ: I guess only -- It would
7 be a bit of speculation, but that seems to be the
8 trend, the trend towards decrease in surface water
9 supply.

10 MR. FERGUSON: Okay. Have you compared your
11 assumptions about reductions in CVP water supplies to,
12 say, the No-Action Alternative under CWF H3+ and what's
13 assumed there for potential deliveries to
14 South-of-Delta Contractors?

15 WITNESS GUTIERREZ: Have I? I think the only
16 information that I have is what was shown in that chart
17 last Friday. And I'm trying to remember --

18 MR. FERGUSON: So I take it you haven't
19 eval -- compared the two.

20 WITNESS GUTIERREZ: No.

21 MR. FERGUSON: Okay.

22 CO-HEARING OFFICER DODUC: Mr. Ferguson, how
23 much more do you have?

24 MR. FERGUSON: I'm done.

25 CO-HEARING OFFICER DODUC: You're done?

1 MR. FERGUSON: Yup.

2 CO-HEARING OFFICER DODUC: Thank you.

3 Mr. O'Hanlon.

4 MR. O'HANLON: I have one redirect question,
5 and that question is for Ms. Mizuno.

6 REDIRECT EXAMINATION BY

7 MR. O'HANLON: And, Ms. Mizuno, which of the
8 Water Authority members hold water rights settlement
9 contracts with the United States?

10 WITNESS MIZUNO: The Exchange Contractors; and
11 we have several smaller Contractors as well; Fresno
12 Slough; James ID; Patterson Water District; R.D.1606;
13 and Tranquility Irrigation District.

14 MR. O'HANLON: Thank you.

15 No further questions.

16 CO-HEARING OFFICER DODUC: Any recross?

17 All right. At this time, Mr. O'Hanlon, do you
18 wish to move your exhibits into the record?

19 MR. O'HANLON: Yes, we do.

20 First, the exhibits related to Ms. Mizuno's
21 testimony, which is San Luis and Delta-Mendota Water
22 Authority's 12, 13, 14 and 19.

23 And with respect to Mr. Gutierrez's testimony,
24 Westlands Water District Exhibits 3, 4, 5, 6, 15, 17,
25 and 22.

1 And with respect to Dr. Shires' testimony,
2 Westlands Exhibits 18, 19, and 20.

3 CO-HEARING OFFICER DODUC: Any objections?

4 That was a no, Miss Meserve?

5 MS. MESERVE: No. I have a housekeeping
6 matter in a moment and I --

7 CO-HEARING OFFICER DODUC: All right.

8 MS. DES JARDINS: I have a couple.

9 CO-HEARING OFFICER DODUC: Surprise. Shock.

10 MS. DES JARDINS: It's just that none of the
11 testimony is signed.

12 CO-HEARING OFFICER DODUC: I believe --
13 Mr. O'Hanlon, please remind me.

14 At the beginning of your direct, did you ask
15 all your witnesses to confirm that it was indeed their
16 correct testimony?

17 MR. O'HANLON: Yes, I did.

18 CO-HEARING OFFICER DODUC: Thank you.

19 Overrule the objection.

20 Your exhibits are accepted into the record.

21 (San Luis and Delta-Mendota Water
22 District's Exhibits 12, 13, 14 & 19
23 received in evidence)

24

25

1 (Westlands Water District's Exhibits
2 3, 4, 5, 6, 15, 17, 18, 19, 20 & 22
3 received in evidence)

4 CO-HEARING OFFICER DODUC: And thank you,
5 witnesses, and you are hereby dismissed.

6 Thank you for your contribution into this
7 hearing.

8 MR. O'HANLON: Thank you.

9 (Panel excused.)

10 CO-HEARING OFFICER DODUC: Miss Meserve.

11 MS. MESERVE: Good afternoon. Just two minor
12 matters.

13 I wanted to, on behalf of LAND and San Joaquin
14 County, join in the brief that was filed by RD 108, et
15 al., by Downey Brand regarding the objections to DWR
16 Exhibit 1143.

17 I do not have a writing but I wanted to join
18 in that brief which describes the reasons why that
19 exhibit should not be accepted, including the
20 timeliness, which is of most concern to me with respect
21 to Part 2 case in chief evidence.

22 And then, in addition, I wanted to briefly
23 just update on the timing to make sure that, in
24 particular, DWR had a current view of our ordering of
25 the panels to come.

1 So, with your indulgence, might I just run
2 through what I think is going to happen next to make
3 sure we're all on the same page?

4 So, tomorrow morning, we will begin with
5 Grassland Water District, Group 44, and then --

6 CO-HEARING OFFICER DODUC: And keep in mind
7 that they're only presenting two witnesses, not three.

8 MS. MESERVE: And then we will go with the
9 LAND Community Impacts Panel, which is Groups 19 and
10 24.

11 And at 1 p.m.? Or I should have them
12 available earlier, it sounds like, perhaps?

13 CO-HEARING OFFICER DODUC: I -- My
14 understanding, based on this morning's discussion, was
15 that there was . . .

16 MS. MESERVE: There was a bit of cross. I
17 think it was at least two hours.

18 CO-HEARING OFFICER DODUC: There was a bit of
19 cross.

20 MS. MESERVE: Two hours maybe?

21 MS. MESERVE: Okay.

22 CO-HEARING OFFICER DODUC: Would it be a
23 tremendous hardship, Miss Meserve, to have your
24 witnesses here in the morning just in case?

25 MS. MESERVE: No. No. I mean, I was thinking

1 maybe 11:00 to be safe.

2 CO-HEARING OFFICER DODUC: Okay. That would
3 be excellent.

4 MS. MESERVE: Okay. And then the next
5 panelists, due to some issues that I believe Mr. Ruiz
6 has explained, would be the San Joaquin County and
7 Central and South Delta, Mr. Burke and Mr. Neudeck.

8 CO-HEARING OFFICER DODUC: Hold on a second.
9 I'm . . .

10 Oh, yes. So you're going --

11 MS. MESERVE: It's pretty much -- It's pretty
12 much that group, but it switched around a little bit
13 within that box and that's why I'm -- within the box
14 for --

15 CO-HEARING OFFICER DODUC: My understanding
16 was the switch would be between Panel 3 and Panel 4.

17 MS. MESERVE: That's -- That's correct.
18 Mr. Nomellini is not available, however, due to a
19 medical issue, and so he cannot go on Tuesday.

20 CO-HEARING OFFICER DODUC: So you are --

21 MS. MESERVE: So he would be peeled off
22 separate, I think was the proposal, which I believe
23 most folks were aware of.

24 So it would be Mr. Burke and Mr. Neudeck
25 only --

1 CO-HEARING OFFICER DODUC: Okay.

2 MS. MESERVE: -- in the following panel.

3 And then we would switch to go down to the
4 panel beginning with Lambie, which is the groundwater
5 panel --

6 CO-HEARING OFFICER DODUC: Correct.

7 MS. MESERVE: -- on behalf of San Joaquin and
8 the other parties.

9 And then we would go to Jeff Michael.

10 And then after Jeff Michael would be Dante
11 Nomellini on his own.

12 CO-HEARING OFFICER DODUC: Okay. That's my
13 understanding.

14 MS. MESERVE: And that would conclude the
15 third group, if you will.

16 CO-HEARING OFFICER DODUC: That is my
17 understanding.

18 MS. MESERVE: That's mine, too. Thank you.

19 CO-HEARING OFFICER DODUC: Wow. Are you going
20 for my job, Miss Meserve? Nice work.

21 MS. MESERVE: Just trying to make sure
22 everyone's on the same page and make sure everyone can
23 prepare for cross.

24 Thank you.

25 CO-HEARING OFFICER DODUC: All right. Thank

1 you, all.

2 With that, we are in adjournment.

3 We will return at 9:30 tomorrow here in this
4 room.

5 (Proceedings adjourned at 4:52 p.m.)

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1 State of California)
2 County of Sacramento)

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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: March 18, 2018

23

24

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Candace L. Yount, CSR No. 2737