



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 Engineer
- 11 Jean McCue, Water Resources Control Engineer
- 12 Hwaseong Jin

13 PART 2

14 For Petitioners:

15 California Department of Water Resources:

- 16 James (Tripp) Mizell
- 17 Jolie-Anne Ansley

18 INTERESTED PARTIES:

19 For California Water Research:

20 Deirdre Des Jardins

21 Local Agencies of the North Delta:

22 Osha Meserve

23 For Friends of the River & Sierra Club of California:

- 24 E. Robert Wright
- 25 Kyle Jones

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APPEARANCES (Continued)

INTERESTED PARTIES (Continued):

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

John Herrick

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

Chris Shutes

For State Water Contractors:

Stefanie Morris

For The Environmental Justice Coalition for Water:

Colin Bailey  
Osha Meserve

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1 Monday, April 2, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: All right,  
5 everyone. Please take a seat. It is 9:30 this fine  
6 Monday morning.

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

9 I am Tam Doduc. To my right is Board Chair  
10 and Co-Hearing Officer Felicia Marcus. And to the  
11 Chair's right is Board Member Dee Dee D'Adamo. To my  
12 left are Andrew Deeringer and Conny Mitterhofer.

13 We're also being assisted today by Mr. Baker.

14 We are in a different room today, so please  
15 take a moment and identify the exit closest to you.  
16 But I believe the exit behind you is the one that will  
17 give you the shortest access to the stairwell -- to the  
18 stairs, and there should not be any partition to block  
19 your access.

20 In the event of any emergency, an alarm will  
21 sound. We will evacuate using the stairs down to the  
22 first floor and meet up in the park across the street  
23 where we may just stay for the rest of the day since  
24 it's so beautiful.

25 But in the event you're not able to use the

1 stairs, please flag down one of the security people --  
2 safety people and they will direct you into a  
3 protective area.

4           As you know, this hearing is being recorded  
5 and Webcasted so, as always, speak into the microphone  
6 after making sure the green light is on, and begin by  
7 stating your name and affiliation.

8           Our court reporter is back with us. If you  
9 would like to have a copy of the transcript prior to  
10 the end of Part 2, please make your arrangements  
11 directly with her.

12           Finally, and most importantly, since we've  
13 all, I'm sure, turned on our cellphones during the  
14 weekend, please take a moment and make sure all your  
15 noise-making devices are on silent, vibrate, do not  
16 disturb.

17           All right. Any housekeeping matter before we  
18 begin?

19           Miss Des Jardins, we did receive your request  
20 with respect to your subpoena witness, as well as  
21 PCFFA's witness. We are still considering that.

22           We should let you know hopefully either by the  
23 end of the day or tomorrow sometimes on what the next  
24 steps are.

25           MS. DES JARDINS: Thank you very much.

1 CO-HEARING OFFICER DODUC: Miss Meserve, who,  
2 by the way, impressed the heck out of me because I saw  
3 her bringing her bike to work this morning.

4 MS. MESERVE: Thank you. It's a short --

5 CO-HEARING OFFICER DODUC: And wearing a  
6 helmet.

7 MS. MESERVE: I do wear a helmet. I try to  
8 set a good example for my kids.

9 Thank you.

10 Just on behalf of the Stone Lakes groups, I am  
11 talking with Pacific Coast Federation of Fishermen's  
12 about potentially going before them in order to  
13 accommodate their need to go later and our need to try  
14 to get our witnesses through next week.

15 I have conferred with counsel for DWR about  
16 that. I believe they are checking into -- It is a week  
17 in advance so I think it should be okay.

18 So maybe we'll check in at the end of the day,  
19 I assume, about next week.

20 CO-HEARING OFFICER DODUC: That would be  
21 excellent. Thank you for helping out PCFFA.

22 And a reminder that there was a request by  
23 Mr. Jackson and others to file a written  
24 motion/objection -- whatever the correct terminology  
25 is -- by 5 p.m. tomorrow in response to the information

1 that DWR released last week. I believe it was a Motion  
2 for Stay or something like that.

3 So we will take that under consideration as  
4 well before determining what activities will ensue next  
5 week.

6 All right. If there isn't any other  
7 housekeeping matter, Mr. Wright, welcome to you and  
8 your panelists, finally. Thank you for your patience.  
9 And thank you for bearing us with our somewhat hectic  
10 schedule.

11 If I could ask the four people to please stand  
12 and raise your right hand.

13

14 Dierdre Des Jardins,

15 Ron Stork,

16 Jonas Minton

17 and

18 Lawrence Kolb,

19 called as witnesses by the Friends of the  
20 River and Sierra Club of California, having  
21 been duly sworn, were examined and testified  
22 as follows:

23 CO-HEARING OFFICER DODUC: Thank you. Be  
24 seated.

25 And you submitted a written Opening Statement.

1 Do you wish to make an oral Opening Statement?

2 MR. WRIGHT: Yes, a very brief one.

3 CO-HEARING OFFICER DODUC: Okay. We'll give  
4 you -- You don't have to use the entire 20 minutes but  
5 you have that.

6 And, then, just for my -- my purposes going  
7 forward, how much time do you need for direct?

8 MR. WRIGHT: I believe each witness will be 20  
9 minutes.

10 CO-HEARING OFFICER DODUC: Okay. And --

11 MR. WRIGHT: And I will endeavor to hold each  
12 witness to that also.

13 CO-HEARING OFFICER DODUC: All right. May I  
14 get an estimate of cross-examination so that  
15 Mr. Bailey, if he's watching, might have an idea of  
16 when he may come up.

17 MS. ANSLEY: Jolie-Anne Ansley for the  
18 Department of Water Resources.

19 We have a joint cross, State Water  
20 Contractors. We estimate about an hour.

21 CO-HEARING OFFICER DODUC: All right.

22 MR. HERRICK: John Herrick, South Delta  
23 parties.

24 Maybe 10 or 15 minutes at most.

25 MR. SHUTES: Chris Shutes with CSPA.



1 Half an hour.

2 MS. MESERVE: Osha Meserve.

3 I'd like to reserve 15 minutes.

4 CO-HEARING OFFICER DODUC: So I have 80  
5 minutes or thereabout for direct.

6 I think it's safe, Mr. Bailey, if you're  
7 watching, we won't get to you until after our lunch  
8 break. We might take an early lunch break, depending  
9 how quickly this goes, but not before lunch.

10 All right. With that, Mr. Wright, your  
11 Opening Statement.

12 MR. WRIGHT: Yes.

13 OPENING STATEMENT

14 MR. WRIGHT: Good morning, Hearing Officers,  
15 Board members and Water Resource Control Board staff.

16 Kyle and I are here representing Friends of  
17 the River and Sierra Club California.

18 Just to give you a brief idea of what you're  
19 going to be hearing today in terms of an opening  
20 statement of what the witnesses are going to be talking  
21 to you about, it really's going to come down into two  
22 parts, with the theme being whether or not the proposed  
23 changes are in the public interest.

24 Now, the first part, you'll be hearing from  
25 Dierdre Des Jardins and Ron Stork. And the big thing

1 there is, where would the water come from in the  
2 Project? And what would those impacts be?

3           And you'll be hearing about the history of  
4 how, back in the 1960s, with the forerunner of this  
5 Project within the Department of Water Resources, it  
6 was presumed that water could be taken from the north  
7 coast rivers to supply the missing water.

8           Of course, folks are now -- we're talking  
9 about wild and scenic rivers -- protected wild and  
10 scenic rivers.

11           We'll also be hearing from Dierdre Des Jardins  
12 that the yields would be going down because of  
13 increasing water rights and uses in the Sacramento  
14 Valley.

15           And Dierdre will also talk a little bit about  
16 climate change, the impacts that's going to have.

17           And then for Mr. Stork, Ron Stork, you're  
18 going to hear about the impacts that the Project would  
19 have because of lowering reservoir levels to adverse  
20 impacts on temperatures and flows below the reservoirs  
21 and upstream from the Delta.

22           He'll also be talking about the pressures to  
23 expand storage to meet the needs for the diversion  
24 change for the Project.

25           And, again, putting some numbers on the --

1 what was mentioned earlier about getting more water  
2 from north coast rivers, the estimates at the time was  
3 that 2 million acre-feet would be needed for the  
4 Project.

5           So, again, the issues, what I would call  
6 Part 1: Where would the water come from? What would  
7 the impacts of that be?

8           Dierdre Des Jardins has a long, extensive  
9 history with the scientific and mathematical background  
10 in researching California water supply impacts.

11           Ron Stork was a Founding Member of the  
12 Sacramento Water Forum.

13           And, of course, we all know that, if agencies  
14 like FERC had followed Mr. Stork's advice back years  
15 ago, maybe some people may not have been evacuated,  
16 because the Oroville emergency spillway would have been  
17 properly armored.

18           So that would be what I call Part 1.

19           Part 2 will be the issue of alternatives.  
20 Again, is this diversion change in the public interest?  
21 What are the alternatives to avoid the adverse water  
22 quality impacts that would result from this Project?

23           And from -- from Jonas Minton, you'll be  
24 hearing about the tremendous strides that have been  
25 made in Southern California on recycling, modern 21st

1 Century methods of supplying more water.

2           You'll be hearing about (sic) him about  
3 converting the drainage-impaired lands in the  
4 San Joaquin Valley so that they could be converted to  
5 solar and not have the double impact of drawing both  
6 more water but also contributing to salinity problems  
7 in the San Francisco Bay Delta.

8           And, then, from Dr. Larry Kolb, you'll be  
9 hearing about, based on his long experience, that  
10 really measurable limits are necessary, far superior to  
11 things like adaptive management.

12           You'll be hearing about -- from him about how  
13 the tunnels would magnify the effects of pollution on  
14 the Delta by lessening fresh water flows through the  
15 Delta.

16           And, of course, Jonas Minton at one point was  
17 Executive Director of the Sacramento Water Forum, as I  
18 think you all know. He was also the Deputy Director of  
19 the Department of Water Resources.

20           Dr. Larry Kolb has a Ph.D. in engineering. He  
21 spent 33 years on the staff of the San Francisco Bay  
22 Regional Water Quality Control Board. And at the time  
23 he retired, he was the Principal Engineer for that  
24 Board and the Assistant Executive Officer.

25           Again with this, all, of course, would be

1 embraced under the overall umbrella as one of your key  
2 hearing issues: Would this diversion change be in the  
3 public interest of the State of California?

4 Thank you very much for allowing me that brief  
5 Opening Statement.

6 And with that, to start, I'd ask Dierdre  
7 Des Jardins:

8 DIRECT EXAMINATION BY

9 MR. WRIGHT: Is Exhibit FOR-7 a true and  
10 correct copy of your qualifications?

11 WITNESS DES JARDINS: Yes, it is.

12 MR. WRIGHT: And is Exhibit FOR-8 a true and  
13 correct copy of your written testimony?

14 WITNESS DES JARDINS: Yes, it is. And I  
15 also --

16 Yes, it is. I also wanted to add, I noticed  
17 hadn't put citations to the reports for the graphics.

18 The graphic on Page 5 is from FOR-12, Page 12.

19 The graphic on Page 6 is from FOR-15, Page 8.

20 And the graphic on Page 9 is from FOR-110,  
21 Page 29.

22 I do refer to all of the reports. I just  
23 didn't put specific citations to what page on the  
24 exhibits they came from.

25 MR. WRIGHT: All right. Would you -- Again,

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1 make sure you speak into the microphone.

2           And now would you please summarize your  
3 testimony for the Hearing Officers, Board Members and  
4 staff.

5           WITNESS DES JARDINS: Thank you.

6           I've looked into the history of the State  
7 Water Project and Central Valley water -- Project water  
8 resources planning. I've done a lot of collaboration  
9 and discussion with Friends of the River about it. And  
10 one of the reasons is to understand why there are so  
11 many issues today.

12           I believe that this decision will govern how  
13 the State Water Project and Central Valley Project  
14 water rights are exercised for the next 50 to 100  
15 years.

16           And I think, to understand what Permit terms  
17 and conditions might be necessary, it's essential that  
18 the Board understand this historical context about the  
19 State Water Project's water supply.

20           My testimony -- There's a couple key points in  
21 my testimony which I'll summarize and then I'll go into  
22 in detail.

23           One is that the State Water Project, as  
24 originally planned, only had about half the water  
25 supplies -- from water supplies for its contracts of

1 4.23 million acre-feet.

2           Second was that one of the ways the Department  
3 of Water Resources dealt with the ensuing conflict was  
4 to operate Oroville Reservoir much more aggressively,  
5 which risks straining the reservoir to near minimum  
6 pool in multiyear drought.

7           And changes to the reservoir operations were  
8 not disclosed in other -- to the State Water Resource  
9 Control Board and regulatory processes which I'll  
10 describe in more detail.

11           Another thing is that very early on in the  
12 Project history, they noticed -- the Department of  
13 Fish & Game noticed the river flows in the Delta, and  
14 they identified this as diverting more water than would  
15 naturally flow in the channels of the Delta.

16           So, again, this conflict is linked to some of  
17 the impacts that we're seeing with river flows.

18           And, finally, the yield of the State Water  
19 Project is projected to go down further due to both the  
20 need to -- for increased outflows to repel salinity due  
21 to sea-level rise and maturity of water rights north of  
22 the Delta.

23           So I'd like to talk a little bit about some of  
24 the details.

25           So, there was a really stunning oral interview

1 by Bill -- with Bill Warne, who was the DWR Director at  
2 the time that the water contracts were issued.

3 And I -- I quote it in my testimony.

4 Bill Warne literally states (reading):

5 "We were only in a position to  
6 guarantee, even with Oroville Dam, about  
7 half of the 4 million acre-feet without  
8 additional works."

9 And his interviewer Chall says (reading):

10 "Only half; I didn't realize that."

11 And he says (reading):

12 "Unless we could augment the  
13 supply."

14 And he literally says that they needed to  
15 augment the supply on the -- on the Sacramento River.

16 And this was going to be augmented by the  
17 Dos Rios Dam but, as we know, that was never built.

18 So two years after the 1979 interview with  
19 Bill Warne, DWR's Bulletin 76-81 found that the firm  
20 yield -- which is in all the critically dry years --  
21 the firm yield of the State Water Project was about  
22 2.3 million acre-feet and projected to decrease to  
23 about 1.6 to 1.8 million acre-feet per year by 2000.  
24 And this was as a result of increased water years in  
25 the areas of origin, maturity of contractual



1 obligations in the Central Valley Project, and other  
2 prior rights.

3 My testimony cites my report, State Water  
4 Project Water Supply, Why the State Water Project  
5 Cannot Meet Contract Obligations.

6 The report details why DWR's north coast area  
7 investigation, which investigated water supply from  
8 many other north coast rivers, largely failed. And the  
9 promised extra upstream water supplies for the State  
10 Water Project contracts never appeared.

11 So in . . . The -- One of the impacts of  
12 this -- And I'd like to, if possible, go to Page 5 of  
13 my testimony, to a graph and display that, Exhibit  
14 DDJ-8, Page 5.

15 One of the impacts of this was --

16 CO-HEARING OFFICER DODUC: It will be .pdf  
17 Page 6.

18 WITNESS DES JARDINS: Oh, thank you.

19 MR. BAKER: Also, this is Friends of the River  
20 FOR-8?

21 WITNESS DES JARDINS: FOR-8.

22 So this is documented in my report on the  
23 reservoir operations. This was shown in -- In Part 1,  
24 I testified on this, so I . . .

25 This -- There is a fairly clear change around

1 the mid-'80s between carrying over -- They used to  
2 operate the State Water Project to meet demands in a  
3 repeat of the 1928 to '34 drought.

4           And this documents that what they did was  
5 change to just take the water supply up front to -- to  
6 maximize deliveries and risk draining Oroville and --  
7 if there is a multiyear drought.

8           So the next graph I'd like to go to is on  
9 Page 6 of my testimony.

10           This is from my report on State Water Project  
11 Water Supply. This is directly out of a spreadsheet  
12 that DWR provided in this hearing.

13           So, this is actually a graph that shows the  
14 contract report and then the requested amounts from the  
15 State Water Project and the approved deliveries.

16           But what you can see is, as -- as they ramp  
17 up, when they get to the full contract demands, it  
18 starts oscillating much more widely. And I believe  
19 this is partly due to this really pushing Oroville  
20 Reservoir to try and meet these demands when they don't  
21 have enough upstream supply.

22           And, so, some of the swings, I would argue,  
23 are because of this imbalance between the up -- the  
24 full upstream supply and the contract demands.

25           And one of the things is, there's -- there's

1 an issue of whether the State Water Project is carrying  
2 over enough water in Oroville to meet area-of-origin  
3 obligations in a multiyear drought.

4 My testimony cites the 1986 Coordinated  
5 Operating Agreement EIR, which stated that the State  
6 Water Project and Central Valley Project were  
7 committing 2.3 million acre-feet Project yield to  
8 supply Delta outflow during critical periods.

9 The EIR/EIS also stated that if Delta outflow  
10 requirements were being met, then all other in-basin  
11 use requirements are being met.

12 But it's unclear from the experience in the  
13 recent drought whether there's still 2.3 million  
14 acre-feet of Project yield being committed for  
15 availability during critical periods.

16 And I believe it's very significant for the  
17 Board's decision that the Coordinated Operating  
18 Agreement between the Department of Water Resources and  
19 the U.S. Bureau of Reclamation is subject to change in  
20 the future.

21 My testimony also cites Water Code 138.10,  
22 which directed that the Department of Water Resources  
23 prepare a plan to meet -- to meet permitted license  
24 conditions, including Decision 1641 requirements,  
25 and -- and submit that plan to the State Water Board.

1           And that plan is inc -- submitted here,  
2 Exhibit FOR-104. And I looked in there -- Once I  
3 realized that this change had happened for any  
4 discussion about carryover storage and I could find  
5 nothing.

6           It was not disclosed. The risks taken with  
7 carryover storage were not disclosed in this formal  
8 plan submitted to the State Water Board and if -- they  
9 just discussed, you know, statistics about past  
10 compliance.

11           And, you know, I argue that carryover storage  
12 here is essential to being able to meet these  
13 obligations.

14           I also wanted to show that the -- So I --  
15 There's a very early report in 1970 Department of  
16 Fish & Game.

17           Let's put up the graph on Page 9.

18           (Exhibit displayed on screen.)

19           WITNESS DES JARDINS: This -- I provided this  
20 report and this -- I was really struck by this. It  
21 showed the Delta flows after the Central Valley Project  
22 came online but before the State Water Project was  
23 completed.

24           And it shows -- The first graphic shows sort  
25 of -- on the far left shows the normal direction of

1 flow, which is all towards the . . . towards Chips  
2 Island and Jersey Point.

3           And then the -- the center one shows with  
4 pumping, and shows Old and Middle River flows but with  
5 the San Joaquin River still flowing normally.

6           And the right shows where there's so much  
7 pumping that the San Joaquin River has reversed.

8           And this is, I believe, literally related in a  
9 way to -- These happen in conditions where there's just  
10 not enough natural flow going there, so the pumps  
11 reverse the flow on the San Joaquin River. And I  
12 believe this is related to the lack of augmentation of  
13 the Sac River flows which would naturally flow down and  
14 allow there to be this positive flow.

15           So there's some very real problems that the  
16 State Water Project has had because this extra roughly  
17 900,000 acre-feet of water supply that was assumed in  
18 Decision 1275 never -- never appeared.

19           And a lot of it's been blamed on the  
20 Endangered Species Act, but the water supply has  
21 impacts. It has impacts on ability to meet water  
22 quality requirements and clearly on on-flow reversals,  
23 unfavorable flow reverses. So -- And the issue is,  
24 this is only going to get worse.

25           And my last part: I've tried to find an

1 estimate of how much increased outflow will be needed  
2 to repel salinity with sea-level rise, and the best I  
3 could find was this 2008 PPIC study.

4           And they found that at one foot of sea-level  
5 rise, you need about an extra 475,000 acre-feet a year  
6 of additional outflow to meet salinity at the Western  
7 Delta.

8           And, you know -- Then -- And there's the other  
9 issue. The BDCP WaterFix modeling assumes an extra  
10 483,000 acre-feet a year of North-of-Delta demand by  
11 2030. So, together -- I added it up -- it's 958,000  
12 acre-feet in future area-of-origin needs, almost a  
13 million acre-feet.

14           And there's a real question of, you know,  
15 where this is going to come from. And draining the  
16 reservoirs attempting to continue the same level of  
17 exports in the face of these kinds of future conditions  
18 would be disastrous.

19           But as Rob Stork will testify, simply  
20 increasing diversions to storage north of the Delta  
21 will also have severe impacts.

22           So, finally, I'd like to say that I believe  
23 that any public trust or public interest analysis for  
24 the WaterFix Change Petition must really weigh where,  
25 you know, these future need and where the water's going

1 to come from and -- and not kick the can down the road.

2 Thank you.

3 MR. WRIGHT: And turning to Ron Stork.

4 Is FOR-Exhibit 1 a true and correct copy of  
5 your qualifications?

6 WITNESS STORK: Yes, it is.

7 MR. WRIGHT: And is FOR Exhibit 2 a true and  
8 correct copy on which your written testimony?

9 WITNESS STORK: Yes, it is.

10 MR. WRIGHT: And would you now please  
11 summarize your testimony for the Hearing Officers.

12 WITNESS STORK: Well, just for the record, I  
13 want to let you know that I also communicated by  
14 bicycle today.

15 (Laughter.)

16 WITNESS STORK: There are probably a few  
17 others here, too, as well.

18 My testimony's pretty simple and I also think  
19 it's -- will be fairly uncontroversial. These facts  
20 that we're going to discuss are widely known to folks  
21 in this room.

22 So, I also want to thank you guys for letting  
23 he me paw through dusty old books and Friends of  
24 River's library, and old files, just to kind of find  
25 some interesting things about the Projects that we're

1 talking about here.

2           Clearly, the WaterFix has historical roots and  
3 present and future implications.

4           If we look at the situation today, we have  
5 both Petitioners have more demand than their historic  
6 deliveries, and the face value of their water rights  
7 are not limiting their diversions.

8           Pumping constraints and geographic realities  
9 in the Delta, including biological realities, have been  
10 a limitation on South-of-Delta deliveries.

11           That sometimes has implications to the  
12 reliability of water in the north state, as water that  
13 can't be exported is sometimes -- ends up in reservoirs  
14 in the north state.

15           And, as others have testified, deeper  
16 reservoirs mean deeper coldwater pools, the more  
17 extensive coldwater pools. And that has implications  
18 to the fisheries downstream of them.

19           Much of the -- the water history of the last  
20 half century or more has been the quest to avoid the  
21 limiting factors of Delta transport.

22           One of the early attempts at trying to deal  
23 with the issue of -- of the Federal and State Projects  
24 and resources in the north state was the adoption of  
25 the area-of-origin statutes in -- in California which



1 are State law.

2           And I discussed a recent common-sense, I  
3 thought, conclusion of some litigation brought by some  
4 north state interests who were hoping that they could  
5 convince the Courts -- Federal Courts that there was  
6 some obligation within the Project, within the CVP, to  
7 have essentially preferential deliveries to the area of  
8 origin as opposed to the export world.

9           And the -- the Court essentially said no, the  
10 Projects have discretion to make deliveries within  
11 their policies and if they're -- if they wish to  
12 equalize them, they can.

13           There's no -- The area-of-origin statutes  
14 don't apply within the CVP and, by extension, within  
15 the State Water Project; that is, how you allocate or  
16 don't allocate water to your Contractors within your  
17 water right.

18           That was, as I said, not a particularly  
19 remarkable conclusion. It -- It -- But it was candid  
20 in the sense that it recognized that physical and  
21 geographic realities are a perfectly kosher opportunity  
22 and explanation for differential deliveries to  
23 differential Contractors.

24           And, of course, it's these physical and  
25 geographic realities that have been -- that are to a

1 large degree the subject of -- of your decision about  
2 the WaterFix here.

3           And -- And I think I argue that in the -- the  
4 testimony that, to some degree, these physical and  
5 geographic realities have -- have been a surrogate for  
6 the operative words of the watershed protection  
7 statutes, that prior right to all water reasonably  
8 required to adequately supply the beneficial needs of  
9 the watershed area or any of the inhabitants or  
10 property owners thereof -- or therein is -- is -- is  
11 the area -- is the core message of that particular  
12 origin statute.

13           When -- When, you know, watershed -- You  
14 can -- You can use your judgments. There's -- They're  
15 contrasting it with two individuals and property  
16 owners, and many have argued that -- that public trust  
17 values in the -- in the watershed are meaningful as  
18 well.

19           We also note that -- that -- that the ability  
20 to make discretionary policy changes about deliveries  
21 is something that the Projects have cherished and --  
22 and -- and indeed like to have. You know, it's Project  
23 flexibility.

24           And it's not uncommon for trade-offs to be  
25 made between essentially reliability of -- of coldwater

1 pools and deliveries in the north state versus the  
2 export demands in the south state.

3           And if you're looking for a . . . to maximize  
4 yield average deliveries happen -- You can increase the  
5 average deliveries when you exercise reservoirs more  
6 fully; i.e., get them up, get them down, and capture  
7 the water and get it south.

8           Going on in more detail, we -- we -- the  
9 testimony talks about, you know, once again, water  
10 rights for both Projects routinely exceed deliveries;  
11 therefore, they're not a constraint. That certainly  
12 happens within the State Water Project, as Deirdre  
13 talked about.

14           And the State Water Project is not complete.  
15 It has at least one major unconstructed authorized  
16 Project south of the Delta, Los Banos Grandes, a large  
17 offstream storage reservoir south of the existing  
18 San Luis Reservoir.

19           The State Water Project is also, I identified,  
20 is a customer for water in the Federal EISs at  
21 Temperance Flat and -- and the Shasta Dam raise.

22           In the context of their Permit extension --  
23 that is, the CVP's Permit extension request -- we note  
24 that Reclamation maintains it's not possible to predict  
25 future operations and deliveries, and that current

1 demands may not reflect CVP future build-out  
2 conditions, which I think is an important thing for you  
3 to consider when you contemplate the reliability of  
4 your -- of modeling, essentially the guesses on what  
5 the implications of -- of the WaterFix will be.

6           Reclamation also has a draft in front of it,  
7 feasibility reports out, for the Shasta Dam raise and  
8 the sites of Temperance Flat Dams.

9           The State Water Project is -- is -- and the  
10 CVP, of course, are also identified in these -- these  
11 major expansions.

12           Clearly, both Projects are aiming to be bigger  
13 and serving more demand than they do today. And it  
14 makes it hard to oper -- model operations.

15           The -- The CVP operations affect at least one  
16 state and Federal wild and scenics river -- that would  
17 be the Lower American River -- and the Board not only  
18 has an obligation to try and . . . comply with the --  
19 the -- the law with regard to area-of-origin statutes,  
20 but also the State Wild and scenic river statutes.

21           There are public trust issues there that have  
22 been testified to by the Water Forum which I think  
23 are -- are significant.

24           And then reaching back into the history of  
25 this Project, the project being a transfer of water

1 across the Delta, the north state rivers have long been  
2 part of the drama of this Project.

3           The peripheral canal, the -- you know, the  
4 Dukes Ditch, and the various incarnations of this  
5 Project have been seen as the highway to the north  
6 state. Some of those north state rivers -- and this is  
7 where our library is really rich -- involve the north  
8 coast rivers that are -- were cur -- are currently part  
9 of the Federal and State water river systems.

10           The Peripheral Canal was actually kind of  
11 tied -- kind of? -- it was legislatively tied to a --  
12 essentially a two-thirds vote requirement in the  
13 legislature to -- to undue wild and scenic river  
14 protection for the State wild and scenic rivers that  
15 passed and then later didn't pass because of a  
16 complicated set of historic stuff back in the early  
17 '80s.

18           And -- And folks have not forgotten that.  
19 Tulare County Board of Supervisors recently asked for  
20 the north coast rivers to be undesignated as state wild  
21 and scenic rivers so that we can get the water down to  
22 Tulare County.

23           And if that's your focus, then -- then they're  
24 right. There -- A lot of the missing yield of the --  
25 of the State Water Project is -- is right there.

1           There's also been an interest on the part  
2 of . . . export interest to -- to build reservoirs or  
3 expand reservoirs in . . . in the north state that are  
4 not north coast rivers. Sites Reservoir is one current  
5 one, though it's been in our files for a long, long,  
6 long time.

7           And, you know, at one time, some of these  
8 offstream storage reservoirs were slated to take north  
9 coast river water and put them there. Instead, Sites  
10 is being reviewed to, if it's -- if it's approved, to  
11 augment water flows in the Sacramento by taking  
12 Sacramento River water in one season and delivering it  
13 in another season.

14           You have yet to have to deal with the water  
15 rights for that issue, but I suspect that you will find  
16 that it will be challenging, and that it will be an  
17 important task to sort out.

18           The reason why I bring that up is the  
19 delightful candor of the General Manager of the  
20 Metropolitan Water District of Southern California who  
21 is a major State Water Project Contractor, saying that,  
22 in an interview that happened -- a public interview  
23 that happened here in Sacramento, that -- that Sites  
24 Reservoir makes absolutely no sense unless he has the  
25 tunnels. He can't get the water from there to the

1 south state.

2           So, from his perception, that's a reason why  
3 you should endorse the WaterFix. But at least from the  
4 perspective of folks concerned about north state water  
5 resources being dedicated to -- further dedicated to  
6 south state demand, that that's a rather direct  
7 admission of the key significance of this Project.

8           And I'll note that I don't see, at least in  
9 the Draft EIR, much of a way of protecting north state  
10 water there.

11           The Shasta Dam raise, of course, is illegal  
12 under State law. And we had some -- some delightfully  
13 candid remarks by the General Manager and Chief Counsel  
14 of the . . . Westlands Water District essentially  
15 saying, you know, we -- we bought the Bollibokka Water  
16 Club, the hunting club there, so that nobody would  
17 object to raising Shasta Dam.

18           There was also Jason Peltier, who was  
19 Assistant General Manager then at Westlands, said:  
20 Well, you know, really our priority is getting the  
21 tunnels before raising Shasta Dam because of obvious  
22 reasons.

23           You -- You all folks do have an obligation  
24 to . . . in your routine conduct of business, to  
25 protect rivers that are protected in the State Wild and

1 Scenic Rivers Act, which includes the McCloud, which is  
2 why raising Shasta Dam is illegal.

3           So that's a -- that's another implication  
4 of -- of this Project before you.

5           And, finally, I will just note, remembering  
6 that our testimony was prepared some number of months  
7 ago, that there's a fair amount of chaos in -- in what  
8 project might actually be constructed, or the way in  
9 which it's constructed, one tunnel, two tunnels.

10           And that -- We know that that's a po --  
11 there's a possibility that you're essentially being  
12 asked to approve a project for which part of it, or  
13 perhaps all of it, is put into cold storage while the  
14 financing and other things arranged.

15           So --

16           CO-HEARING OFFICER DODUC: Just --

17           WITNESS STORK: -- thank you.

18           CO-HEARING OFFICER DODUC: -- a moment.

19           Miss Morris.

20           MS. MORRIS: Yeah. I would just object to  
21 that --

22           CO-HEARING OFFICER DODUC: Microphone?

23           MS. MORRIS: Sorry. This one's really  
24 sensitive (indicating microphone).

25           I would just object to that last statement.



1 It wasn't in his testimony, as he indicated.

2 He was basing that statement on things that  
3 have happened in the past. And, again, the Board has  
4 ruled that there would be a Part 3 if there was staged  
5 construction, and that all of that evidence would occur  
6 in Part 3 of this hearing.

7 CO-HEARING OFFICER DODUC: Any response,  
8 Mr. Wright?

9 MR. WRIGHT: Yes. I think you can take --

10 CO-HEARING OFFICER DODUC: I'm sorry. Your  
11 phone -- microphone.

12 MR. WRIGHT: Yes. Thank you.

13 Yes. I think you can take judicial notice of  
14 the obvious and that the Board has heard about this  
15 in -- in numerous filings in the recent weeks.

16 CO-HEARING OFFICER DODUC: I'm sorry. I don't  
17 understand that.

18 MR. WRIGHT: I believe Mr. Stork's testimony  
19 simply related to -- that amplifying his testimony  
20 about cold storage, that events since his testimony,  
21 the date being November 30th, that's simply been  
22 further amplified and underscored by recent events.

23 MS. MORRIS: I don't think you can take  
24 judicial notice of newspaper articles or statements.  
25 So, again, I would just move to strike that as

1 inappropriate and outside the scope of Phase 2.

2 CO-HEARING OFFICER DODUC: Did you have  
3 something to add, Miss Meserve?

4 MS. MESERVE: Yes.

5 I guess I just want to make clear that  
6 Mr. Stork has a discussion about phased construction in  
7 his testimony, and I think he's -- he should be able to  
8 discuss it as long as he's within the scope of his  
9 testimony. So . . .

10 CO-HEARING OFFICER DODUC: Well, I think  
11 Miss Morris' objection is that he's discussing it in  
12 the context of development since he submitted his  
13 testimony.

14 MS. MESERVE: And then I just want to make  
15 sure also that I think that, on cross-examination or --  
16 I mean, it doesn't really matter -- there's got to be  
17 the ability to discuss what's in his testimony despite  
18 the plan perhaps to have a Part 3. I don't see why  
19 we'd be precluded from discussing that material.

20 CO-HEARING OFFICER DODUC: We'll cross that  
21 bridge in cross-exam when we get to it.

22 But Miss Morris' objection is sustained.

23 WITNESS STORK: Well, I'll refer you to my  
24 written testimony on cold storage --

25 CO-HEARING OFFICER DODUC: Yes.

1 WITNESS STORK: -- which --

2 CO-HEARING OFFICER DODUC: Without referencing  
3 things that are not in your testimony.

4 WITNESS STORK: Exactly.

5 And I'm sure you'll -- you'll find it  
6 interesting and relevant.

7 And that concludes my summary of my testimony.

8 MR. WRIGHT: All right. Turning now to Jonas  
9 Minton.

10 Is Exhibit FOR-1 a true and correct copy of  
11 your qualifications?

12 WITNESS MINTON: It is.

13 MR. WRIGHT: And is FOR Exhibit -- If I  
14 said -- Did I say FOR Exhibit 5?

15 Yeah. Let me repeat the question.

16 Is FOR Exhibit 5 a true and correct copy of  
17 your qualifications?

18 WITNESS MINTON: It is.

19 MR. WRIGHT: And is FOR Exhibit 6 a correct  
20 copy of your testimony?

21 WITNESS MINTON: It is.

22 MR. WRIGHT: Okay. Now, would you please  
23 summarize your testimony.

24 WITNESS MINTON: Good morning.

25 I was trying to remember before my testimony

1 was prepared whether Andy Sawyer or I were the first  
2 ones to bicycle commute to this building back in the  
3 early 1970s. I'm not sure, so I cannot swear to that.

4 But I also --

5 CO-HEARING OFFICER DODUC: If we continue this  
6 in May, which is bicycle month, we will have to have a  
7 daily contest, I believe.

8 (Laughter.)

9 WITNESS MINTON: Well, thank you.

10 In preparing my testimony, I started by  
11 reviewing the State Board's statement on public trust  
12 considerations that's posted on your website.

13 They're so relevant, they're the only  
14 sentences I will quote verbatim from my testimony  
15 (reading):

16 "The difficulty comes in balancing  
17 the potential value of a proposed or  
18 existing water diversion with the impact  
19 it may have on the public trust. After  
20 carefully weighing the issues and  
21 arriving at a determination, the Board is  
22 charged with implementing the action  
23 which would protect the latter."  
24 That being public trust.

25 (Reading):

1                    "As with all the other pieces of the  
2                    California water puzzle, allocating the  
3                    limited resource fairly and impartially  
4                    among all (sic) competing water (sic)  
5                    users represents one of the Board's  
6                    greatest challenges."

7                    To help the Board meet this challenge, my  
8                    testimony references three of the solutions found in  
9                    the Planning & Conservation League's eight affordable  
10                    water solutions published in March 2010 (indicating).

11                    First, my testimony describes how California  
12                    can safely increase recycled water.

13                    I note that in 2010, PCL sponsored Senate Bill  
14                    918, with which you're familiar. This legislation  
15                    required adoption of uniformed water recycling criteria  
16                    for indirect potable use for groundwater recharge; also  
17                    required development of uniform criteria for potable  
18                    reuse for surface water augmentation; and it required a  
19                    feasibility study of whether regulations could be  
20                    written for direct potable use.

21                    The Board has adopted uniform criteria for the  
22                    indirect potable reuse, and you've completed a study of  
23                    the feasibility of developing criteria for direct  
24                    potable reuse in the future.

25                    These criteria are going to help the Board and

1 California meet the goals that you've established.

2 Those are: Increasing (reading):

3 ". . . Water recycling (sic) . . . over  
4 the 2000 levels by at least 1 million  
5 acre-feet . . . by the year (sic) 2020  
6 and . . . 2 million acre-feet by the year  
7 (sic) 2030."

8 As it turns out, your actions are already  
9 spurring action. The City of San Diego will start  
10 construction next year on its pure water project. They  
11 expect to recycled water to meet a third of the city's  
12 drinking water by the year 2030. That date happens to  
13 be the same date, the very best case, that WaterFix  
14 could be online.

15 The City of Los Angeles and Metropolitan Water  
16 District are discussing how to recycle as much as  
17 168,000 acre-feet per year of water.

18 That's one of the ways that LEDWP will meet  
19 Mayor Garcetti's goal of reducing the purchase of  
20 imported water by 50 percent by the year 2024.

21 2024, again, is six years before the earliest  
22 date that WaterFix could be online.

23 Similarly, Orange County Water District is  
24 expanding its recycled project to 130 million gallons  
25 per day. That's on the way to their goal of supplying

1 about 40 percent of all water needed in Orange County.

2 My testimony then turns to this third solution  
3 that PCL proposed: Adopting and enforcing numeric flow  
4 water quality standards for the Delta.

5 My testimony notes one of the conundrums I  
6 think that you've been facing in this hearing. With no  
7 adopted Delta Flow Criteria against which to evaluate  
8 the WaterFix Petition, there has been an endless do  
9 loop of futility.

10 I suggest, to correct this irregularity, the  
11 State Board could take suggestions for appropriate  
12 Delta Flow Criteria in Part 2 and decide on appropriate  
13 Delta Flow Criteria.

14 This would allow the Petitioners and the  
15 Protestants to intelligently and factually provide you  
16 with the necessary information on the impacts of the  
17 Project.

18 Next, my testimony addresses our sixth  
19 recommended action (reading):

20 "Consider alternative future uses of  
21 drainage-impaired lands in the  
22 San Joaquin Valley."

23 And this goes to your responsibilities under  
24 the Public Trust Doctrine to look at the long-term  
25 viability of different water uses.

1           My testimony cites the findings of Dr. Jay  
2 Lund, the public policy and Institute of California and  
3 the California Dairy Council -- pardon me -- Dairy  
4 Research Foundation.

5           They've all found that significant amounts of  
6 irrigated agricultural lands will be retired.

7           In doing your public trust balancing, you  
8 should weigh the benefits of a project to temporarily  
9 supply water to lands that will be going out of  
10 production at the expense of all other long-term uses.

11           My testimony then moves to a different  
12 approach to the coequal objectives. I note that the  
13 contention WaterFix has engendered at least 30 lawsuits  
14 by at least 82 plaintiffs.

15           Westlands Water District and Santa Clara  
16 Valley Water District voted not to fund their share of  
17 the Project. Kern County Water Agency voted to pay  
18 only half its share.

19           In all of this, perhaps the biggest flaw in  
20 the entire BDCP WaterFix approach was to tell  
21 stakeholders and regulators what they should support.

22           This is sometimes called the DAD Method:  
23 Decide, Announce and Defend.

24           My testimony then contrasts that with the ad  
25 hoc effort in 2012 known as the Coalition to Support



1 Delta Projects.

2           Instead of someone telling them what they  
3 should support, they were asked what projects could be  
4 broadly supported.

5           In a remarkable -- Because I'm remarking on  
6 it, it's remarkable.

7           In a remarkable six-month highly facilitated  
8 collaborative open, transparent process, 37 . . . key  
9 stakeholders ended up signing a letter supporting 43  
10 specific projects to move forward. These include a mix  
11 of projects to improve water supply reliability,  
12 improve the Delta ecosystem, and enhance Delta as  
13 place.

14           In my 40 now years of water, I am unaware of  
15 any letter that has supported specific projects and is  
16 signed by that range of stakeholders, including Jason  
17 Peltier, Barbara Barrigan-Parilla, Roger Patterson,  
18 Supervisors from all five Delta counties, with their  
19 support, these water supply reliability ecosystem Delta  
20 as place projects, many of which have been moved  
21 forward.

22           Although this was a significant  
23 accomplishment, by the end of 2012, the Bay-Delta  
24 Conservation Plan was polarizing stakeholders and began  
25 consuming all of their time and attention.

1           It was decided that the Coalition could not  
2 make further progress at that time.

3           My testimony concludes with the example of the  
4 Sacramento Water Forum.

5           After years of fighting among themselves,  
6 Water Districts in three counties, environmentalists,  
7 units of local government, business groups and  
8 taxpayers' association engaged in a collaborative  
9 process to meet their mutually identified coequal  
10 objectives.

11           These may sound familiar.

12           The first which provide a reliable and safe  
13 water supply for the Sacramento Region's long-term  
14 growth and economic health.

15           The second was to preserve the fishery  
16 wildlife, recreational and esthetic values of the  
17 American River.

18           More than 15 years after they unanimously  
19 signed this 30-year agreement, Water Forum members have  
20 an impressive record, I believe, of implementing  
21 projects that are preserving our environmental  
22 resources and providing for the water supply  
23 reliability.

24           This precedent of coequal objectives was  
25 actually followed in the Delta Reform Act, as we know

1 it has coequal objectives.

2           Unfortunately, the precedent of open,  
3 inclusive, collaborative working together was not  
4 followed by BDCP or the WaterFix processes.

5           In evaluating whether to approve the WaterFix  
6 Petition, and whether it's in the public interest and  
7 properly balances public trust, it's appropriate for  
8 you to recognize an alternative approach is possible:  
9 Collaborative efforts, such as the Coalition to Support  
10 Delta Projects, and the Sacramento Water Forum work,  
11 where there is a fair, inclusive and transparent  
12 process.

13           That concludes my testimony.

14           Thank you.

15           MR. WRIGHT: Turning now to our concluding  
16 witness, Dr. Larry Kolb.

17           Is FOR Exhibit 3 a true and correct copy of  
18 your qualifications?

19           WITNESS KOLB: Yes, it is.

20           MR. WRIGHT: And make sure you push that  
21 button so you can see the green light on your speaker  
22 (sic).

23           And is FOR Exhibit 4 a true and correct copy  
24 of your testimony?

25           WITNESS KOLB: Yes, it is.

1 MR. WRIGHT: And now would you please  
2 summarize your testimony for the Hearing Officers.

3 WITNESS KOLB: Yes.

4 I -- I began my employment with the Regional  
5 Water Quality Control Board for the San Francisco Bay  
6 Region in 1973, and I worked for 33 years, 300 Board  
7 meetings.

8 I rode a bike to work every day, practically,  
9 of that period. I have 50,000 lifetime -- I only had  
10 one accident that was my fault, so it can be done.

11 When I began my employment, the talk at the  
12 Board was talk about the Porter-Cologne Act which had  
13 been passed a few years earlier, and the method that  
14 that Act specified, which was to identify beneficial  
15 uses, water quality objectives and, finally, effluent  
16 limits.

17 This was thought to be a bonanza for  
18 consultants because it was arguable at every step of  
19 the way.

20 Then, in the fall of 1972, Congress passed  
21 over a Presidential veto the first version of what is  
22 now called the Clean Water Act. That basically took a  
23 different approach for the most important elements of  
24 the act.

25 And it said that we're going to use

1 technology-based limits. EPA is supposed to identify  
2 effluent limits that are achievable using a couple of  
3 different levels of technology, and those effluent  
4 limits were to be reflected in NPDES Permits.

5           And the permitting process was delegated to  
6 states that have suitable qualifications, the first of  
7 which was California. So the first NPDES Permits in  
8 the country, I think, were done in California.

9           The . . . In those early years of the permit  
10 program, I wrote permits. I then supervised people who  
11 prepared permits, defended Permits at Board hearings.

12           It was a time of great adversarial heat. Many  
13 of the permits were appealed, especially by the oil  
14 refineries and the steel company. It was not a  
15 consensus project.

16           On the other hand, it worked. There was a  
17 major dramatic decrease in pollutants entering San  
18 Francisco Bay because of the Clean Water Act.

19           The money spent on this amounted to several  
20 billion dollars, even in 1970's dollars. And I think  
21 people had wondered, was that investment worth it if  
22 we're going to write off the fish that this stuff was  
23 supposed to protect?

24           And this -- The main driver of Permits was --  
25 was protecting the biology. And if the biology is not

1 worth saving, maybe we wasted it.

2 I understand the State Board is considering  
3 using adaptive management which I believe, from  
4 experience personally, is more slogan than method.  
5 It's learn while doing.

6 And that may be something, for example, how  
7 you respond to -- I don't know -- a nuclear bomb or  
8 some other dramatic, unexpected thing, but it's a --  
9 it's a poor substitute for predictable consequences.

10 We already have a better model and one that we  
11 know works, which is the State Board's existing process  
12 for flow standards and for water quality standards.

13 We've got a template that works. Why don't we  
14 use it?

15 The second point is that the tunnels would  
16 magnify pollutant impacts. We've seen this  
17 unprecedented catastrophic decline, called the pelagic  
18 organism decline, or the pod. It's just extraordinary.  
19 Like the whole system just gave up and died. It's not  
20 quite gone, but it's -- it's just incredible.

21 The Bay species that are involved include the  
22 Longfin Smelt, the Starry Flounder, Bay Shrimp. The  
23 POD study group concluded that the major driver for  
24 this decline was flow, reductions in flow.

25 The flow of water in the Delta, why does it

1 matter so much?

2 Well, in two ways: One is that flow provides  
3 dilution. More dilution means lower concentrations.

4 A second consequence is pollutant transport.  
5 Flow is what you need to move the pollutants downstream  
6 towards the Golden Gate and the vast expanses of the  
7 oceans.

8 Lessening fresh water outflow, which the  
9 Tunnel Project would allow, would increase both  
10 pollution concentrations and residence time in the  
11 Delta. These two factors would allow pollutant impacts  
12 to soar.

13 I think one of those pollutant impacts we're  
14 already seeing, which is the POD, the Pelagic Organism  
15 Decline. In other words, alarm bells are going off  
16 loud and clear that what we're doing isn't good enough  
17 and now we're talking about making it worse.

18 Another impact of special interest to me  
19 includes selenium. By diverting more water out of the  
20 Delta, there would be more available for agriculture,  
21 including agriculture on the westside of the Delta,  
22 like Westlands.

23 And irrigating these soils means that  
24 you're -- it's -- you're making this bargain with the  
25 deferable. You're taking selenate, which is a

1 relatively non-available, non-biologically available  
2 version of selenium, and turning it first into selenate  
3 when you put it with water, when you irrigate the land.  
4 And then, later, it becomes organic, which makes it  
5 really toxic. The differences between organic and  
6 inorganic forms are huge.

7           So by taking still more water out of the  
8 Delta, we're harming the Delta twice, once by reducing  
9 outflow and, again, by irrigating toxic soils to create  
10 toxic drainage.

11           My final point is that the State Water Board,  
12 of which I've been a student for these many years, is  
13 the right agency to resolve these hard questions.

14           The legislature knew what it was doing when it  
15 created the State Board. Conflict of interest, fixed  
16 terms, recorded public votes, all of that is the kind  
17 of system to make the State Board independent as a  
18 decision-maker.

19           It also creates independence for staff so that  
20 there's expertise, continuity and transparency for  
21 everything this Board does.

22           The State agencies under the direct control of  
23 the executives, such as the Department of Fish and  
24 Wildlife, don't have these protections. In fact,  
25 they've chronically been given regulatory



1 responsibilities without the necessary institutional  
2 protections for independence.

3 I have seen them steamrolled on at least one  
4 occasion, where I was up close and personal, when the  
5 State Board signed -- the Department signed off on a  
6 project that all of the people who worked on it from  
7 the Department's working level thought it was terrible.

8 So it's -- it's not the people in the  
9 Department, unless you go high enough, and that --  
10 that's where things don't go so well.

11 The difficult decisions, like the one before  
12 the Delta, is why the State Board exists and why it has  
13 these special protections from undue influence.

14 I saw the State Board do many things over the  
15 many years that I worked there, and since I retired. I  
16 don't recall the State Board ever handing  
17 responsibility to another agency.

18 I don't know all the things that the State  
19 Board's done but this just seems bizarre. This is a  
20 central responsibility, and giving it to somebody else  
21 is an abdication, a perversion, from the system that  
22 the legislature created.

23 I urge the State Board to take on this  
24 responsibility, to do its job.

25 Thank you.

1 MR. WRIGHT: Thank you.

2 And that concludes the direct testimony this  
3 morning on behalf of Friends of the River and Sierra  
4 Club California.

5 CO-HEARING OFFICER DODUC: Thank you.

6 Why don't we take a short break before we  
7 start with cross-examination by Department and State  
8 Water Contractors. You guys can all rearrange  
9 yourselves during the break.

10 And we will turn at 10:55.

11 (Recess taken at 10:38 a.m.)

12 (Proceedings resumed at 10:55 a.m.:)

13 CO-HEARING OFFICER DODUC: All right. It is  
14 10:55. We are back.

15 And we have a joint cross by DWR and State  
16 Water Contractors for about 60 minutes.

17 And then, Miss Meserve, when you requested 15,  
18 which party were you making that request on behalf?

19 MS. MESERVE: Friends of the River -- Oh, I'm  
20 sorry. For LAND.

21 CO-HEARING OFFICER DODUC: For LAND. Because  
22 depending on which parties they are, that determines  
23 your order.

24 So then we'll have Miss Meserve for 10,  
25 Herrick for 10 to 15, and Mr. Shutes for 30.

1            Depending on how quickly it goes, we may try  
2 to get through this panel before our lunch break, but  
3 it depends a lot on how quickly things go and how the  
4 court reporter feels.

5            So with that, turning to you, Miss Morris and  
6 Mr. Mizell.

7            MS. MORRIS: Thank you.

8            Just a quick overview of topics. I have  
9 questions for each of the witnesses, largely regarding  
10 the basis of their conclusions, and some slight  
11 questions on qualifications.

12                                 DIRECT EXAMINATION BY

13            MS. MORRIS: I'll start with Miss Des Jardeen  
14 (phonetic).

15            WITNESS DES JARDINS: Yeah.

16            MS. MORRIS: It's Jardins, right?

17            WITNESS DES JARDINS: Des Jardins, yes.

18            MS. MORRIS: Thank you.

19            Looking at your FOR-7, which is your Statement  
20 of Qualifications, are those the same Statement of  
21 Qualifications you presented in Part 1 under DDJ-100?

22            WITNESS DES JARDINS: I believe it's -- it's  
23 the same one, yes.

24            MS. MORRIS: Okay. And your current position  
25 is principal at California Water Research; correct?

1 WITNESS DES JARDINS: Yes.

2 MS. MORRIS: What is California Water  
3 Research?

4 WITNESS DES JARDINS: I've been doing . . .  
5 consulting and public interest comments since 2011. I  
6 was a Senior Policy Advisor for Friends of Trinity  
7 River in 2010.

8 But I started California Water Research  
9 because it became clear that I needed to -- there  
10 needed to be a vehicle to -- to work more  
11 independently.

12 I have California Water Research as a -- an  
13 ongoing blog, and we get donations, although I am not  
14 nonprofit, yet.

15 CO-HEARING OFFICER DODUC: Miss Des Jardins,  
16 if I might ask you to move the microphone closer to  
17 you.

18 WITNESS DES JARDINS: I apologize for that.  
19 I'm --

20 CO-HEARING OFFICER DODUC: Much better.

21 WITNESS DES JARDINS: -- a bit hoarse.

22 CO-HEARING OFFICER DODUC: Thank you.

23 MS. MORRIS: Okay. A couple followup  
24 questions:

25 You say you've done consulting. Who have you

1 done consulting -- who has California Water Research  
2 done consulting for?

3 WITNESS DES JARDINS: Oh, gosh. It's pretty  
4 long for me to . . .

5 MS. MORRIS: Is it listed on your SOQ?

6 WITNESS DES JARDINS: I have -- Yeah.

7 I did consulting for Friends of Trinity River,  
8 for PCFFA when Zeke Grader was there, for Restore the  
9 Delta.

10 I did a project -- Friends of the River had a  
11 grant to look at the BDCP modeling.

12 I -- I'd have to pull up to look at  
13 everything. I worked on a large number of projects.

14 And then, on my own, I looked at -- I began  
15 analyzing climate change and climate change impacts.

16 MS. MORRIS: Okay. Thanks.

17 I'm -- You said that Friend -- California  
18 Water Research is a not-for-profit entity.

19 WITNESS DES JARDINS: No. We haven't gotten  
20 the nonprofit status yet.

21 MS. MORRIS: And -- But you said donations  
22 have been made.

23 WITNESS DES JARDINS: Yeah. To -- Donations  
24 or payments. Mostly -- You know, I do -- The clients  
25 that I have do not have a great deal of resources.

1 MS. MORRIS: So the donations are coming from  
2 clients to do consulting or for -- from some other  
3 source?

4 WITNESS DES JARDINS: Some -- Some are  
5 donations to support California Water Research's own  
6 work and some are contributions for work that  
7 California Water Research is doing.

8 MS. MORRIS: Are you the only principal at  
9 California Water Research?

10 WITNESS DES JARDINS: I'm the principal.  
11 We've worked with a number of other folks,  
12 but, yes, I'm the principal.

13 MS. MORRIS: Is there any other principal was  
14 the question, not -- I know you are.

15 WITNESS DES JARDINS: Principal means, yeah,  
16 principal.

17 MS. MORRIS: So there's no other shareholders,  
18 other people who have interest. Just you.

19 WITNESS DES JARDINS: Yeah.

20 MS. MORRIS: Okay. And do you have any  
21 employees?

22 WITNESS DES JARDINS: Not employees. But we  
23 have people we work with, like Dr. Tom Williams, who  
24 was brought in Part 1.

25 MS. MORRIS: Okay. I'm just -- I'm really

1 asking very direct questions because I have a lot of  
2 questions that I want to move through.

3           So if you could just try to focus on the  
4 question. I'm, like -- I'm just asking if you have any  
5 employees. I understand you may work with other folks,  
6 but I'm asking if there are any direct employees.

7           WITNESS DES JARDINS: People who are paid?  
8 Yes, I have paid people for -- for services associated  
9 with California Water Research.

10           MS. MORRIS: Have you paid people to do  
11 research or to help you come up with your pro -- draft  
12 your testimony today?

13           WITNESS DES JARDINS: No.

14           MS. MORRIS: Okay. What's the major source of  
15 funding for California Water Research?

16           CO-HEARING OFFICER DODUC: Hold on,  
17 Miss Des Jardins.

18           WITNESS DES JARDINS: Yeah.

19           MS. MESERVE: I would object as to the  
20 relevance of this line of questioning. It appears to  
21 be mostly financial, and I -- if -- I don't understand  
22 what the relevance is to this proceeding.

23           CO-HEARING OFFICER DODUC: I'm curious as  
24 well, Miss Morris.

25           MS. MORRIS: I believe it's relevant. And

1 because it may go to the weight of the evidence, I want  
2 to understand who's funding California Water Research.  
3 On behalf of whom are they advocating these positions.

4           And it's been unclear to me in this  
5 proceeding. In some instances, Miss Des Jardins is  
6 appearing as a person and, in other instances, making  
7 claims on behalf of California Water Research.

8           And so I'm -- I'm almost done and I'm going to  
9 move through the questions as quickly as possible.

10           CO-HEARING OFFICER DODUC: Overruled.

11           I believe I heard Petitioners' witnesses being  
12 asked for whom they work, so . . .

13           Go on, Miss Morris.

14           LEFT1: If I may respond just briefly. I  
15 think these questions would be more appropriate if  
16 she's testifying later on on behalf of California Water  
17 Research as opposed to now when she's testifying on  
18 behalf of Friends of the River and Sierra Club.

19           CO-HEARING OFFICER DODUC: We can do it now or  
20 do it later. Lets just -- And since she's done,  
21 anyway, let's move on.

22           MS. MORRIS: I have a few more.

23           I don't think you answered the question about  
24 the major source of funding.

25           Did I miss that response?



1           WITNESS DES JARDINS: Could -- Could you  
2 repeat the question?

3           MS. MORRIS: What is the major source of  
4 funding for California Water Research?

5           WITNESS DES JARDINS: For this appearance, I'm  
6 appearing pro bono for Friends of the River.

7           MS. MORRIS: But my question was the  
8 funding -- the major source of funding for California  
9 Water Research as a whole, not just for your appearance  
10 here today.

11          WITNESS DES JARDINS: It -- It really depends  
12 on the project.

13          But sometimes I get significant contributions  
14 from, you know, environmental or fishing groups, and  
15 sometimes the -- the projects for California Water  
16 Research, I'm generally donating a significant amount  
17 of time because I believe it's a -- it's a critical  
18 need.

19          One of the things I did was predict the  
20 California -- 2013-2016 drought, and I sent -- based on  
21 model draft impacts, and I sent that to the Department  
22 of Water Resources in 2012 saying there had been a once  
23 in a thousand-year drought in New Mexico and a once in  
24 a thousand-year drought in Texas.

25          And I thought I could come to California based

1 on the kind of forecasting or climate change impacts.  
2 And the next year, it did, and DWR said, "Oh, we had no  
3 way of knowing." And clearly they hadn't read this  
4 very detailed synthesis of the climate change modeling  
5 and -- and what -- what's -- was happening.

6 MS. MORRIS: Okay. Thank you.

7 That's really outside the scope of my  
8 question.

9 MR. WRIGHT: I do object. Counsel's cutting  
10 off the witness' answer.

11 WITNESS DES JARDINS: Yeah.

12 CO-HEARING OFFICER DODUC: Did you get the  
13 answer?

14 MS. MORRIS: I did.

15 CO-HEARING OFFICER DODUC: Let's move on.

16 MS. MORRIS: Okay.

17 CO-HEARING OFFICER DODUC: Thank you.

18 MS. MORRIS: Are you receiving any funds for  
19 your legal work on behalf of California Water Research?

20 WITNESS DES JARDINS: Yes.

21 MS. MORRIS: From who?

22 WITNESS DES JARDINS: I would prefer not to  
23 discuss that.

24 MS. MORRIS: I believe you're under oath and  
25 that you have to answer the question.

1 MR. WRIGHT: May I hear the question again?

2 MS. MORRIS: The question was, who are you --  
3 She's testified that she's receiving funds for legal  
4 work on behalf of California Water Research, and I  
5 asked from who.

6 MR. WRIGHT: Object to relevance.

7 And, again, she's not testifying today on  
8 behalf of California Water Research.

9 MS. MORRIS: She tes -- She --

10 CO-HEARING OFFICER DODUC: Hold on.

11 I'm sorry, Miss Morris. Your question is  
12 pertaining to the legal work?

13 MS. MORRIS: Yes.

14 CO-HEARING OFFICER DODUC: Did you understand  
15 that clarification, Miss Des Jardins? She's asking  
16 about legal work.

17 WITNESS DES JARDINS: I'm not.

18 CO-HEARING OFFICER DODUC: You're not a  
19 attorney.

20 WITNESS DES JARDINS: I'm not an attorney,  
21 yeah.

22 MS. MORRIS: Okay. Miss Des Jardins, then do  
23 you have a good funding site for discovery costs for  
24 California Water Research?

25 MR. WRIGHT: Objection to relevance.

1           This has nothing to do with her testimony on  
2 behalf of Friends of the River and the Sierra Club.

3           CO-HEARING OFFICER DODUC: Miss Morris.

4           MS. MORRIS: I think it does. I think that  
5 who she's receiving funding for, who she's providing  
6 opinions for -- She said she's doing this pro bono but  
7 in the past from Friends of the River, who she's  
8 testifying here for today, she has received funds.

9           And I think it goes to -- potentially to the  
10 weight of the evidence provided by this witness.

11          CO-HEARING OFFICER DODUC: Miss Des Jardins,  
12 are you able to answer the question?

13          WITNESS DES JARDINS: There was an issue when  
14 the Project became -- started changing rapidly, and  
15 there was an error in the hearing ruling that the  
16 Petitioners had promised in their written --

17          CO-HEARING OFFICER DODUC: I'm sorry. I'm  
18 sorry. Where are you going with this?

19          WITNESS DES JARDINS: Well, just that I try to  
20 raise some funds to call a -- Department of Water  
21 Resources to provide more complete and accurate  
22 information about how the Project was changing.

23          And that was because all of the testimony, as  
24 you know, had already been submitted, and there was a  
25 very real concern.

1 CO-HEARING OFFICER DODUC: I'm sorry. Let me  
2 cut to the chase.

3 Did you receive funding for that purpose?

4 WITNESS DES JARDINS: I got a \$300 donation  
5 from Central Delta Water Agency, which I have not  
6 expended yet.

7 I don't know if we're going to be able to --  
8 to do that. I don't know if other parties are going to  
9 do that.

10 CO-HEARING OFFICER DODUC: All right.

11 MS. MORRIS: What about the \$2,500 donation  
12 you received on GoFundMe for that purpose? Who was  
13 that from?

14 WITNESS DES JARDINS: That was from my  
15 husband.

16 MS. MORRIS: On your Statement of  
17 Qualifications -- just to try to clean this up and to  
18 move quickly -- has anything changed in your formal  
19 education since you testified in Part 1 in this  
20 proceeding?

21 WITNESS DES JARDINS: (Examining computer  
22 screen.)

23 I would have to -- Let me go look at --

24 MS. MORRIS: I'm actually not asking you to --

25 CO-HEARING OFFICER DODUC: Hold on. Hold on.

1 Miss Des Jardins, your Statement of  
2 Qualifications cites a B.A. from U.C. Santa Cruz in  
3 applied mathematics and a Ph.D. candidate from the  
4 University of California Santa Cruz.

5 Has that changed?

6 WITNESS DES JARDINS: Did I say I was a  
7 candidate or -- I mean, I completed everything but my  
8 dissertation.

9 CO-HEARING OFFICER DODUC: That's what it  
10 says.

11 WITNESS DES JARDINS: Yeah.

12 CO-HEARING OFFICER DODUC: Candidate from 1992  
13 to 1997.

14 WITNESS DES JARDINS: Yes. That --

15 CO-HEARING OFFICER DODUC: That is correct?

16 WITNESS DES JARDINS: That is correct, yes.

17 MS. MORRIS: Thank you.

18 Looking at your testimony, FOR-8.

19 WITNESS DES JARDINS: Yes.

20 MS. MORRIS: These are just general questions,  
21 so I just want to direct you to that page if you --

22 It's the context in which I'm asking these questions.

23 You claim that Oroville carryover has not been  
24 disclosed to the State Water Resource Control Board;  
25 correct?

1           WITNESS DES JARDINS: Not that I could find,  
2 and I did a very comprehensive search --

3           MS. MORRIS: Okay. Thank you.

4           WITNESS DES JARDINS: -- on the Water Board  
5 website.

6           MS. MORRIS: Are you familiar with the  
7 regulatory agency known as FERC?

8           WITNESS DES JARDINS: Yes.

9           MS. MORRIS: How about the Division of Safety  
10 of Dams?

11          WITNESS DES JARDINS: Yes.

12          MS. MORRIS: How about the Army Corps of  
13 Engineers?

14          WITNESS DES JARDINS: Yes.

15          MS. MORRIS: Are you aware that those agencies  
16 have regulatory authority over dams, dams that operate  
17 hydroelectric power and flood control?

18          WITNESS DES JARDINS: I'm familiar with the  
19 Army Corps rule curves.

20                 These -- These agencies that you cite -- I  
21 mean, I worked with Ron Stork to look very closely,  
22 when there was the Oroville spillway incident, at the  
23 Army Corps rules and the Army Corps handbook and what  
24 happened with relicensing, but that's different than  
25 the carryover storage for the water supply.

1 MS. MORRIS: Okay. And, again, I'm trying not  
2 to interrupt, but I -- I'm trying to ask specific  
3 questions, and I may have to ask for more time if we  
4 continue on this.

5 CO-HEARING OFFICER DODUC: (Nodding head.)

6 MS. MORRIS: Okay. And the State Water  
7 Resources Control Board has regulatory jurisdiction  
8 over certain water rights; correct?

9 WITNESS DES JARDINS: If you --

10 MS. MORRIS: Like --

11 WITNESS DES JARDINS: -- mean --

12 MS. MORRIS: -- DWR and the Bureau's water  
13 rights.

14 WITNESS DES JARDINS: If you mean post-1914  
15 water rights, yes, that's correct.

16 MS. MORRIS: I'm being vague because I don't  
17 want to start any arguments or have objections.

18 And the State Water Resource Control Board  
19 sets water quality in the Delta to meet reasonable  
20 beneficial uses through the Water Quality Control Plan;  
21 correct?

22 WITNESS DES JARDINS: Yes.

23 MS. MORRIS: So, hypothetically, just to -- by  
24 way of analogy, you're required by law to carry a  
25 specific standard amount of automobile insurance, but



1 the State doesn't tell you which company to buy from or  
2 how to budget your money so that you can afford to  
3 purchase insurance; do they?

4 WITNESS DES JARDINS: I'm sorry?

5 MR. WRIGHT: Objection: That's confusing and  
6 unintelligible.

7 WITNESS DES JARDINS: Yeah. I -- I -- Could  
8 you repeat the question? I'm really not following.

9 CO-HEARING OFFICER DODUC: Mr. Wright, I can't  
10 hear you because . . .

11 MS. MORRIS: I'm happy to repeat the question.

12 CO-HEARING OFFICER DODUC: Repeat the  
13 question, Miss Morris.

14 MS. MORRIS: I'll break it into pieces.

15 You understand that you are required to carry  
16 a specific standard amount of automobile insurance  
17 under State law; correct?

18 WITNESS DES JARDINS: Yes.

19 MS. MORRIS: But the State doesn't tell you  
20 which company to buy that insurance from; do they?

21 WITNESS DES JARDINS: Yes. No, they don't.

22 MS. MORRIS: And they don't tell you how to  
23 budget your money so you can afford to purchase that  
24 insurance; do they?

25 WITNESS DES JARDINS: No, but I'm not sure I

1 agree with your analogy.

2 MS. MORRIS: Well, similarly -- You can  
3 disagree with me.

4 Similarly, doesn't the State Water Resources  
5 Control Board set the standards and enforce them, and  
6 DWR decides how they will operate in order to meet  
7 those standards, as well as the many other standards  
8 DWR must meet.

9 MR. WRIGHT: Objection: That question is  
10 compound and confusing and unintelligible.

11 CO-HEARING OFFICER DODUC: Well, I understood  
12 it.

13 Are you able to answer, Miss Des Jardins?

14 WITNESS DES JARDINS: It is a compound  
15 question, so there's two components.

16 Does the State Water Resources Control Board  
17 set the standard? Yes.

18 The second part of the question is: Does the  
19 State Water Resources Control Board enforce the  
20 standards?

21 We're all familiar with the Temporary Urgency  
22 Change Petition in the most recent drought.

23 If you look at the history of the SWP Permit,  
24 there's TUCPs regularly. And it's -- It is an exhibit,  
25 so --

1 MS. MORRIS: Do the State Water Project --  
2 Does the State Water Project through DWR have the sole  
3 responsibility to meet the Water Quality Control Plan  
4 requirements?

5 WITNESS DES JARDINS: If you looked at the  
6 Coordinated Operating Agreement, which was the  
7 Board's -- you know, was what happened when it became  
8 clear that both -- both the Bureau Permit -- The -- The  
9 U.S. Bureau of Reclamation Permit assumed the full  
10 unimpaired flow of the Feather River. There's an  
11 agreement to share shortages.

12 And under that standard, the Bureau releases  
13 75 percent of the stored water and they have the  
14 majority of storage. And under that current COA, they  
15 re -- the State Water Project has a 25 percent  
16 obligation. So, yes, it's true that -- that the Bureau  
17 has the majority.

18 The other thing I'd like to point out, though,  
19 is that when Oroville is drawn down severely to close  
20 to minimum pool, this -- the health and safety issues  
21 were the main reasons cited in the DWR's application  
22 for the 2013 Temporary -- or 2014 Temporary Urgency  
23 Change Petition.

24 So --

25 MS. MORRIS: Did you cite that?

1 WITNESS DES JARDINS: -- the M&I --

2 CO-HEARING OFFICER DODUC: Hold on.

3 WITNESS DES JARDINS: Yeah.

4 CO-HEARING OFFICER DODUC: One at a time,  
5 please.

6 MS. MORRIS: Did you cite to that in your  
7 testimony -- in regard to your testimony today?

8 WITNESS DES JARDINS: This is  
9 cross-examination, Miss Morris.

10 MS. MORRIS: Right. But I didn't actually ask  
11 you that question, so . . .

12 I would just move to strike the answer as  
13 nonresponsive.

14 The question was simply: Does the State Water  
15 Project through DWR have the sole responsibility to  
16 meet Water Quality Control Plans?

17 And the answer was responsive.

18 CO-HEARING OFFICER DODUC: Miss Des Jardins, I  
19 have to agree.

20 Let's go ahead and focus on the question that  
21 was asked and let's focus your answer on that, please.

22 MS. MORRIS: Looking at Page 5 of your  
23 testimony in FOR-8.

24 MR. WRIGHT: Let's have the Page 5 shown,  
25 please, maybe.

1 (Exhibit displayed on screen.)

2 MS. MORRIS: I'm looking at the figure

3 and . . .

4 Miss Des Jardins, isn't it true that you used

5 this in your Part 1 testimony and that Miss Ansley

6 asked you several questions about this on

7 cross-examination?

8 WITNESS DES JARDINS: I -- There was -- I did

9 provide surrebuttal testimony in Part 1, yes.

10 MS. MORRIS: And you were questioned on these

11 graphs.

12 Do you recall that?

13 WITNESS DES JARDINS: I don't recall exactly

14 what the cross-examination was.

15 MS. MORRIS: And aren't these demonstrating

16 examples of rule curves that could have been used but

17 were never adopted by the Department of Water

18 Resources?

19 WITNESS DES JARDINS: It is . . . It is . . .

20 I -- I've actually looked and I found in -- I

21 found in the Board's old records from the '95 Water

22 Quality Control Plan record, the rule curve.

23 CO-HEARING OFFICER DODUC: Miss Des Jardins --

24 WITNESS DES JARDINS: Yeah.

25 CO-HEARING OFFICER DODUC: -- that was not the

1 question.

2 WITNESS DES JARDINS: The question was, aren't  
3 these -- So given that --

4 CO-HEARING OFFICER DODUC: To your knowledge,  
5 were these ever adopted?

6 WITNESS DES JARDINS: I believe it's likely  
7 they were, given the other information that I have.

8 CO-HEARING OFFICER DODUC: All right. That's  
9 her answer, Miss Morris.

10 MS. MORRIS: Thank you.

11 In your Exhibit FOR-15, Pages 8 and 9.

12 WITNESS DES JARDINS: Let me --

13 MS. MORRIS: I think Mr. Baker's probably  
14 working on pulling it up.

15 WITNESS DES JARDINS: Is that the State Water  
16 Project Water Supply or the latter, the carryover  
17 storage?

18 (Exhibit displayed on screen.)

19 MS. MORRIS: This is in your section on State  
20 Water Project's inability --

21 WITNESS DES JARDINS: Yes.

22 MS. MORRIS: -- to provide flow, Table A.

23 On Page 8 and 9.

24 (Exhibit displayed on screen.)

25 MS. MORRIS: This -- In your testimony, you

1 talk about the four pumps agreement; correct?

2 WITNESS DES JARDINS: Yes.

3 MS. MORRIS: And do you know if DWR was able  
4 to use the additional capacity of the four pumps in the  
5 winter months, roughly mid-December to mid-March?

6 WITNESS DES JARDINS: There -- Yeah. You're  
7 talking about the Army Corps of Engineers' Public  
8 Notice 5802A, and that allowed increase of diversions  
9 when -- I believe, when -- when the San Joaquin River  
10 flows were high. And they diverted, I believe, up to a  
11 third of that.

12 And, yes, they were able to do that.

13 MS. MORRIS: Your testimony is, they were able  
14 to use that.

15 WITNESS DES JARDINS: I -- That -- It's not  
16 in -- in my report.

17 But, yes, divert and pump in winter months,  
18 and that was -- Yeah, that was specifically part of the  
19 Army Corps Permit. And I think it allows it to go up  
20 8500 cfs. I think they've increased it a little since  
21 then.

22 MS. MORRIS: Are you familiar with  
23 Mr. Leahigh's exhibit, DWR-855?

24 If we could pull that up, Baker.

25 I believe, because they're out of order,

1 Mr. Baker, that that's in the rebuttal portion, I hope.

2 (Exhibit displayed on screen.)

3 MS. MORRIS: So, looking at this exhibit, are  
4 you familiar with it?

5 WITNESS DES JARDINS: I'm not sure that I  
6 looked in detail at this one. There's about a thousand  
7 exhibits.

8 MS. MORRIS: Would you be able to answer  
9 questions based off of it?

10 WITNESS DES JARDINS: Yeah, if you show me  
11 what you're asking about. I have looked at the  
12 Delivery Reliability Reports, which it references.

13 MS. MORRIS: Okay. So looking at this  
14 DWR-855, the blue bar -- The title is Average monthly  
15 SWP exports (Pre and Post Biological Opinions).

16 Do you see that?

17 WITNESS DES JARDINS: Yes.

18 MS. MORRIS: And the blue -- dark blue is the  
19 average exports 2005 Reports Pre-BiOps, and the light  
20 blue bar is the average exports 2011 report.

21 Do you see that?

22 WITNESS DES JARDINS: Average exports are not  
23 the same as firm water supply.

24 So I can answer questions about average  
25 exports, but there's a different definition. Firm



1 water supply is everything that can be delivered in all  
2 but critical years.

3 MS. MORRIS: Right.

4 I wasn't asking about firm water supply at  
5 all. My questions were limited to exports.

6 WITNESS DES JARDINS: You wanted to know about  
7 the average historical exports.

8 MS. MORRIS: No. I -- I just asked if you  
9 understand the orientation of the graphic.

10 WITNESS DES JARDINS: It's describing  
11 average -- average exports before and after the  
12 Biological Opinions.

13 MS. MORRIS: Okay. And, in general -- in  
14 general, not in all months -- aren't the dark blue bars  
15 above the light blue bars?

16 Except for -- Just so we don't have any -- we  
17 can speak clear here. Except for in July and August.

18 WITNESS DES JARDINS: There -- There is some  
19 reduction in the spring months, yeah.

20 MS. MORRIS: And if you would just estimate  
21 across the months the differences, what do you think  
22 that they would be? That the exports would be higher  
23 pre-BiOps or post-BiOps?

24 WITNESS DES JARDINS: There -- There are  
25 definitely some restrictions from the BiOps, it's true.

1 The -- One of the effects of the BiOps was to limit  
2 reserve flows and that did have some effects.

3 MS. MORRIS: Is it your contention that  
4 in-basin uses in the last 50 years have remained  
5 constant?

6 WITNESS DES JARDINS: I didn't say that.

7 MS. MORRIS: Is it your -- Do you believe that  
8 the regulatory restrictions in the last 50 years have  
9 remained constant?

10 WITNESS DES JARDINS: I didn't say that,  
11 either.

12 MS. MORRIS: And how about the hydrology?

13 WITNESS DES JARDINS: I've -- There are -- is  
14 evidence that the hydrology is shifting dramatically  
15 since around 2000.

16 MS. MORRIS: Okay.

17 WITNESS DES JARDINS: Yeah.

18 MS. MORRIS: Thanks.

19 And if we could look at your testimony FOR-8  
20 on Page 6.

21 WITNESS DES JARDINS: Yeah.

22 MS. MORRIS: It's a different exhibit, FOR-8.  
23 It's her testimony, not the report.

24 WITNESS DES JARDINS: Oh, FOR-8 on Page 6.  
25 Sorry. Let's go look at it.

1 (Exhibit displayed on screen.)

2 MS. MORRIS: Yeah, in the table. Thank you.

3 Again, the -- You're familiar with this table  
4 because it's part of your testimony; correct?

5 WITNESS DES JARDINS: Yes.

6 MS. MORRIS: And looking at 1977, the first  
7 sort of dip in this chart.

8 Do you see that?

9 WITNESS DES JARDINS: Yes.

10 MS. MORRIS: Wasn't 1977 the driest year on  
11 record?

12 WITNESS DES JARDINS: Mmm . . . I'm trying to  
13 remember. I've looked at the ranks. I'm trying to  
14 remember if 2014 was dryer.

15 It's -- It's in the bottom -- bottom two, I  
16 believe.

17 MS. MORRIS: Okay. And the Delta standards at  
18 the time were based on D-1291, correct, if you know?

19 WITNESS DES JARDINS: That would have been  
20 before Decision 1485, I believe. So, yeah, that --  
21 that may be.

22 I'm not sure --

23 MS. MORRIS: Okay.

24 WITNESS DES JARDINS: -- and I wouldn't,  
25 without looking it up again.

1 MS. MORRIS: But you agree they weren't based  
2 on D-1641; correct?

3 WITNESS DES JARDINS: No. That -- The -- The  
4 regulatory restrictions have changed across time on  
5 this graph.

6 MS. MORRIS: And then looking at 1991, the  
7 sort of third dip down --

8 WITNESS DES JARDINS: Yes.

9 MS. MORRIS: -- in the approved request.  
10 Wasn't 1991 the fifth year in a six-year  
11 drought?

12 WITNESS DES JARDINS: Yes, it was.

13 MS. MORRIS: And the Delta standards at that  
14 time were not based on D-1641; were they?

15 WITNESS DES JARDINS: That was Decision 1485,  
16 I believe.

17 MS. MORRIS: And looking at 2001 and the dip  
18 shown on your graph, that was the first dry year under  
19 the new D-1641 Delta requirements which added  
20 additional water flow and quality standards; correct?

21 WITNESS DES JARDINS: I believe so.

22 The Water Quality Control Plan was enacted in  
23 1995, and Decision 1641 enacted into the Permits the  
24 obligations for meeting that.

25 So I'm -- I -- I think the '95 Water Quality

1 Plan standards have been in effect for some time.

2 I don't know that the implementation, which  
3 was part of Decision 1641, changed the Water Quality  
4 Plan.

5 MS. MORRIS: And the Biological Opinions  
6 didn't come into play until 2008-2009; correct?

7 WITNESS DES JARDINS: There were Biological  
8 Opinions during this entire period. There was a --  
9 The -- The 2004 Biological Opinion was sent -- was --  
10 there was a lawsuit about it with the Wanger Court, and  
11 there was a mandate because . . . There was -- There  
12 was a mandate that --

13 MS. MORRIS: Right. But my question is  
14 different. My question is a little bit different.

15 WITNESS DES JARDINS: Yeah.

16 MS. MORRIS: That -- Not that they didn't  
17 exist but they weren't implemented until 2008 and 2009;  
18 correct? The Biological Opinions.

19 WITNESS DES JARDINS: There are Biological  
20 Opinions the whole time. The Biological Opinion -- The  
21 Wanger Biological Opinion, I believe -- And I'm not  
22 100 percent. But the Wanger Biological Opinion had the  
23 requirements for Old and Middle River flows, and there  
24 was a concern that that substantially limited the  
25 Project impacts.

1 MS. MORRIS: Are you -- Do you think that  
2 there were Biological Opinions in -- in 1979?

3 WITNESS DES JARDINS: The first Permits have  
4 had conditions on -- on -- to protect -- There have  
5 been conditions all along to protect fish and wildlife  
6 that go back -- I think there was -- the first Petition  
7 to list the winter-run.

8 I'm not -- I'm not completely clear on the  
9 whole sequence of, but they -- various fish have been  
10 listed. I think the most recent, there was an  
11 Emergency Petition to list the Delta Smelt in 2005.

12 So . . . it may be that -- I'm not sure  
13 exactly when the first -- first fish were listed.

14 MS. MORRIS: Okay.

15 WITNESS DES JARDINS: Yeah.

16 MS. MORRIS: Thank you.

17 Your opinion about Oroville operations and the  
18 fact that they are not based -- that -- that the  
19 shortages under the State Water Project are not based  
20 on sort of water supply shortages from Biological  
21 Opinions and other regulatory restrictions.

22 How do you tease out those Biological Opinions  
23 and regulatory restrictions to come to that conclusion?

24 WITNESS DES JARDINS: Well, it's based on a  
25 great deal of looking at a whole history of

1 projections.

2           So, the original projection with the '95 Water  
3 Quality Control Plan, was that they were dedicating a  
4 million acre-feet a year because of the new spring  
5 outflow standards. And then the -- But the Port  
6 Chicago trigger ended up being used differently, so  
7 there was significantly less spring outflow than  
8 projected.

9           And then -- So the Biological Opinions --

10           CO-HEARING OFFICER DODUC: I'm sorry. I'm  
11 confused now.

12           What was the question again?

13           WITNESS DES JARDINS: Try -- How did I tease  
14 out the impacts?

15           And one was looking at the sequence of --

16           CO-HEARING OFFICER DODUC: Hold on.

17           WITNESS DES JARDINS: -- regulatory --

18           CO-HEARING OFFICER DODUC: Hold on.

19           Miss Morris.

20           MS. MORRIS: I'll withdraw the question and  
21 move on.

22           WITNESS DES JARDINS: Yeah.

23           CO-HEARING OFFICER DODUC: Thank you.

24           MS. MORRIS: I wanted to look at a statement  
25 that you made on Page 6 of your testimony and moving on

1 to Page 7, about a commitment.

2 (Exhibit displayed on screen.)

3 MS. MORRIS: And you cite to -- You say that  
4 Exhibit A referred to in the paragraph on Page 6,  
5 Line 25 . . .

6 Do you see that?

7 WITNESS DES JARDINS: Yeah. Those were the  
8 Exhibit A standards at the time of the Coordinated  
9 Operating Agreement.

10 MS. MORRIS: Do you have an understanding of  
11 what those Exhibit A standards were?

12 WITNESS DES JARDINS: I believe that was  
13 Decision 1485.

14 I think if the --

15 MS. MORRIS: That's perfect. That was the --

16 WITNESS DES JARDINS: Yeah.

17 MS. MORRIS: -- answer I was looking for.

18 WITNESS DES JARDINS: Yeah.

19 MS. MORRIS: And your assertion that you -- It  
20 seems to me that you're asserting on Page 6, Lines 22  
21 on to Lines -- Page 7, Line 7, you appear to be  
22 asserting that DWR and the Bureau made a commitment of  
23 2.3 million acre-feet.

24 And your assertion is that it's unclear if  
25 this is still being committed; is that correct?



1 WITNESS DES JARDINS: Yeah.

2 MS. MORRIS: And the basis of that commitment  
3 that you cite to was FOR-103, which is the EIR/EIS for  
4 the COA -- Coordinated Operations Agreement -- correct?

5 WITNESS DES JARDINS: It's not just that.  
6 There's a background to the COA.

7 MS. MORRIS: Did you cite any other documents  
8 in your testimony? The only one I can see is the  
9 EIR/EIS for the Coordinated Operations Agreement.

10 WITNESS DES JARDINS: No. But this was  
11 informed also by my other -- my knowledge of the --  
12 what happened with the State Water Project and Central  
13 Valley Project Permits and the Board processes at that  
14 time. I can discuss that.

15 But, yeah, the only citation is to the  
16 Coordinated Operating Agreement.

17 MS. MORRIS: And you're aware, I believe you  
18 testified, that Decision 1481 was replaced by  
19 Decision 1641; correct?

20 WITNESS DES JARDINS: Decision -- Can you  
21 repeat the question?

22 MS. MORRIS: It's 1485 -- sorry -- was  
23 replaced by Decision 14 -- 16 -- 1641.

24 I can restate it because I just caused massive  
25 confusion.

1 WITNESS DES JARDINS: That's not precisely  
2 correct.

3 MS. MORRIS: You -- So D-1485 was -- Actually,  
4 just strike that.

5 Do you think that there are more or less water  
6 supply obligations for DWR and USBR in Decision 1485 or  
7 in Decision 1641?

8 WITNESS DES JARDINS: The -- The 1995 Water  
9 Quality Control Plan and that -- which was just  
10 succeeded by the 2006 Water Quality Control Plan, which  
11 is implemented under Decision 1641, does have more  
12 outflow obligations. And particularly what -- what's  
13 ended up being implemented is more --

14 CO-HEARING OFFICER DODUC: So your answer --

15 WITNESS DES JARDINS: There is more during dry  
16 years.

17 CO-HEARING OFFICER DODUC: So your answer is  
18 yes, there is more.

19 WITNESS DES JARDINS: Yeah.

20 MS. MORRIS: And does the Biological Opinions  
21 in '08 and '09 also have additional outflow  
22 requirements; correct?

23 WITNESS DES JARDINS: There's -- One of the  
24 primary effects -- I'm trying to remember. I thought  
25 that the primary effects were export restrictions which

1 aren't exactly the equivalent.

2 MS. MORRIS: Are you aware that the Delta  
3 outflow far exceeded 2.3 million acre-feet in 2014 and  
4 2015?

5 WITNESS DES JARDINS: Yes.

6 And that's not exactly the same thing as  
7 the -- the -- the dedicated water which is to affect  
8 salinity intrusion.

9 There were huge issues with salinity intrusion  
10 in 2014.

11 MS. MORRIS: Thank you.

12 Good morning. How are you, Mr. Stork?

13 WITNESS STORK: I'm doing just great.

14 MS. MORRIS: Great.

15 Have you ever testified as an expert in a  
16 State Court proceeding? And I'm not talking about a  
17 regulatory proceeding like before this Board, but in a  
18 State Court proceeding.

19 WITNESS STORK: I have not.

20 MS. MORRIS: And have you ever testified as an  
21 expert in -- expert in a Federal Court proceeding?

22 WITNESS STORK: I have not.

23 MS. MORRIS: Looking at your testimony on

24 Page 6.

25 I can pause if -- I think, Mr. Baker, it's

1 helpful for counsel if you can show it on the screen so  
2 they can see what we're talking about.

3 (Exhibit displayed on screen.)

4 MS. MORRIS: Thank you.

5 So looking at your testimony on Page 6, and  
6 I'm looking at Lines 6 through 13.

7 (Exhibit displayed on screen.)

8 MS. MORRIS: You state the proposed (reading):

9 ". . . Change in point of diversion  
10 will . . . have (sic) adverse  
11 implications . . . on coldwater pools,  
12 downstream fishery conditions, and  
13 recreation . . ."

14 Have you done any modeling that shows how the  
15 proposed change in point of diversion will impact  
16 coldwater pool?

17 WITNESS STORK: I have not done any modeling  
18 myself. I'm the consumer of models.

19 MS. MORRIS: Have you done any of your own  
20 modeling to look at the impacts to downstream  
21 fisheries?

22 WITNESS STORK: I have not personally done  
23 that modeling, no.

24 MS. MORRIS: And would the answer be the same  
25 for recreation?

1 WITNESS STORK: That's correct.

2 MS. MORRIS: Looking at your testimony on  
3 Page 7, Lines 6 through 12.

4 (Exhibit displayed on screen.)

5 MS. MORRIS: You state that greater water  
6 demands South of Delta, together with CWF and other new  
7 facilities, will likely result in a loss of public  
8 trust resources.

9 Have you done any modeling to determine what  
10 the loss of public trust resources would be under your  
11 hypothetical?

12 WITNESS STORK: Once again, I'm the consumer  
13 of models. I'm not doing models myself.

14 MS. MORRIS: And do you have any estimate of  
15 the magnitude of the increased demand?

16 WITNESS STORK: "Magnitude" as an order of 10  
17 order of magnitude?

18 I do not. And my testimony largely suggests  
19 that it's uncertain.

20 MS. MORRIS: Okay. In your testimony, you  
21 mentioned the potential for several additional  
22 projects, including raising Shasta, constructing Sites  
23 Reservoir and Temperance Flats, among others.

24 Does your statement assume all of these  
25 Projects are completed?

1           WITNESS STORK: I think those Projects are  
2 speculative, and so it's -- My testimony is -- is  
3 merely that the State Water Project and the CVP are  
4 planning -- in active planning for additional projects.

5           MS. MORRIS: And I understand that you just  
6 said all of those Projects are speculative; correct?

7           WITNESS STORK: I would hope they're  
8 speculative. I think others believe that they're a --  
9 a sure thing.

10          MS. MORRIS: But, in this instance, you  
11 haven't looked at how any results from those Projects  
12 and how, together with WaterFix, they may have impacts  
13 on public trust resources; correct?

14          WITNESS STORK: Both Friends of the River and  
15 others have -- including State agencies -- have offered  
16 comments, fairly adverse comments, about Temperance  
17 Flat Dam, Shasta Dam raise, and -- and much less  
18 certain comments because the Project is more  
19 speculative around Sites.

20                 So I am familiar with the kinds of reactions  
21 to the environmental and feasibility documents --  
22 feasibility reports for those Projects.

23          MS. MORRIS: Nonetheless, none of the Projects  
24 that you cite, and have now testified as being  
25 speculative, are included in the Project Description

1 for California WaterFix; correct?

2 WITNESS STORK: Precisely. I couldn't have  
3 said it better myself.

4 MS. MORRIS: And isn't it true that California  
5 WaterFix does not propose any of the -- any new dams or  
6 construction of any new dams?

7 WITNESS STORK: The same thing I just said,  
8 yes.

9 MS. MORRIS: And, Mr. Stork, you're aware that  
10 DWR has abandoned diverting water from the north coast  
11 rivers to the Sacramento River for purposes of the  
12 State Water Project; correct?

13 WITNESS STORK: I believe that the Department  
14 is foreclosed by law, so, yes, it has. But there are  
15 other forces in the State who have different opinions.

16 MS. MORRIS: And looking at your testimony on  
17 Page 12, the citation you cite there about moving more  
18 water --

19 (Exhibit displayed on screen.)

20 MS. MORRIS: -- that was based on the ability  
21 for DWR to move water from the north coast rivers; was  
22 it not?

23 WITNESS DES JARDINS: That's correct, and not  
24 just the Eel but more as well.

25 MS. MORRIS: Yeah.

1 Good morning, Mr. Minton.

2 WITNESS MINTON: Good morning to you.

3 MS. MORRIS: A couple quick questions for you.

4 Have you ever qualified as an expert and  
5 testified as an expert in State Court?

6 WITNESS MINTON: No.

7 MS. MORRIS: And how about Federal Court?

8 WITNESS MINTON: Yes.

9 MS. MORRIS: In what matter?

10 WITNESS MINTON: It was the matter of the U.S.  
11 vs. San Diego on their pollution discharge and the  
12 opportunities for water conservation to reduce those  
13 discharges.

14 MS. MORRIS: And what matters were you  
15 qualified as an expert on in that case?

16 WITNESS MINTON: In water conservation.

17 MS. MORRIS: Thank you.

18 I wanted to look at Page 7 of your testimony.

19 And that -- sorry, Mr. Baker. That is FOR-6.

20 (Exhibit displayed on screen.)

21 MS. MORRIS: Do you see that?

22 WITNESS MINTON: Yes, I do.

23 MS. MORRIS: And you cite that -- you cite to  
24 the California Dairy Research Foundation for the  
25 appropriation that (reading):



1           ". . . Another 1.5 million acres have  
2           been impaired by salt."

3           Is that correct?

4           WITNESS MINTON: Yes.

5           MS. MORRIS: Do you know how the California  
6 Dairy Research Foundation came up with that  
7 1.5 million-acre number?

8           WITNESS MINTON: I do not, no.

9           MS. MORRIS: And if we looking at FOR-78,  
10 which you cite, which is the citation.

11          WITNESS MINTON: Um-hmm.

12          (Exhibit displayed on screen.)

13          MS. MORRIS: Is there any data in this  
14 document that shows how that 1.5 million acre-feet have  
15 been impaired by salt, has -- was calculated by  
16 California Dairy Research Foundation?

17          WITNESS MINTON: Not that I'm aware of.

18          MS. MORRIS: Okay. At this time, I would move  
19 to strike Lines 7 to 10 on the basis that it's hearsay  
20 and that there's -- there's actually no citation or  
21 data to support that 1.5 million acres being impaired  
22 by salts.

23          CO-HEARING OFFICER DODUC: Let me try to  
24 understand.

25          Mr. Minton, is that 1.5 million acres

1 mentioned in FOR-78?

2 WITNESS MINTON: Yes, I believe it is.

3 If we scroll down, I think it's on --

4 MS. MORRIS: Right, it is mentioned, but it's  
5 just a quote.

6 So we -- It appears to be a newsletter. And  
7 if you scroll --

8 (Exhibit displayed on screen.)

9 MS. MORRIS: Keep going down.

10 (Exhibit displayed on screen.)

11 CO-HEARING OFFICER DODUC: There it is.

12 MS. MORRIS: Right there.

13 There's no data supporting it. It doesn't  
14 cite to any other articles that have data. So, really,  
15 it's Mr. Minton citing you to another newspaper --  
16 newsletter without any data to support it.

17 CO-HEARING OFFICER DODUC: It goes to weight,  
18 Miss Morris.

19 MS. MORRIS: I thought you might say that.

20 Looking at your testimony FOR-6 on Page 5,  
21 Lines 21 to 25.

22 (Exhibit displayed on screen.)

23 MS. MORRIS: You state that the impacts of  
24 California WaterFix (reading):

25 ". . . Could be on the order of a million

1 acre-feet . . . in some years."

2 WITNESS MINTON: I'm sorry. What page is that  
3 again?

4 MS. MORRIS: Page 5, Lines 21 to 25.

5 WITNESS MINTON: Yes.

6 MS. MORRIS: On what do you base the statement  
7 that the impacts of CWF could be on the order of  
8 1 million acre-feet in some years?

9 WITNESS MINTON: This is a whole series of  
10 discussions.

11 I originally participated in the Bay-Delta  
12 Conservation Plan. Well, I didn't participate. I sat  
13 in on their proceedings for about a year or so where it  
14 was first envisioned, and then I followed its progress  
15 in the past decade.

16 So it's an amalgamation of the information  
17 I've received.

18 MS. MORRIS: You understand the Project before  
19 the Board for the Change Petition is not the Bay-Delta  
20 Conservation Plan; correct?

21 WITNESS MINTON: I understand -- My  
22 understanding is that the Project before the Board is  
23 a . . .

24 MS. MORRIS: My question was --

25 WITNESS MINTON: It appears to be an evolving

1 Project that -- I'm -- I'm not exactly sure what the  
2 Project is that the Proponents are putting forth  
3 currently. I don't even know what that is, so it's  
4 hard for me to judge that.

5 MS. MORRIS: Have you reviewed the Petition  
6 before --

7 WITNESS MINTON: Yes.

8 MS. MORRIS: -- the change in point of  
9 diversion?

10 WITNESS MINTON: Yes.

11 MS. MORRIS: Does it say anything about the  
12 Bay-Delta Conservation Plan.

13 WITNESS MINTON: It does not.

14 MS. MORRIS: Does the Bay-Delta Conservation  
15 Plan have a number of items that are not included in  
16 the California WaterFix, to your knowledge?

17 WITNESS MINTON: Yes. I believe it deleted a  
18 lot of the habitat program as one example.

19 MS. MORRIS: And are you aware that the  
20 Project before the Board is California WaterFix with  
21 the operations H3+?

22 WITNESS MINTON: That's my understanding.

23 MS. MORRIS: And are you aware that, based on  
24 the modeling presented to the Board for CWF H3+,  
25 there's approximately only an additional 226,000 --

1 hundred thousand acre-feet of average annual yield  
2 increase?

3 WITNESS MINTON: That is my understanding.

4 It's also my understanding that Project  
5 operations could change in the future and things like  
6 Temporary Urgency Change Petitions have been fairly  
7 routinely granted, which would increase average annual  
8 deliveries.

9 So it's difficult for me to know, under the  
10 concept of adaptive management and changes in the  
11 future, what the actual impacts would be in total.

12 MS. MORRIS: Let's explore some statements you  
13 just made.

14 WITNESS MINTON: Thank you.

15 MS. MORRIS: Are you familiar -- And I'm just  
16 asking a very simple question.

17 Are you familiar with the TUC pro -- TUCP  
18 process that occurred before the Board in 2014 and  
19 2015?

20 WITNESS MINTON: I'm aware that it occurred.  
21 I did not participate in it.

22 MS. MORRIS: Do you have any knowledge that  
23 exports were increased under those TUCPs?

24 WITNESS MINTON: I do not know if they were  
25 increased. I believe they were also for some water

1 quality needs in the South Delta.

2 MS. MORRIS: Are you aware that the exports  
3 that were allowed to occur when standards were not  
4 being met were for public health and safety purposes  
5 and a minimum cfs as stated in the Biological Opinions?

6 WITNESS MINTON: I do not know that as my  
7 own -- I don't have that as my own knowledge.

8 MS. MORRIS: Okay. Then I would move to  
9 strike his statements that the TUCPs, which are not  
10 part of this Petition, and he has not -- he doesn't  
11 have knowledge of how they may or may not affect this  
12 Project. Are not relevant, one, and number two, they  
13 don't have any basis.

14 CO-HEARING OFFICER DODUC: My understanding of  
15 his statement was that he said he doesn't know what  
16 impact the TUCP might have on the Project.

17 He voices it as one of those things that he is  
18 uncertain about.

19 MS. MORRIS: There was an implication -- And  
20 based on the question that I asked before.

21 So don't I do this. Instead of striking that,  
22 I would move to strike Lines 23 and 25 of his testimony  
23 on the basis that there is no evidence or data cited to  
24 that the exports -- sorry -- that the impacts could  
25 be -- of diversions would be in the order of 1 million

1 acre-feet.

2 CO-HEARING OFFICER DODUC: Mr. Minton, I  
3 believe you said it was based on your personal  
4 experience and knowledge.

5 WITNESS MINTON: Yes.

6 CO-HEARING OFFICER DODUC: Mr. Wright?

7 MR. WRIGHT: Yes.

8 I think this objection goes to the weight that  
9 he has extensive experience to testify to that.

10 MS. MORRIS: I would just note that he said it  
11 was on his knowledge of the BDCP, which is a different  
12 Project than is before the Board at this point in time.

13 CO-HEARING OFFICER DODUC: So noted, and it  
14 goes to weight.

15 MS. MORRIS: Dr. Kolb, good morning.

16 I have a couple of quick questions --

17 MR. WRIGHT: Dr. Kolb.

18 MS. MORRIS: I'm sorry, what?

19 MR. WRIGHT: Dr. Kolb.

20 MS. MORRIS: I said Dr. Kolb.

21 MR. WRIGHT: Oh, okay. My hearing, then.

22 MS. MORRIS: Have you ever qualified to  
23 testify as an expert in State Court?

24 WITNESS KOLB: No.

25 MS. MORRIS: I'm sorry? Could --

1 WITNESS KOLB: No.

2 MS. MORRIS: Thank you.

3 And how about Federal Court?

4 WITNESS KOLB: No.

5 MS. MORRIS: Looking at your testimony,

6 FOR-4 --

7 Mr. Baker, if we could pull it up.

8 (Exhibit displayed on screen.)

9 MS. MORRIS: And I'm looking at Page 4.

10 (Exhibit displayed on screen.)

11 MS. MORRIS: Lines 16 to 20.

12 (Exhibit displayed on screen.)

13 MS. MORRIS: Do you have that in front of you?

14 And I'll go ahead and ask you the questions.

15 WITNESS KOLB: Yeah.

16 MS. MORRIS: Okay. Thank you.

17 CO-HEARING OFFICER DODUC: Page 4, Mr. Baker.

18 (Exhibit displayed on screen.)

19 MS. MORRIS: And on Page 4, Lines 16 to 20,  
20 you state that there would be less freshwater outflow.

21 What's the basis of this statement?

22 WITNESS KOLB: That's the whole purpose of the  
23 Project, is to allow diversions out of the Delta when  
24 they would not otherwise occur.

25 MS. MORRIS: And did you look at CalSim II



1 modeling results to come to that statement?

2 WITNESS KOLB: No.

3 MS. MORRIS: Did you look at any modeling  
4 results?

5 WITNESS KOLB: No. This is a widely known  
6 consequence.

7 MS. MORRIS: And, Dr. Kolb, if outflow were to  
8 remain the same under CWF, would your opinions that you  
9 gave in your testimony change?

10 WITNESS KOLB: If the outflow got no worse  
11 than it is right now, I would still be very concerned  
12 because the pelagic organism decline has been -- it's a  
13 catastrophe, and it's going on right now without any  
14 new project.

15 MS. MORRIS: But, in any instance, if it were  
16 to remain the same as it was, it wouldn't be from  
17 California WaterFix causing those impacts; would it?

18 WITNESS KOLB: It would -- If it -- If it  
19 made -- If it made it -- If we're going to spend  
20 \$17 billion to get no improvement in the fisheries, I  
21 would say that's a bad investment of public money.

22 MS. MORRIS: I'm not sure that was my  
23 question, but okay.

24 I wanted to ask you about your testimony on  
25 Page 3.

1 (Exhibit displayed on screen.)

2 MS. MORRIS: And I believe you also testified  
3 about the POD decline. But you seem to cite for the  
4 appropriation of the decline Exhibit FOR-60, Pages 90  
5 to 97 in your testimony.

6 Do you see that on Line 16?

7 WITNESS KOLB: I do, yes.

8 MS. MORRIS: And that's an IEP paper; correct.

9 WITNESS KOLB: Yes.

10 MS. MORRIS: And isn't it true that that IEP  
11 paper that you cite to was describing a number of  
12 conceptual models?

13 WITNESS KOLB: No. The -- The burden of that  
14 paper was that there has been a regime change, a  
15 catastrophic one, in the Delta.

16 It's not talking about conceptual models.

17 It's talking about: Why has decline occurred?

18 And their -- They said the -- this regime  
19 shift, number one, is outflow. And they go on to say  
20 that that they considered the dominant variable.

21 MS. MORRIS: Okay. I think we'd better pull  
22 that document up, then.

23 If we could pull up FOR-60, and it starts --  
24 and we'll start on Page 90, I believe.

25 WITNESS KOLB: At the bottom.

1 (Exhibit displayed on screen.)

2 MS. MORRIS: And these line numbers are even  
3 more outrageous than the ones that we deal with.

4 So I'm -- I'm looking at Line 3970 -- 3975.

5 And it's -- it's talking about (reading):

6 ". . . A regime shift might have taken  
7 place . . ."

8 Correct? It's not saying it did take place.

9 It "might have taken place."

10 WITNESS KOLB: They're taking as a given the  
11 pelagic organism decline.

12 The question that they're commenting on is:

13 Did a regime change take place? And they were -- They  
14 were -- They did not conclude that it happened; they're  
15 saying it might have happened.

16 MS. MORRIS: Right.

17 And if we go down to look at 3991 of that same  
18 exhibit, it's talking about (reading):

19 ". . . Drivers we propose for the POD  
20 regime shift are . . ."

21 It's really -- And it was outflow. It doesn't  
22 say it's outflow. It's testing hypotheses to try to  
23 determine what caused the POD shift; correct?

24 WITNESS KOLB: Yes. It says (reading):

25 "These drivers are listed in our

1 hypothesized order . . . of importance to  
2 the resiliency of the system and  
3 approximate rate of change."

4 The first of which is diversions. Flow.

5 MS. MORRIS: And you further state in your  
6 testimony that pollutant levels will increase.

7 What pollutants are you specifically referring  
8 to?

9 WITNESS KOLB: I would be referring to all of  
10 the pollutants that could not be through conventional  
11 wastewater treatment. And I listed some of them, but  
12 there are probably a hundred more that one could list.

13 MS. MORRIS: And you also --

14 WITNESS KOLB: There's a sealing -- There's a  
15 saying in analytical chemistry today that you can find  
16 anything in anything. And I think that's true.

17 MS. MORRIS: Okay. You state that flow into  
18 the bay dilutes the pollution; correct?

19 WITNESS KOLB: Yes.

20 MS. MORRIS: Do you have an understanding if  
21 USBR and DWR have an obligation to make water releases  
22 to provide dilution?

23 WITNESS KOLB: My understanding is that they  
24 do.

25 MS. MORRIS: And is that for -- is that more

1 repelling salinity?

2 WITNESS KOLB: I don't know.

3 MS. MORRIS: What other -- What other  
4 obligation do they have to dilute pollutants?

5 WITNESS KOLB: I don't know.

6 MS. MORRIS: Did you conduct any specific  
7 analysis -- analyses to quantify or otherwise determine  
8 what the changes in any pollutant levels would be due  
9 to California WaterFix implementation?

10 WITNESS KOLB: I did not.

11 MS. MORRIS: Looking at your testimony on  
12 Page 4, and, again, that's FOR-4.

13 (Exhibit displayed on screen.)

14 MS. MORRIS: Lines 21 to 23, you state that  
15 implementing CVP will result in more water being used  
16 to irrigate (reading):

17 ". . . Soils with naturally  
18 occurring . . . selenium."

19 Have you developed an estimate of how much  
20 additional water will be applied to those soils?

21 WITNESS KOLB: No, I have not.

22 MS. MORRIS: I'm almost done. I'll wrap it  
23 up.

24 Have you developed an estimate of how much  
25 additional acreage of this type of soil will be

1 irrigated as a result of implementing California  
2 WaterFix?

3 WITNESS KOLB: No, I have not.

4 I'd like to note, however, that that acreage  
5 is going down because of high water tables in the area,  
6 which is a toxic time bomb waiting to happen.

7 Irrigating this in the first place was one of  
8 the worst mistakes we made in California water policy.

9 (Timer rings.)

10 MS. MORRIS: And, Dr. Kolb, have you reviewed  
11 the water quality sections of the Final EIR/EIS adopted  
12 by the Department of Water Resources?

13 WITNESS KOLB: Only in a general way.

14 MS. MORRIS: Okay. I have no further  
15 questions.

16 CO-HEARING OFFICER DODUC: Thank you.

17 Are you guys done?

18 MS. MORRIS: We're done, I think.

19 Actually, there's two little housekeeping  
20 things.

21 CO-HEARING OFFICER DODUC: Mr. Mizell.

22 MR. MIZELL: Yes.

23 For the record, we're going to object to  
24 hearsay on the 1 million acre-foot increase mentioned  
25 by Mr. -- or -- yeah --

1 CO-HEARING OFFICER DODUC: Mr. Minton.

2 MR. MIZELL: -- Mr. Minton.

3 MS. MORRIS: And then I had one --

4 CO-HEARING OFFICER DODUC: I thought I noted  
5 that already; haven't I?

6 MS. MORRIS: Yeah.

7 I do have another -- Looking at  
8 Miss Des Jardins' testimony, FOR-8, Page 3, Lines 1  
9 through Page 4, Lines 20.

10 (Exhibit displayed on screen.)

11 MS. MORRIS: I would move -- I object to those  
12 lines because it's hearsay.

13 It's a . . . interview of another person and  
14 it doesn't appear to be based -- there's -- it doesn't  
15 appear to be incorporated into her testimony.

16 Rather, it just seems to be a citation to an  
17 interview with a person that we can't cross-examine.

18 CO-HEARING OFFICER DODUC: All right. We will  
19 note that as a hearsay objection.

20 MS. ANSLEY: Jolie-Anne Ansley for the  
21 Department of Water Resources.

22 We also have a list of hearsay objections that  
23 we were planning to bring when they moved them into  
24 evidence, and we're happy to bring that list then to  
25 this testimony, but wanted to alert the Hearing

1 Officers.

2 CO-HEARING OFFICER DODUC: All right. Which  
3 we might actually do later today, so be prepared.

4 MS. MORRIS: Thank you.

5 CO-HEARING OFFICER DODUC: All right.

6 Miss Meserve.

7 MS. MESERVE: I never like to be the one  
8 standing between lunch.

9 CO-HEARING OFFICER DODUC: Actually, that will  
10 probably be Mr. Shutes, but you're part of it.

11 MS. MESERVE: Okay. We'll -- We'll take the  
12 blame.

13 CO-HEARING OFFICER DODUC: Outline of your  
14 questions, Miss Meserve?

15 MS. MESERVE: Yes.

16 I just have a couple of questions for  
17 Mr. Stork regarding wild and scenic rivers, and Shasta  
18 Dam and, cold storage.

19 And then I have just a couple questions for  
20 Mr. Minton regarding alternatives.

21 CO-HEARING OFFICER DODUC: Please proceed.

22 MS. MESERVE: Okay.

23 CROSS-EXAMINATION BY

24 MS. MESERVE: Mr. Stork, starting with you,  
25 please.



1           Your testimony on Page 13 discusses the  
2 existence of the wild and scenic river designations  
3 helping defeat the Peripheral Canal in 1982.

4           Do you believe that the grant of a Petition  
5 allowing the construction and operation of the tunnels  
6 would increase pressure to remove wild and scenic river  
7 protections?

8           WITNESS STORK: I do.

9           MS. MESERVE: And why?

10          WITNESS STORK: The ability to transfer water  
11 across the Delta is an important part of tapping the  
12 north coast rivers, which are in the State system or,  
13 for that matter, the McCloud River, which is protected  
14 in the State Wild and Scenic Rivers Act.

15          So particularly since there's been no, shall  
16 we say, increase in the -- in the level of protection  
17 of changing the State system, as was envisioned early  
18 on, having the two-thirds vote. So it's a 50 percent  
19 vote out of both the Congress and the Legislature to  
20 change that system.

21          And there's a lot of folks in the State Water  
22 Project that would like to have reliable water for  
23 their -- for their contracts that they don't have  
24 now -- sorry -- contracts that they have that are not  
25 reliably served with water.

1 MS. MESERVE: And what would be your response  
2 if someone argued that there's not currently a way to  
3 divert those north coast rivers into the Sacramento  
4 River and, ultimately, the tunnels?

5 WITNESS STORK: That is true. The north coast  
6 rivers flow, with the exception of Trinity Dam, mostly  
7 unaltered and unregulated, to the -- to the ocean.

8 So you would have to build dams and tunnels to  
9 deliver water to -- generally, it's been to the  
10 Sacramento River, and then pick it up and put across  
11 the Delta so that the south state export facilities can  
12 export that water --

13 CO-HEARING OFFICER DODUC: Hold on.

14 WITNESS MINTON: To the --

15 CO-HEARING OFFICER DODUC: Hold on.

16 Miss Morris.

17 MS. MORRIS: Stefanie Morris, State Water  
18 Contractors.

19 I just object as to relevance.

20 That's not part of the Proposed Project, as  
21 noted by the witness. We would have to require to go  
22 to the legislature and remove those restrictions.

23 So I don't think that it is particularly  
24 probative for this hearing to have that discussion.

25 And also, I just want to say for the record, I

1 think it mischaracterizes State Water Project  
2 Contractors and what they look for in reliability.

3 CO-HEARING OFFICER DODUC: Miss Meserve.

4 MS. MESERVE: I think -- I'm just asking for  
5 additional information regarding the topics of his  
6 testimony about why he'd be concerned about it.

7 And I think this is --

8 CO-HEARING OFFICER DODUC: Make -- No, no.

9 I'm --

10 MS. MESERVE: Within --

11 CO-HEARING OFFICER DODUC: -- asking you --

12 MS. MESERVE: -- the scope -- Oh, I'm sorry.

13 CO-HEARING OFFICER DODUC: I'm asking you for  
14 the relevance to the key hearing issues before us.

15 MS. MESERVE: I think the public interest and  
16 public trust and wildlife are obviously very impacted  
17 by the ability to continue protecting north coast  
18 rivers.

19 And so if Mr. Stork's testimony is about  
20 whether those rivers may be better or worse protected  
21 with or without the Project, that's why I'm asking him.

22 CO-HEARING OFFICER DODUC: That's a stretch.

23 But if you're not going to pursue it much  
24 further, I will just allow it to go.

25 MS. MESERVE: Yeah. I don't have a lot on it.

1 CO-HEARING OFFICER DODUC: Right.

2 MS. MESERVE: I was just trying to get more  
3 detail than what was included in his testimony.

4 On Page 16 of your testimony, you mention that  
5 you believe the Shasta Dam raise would violate the Wild  
6 and Scenic Rivers Act.

7 WITNESS STORK: It would.

8 MS. MESERVE: Is there anything that's  
9 happened since you wrote your testimony in November  
10 that supports your point of view?

11 WITNESS STORK: Yes.

12 MS. MESERVE: And what is that?

13 WITNESS STORK: The San Luis & Delta-Mendota  
14 Water Authority had -- and Westlands Water District has  
15 items on their agendas to join up to be a cosponsor of  
16 the Shasta Dam raise.

17 There was an attempt in the omnibus  
18 appropriations bill to help facilitate that that  
19 failed.

20 And a letter was sent by Friends of the River  
21 and other parties last week to the San Luis  
22 Delta-Mendota Water Authority to -- alerting them to  
23 the effect their offer to cosponsor on the Project is  
24 illegal under State law.

25 MS. MESERVE: And has the State of California

1 taken a position on the violation of the Wild and  
2 Scenic Rivers Act?

3 WITNESS STORK: Secretary Laird communicated  
4 during -- a few weeks back during the omnibus  
5 appropriation bill discussions that the State of  
6 California would not support the proposed language in  
7 the bill because of its obligation to protect rivers  
8 protected in the State act.

9 MS. MESERVE: And just thinking  
10 hypothetically, Mr. Stork:

11 If the Shasta Dam raise was off the table  
12 permanently, for some reason, would you still be  
13 concerned about the permanent protection of Northern  
14 California rivers if the Tunnels Petition was granted?

15 CO-HEARING OFFICER DODUC: She saved it,  
16 Miss Morris.

17 WITNESS STORK: I don't know how you can  
18 permanently protect rivers without having some fairly  
19 significant protections that exceed the current  
20 50 percent vote, and it's out of the system.

21 So, I guess the answer would be, I would still  
22 be concerned.

23 MS. MESERVE: On Page 21 of your testimony,  
24 Mr. Stork, you discuss cold storage and examples of  
25 Water Board actions to prevent cold storage in the

1 Bella Vista and Auburn Dam matters.

2           What do you see as the danger if a permit was  
3 granted for the Delta tunnels and it was not  
4 construction -- constructed on the 18-year or so  
5 timeline that's been discussed at this hearing?

6           WITNESS STORK: In my testimony, I -- I noted  
7 that the -- there had been discussions about  
8 essentially a phased approach by the Petitioners, and  
9 they noted that it would be more costly to do that.

10           If -- And -- And, therefore, there would be  
11 some risk that the -- there would only be one tunnel,  
12 and that the second tunnel might be indefinitely  
13 deferred because of financial considerations.

14           That was -- And my testimony is supported by  
15 the EIR work that was being done in the background.

16           So, obviously, one of the concerns is that the  
17 Project under consideration here is not the same  
18 Project and it may have different --

19           CO-HEARING OFFICER DODUC: I'm sorry.

20           WITNESS STORK: -- operations.

21           CO-HEARING OFFICER DODUC: That -- What was  
22 your question again, Ms. Meserve?

23           MS. MESERVE: I was asking about --

24           CO-HEARING OFFICER DODUC: The longer  
25 construction period and whether or not he would be

1 concerned by that.

2 MS. MESERVE: Actually, I was asking -- going  
3 back to the cold storage points of his testimony, what  
4 would be the concern with a project that was permitted  
5 and then put in cold storage.

6 MS. MORRIS: I would --

7 CO-HEARING OFFICER DODUC: Hold on.

8 Miss Me -- Miss Morris.

9 MS. MORRIS: I just object to testimony that  
10 goes to the issue of staged construction or  
11 implementation.

12 And I -- I don't think that question was  
13 responsive -- or the answer was responsive to the  
14 question asked.

15 So I -- Are we not -- I don't want to get up  
16 here and object all the time if you're --

17 CO-HEARING OFFICER DODUC: No, no, no, I  
18 understand. That's why I stopped him. His answer was  
19 not responsive.

20 So let's try again, Mr. Stork.

21 WITNESS STORK: Well, you'd have to repeat the  
22 question because I thought it was responsive.

23 MS. MESERVE: I thought it was somewhat  
24 responsive.

25 But let's just take a specific ample. I think

1 you mentioned area-of-origin water supplies.

2           If -- If there was a petition that was granted  
3 and then, as you call it, put in cold storage, would  
4 that concern you with the ability to meet  
5 area-of-origin water demands during that time period?

6           CO-HEARING OFFICER DODUC: Miss Morris.

7           MS. MORRIS: Objection: Calls for a legal  
8 opinion; assumes facts not in evidence.

9           CO-HEARING OFFICER DODUC: From your  
10 experience, are you able to answer that not as an  
11 attorney?

12          WITNESS STORK: Yeah. I --

13          CO-HEARING OFFICER DODUC: Go ahead.

14          WITNESS STORK: I -- I think it's -- it's  
15 difficult to know, so that's one reason why the answer  
16 is difficult to formulate.

17           If there was an indefinite deferral of parts  
18 of the Project, the operations of the Project that was  
19 actually constructed would be under different pressures  
20 and different operational opportunities.

21           And that may have an effect on, for example,  
22 operations at Folsom Dam, which is a State wild and  
23 scenic river downstream of that.

24           So, I can't -- I can't say with precision what  
25 all the concerns would be, but there would be a



1 difference if only part of the Project was constructed.

2 MS. MESERVE: And would it be fair to say that  
3 you're advocating for water right petitions that would  
4 be granted and acted upon within a reasonable period of  
5 time so that the conditions would be accurate?

6 WITNESS STORK: I think it's been the judgment  
7 of the Board that it is helpful when they're issuing  
8 water rights that the Project is -- is capable of  
9 constructing and intends to construct the Project. And  
10 I think that's a good thing.

11 MS. MESERVE: Now, you've been with Friends of  
12 the River since 1987. And Friends of the River's been  
13 very active in protecting rivers throughout the state;  
14 right?

15 WITNESS STORK: I don't know of an  
16 organization that has had more of a singular focus than  
17 Friends of the River on that issue.

18 MS. MESERVE: Now, Sacramento River is not a  
19 wild and scenic river; is it?

20 WITNESS STORK: It is not.

21 MS. MESERVE: And it's not known for kayaking,  
22 for instance, or other white water sports.

23 WITNESS STORK: You know, when all the other  
24 rivers are down, the Sacramento has water with it.

25 But it isn't a white water river, at least

1 downstream of the Shasta Dam complex.

2 MS. MESERVE: In your review, does the  
3 Sacramento River provide important public benefits?

4 WITNESS STORK: Yes.

5 MS. MESERVE: What kind of benefits?

6 WITNESS STORK: Fishery, recreation, birding,  
7 the kinds of amenities that the Sacramento Valley has  
8 grown accustomed to over the years.

9 MS. MESERVE: And, in your opinion, would it  
10 be necessary to conduct water modeling in order to  
11 predict those negative impacts you just mentioned?

12 WITNESS STORK: Yes.

13 MS. MESERVE: Are you aware that the intakes  
14 themselves would take up a couple of miles of the  
15 riverbank?

16 WITNESS STORK: Yes.

17 MS. MESERVE: Would it be necessary to conduct  
18 water modeling in order to predict those impacts on  
19 recreational, for instance?

20 WITNESS STORK: Yeah. It wouldn't be water  
21 modeling. It would be an assessment of the effects  
22 on -- on habitat and recreation.

23 MS. MESERVE: So it wouldn't be necessary to  
24 conduct modeling for -- to understand those kinds of  
25 impacts; right?

1           WITNESS STORK: The model -- The hydrologic  
2 modeling I think would be associated with the actual  
3 diversions, not the physical facilities.

4           MS. MESERVE: And thinking back on your career  
5 at Friends of the River, do you think -- are you  
6 familiar with the term "sustainable"?

7           WITNESS STORK: Yes.

8           MS. MESERVE: And do you think that it's  
9 sustainable to continue to divert additional rivers  
10 into infrastructure for human use the way that it's  
11 proposed in this particular Petition?

12          CO-HEARING OFFICER DODUC: Ms. Morris.

13          MS. MORRIS: Thank you.

14          I would just object that this witness  
15 testified that he hadn't looked at any of the modeling  
16 for this Project, and that for him to offer an opinion  
17 without having looked at the modeling or all the  
18 documents would be speculative at best.

19          CO-HEARING OFFICER DODUC: Miss Meserve.

20          MS. MESERVE: I think we've just established  
21 that the footprint of the Project itself and other  
22 aspects of it are well within the realm of Mr. Stork  
23 and other witnesses without having conducted any  
24 modeling themselves.

25          CO-HEARING OFFICER DODUC: It is his opinion.

1 Overruled.

2 WITNESS STORK: You'd have to repeat the  
3 question.

4 MS. MESERVE: Going back to your understanding  
5 of "sustainable," do you believe that a Project that --  
6 whose purpose is to divert a river into infrastructure  
7 is a sustainable solution as proposed here?

8 CO-HEARING OFFICER DODUC: Ms. Morris.

9 MS. MORRIS: Objection: Vague and ambiguous  
10 as to "divert a river." The Project doesn't divert the  
11 whole river.

12 CO-HEARING OFFICER DODUC: Yes.

13 MS. MESERVE: Let's clarify. Thank you.

14 A portion of the Sacramento River in two  
15 tunnels for this Project.

16 CO-HEARING OFFICER DODUC: As proposed by this  
17 Project.

18 MS. MESERVE: As proposed.

19 CO-HEARING OFFICER DODUC: Ms. Morris.

20 MS. MORRIS: I would just object that I don't  
21 think the witness has testified that he has the  
22 knowledge of what portion of flows are going to be  
23 diverted from the Sacramento River and at what times to  
24 draw a conclusion or opinion on this question.

25 CO-HEARING OFFICER DODUC: So noted.

1 Let him answer.

2 WITNESS STORK: Actually, I believe I said I  
3 was the consumer of models, not the creator of models.

4 That's a -- That's a tough question, because  
5 sustainability is obviously a somewhat vague term.

6 I think that diversions from the San Joaquin  
7 River have gone past what is sustainable. Obviously,  
8 parts of the San Joaquin River have no water in it  
9 anymore.

10 That's a fairly low bar.

11 Diversions from the Sacramento are . . .

12 It's a bigger river but big diversions at  
13 times when there's a need for flow past those points is  
14 unsustainable from a . . . ecological perspective.

15 (Timer rings.)

16 MS. MESERVE: May I have just five limits and  
17 I'll finish it with Mr. Minton, please?

18 CO-HEARING OFFICER DODUC: Five minutes to  
19 finish up with Mr. Minton?

20 MS. MESERVE: Yes.

21 CO-HEARING OFFICER DODUC: Okay.

22 MS. MESERVE: Can we bring up the -- I have an  
23 article on a flash drive that I wanted to ask  
24 Mr. Minton about.

25 Just to begin with, Mr. Minton, your

1 testimony --

2 (Exhibit displayed on screen.)

3 MS. MESERVE: -- discusses alternative means  
4 to meet supplies without building the twin tunnels; is  
5 that right?

6 WITNESS MINTON: Correct.

7 MS. MESERVE: And I have an article that was  
8 in the San Francisco Chronicle last week regard -- by  
9 Mr. Matthews regarding L.A. and the Delta tunnels.

10 Are -- Are you familiar with this opinion  
11 piece?

12 WITNESS MINTON: I read it.

13 MS. MESERVE: Do you agree with Mr. Matthews  
14 that L.A. needs the tunnels?

15 WITNESS MINTON: I do not.

16 MS. MESERVE: And why not?

17 WITNESS MINTON: There are perhaps two main  
18 arguments for the tunnels.

19 One is as a backup in the event of massive  
20 levee failures within the Delta.

21 And the second is, by some, the idea that  
22 these tunnels would actually provide more water. I  
23 know that may not -- in amounts that exceed what is  
24 shown in the modeling. But there are people who are  
25 saying that it would do more.

1           One of the problems with the argument about  
2 the failure of the Delta levees is to keep in mind  
3 that, on average -- even if this Project was built, on  
4 average, about half of the water diverted would still  
5 be diverted from the South Delta.

6           And what that means is, the levees,  
7 particularly along Old and Middle Rivers, have to be  
8 maintained, strengthened, even in the face of sea-level  
9 rise.

10           Once you strengthen those levees, you reduce  
11 the argument that they're going to fail and be lost for  
12 unacceptably long periods of time.

13           And, in fact, it's my understanding that the  
14 Department of Water Resources and the Metropolitan  
15 Water District of Southern California have wisely  
16 prepositioned rock in strategic locations for  
17 relatively quick emergency repairs of those levees.

18           We also know that -- I know that the  
19 Metropolitan Water District of Southern California has  
20 worked with Delta Engineers to identify which levees  
21 are most critical for improvement, and they have  
22 actually begun doing some of those improvements. The  
23 Bacon Island levee improvements that are underway is  
24 one example of that.

25           So then you look at the water supply options.

1 And Southern California -- I've been working with them  
2 since about 1980 on ways to improve their reliability,  
3 things like water conservation.

4 And I will go back to the preceding 1641.

5 As some may recall, one draft initially said:

6 Well, cut everybody 20 percent. That was a draft in  
7 1641. That didn't go too far, as I recall.

8 But, as an outgrowth of that, there was the  
9 creation of the Urban Water Conservation Best  
10 Management Practices. I was assigned to work with  
11 parties to develop these.

12 Metropolitan and others said: Well, that's  
13 interesting, but it isn't going to make any real  
14 difference.

15 Well, turns out it did make a big difference.

16 When I was in charge of the water recycling  
17 effort for the Department of Water Resources, they  
18 said: Well, that's interesting but it's not really  
19 going to go anywhere. It's the . . . toilet-to-tap  
20 syndrome.

21 Well, we've gotten past that. Now we're  
22 finding that there are additional opportunities: Local  
23 storm water capture, improvements of the groundwater  
24 basins that have been polluted. We're seeing projects  
25 everywhere.



1           So, in my view, this local resiliency can more  
2 than makeup for any of the purported benefits without  
3 the already-identified and -admitted adverse impacts,  
4 plus others I think are likely to occur which have not  
5 been admitted.

6           So, yes, I -- I firmly believe that Southern  
7 California and the Bay Area are going to be able to  
8 continue to meet their needs with those kinds of  
9 Projects.

10           MS. MESERVE: And your testimony mentions the  
11 Coalition to Support Delta Projects.

12           In that process that you helped lead, was  
13 there broad agreement around permitting and funding  
14 levee maintenance?

15           WITNESS MINTON: There was unanimous agreement  
16 about that, and funds were secured from the Department  
17 of Water Resources, similar to Prop 1A and other funds,  
18 so that those improvements are underway as we speak.

19           MS. MESERVE: Thank you.

20           No further questions.

21           CO-HEARING OFFICER DODUC: Thank you.

22           Mr. Herrick.

23           Mr. Shutes, do you still need 30 minutes?

24           MR. SHUTES: That's a reasonable estimate.

25           CO-HEARING OFFICER DODUC: Then we will take

1 our lunch break after Mr. Herrick is done.

2 MR. HERRICK: Thank you Hearing Officer, Board  
3 Members.

4 John Herrick for South Delta parties. This  
5 won't take more than probably five minutes.

6 CROSS-EXAMINATION BY

7 MR. HERRICK: Miss Des Jardins, I just want to  
8 clarify something that was brought up on cross.

9 You testified that you thought that Central  
10 Delta Water Agency contributed to your GoFundMe  
11 account.

12 Would it refresh your recollection to say that  
13 was somebody associated with Southern Delta but not the  
14 agency.

15 WITNESS DES JARDINS: It was an individual.  
16 It was not -- It was just an individual helping me.

17 And you're correct, it wasn't -- it wasn't the  
18 agency, and it had nothing to do with Central Delta's  
19 case.

20 MR. HERRICK: Thank you.

21 And Mr. Minton -- Dr. Minton. Are you a  
22 doctor? You're now a doctor.

23 Mr. Minton, you just gave a nice answer or a  
24 comprehensive answer to a question by Miss Meserve. I  
25 just want to follow up on that.

1           So it's your opinion that because of  
2 tremendous strides in conservation and reuse of water  
3 and the fact that acreages of land in the southern  
4 valley may go out of -- be brought out of agricultural  
5 production.

6           It's your testimony, then, that a Project that  
7 would cost billions of dollars is not in the public  
8 interest at this time; is that correct?

9           WITNESS MINTON: That is correct.

10           The cost estimates that I've heard of,  
11 \$17 billion for WaterFix, and that's based my  
12 understanding on a maybe less than or equal to  
13 10 percent design, which means, in my view, based on my  
14 experience, costs are likely to be much higher.

15           Investing even a fraction of that amount in  
16 local water supply projects that also create local jobs  
17 is a far better investment of funds, and it's much more  
18 protective of public trust values.

19           MR. HERRICK: And would it be your opinion  
20 that if -- if a project that -- that entailed such high  
21 costs, like the, you know, 10 to \$15 billion cost to  
22 the WaterFix, that that would remove available funds  
23 for some of the projects you're talking about?

24           WITNESS MINTON: Yes.

25           CO-HEARING OFFICER DODUC: Hold on.

1 MS. MORRIS: That calls for speculation.

2 Mr. Minton does not what other Water Districts  
3 may or may not invest in, with or without this Project.

4 CO-HEARING OFFICER DODUC: We acknowledge that  
5 it's pure speculation.

6 MR. HERRICK: I won't comment on whether it's  
7 speculation or not.

8 WITNESS MINTON: I could add that, having been  
9 a Water Agency Manager myself, I'm aware that, when  
10 there are finite amounts of funds available, there are  
11 tough choices by Boards of Directors.

12 And it is only logical that, if significant  
13 amounts of funding are going in one project, those  
14 funds will not be available for other projects.

15 MR. HERRICK: Thank you.

16 Mr. Minton, on Page 8 of your testimony, you  
17 briefly mention the Delta Reform Act goals of  
18 restoring, enhancing the Delta ecosystem, and  
19 maintaining and enhancing the Delta as a place.

20 Do you recall that?

21 WITNESS MINTON: Yes.

22 MR. HERRICK: Do you have any opinion on  
23 whether or not the construction-related impacts that  
24 have been discussed in these hearings would maintain or  
25 enhance the Delta as a place?

1 CO-HEARING OFFICER DODUC: Miss Morris.

2 MS. MORRIS: Objection: Lacks foundation.

3 This witness has not testified that he's  
4 looked at the construction impacts, the length of them,  
5 or how they may or may not impact the Delta.

6 MR. HERRICK: I could lay foundation if you  
7 want, but I thought we were trying to avoid such  
8 things.

9 CO-HEARING OFFICER DODUC: Yes.

10 Mr. Minton, to what extent can you answer the  
11 question?

12 WITNESS MINTON: I have personally visited and  
13 toured the Delta.

14 My knowledge of just the access that would be  
15 denied during the lengthy construction period indicates  
16 to me that those values would be significantly  
17 impaired.

18 MR. HERRICK: And, Mr. Minton, let's just  
19 assume the Project is constructed and we're all through  
20 with the -- any sort of impacts that deal with the  
21 construction -- ongoing construction.

22 Does this Project, after it's all done, do  
23 anything to maintain the Delta as a place?

24 WITNESS MINTON: Not that I'm aware of.

25 MR. HERRICK: Dr. Stork.

1 Mr. Stork. Sorry.

2 All right. I can't see everybody's name tag.

3 I'm sorry. I don't want to insult anybody.

4 Mr. Stork, on Page 12 of your testimony, you  
5 provide a -- what is that -- a chart from Bulletin 76.

6 Do you see that?

7 WITNESS STORK: I do.

8 MR. HERRICK: And you testified that this is  
9 an indication of expected water supplies for the State  
10 Water Project resulting from north coast river  
11 developments; is that correct?

12 WITNESS STORK: Expected at that time, 1960.

13 MR. HERRICK: Yes, thank you.

14 And, of course, those supplies have not and  
15 probably will not be developed; is that correct?

16 WITNESS STORK: That is my hope, at least  
17 illegal supplies should not be part of the State Water  
18 Project.

19 MR. HERRICK: So do you think it's prudent to  
20 move forward on a project that deals with exports  
21 before we've determined how much supply's available for  
22 exports?

23 WITNESS STORK: I believe that's been our  
24 position for several years, yes.

25 MR. HERRICK: So would you recommend that we

1 determined things, such as fishery needs or superior  
2 rights needs or public trust needs, before we  
3 determine -- we approve a project that involves the  
4 significant exports of the water from the Delta?

5 WITNESS STORK: That's been our position.

6 MR. HERRICK: And, Dr. Kolb, just one question  
7 for you.

8 I have one more for Mr. Minton. I'm sorry.

9 Dr. Kolb, you had some testimony and some  
10 cross-examination about the impacts on the Delta  
11 resulting from the Project.

12 You recall that; correct?

13 WITNESS KOLB: Yes.

14 MR. HERRICK: Now, without getting into any  
15 specifics of modeling or anything, do you have an  
16 opinion on whether or not a freshwater estuary can be  
17 improved if you decrease the amount of fresh water  
18 flowing into the estuary?

19 WITNESS KOLB: No. It would not improve it.  
20 It would degrade it.

21 MR. HERRICK: And, of course, we might come up  
22 with a situation where, you know, when the Sacramento  
23 River's at 200,000 cfs or something, you could siphon  
24 off some water with no effects.

25 But your opinion is generally based upon

1 operation of a Project that proposes to take water out  
2 before it reaches the Delta; correct?

3 WITNESS KOLB: Yes, that's right.

4 MR. HERRICK: Mr. Minton, I have one last  
5 question I forgot.

6 You referenced, as did other witnesses, you  
7 know, having numerical limits or goals as part of a  
8 prerequisite to approving his Project.

9 WITNESS MINTON: That's correct.

10 In our Exhibit A, affordable water solutions,  
11 that is one of the solutions. First, to have the water  
12 standards so that, as -- When I was a Water Agency  
13 Manager, if I knew what the limits were and the rules  
14 were, I could move forward with the Project.

15 If I tried to move forward with the Project  
16 first, it created the kind of confusion that I think  
17 is -- is occurring in this proceeding.

18 MR. HERRICK: And would you agree that it's  
19 not just confusion but it creates the wrong incentives,  
20 in that if there's not a specific goal one has to meet,  
21 we end up with these adaptive management strategies  
22 whereby the various interests fight it out over how  
23 much protection you get?

24 CO-HEARING OFFICER DODUC: Miss Morris.

25 MS. MORRIS: Objection: I think it calls for



1 speculation. But beyond that, it implies that somehow  
2 the adaptive management's going to be -- There's  
3 implications being made by the question that I don't  
4 think are facts in the record.

5 CO-HEARING OFFICER DODUC: Mr. Herrick, would  
6 you like to rephrase?

7 MR. HERRICK: Yes. I was going to say that,  
8 yes, I was making those implications.

9 But, Mr. Minton, do you understand that part  
10 of the Petition here includes the to-be-developed  
11 adaptive management associated with the Project?

12 WITNESS MINTON: Yes.

13 MR. HERRICK: And that adaptive management  
14 will have some sort of process that will -- the needs  
15 of the estuary and the needs of exports will somehow  
16 work out, operational decisions based upon the data  
17 available at the time; correct?

18 WITNESS MINTON: I understand that there is  
19 a -- I would consider a fairly vaguely described  
20 adaptive management process.

21 It does not have the kind of limits and  
22 consequences that are found in successful Adaptive  
23 Management Programs. It's more kind of a hope and a  
24 prayer that things will work out in the future,  
25 which -- with -- when dealing with the Delta ecosystem

1 that is so already impacted, in collapse, that kind of  
2 flexibility is no -- no reasonable way to proceed.

3 MR. HERRICK: I'll leave it at that. Thank  
4 you very much.

5 No further questions.

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

8 Let's do a time check. We will adjourn and  
9 come back at 1:30, and Mr. Shutes needs 30 minutes, so  
10 that's 2 p.m.

11 At this time, Mr. Wright, Mr. Jones, do you  
12 have any direct planned -- redirect? Sorry.

13 MR. WRIGHT: So far, I have not formulated or  
14 heard anything calling upon redirect as of now --

15 CO-HEARING OFFICER DODUC: Okay.

16 MR. WRIGHT: -- from me.

17 CO-HEARING OFFICER DODUC: So -- Understood.

18 So assuming that we might wrap up this panel by about  
19 2 o'clock, we'll turn to Mr. Colin -- Mr. Bailey.

20 Sorry.

21 Mr. Bailey, how much time do you need for  
22 direct?

23 LEFT9: I anticipate less than an hour.

24 CO-HEARING OFFICER DODUC: For the entirety of  
25 your direct.

1 LEFT9: Correct.

2 CO-HEARING OFFICER DODUC: So that will get us  
3 to 3 o'clock or thereabouts.

4 Estimate for cross, keeping in mind that we  
5 will adjourn at 5:00 today.

6 MS. ANSLEY: I think that we have no more  
7 than . . .

8 I'm sorry, can we have a moment, please?

9 CO-HEARING OFFICER DODUC: Anyone else besides  
10 the Department?

11 Mr. Herrick.

12 MR. HERRICK: John Herrick for South Delta  
13 parties.

14 I would reserve 10 minutes but it might be  
15 zero. I might have no questions.

16 CO-HEARING OFFICER DODUC: You have a  
17 microphone right there, Miss Des Jardins.

18 MS. DES JARDINS: Okay. Dierdre Des Jardins  
19 for California Water Research.

20 I'd like to reserve 10 minutes.

21 MS. ANSLEY: I apologize. I had forgotten  
22 Mr. Heagerty was joining that.

23 CO-HEARING OFFICER DODUC: Yes.

24 MR. BAILEY: I'm sorry.

25 MS. ANSLEY: Oh.

1 MR. BAILEY: He's not going to be here.

2 MS. ANSLEY: Oh, he's not here. Okay. So

3 I --

4 CO-HEARING OFFICER DODUC: So are you  
5 withdrawing Mr. Heagerty as a witness?

6 MR. BAILEY: I think we will have to, yes.

7 CO-HEARING OFFICER DODUC: Okay.

8 MS. ANSLEY: Then for the remaining witnesses  
9 of that Panel 2, Just -- Environmental Justice  
10 Coalition for Water, the DWR has about 20 to 30  
11 minutes.

12 CO-HEARING OFFICER DODUC: All right. Then we  
13 will definitely finish with the EJCW panels as well  
14 today.

15 With that, we will adjourn and return at 1:30.

16 (Lunch recess at 12:34 p.m.)

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1 Monday, April 2, 2018 1:30 p.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: All right. It is  
5 1:30. We are back in session.

6 Are there any housekeeping matters we need to  
7 discuss?

8 Seeing none, I'll turn it over to Mr. Shutes  
9 who has requested 30 minutes for his cross-examination.

10 And let it be noted, we now have Miss Gaylon  
11 helping us out.

12 MS. GAYLON: Just to note: This timer isn't  
13 working at the moment.

14 CO-HEARING OFFICER DODUC: Oh, okay. So it's  
15 now 1:30. Mr. Shutes, you have until 2:00 p.m.

16 MR. SHUTES: I will do my best to make it that  
17 amount of time or shorter.

18 Good afternoon. Chris Shutes for the  
19 California Sportfishing Protection Alliance.

20 I have two lines of questioning basically:  
21 One is for Mr. Minton about coequal goals; and one is  
22 for Mr. Stork about uncertainty and discretion.

23 CO-HEARING OFFICER DODUC: I'm sorry.  
24 Uncertainty and . . .

25 MR. SHUTES: Discretion.

1 CO-HEARING OFFICER DODUC: Discretion. Okay.

2 CROSS-EXAMINATION BY

3 MR. SHUTES: Good afternoon, Mr. Minton.

4 WITNESS MINTON: Good afternoon, Mr. Shutes.

5 MR. SHUTES: Much of your testimony concerns  
6 coequal goals; correct?

7 WITNESS MINTON: Yes.

8 MR. SHUTES: Is it your understanding that the  
9 California WaterFix would increase water supply  
10 reliability by allowing the capture and diversion of  
11 additional unregulated water at the North Delta  
12 diversions compared to existing facilities?

13 WITNESS MINTON: Yes.

14 MR. SHUTES: Do you understand that the  
15 Proponents have suggested that reservoir operations of  
16 Central Valley Projects and State Water Project  
17 reservoirs would essentially not change under  
18 California WaterFix?

19 WITNESS MINTON: That's my understanding of  
20 what they represent.

21 MR. SHUTES: Thank you.

22 If State Water Project and California -- and  
23 Central Valley Project reservoir operations would  
24 remain unchanged under California WaterFix, would in  
25 your view the California WaterFix increase the

1 reliability of the two Projects in meeting year-end --  
2 year-round in-basin uses, including water quality  
3 requirements in the Delta and downstream of the storage  
4 reservoirs?

5 WITNESS MINTON: I do not see or believe that  
6 they could achieve those without changing the upstream  
7 operations.

8 MR. SHUTES: In terms of the reliability for  
9 water supply and environmental protection, then, does  
10 California WaterFix as proposed appear to you to offer  
11 coequal benefits?

12 WITNESS MINTON: It does not.

13 MR. SHUTES: What, if any, direct  
14 environmental benefits would accrue to -- from the use  
15 of the North Delta diversions?

16 And by "direct benefits," I mean benefits that  
17 don't derive from offsets or replacements of other  
18 actions that the State and Federal Projects might  
19 undertake.

20 WITNESS MINTON: I'm not sure I fully  
21 understand your question.

22 Could you rephrase it?

23 MR. SHUTES: I'll start again. And having  
24 heard the qualifier, what, if any, direct environmental  
25 benefits would accrue due to the use of the North Delta

1 diversions as opposed to any other facilities?

2 WITNESS MINTON: My understanding is that the  
3 Proponents' assertion is that, by diverting some of the  
4 water from the North Delta, it could reduce the adverse  
5 impacts of some of the South Delta diversions.

6 MR. SHUTES: But there would be no -- no  
7 direct benefits from using the North Delta diversions,  
8 per se, in your understanding; would there?

9 WITNESS MINTON: By "direct," I'm not sure  
10 what you mean, sir.

11 MR. SHUTES: As opposed to offsets or  
12 replacements or other actions that would not be done  
13 somewhere else.

14 WITNESS MINTON: Correct, there would not be.

15 MR. SHUTES: On Page 6 of your testimony, you  
16 describe the potential for another phase or part of the  
17 California WaterFix hearing to determine appropriate  
18 Delta Flow Criteria.

19 WITNESS MINTON: Um-hmm.

20 MR. SHUTES: Could you, in broadbrush describe  
21 what that might entail, in your view?

22 WITNESS MINTON: And I can refer to our  
23 exhibit, "8 Affordable Reliable Water Solutions," which  
24 is in the record. One of those solutions is  
25 science-based flow standards. The short version of it



1 is standards first, water applications second.

2           So I'm aware that the State Board already has  
3 underway the update of the Water Quality Control Plan.

4           And it -- As a former project developer and a  
5 former water rights applicant, and having actually  
6 received -- led the effort to receive a new water right  
7 for El Dorado County, it would seem to me that, if the  
8 Board can continue its work on updating the Water  
9 Quality Control Plan, and then look at the -- the  
10 application before it or, as it may be continuously  
11 evolving, that just makes sense. That's the  
12 common-sense approach.

13           Doing it the other way just risks too many  
14 uncertainties for the applicant, for the Protestants  
15 and for the environment.

16           MR. SHUTES: So -- But what you suggest in  
17 your testimony is another phase of the WaterFix hearing  
18 as opposed to waiting for the update of the Water  
19 Quality Control Plan to occur before completing the  
20 WaterFix hearing.

21           Did you have any specific process or sort of  
22 needs in mind that that phase would have to undertake  
23 when you wrote that?

24           WITNESS MINTON: That was in recognition of  
25 the schedule that the Petitioners have put forth and

1 the State Board has adopted, which, as I understand it,  
2 calls for a decision on the Petition before the Water  
3 Quality Control Plan is amended.

4           And so I don't have a specific methodology for  
5 including what would, in essence, be the functional  
6 equivalent of that standard. But, again, absent that,  
7 I just don't know how one can adequately assess what  
8 the impacts of this Project would be on a variety of  
9 beneficial uses certainly within the Delta and for  
10 those water users upstream of the Delta.

11           MR. SHUTES: Thank you very much, Mr. Minton.

12           Good afternoon, Mr. Stork.

13           WITNESS STORK: Good afternoon, Mr. Shutes.

14           MR. SHUTES: Mr. Stork, Friends of the River  
15 recently commented on the DEIR/DEIS for the Sites  
16 Reservoir Project; is that correct?

17           WITNESS STORK: That's correct.

18           MR. SHUTES: To your knowledge, does the  
19 DEIR/DEIS for Sites Reservoir contain a detailed  
20 Operations Plan for Sites water -- Sites Reservoir if  
21 that reservoir is built?

22           WITNESS STORK: That was our observation, and  
23 we told them that.

24           MR. SHUTES: Your observation was that it does  
25 not?

1 WITNESS STORK: It does not contain detailed  
2 Operational Plan or, for that matter, who the  
3 beneficiaries are.

4 MR. SHUTES: Does it contain any Operations  
5 Plan?

6 WITNESS STORK: That . . .

7 The operations would be dependent on meeting  
8 Decision 1641 in the Delta was their major operational  
9 constraint.

10 MR. SHUTES: Does the Sites DEIR/DEIS include  
11 an alternative that evaluates the impacts of Sites  
12 Reservoir with the California WaterFix in place?

13 CO-HEARING OFFICER DODUC: Hold on, please.  
14 Miss Morris.

15 MS. MORRIS: I just object to relevance.

16 The Sites Reservoir is a separate project, and  
17 it hasn't completed an environmental review or other  
18 things and so it's unclear how -- We don't know yet how  
19 it may be incorporated and what analysis would occur.

20 CO-HEARING OFFICER DODUC: Mr. Shutes.

21 MR. SHUTES: Mr. Stork's testimony was that  
22 they're done of several different types of projects  
23 that may be incentivized in some way by the California  
24 WaterFix.

25 I'm trying to get a little bit of

1 understanding of what we know today about one of those  
2 specific projects. That's . . . Yes.

3 CO-HEARING OFFICER DODUC: And how is that  
4 relevant to one of the key hearing issues before us?

5 MR. SHUTES: I think what it does is, it  
6 addresses . . . where the water would come from and  
7 it -- and it addresses what the public interest might  
8 be in the further -- in the sort of secondary effects  
9 of California WaterFix if -- if indeed the California  
10 WaterFix is approved.

11 CO-HEARING OFFICER DODUC: I don't know that I  
12 follow that. I did not follow that.

13 MR. SHUTES: Mr. Stork's testimony addresses  
14 the fact that, with California WaterFix in place, there  
15 are different projects that might become more viable or  
16 likely to occur because of the availability of  
17 increased conveyance.

18 CO-HEARING OFFICER DODUC: All right.

19 MR. SHUTES: What I'm trying to figure out is  
20 what we know about one of those projects, and whether  
21 there is any information there that has evaluated how  
22 it might work in tandem with the -- the California  
23 WaterFix operations.

24 CO-HEARING OFFICER DODUC: I'd rather know  
25 actually from Mr. Stork in which way -- How do you

1 believe WaterFix would . . . actually . . . incentivize  
2 these Projects?

3 WITNESS STORK: I do believe that. And I  
4 think my testimony goes to that.

5 Clearly, Mr. Kightlinger's interview here in  
6 Sacramento where he said that, essentially, we're in on  
7 Sites unless we don't have the WaterFix Tunnels.  
8 Without the tunnels, we're not interested in  
9 constructing and being part of this reservoir complex.

10 CO-HEARING OFFICER DODUC: So, if I understand  
11 it, your testimony, and what Mr. Shutes is trying, I  
12 think, to question you on -- Or at least your testimony  
13 is that, in considering the public interest of the  
14 WaterFix proposal that is before us, we should also  
15 consider other potential projects that it may  
16 incentivize.

17 WITNESS STORK: That's correct.

18 MS. MORRIS: May I briefly?

19 I would just move to strike that statement as  
20 hearsay. That's -- Mr. Stork has no personal knowledge  
21 of that other than an interview that was not -- it was  
22 in Maven's Notebook and that's his only citation.

23 So there are no facts in this record to  
24 support that, and the only fact is hearsay.

25 And, again, it's Maven summarizing a

1 conversation in an interview with Mr. Kightlinger.

2 CO-HEARING OFFICER DODUC: Okay. So it's  
3 noted as a hearsay objection.

4 Overruled for now. I will allow Mr. Shutes to  
5 explore this a little bit, though the length is  
6 tenuous.

7 MR. SHUTES: I think I'm done with that  
8 particular line of questioning. Thank you.

9 Mr. Stork, on Page 6 of your testimony, you  
10 have a heading that says (reading):

11 "Project Deliveries and Operations  
12 Are Uncertain Because the Project is  
13 Uncertain."

14 Do you recall that?

15 WITNESS STORK: Yes.

16 MR. SHUTES: Mr. Stork, isn't it true that the  
17 defining purposes of a defined project may not always  
18 be the only outcomes if the Project is completed?

19 WITNESS STORK: True enough.

20 MR. SHUTES: On Page 9 of your testimony, you  
21 suggest that the discretion of the Central Valley  
22 Project and State Water Project Managers and Operators  
23 allow many possible outcomes; is that correct?

24 WITNESS STORK: That is correct.

25 MR. SHUTES: So, within the Proposed Project,

1 regardless of how defined it is, in your opinion, if  
2 Project deliveries and operations -- are Project  
3 deliveries and -- and operations under California  
4 WaterFix uncertain just for that reason?

5 MS. MORRIS: Excuse me.

6 CO-HEARING OFFICER DODUC: Miss Morris.

7 MS. MORRIS: I'm sorry. Thank you.

8 Calls for speculation.

9 He is not a Project Operator, and the  
10 implication here is that somehow DWR and the Bureau  
11 will not follow the rules in the Biological Opinions or  
12 under -- their responsibilities under the Water Quality  
13 Control Plan.

14 CO-HEARING OFFICER DODUC: Can you rephrase.

15 MR. SHUTES: Mr. Stork has followed and rather  
16 carefully monitored the operations of the State and  
17 Federal Projects for the last 30 years, and I think  
18 he's entitled to an opinion about general aspects of  
19 how they're operated.

20 CO-HEARING OFFICER DODUC: And your question,  
21 again, was?

22 MR. SHUTES: You suggest -- Let's see.

23 So within the Proposed Project, regardless of  
24 how defined it is today, is it your opinion that  
25 Project deliveries and operations under California

1 WaterFix are uncertain?

2 CO-HEARING OFFICER DODUC: Overruled,

3 Miss Morris. His opinion.

4 WITNESS STORK: It is my opinion, and I also  
5 note that it appears to be Reclamation's opinion as  
6 well, as I quoted in -- in my testimony -- written  
7 testimony.

8 There are a lot of variables that affect  
9 operations. Obviously, Biological Opinions are one.  
10 The decisions of this Board are another. The degree of  
11 demand of the Project, Project facilities. All of  
12 those things make a difference in Project operations.

13 MR. SHUTES: Mr. Stork, isn't uncertainty in  
14 the future operations of the -- of the Projects under  
15 California WaterFix uncertain in part because of the  
16 size and the scope of the State Water Project and the  
17 California -- and the Central Valley Project?

18 WITNESS STORK: Yes, those are big projects.  
19 And I noted they appear to be incomplete to varying  
20 degrees, both as regard to major storage facilities and  
21 the project build-out demand.

22 MR. SHUTES: Mr. Stork, isn't it also true  
23 that, in your experience, unexpected events can turn a  
24 Project to unexpected outcomes?

25 WITNESS STORK: Well, unexpected events



1 certainly happen.

2           A few years back, Folsom Reservoir lost half  
3 of its reservoir when a gate broke.

4           And then, of course, unexpected events  
5 happen -- happened last year with quite a drama up  
6 there at Oroville Project. And now, of course, they're  
7 on a -- a temporary flood control regime that reduces  
8 the . . . project storage during the -- during the  
9 flood control season.

10           So unexpected events happen.

11           MR. SHUTES: And -- And drawing your attention  
12 to some unexpected events at Oroville over the last 10  
13 years, haven't the operations of Oroville changed  
14 significantly because of various equipment failures  
15 or . . . other problems with infrastructure?

16           CO-HEARING OFFICER DODUC: Miss Morris.

17           MS. MORRIS: Objection: Relevance.

18           CO-HEARING OFFICER DODUC: What is the  
19 relevance?

20           MR. SHUTES: The relevance is that we're  
21 planning out for something that's -- that's going to be  
22 happening in 15 years from now. And the presentation  
23 of the Proponents has been that we can expect Project  
24 operations to function as planned and as expected under  
25 what might -- one might call the normal course of

1 operations.

2 I'm just pointing out the fact -- or asking  
3 Mr. Stork to confirm the fact, based on actual  
4 experience at the State Water Project, that things  
5 don't always work out exactly as planned.

6 CO-HEARING OFFICER DODUC: I think that goes  
7 for anything and everything in life.

8 MS. MORRIS: I just question: Is it probative  
9 because he's -- this is -- As indicated by the  
10 questioner, these are not normal circumstances that  
11 they're operating under, and there's -- there's no  
12 reason to believe that they would continue or -- and  
13 they may change.

14 But it just seems very speculative.

15 CO-HEARING OFFICER DODUC: It is.

16 I'm -- I'm not --

17 MR. SHUTES: Let me --

18 CO-HEARING OFFICER DODUC: I'm not sustaining  
19 your (sic) objection, Mr. Shutes, but I would agree  
20 that I question the probative value of this line of  
21 questioning.

22 WITNESS STORK: May I answer, or at least  
23 attempt an answer, or provide an example of the fairly  
24 significant departure that could happen that I think  
25 this Board needs to consider, and that is Biological

1 Opinions come and go, and the Federal government  
2 perhaps may not be quite the same partner that you've  
3 had in the past.

4           So to the extent that -- that your  
5 decisions . . .

6           Well, your decisions may be even more  
7 necessary than they have been in the past because your  
8 Federal partner may not be as reliable as it has in the  
9 past.

10           I said that diplomatically.

11           MR. SHUTES: Going back to Oroville,  
12 Mr. Stork.

13           In about 2009, wasn't there a failure of the  
14 gates that released water out of the bottom of Oroville  
15 Reservoir?

16           CO-HEARING OFFICER DODUC: All right. I think  
17 you've made your point.

18           I'm not sure what --

19           MR. SHUTES: So --

20           CO-HEARING OFFICER DODUC: -- additional  
21 detail you want to get into the record and for what  
22 purpose.

23           MR. SHUTES: What I'm trying to point out here  
24 is that these are not necessarily short-term stochastic  
25 events, that they may endure for a decade, and that

1 that leaves the different operating regimes. And also  
2 the changes in decisions about what future repairs and  
3 operations are going to be.

4 CO-HEARING OFFICER DODUC: Ms. Morris.

5 MS. MORRIS: I just don't believe this is the  
6 correct forum for this because this has nothing to do  
7 with the Project or the Project operations.

8 And, quite frankly, it would be silly for us  
9 to put on rebuttal. This is not an issue that is  
10 currently before the Board and there's other venues for  
11 this testimony, and I'm sure other -- that they will  
12 seek and have sought those.

13 MR. SHUTES: I'll move on, but just --

14 CO-HEARING OFFICER DODUC: Yeah. You --

15 MR. SHUTES: -- to respond to Miss Morris.  
16 I'm not trying to bring in something from outside here.

17 This really has to do with the predictability  
18 and --

19 CO-HEARING OFFICER DODUC: Yes.

20 MR. SHUTES: -- reliability --

21 CO-HEARING OFFICER DODUC: And you've made  
22 your point.

23 MR. SHUTES: Okay.

24 CO-HEARING OFFICER DODUC: Let's move on.

25 MR. SHUTES: Mr. Stork, you said you were a

1 consumer of modelers -- of models but not a modeler; is  
2 that correct?

3 WITNESS STORK: That's correct.

4 MR. SHUTES: In your experience as a consumer  
5 of models, are models good at modeling discretion?

6 WITNESS STORK: Models attempt to model  
7 discretion with varying degrees of success.

8 MR. SHUTES: Mr. Stork, in your experience, is  
9 it reasonable to expect that Central Valley Project  
10 Operators and Managers over the coming decades will  
11 seek to use their discretion, whatever discretion is  
12 available to them, to optimize long-term Project  
13 delivery -- contract deliveries?

14 CO-HEARING OFFICER DODUC: Miss Morris.

15 MS. MORRIS: Speculative.

16 CO-HEARING OFFICER DODUC: Yes, it is. We'll  
17 take this for whatever worth it provides.

18 WITNESS STORK: Shall I answer with an  
19 example?

20 The Congress has -- has indeed directed  
21 Reclamation to undertake actions to maximize Project  
22 deliveries, and they have initiated an EIS to do that.  
23 So I'm not -- I'm not harshing on State Water Project  
24 there, I'm harshing assisting on Reclamation and the  
25 Congress.

1 MR. SHUTES: So, actually, my question was  
2 just more about general how Operators, not just State  
3 Valley -- State Water Project or Central Valley Project  
4 Operators operate but any Water Project Operator.

5 Isn't it -- Hasn't it been your experience  
6 that they try to optimize the purposes of their  
7 Project, particularly for water supply, within the  
8 constraints that they're put under?

9 WITNESS STORK: I -- I certainly have had  
10 extensive experience in FERC relicensing especially,  
11 and seeing just that.

12 It is the -- the overriding interest of the  
13 Operators to optimize their Project's purposes.

14 MR. SHUTES: Mr. Stork, on Page 7 of your  
15 testimony, you refer to the Los Baños Grande Reservoir  
16 that has been approved as part of the State Water  
17 Project but not constructed; is that correct?

18 WITNESS STORK: That is correct.

19 MR. SHUTES: Do you expect that DWR would  
20 attempt to construct Los Baños Grande Reservoir  
21 specifically?

22 CO-HEARING OFFICER DODUC: Miss Morris.

23 MS. MORRIS: Again, objection: Speculative.

24 I just -- It doesn't seem probative. This  
25 witness doesn't work for DWR.

1           If Mr. Shutes wanted to ask these questions,  
2 he should have asked someone from DWR.

3           CO-HEARING OFFICER DODUC: Mr. Shutes.

4           MR. SHUTES: Again, I think Mr. Stork's  
5 experience puts him in a position to reasonably answer  
6 the question.

7           I could direct the question to Mr. Minton, who  
8 has also worked -- who has worked for DWR, if that  
9 would be --

10          CO-HEARING OFFICER DODUC: Enough. Enough.  
11 I'm sustaining the objection.

12          MR. SHUTES: Okay. Very well.

13          Mr. Stork, you're an environmental  
14 representative on the Water Forum; correct?

15          WITNESS STORK: That is correct.

16          MR. SHUTES: Mr. Minton, are you still a  
17 representative on the Water Forum?

18          WITNESS MINTON: No, I am not.

19          MR. SHUTES: Thank you.

20          Mr. Stork, The Water Forum's proposed flow  
21 management standard for the operation of the Lower  
22 American River was described recently by Water Forum  
23 representatives in this hearing.

24          Did you -- Are you aware of the testimony they  
25 provided?

1 WITNESS STORK: I watched the testimony.

2 MR. SHUTES: And -- And I believe they  
3 describe the -- the standard as having been iteratively  
4 developed.

5 Is that what you recall?

6 WITNESS STORK: Yes.

7 CO-HEARING OFFICER DODUC: Miss Morris -- Hold  
8 on.

9 Miss Morris.

10 MS. MORRIS: Just for clarity of the record,  
11 are we talking about the flow management standard or  
12 the modified flow management standard? I don't think  
13 it's clear from the question. I just want to be clear  
14 for the record.

15 CO-HEARING OFFICER DODUC: Mr. Shutes.

16 MR. SHUTES: I'm -- I'm not that familiar with  
17 the terminology. Maybe Mr. Stork can provide the most  
18 recent --

19 WITNESS STORK: I can help you.

20 MR. SHUTES: Thank you.

21 WITNESS STORK: Both -- Both proposals, both  
22 the modified and the one that was the predecessor, the  
23 penultimate one involved iterative optimization  
24 approaches. The modified one represents more recent  
25 data as well as refined objectives.



1 MR. SHUTES: At -- Having spent many years in  
2 that process as an environmental representative --

3 WITNESS STORK: More than a quarter of a  
4 century.

5 MR. SHUTES: -- do you believe that that type  
6 of iterative process would be appropriate for the  
7 development of -- perhaps on a short-time basis --  
8 would be appropriate for the development of carryover  
9 storage and reservoir management operation requirements  
10 for other Central Valley Project and State Water  
11 Project reservoirs?

12 WITNESS STORK: Yes.

13 The Water Forum spent a lot of time on trying  
14 to develop optimized Folsom operations. I have been  
15 around other Projects and not seen that kind of  
16 extensive modeling and optimization work to a lesser or  
17 greater degree.

18 And, very frankly, I think that is a good  
19 approach. It tends -- It tends to -- Particularly if  
20 some of the Project critics have the opportunity to  
21 walk with the Applicants in the development of their  
22 optimizations, it tends to result in more consensus  
23 and, I think, better proposals that may come before the  
24 Board or National Marine Fishery BiOps.

25 MR. SHUTES: Last question: Mr. Stork, the

1 Water Forum evaluated the potential -- or series of  
2 questions -- potential impacts of the modified flow  
3 management standard for Folsom and Lower American River  
4 to Shasta Reservoir and the Sacramento River; is that  
5 correct?

6 WITNESS STORK: It did. The -- Well, the  
7 Water Forum described their -- their methodology. It  
8 was largely using, you know, the modeling effort that  
9 was done by Reclamation, then essentially a refinement  
10 to try and look at what would happen with varying  
11 end-of -- end-of-season storage targets and if they  
12 were imposed at Folsom Reservoir and what reassigned  
13 impacts there might be at Shasta.

14 MR. SHUTES: Did the Water Forum consider  
15 potential redirected impacts to Oroville or Trinity in  
16 that analysis?

17 WITNESS STORK: I don't believe they did.

18 MR. SHUTES: Thank you --

19 WITNESS STORK: At least --

20 MR. SHUTES: -- very much.

21 WITNESS STORK: -- as I recall.

22 MR. SHUTES: That's all I have.

23 Thank you.

24 CO-HEARING OFFICER DODUC: Redirect,  
25 Mr. Wright?

1 MR. WRIGHT: No redirect.

2 CO-HEARING OFFICER DODUC: At this time, would  
3 you like -- Does that conclude your case in chief and,  
4 if so, would you like to move your exhibits into the  
5 record?

6 MR. WRIGHT: Yes. That concludes the case in  
7 chief for Friends of the River and Sierra Club  
8 California.

9 And I would like to move into the record the  
10 testimony and Friends of the River Exhibits 1 through  
11 111.

12 CO-HEARING OFFICER DODUC: Objections,  
13 Miss Ansley?

14 MS. ANSLEY: Yes. Jolie-Anne Ansley for the  
15 Department of Water Resources.

16 We have various objections to hearsay. I have  
17 them in the list, so hopefully I can get them on the  
18 record, understanding, of course, the Board's rules on  
19 hearsay.

20 We join in the motion of the State Water  
21 Contractors for the hearsay objection to  
22 Miss Des Jardins' testimony, FOR-8, regarding the  
23 interview with Bill Warne. That would be Page 2,  
24 Line 24 to Page 4, Line 14.

25 For Mr. Stork, which is FOR-2, we have a

1 series of objections and I will read the page and line  
2 numbers that specifically relate to representations  
3 made in newspaper articles, specifically mainly quotes  
4 of people.

5           They are Page 13 -- or, no -- Yes, Page 13,  
6 Lines 9 through 15; and Footnote; 26, Page 15, Lines 2  
7 through 9; and Footnote 32; Page 15, Lines 10 through  
8 13; and Footnote 33; Page 16, Lines 19 through 17 --  
9 oh, excuse me -- Page 16, Line 19 through Page 17,  
10 Line 1; and Footnote 37; Page 17, Line 10; Footnote 39;  
11 Page 17, Line 11 through Page 18, Line 1; and  
12 Footnote 40; Page 20, Line 15 to Page 16 . . .

13           Excuse me. I don't have the end line number.  
14 It would go -- It would be the sentence supported by  
15 Footnote 52.

16           I realize I forgot one as well. It's Page 8,  
17 Lines 14 -- hold on -- Lines 14 to 15; and Footnote 16.

18           I'm happy to discuss any of those references,  
19 but I would like them just put on the record as a  
20 timely hearsay objection.

21           To Mr. Minton's testimony, which is FOR-6, I  
22 have an objection to -- a hearsay objection to Page 6,  
23 Lines 21 through 28, which is a vote of a -- of a  
24 person in a News Deeply article.

25           I think that would conclude my hearsay

1 objections for this testimony.

2 CO-HEARING OFFICER DODUC: Thank you.

3 MS. ANSLEY: Thank you.

4 CO-HEARING OFFICER DODUC: Let me ask

5 Mr. Deeringer:

6 Do you wish Miss Ansley to send that list or  
7 do you have it down?

8 MR. DEERINGER: The list would be helpful to  
9 have in writing, if it's available.

10 CO-HEARING OFFICER DODUC: If you could just  
11 send it to the service list.

12 MS. ANSLEY: Okay.

13 MR. DEERINGER: Thank you.

14 CO-HEARING OFFICER DODUC: Just so everyone  
15 knows:

16 Pursuant to our February 21st, 2017, ruling,  
17 this is how we deal with hearsay, at least the hearsay  
18 objection as to which Miss Ansley just noted.

19 Hearsay objections are noted for the record  
20 and will be taken into consideration when reviewing the  
21 evidence and making findings.

22 Before relying on any testimony to which a  
23 timely hearsay objection has been made, we will  
24 evaluate whether the testimony or exhibit contains  
25 hearsay statements and whether an exception to the

1 hearsay rule applies.

2           Consistent with Government Code Section 11513,  
3 we will not rely solely on hearsay evidence to support  
4 a finding.

5           All right. With the noted hearsay objections,  
6 your exhibits are hereby moved into the record,  
7 Mr. Wright.

8           MR. WRIGHT: Yes.

9                                       (Friends of the River's Exhibits FOR-1  
10                                      through FOR-111 received in evidence)

11           CO-HEARING OFFICER DODUC: Thank you.

12           Thank you, all witnesses.

13           By the way, I have to say that you did a very  
14 fine job in your direct testimony, concise, and you  
15 spoke to us rather than just reading off a sentence --  
16 I mean, reading off a paper, so that was one of the  
17 best presented, I think, direct testimony we've heard.

18           MR. WRIGHT: Thank you very much.

19           CO-HEARING OFFICER DODUC: All right.

20 Mr. Colin (sic), hard act to follow.

21           Mr. Bailey, sorry. I keep wanting to call you  
22 Mr. Colin.

23           Are you doing okay?

24           THE REPORTER: (Nodding head.)

25           CO-HEARING OFFICER DODUC: We don't need to

1 break yet?

2 THE REPORTER: (Shaking head.)

3 CO-HEARING OFFICER DODUC: We can stand up and  
4 stretch while the shift is being made.

5 With the exception of Dr. Shilling, who has  
6 taken the oath previously, if the other witnesses could  
7 please stand and raise your right hand.

8

9 Andria Ventura,

10 Fraser Shilling

11 and

12 Sherri Norris,

13 called as witnesses by the Environmental  
14 Justice Coalition for Water, having been duly  
15 sworn, were examined and testified as follows:

16 CO-HEARING OFFICER DODUC: And are you sure  
17 that your cellphone has been silenced?

18 WITNESS NORRIS: Yes.

19 CO-HEARING OFFICER DODUC: All right. Thank  
20 you.

21 Be seated.

22 CO-HEARING OFFICER MARCUS: While his hand is  
23 up.

24 WITNESS SHILLING: Do you swear?

25 (Laughter.)

1 CO-HEARING OFFICER DODUC: I pick my moments.

2 Mr. Bailey, you had, I think, a Policy  
3 Statement you wanted to give?

4 MR. BAILEY: Yes, I do.

5 And I thought I'd handle the preliminaries  
6 that were mentioned only in brief early before as well  
7 before we do that.

8 Colin Bailey on behalf of Environmental  
9 Justice Coalition for Water, joined by Miss Osha  
10 Meserve, also for EJCW.

11 Thanks for accommodating our panel earlier  
12 last week.

13 As was mentioned earlier, I regret to inform  
14 the Board that Mr. Heagerty is ill and facing down a  
15 couple days worth of medical procedures.

16 That being the case, we mentioned earlier that  
17 we would be withdrawing his testimony, and I think  
18 that's what the proper procedure dictates at this  
19 point. So I will go ahead and withdraw his -- his  
20 testimony, which is EJCW-38.

21 All right. And then jumping into the Policy  
22 Statement.

23 CO-HEARING OFFICER DODUC: Okay.

24 MR. BAILEY: Actually, please remind me: How  
25 much time do I have for that?



1 CO-HEARING OFFICER DODUC: Three minutes.

2 MR. BAILEY: Three minutes. Okay. I think  
3 I'll be fairly short.

4 But here we go. Three minutes.

5 MR. BAILEY: So, Environmental Justice  
6 Coalition for Water, EJCW, is a statewide non-profit  
7 organization supporting a coalition of grassroots  
8 environmental justice organizations.

9 It's our view that WaterFix as proposed  
10 presents significant challenges and risks to  
11 environmental justice and tribal communities now and  
12 into the future.

13 Traditionally, in California, water policy and  
14 major infrastructure decisions have been made without  
15 the benefit of meaningful input from low-income  
16 communities, communities of color, California indian  
17 tribes, youths and other underrepresented communities.  
18 In fact, it's EJCW's exper -- belief that exclusion  
19 from these forums has, in fact, been the norm.  
20 Happily, we have made some progress in that report --  
21 in that regard.

22 The Central Valley Project and the battle over  
23 resources flowing to and through it in the Delta are an  
24 example of that.

25 EJCW actually formed in 1999 as a coalition of

1 urban farm worker, subsistence fishers and tribes all  
2 concerned about the then CALFED process and its lack of  
3 a voice for environmental justice in tribal  
4 communities, who then fought for a place at the table.  
5 Fast forward 18 -- some 19 years, I guess it is now,  
6 and we are in a very similar posture.

7 I think we can claim some significant progress  
8 in integrating environmental justice considerations  
9 into -- and communities into policy-making processes,  
10 not least of which are evidenced by this very Board.

11 Human right to water policy adopted by the  
12 legislature in 2011 and, of course, the State Water  
13 Board's efforts around human rights water resolution  
14 adopted in 2016, and much, much more are prime examples  
15 of that shift.

16 Nevertheless, WaterFix remains largely the  
17 domain of large water agencies, many of which, in our  
18 view, serve as proxies for for-profit and for -- and  
19 private corporate entities.

20 Through EJCW's witnesses -- witness testimony,  
21 I should say, and that of some of the other groups that  
22 you've heard, from Restore the Delta, AquAlliance and  
23 so forth, you've heard or will hear that WaterFix would  
24 have deleterious impacts to low-income urban  
25 ratepayers, who will pay more than is affordable at the

1 household level to support this very costly Project,  
2 farming and farm worker communities, especially in the  
3 Delta, which ranks among the poorest and  
4 least-opportune regions of the state, those engaged in  
5 fishing in and around the Delta for subsistence,  
6 cultural and/or traditional religious purposes.

7           And, honestly, the WaterFix seems to be poised  
8 to do very little or nothing to address lack of access  
9 to safe, clean, affordable water for drinking and  
10 sanitation per the human right to water policy for  
11 communities that currently do not have reliable access.

12           So, on the whole, EJCW asserts that the  
13 WaterFix is contrary to public interest and public  
14 trust, as you heard from last week's panel, and should  
15 be denied.

16           Should it be approved, EJCW would seek  
17 significant mitigation to ensure the economic, public  
18 health and other impacts to EJ and tribal communities  
19 will leave them no worse off than from WaterFix.

20           Today, EJCW's witnesses will speak to some of  
21 those public interests that are implicated by the  
22 WaterFix Project.

23           With that, I'm prepared to move on to our  
24 panel.

25           CO-HEARING OFFICER DODUC: Thank you.

1 So I believe you need an hour for direct?

2 MR. BAILEY: Probably a little less.

3 CO-HEARING OFFICER DODUC: A little less?

4 All right. So we'll look and see about

5 3 o'clock, then.

6 MR. BAILEY: Yes, I think that's right.

7 DIRECT EXAMINATION BY

8 MR. BAILEY: All right. To begin,

9 Miss Ventura, could you please state your name -- Yeah.

10 Please state your name and spell it for the

11 record.

12 WITNESS VENTURA: My name is Andria Ventura.

13 That's A-N-D-R-I-A, V-as-in-Victor-E-N-T-U-R-A.

14 MR. BAILEY: Thank you.

15 And have you examined Exhibit EJCW-22?

16 WITNESS VENTURA: I have.

17 MR. BAILEY: Is it a true and correct copy of

18 your prepared direct testimony?

19 WITNESS VENTURA: It is.

20 MR. BAILEY: Did you prepare it?

21 WITNESS VENTURA: I prepared it in conjunction

22 with yourself, Mr. Bailey.

23 MR. BAILEY: Do you have any corrections to

24 make to your testimony?

25 WITNESS VENTURA: I do not.

1 MR. BAILEY: With that, would you please  
2 summarize your testimony.

3 WITNESS VENTURA: And I am going to apologize  
4 for reading a little bit, because -- Usually I try not  
5 to, but I don't want to miss of my points here, so --  
6 Though my point is very simple.

7 So, again, my name is Andrea Ventura. I am  
8 the Toxics Programs Manager for Clean Water Action.  
9 And central to our mission is that all people,  
10 regardless of race, ethnic identity, economic position,  
11 education, or any other social factor, they all have --  
12 all people have the right to access to safe water and  
13 to share equitably in the benefits of our waterways.

14 So I'm here today to state the obvious: That  
15 it is incumbent upon the state to restore and maintain  
16 the integrity of its waterways, including ensuring that  
17 water quality assures that our waters are fishable and  
18 swimmable, and eliminating pollutant discharges.

19 The primary point of my testimony is that the  
20 Water Rights Change Petition will hinder plans  
21 established to remediate and protect the Delta and  
22 San Francisco Bay watersheds, particularly for complex  
23 bioaccumulative contaminants, such as mercury, which  
24 I've worked extensively on.

25 You will hear about Dr. Shilling's research.

1 And that has indicated that there is a significant  
2 potential of increased bioaccumulation of methyl  
3 mercury in fish that would interfere with efforts to  
4 reduce methyl mercury loadings in the Delta, as  
5 proposed by a team deemed approved by this State Board,  
6 as well as bioaccumulation in the fish.

7           And this in itself should be ample reason to  
8 reject the Water Rights Change Petition, in my view.  
9 However, the problem is exacerbated by what I believe  
10 is the disproportionate burden that continued -- that  
11 continued and potentially increased methyl mercury  
12 loads place on tribes, low-income Californians, and  
13 communities of color who practice subsistence fishing.

14           The reality is that the fishing and cultural  
15 needs of tribes and other communities of color and  
16 low-income communities have not traditionally been  
17 protected.

18           As some of you know, I began working on TMDLs  
19 for bioaccumulate contaminants in 2003, both in  
20 San Francisco Bay watershed and the Delta.

21           And none of the numerous TMDLs that I have  
22 been involved with since then have established fish  
23 tissue targets that would protect anglers and their  
24 children who consume fish sometimes every day,  
25 certainly several times during the week.

1           Yet any short walk along popular fishing spots  
2 in the Bay Area or participation in community meetings  
3 of diverse populations in the Delta quickly  
4 demonstrates that there are significant numbers of --  
5 of people that are fishing and consuming high levels of  
6 contaminated fish.

7           By not recognizing the needs and subsequent  
8 practices of these disadvantaged communities, the  
9 State's TMDL process unintentionally, but in reality,  
10 did create a fundamental situation of environmental  
11 injustice.

12           While current pollution prevention and  
13 remediation plans will protect sports fishers, without  
14 formal recognition of subsistence fishing and tribal  
15 cultural issues, efforts to meet Clean Water Act  
16 quality standards end up protecting the privileged few  
17 and not those most dependent on the State's watersheds.

18           This was confirmed in a report that Clean  
19 Water Action produced several years ago that was  
20 informed by input from many different kinds of experts  
21 that that was one of the major problems, that we  
22 weren't looking at subsistence fishing or cultural  
23 uses.

24           Because of that situation, I, over a decade,  
25 have advocated that the State Water Resource Control

1 Board recognize subsistence fishing for non-tribal  
2 communities as beneficial uses of California waters.  
3 And we have also supported tribal efforts to protect  
4 their community's health and cultural conditions.

5           And these efforts did come to fruition on  
6 May 2nd, 2017, when the State Board did adopt  
7 definitions for three new beneficial uses for  
8 non-tribal subsistence fishing, tribal subsistence  
9 fishing, and tribal cultural uses.

10           Now I'm focused on having -- making sure that  
11 appropriate waterways that do support these beneficial  
12 uses are so designated, starting with San Francisco  
13 Bay, but we are also very interested in the Delta.

14           Why are they necessary? The example of  
15 mercury is particularly pertinent. Mercury is  
16 negatively impacting beneficial uses of many waters of  
17 the State by making fish unsafe for human and wildlife  
18 consumption.

19           Although mercury occurs naturally in the  
20 environment, concentrations of mercury exceed  
21 background levels because of human activities.

22           We all know that gold and mercury mining  
23 practices are a predominant source of legacy mercury  
24 pollution -- not a surprise to anyone -- though there  
25 are also contemporary sources.



1           In the context of the WaterFix, however, it is  
2 important to note that the largest source of the highly  
3 contaminated San Francisco Bay's mercury is the Central  
4 Valley because the rivers carry the mercury from remote  
5 regions through the Delta and into the bay.

6           I would say that it was particularly fitting  
7 in the end that the State Board actually recognized  
8 these beneficial uses in conjunction with its plan to  
9 address mercury. Resolution 2017-0027 approved Part 2  
10 of the Water Quality Control Plan for inland surface  
11 waters, enclosed basin estuaries of California, tribal  
12 and subsistence fishing beneficial uses and mercury  
13 provisions.

14           In addition to defining the three new  
15 beneficial uses, the State Water Board did approve one  
16 new narrative and four new numeric mercury objectives  
17 to apply to inland surface waters and closed-basin  
18 estuaries, with the exception of water bodies or a --  
19 water body segments with site-specific mercury  
20 objectives.

21           These provisions obviously will be implemented  
22 through NPDES Permits, water quality certifications,  
23 waste discharge requirements, or waivers of WDRs.

24           This action provides a consistent and  
25 regulatory approach throughout the state by sending

1 mercury limits to protect the beneficial uses  
2 associated with the consumption of fish by both people  
3 and wildlife, including our most vulnerable  
4 communities.

5           The process that this Water Board implemented  
6 to establish these beneficial uses and the mercury  
7 provisions was a multiyear effort, included a  
8 comprehensive stakeholder process that included  
9 impacted communities, public interest advocates, as  
10 well as the regulated community, and we feel that that  
11 was incredibly important.

12           There were numerous hearings, staff reports  
13 and other opportunities to provide that comment, as my  
14 written testimony has indicated. I won't read through  
15 all of that for you.

16           And given that the Board did establish these  
17 beneficial uses as part of the public interest, it is  
18 my opinion that you have used its authoritative  
19 evidence.

20           And I would assert that decisions related to  
21 the California WaterFix must take into account the  
22 potential impacts of the Project on water quality and  
23 contamination of fish that could exacerbate or create  
24 new risks to subsistence fishing communities and tribal  
25 cultural uses.

1 I have reviewed Dr. Shilling's prepared  
2 testimony, dated November 30th -- he will obviously  
3 expand on that -- recounting the negative impacts from  
4 the Delta Tunnels Project for fish health and those who  
5 consume them.

6 And as such, based on that, I have concluded  
7 that this Project does put subsistence fishers and  
8 tribal communities at disproportionate risk from  
9 exposure to mercury and other health-threatening  
10 contaminants.

11 This is, in my view, contrary to the  
12 aforementioned beneficial uses, the public interest and  
13 the State Board's intent to equitably protect all  
14 Californians. It would also further impede the future  
15 designation of water bodies as supporting subsistence  
16 fishing or cultural uses.

17 We don't want to perpetuate such environmental  
18 injustice, particularly for these anglers. We do see  
19 that this Board has a commitment to environmental  
20 justice in equity and, for that reason, we believe that  
21 this -- that moving ahead with this Petition would not  
22 be in the public interest.

23 MR. BAILEY: Thank you, Miss Ventura.

24 Dr. Shilling, you're already entered into the  
25 record.

1           So have you examined EJCW Exhibit 2?

2           WITNESS SHILLING: Yes.

3           MR. BAILEY: Great.

4           Is it a true and correct copy of your prepared  
5 direct testimony?

6           WITNESS SHILLING: Yes.

7           MR. BAILEY: Did you prepare it?

8           WITNESS SHILLING: Yes.

9           MR. BAILEY: Do you have any corrections to  
10 make to your testimony?

11          WITNESS SHILLING: No.

12          MR. BAILEY: That's it.

13          Would you please summarize your testimony.

14          WITNESS SHILLING: Sure.

15          No PowerPoint this time and so excuse me for  
16 reading, and I'll reference the exhibits as I go for  
17 your benefit.

18          With my oral testimony, I'll provide evidence  
19 about the potential and likely impacts of the Twin  
20 Tunnels Project on procedural and material aspects of  
21 environmental justice as it relates to California  
22 Indian tribes and local communities and their use of  
23 fish in the Delta Region.

24          The changes proposed in the Petition will  
25 unreasonably affect fish, recreational and public trust

1 uses in the Delta Region through decreased tribal,  
2 recreational angling, and subsistence beneficial uses  
3 of fish. This is based on likely impacts on fish  
4 availability and fish quality.

5           In terms of my expertise in this area, I  
6 received my Ph.D. from the University of Southern  
7 California in 1992 in aquatic ecology.

8           My research since beginning at the University  
9 of California, Davis, in 1995 and especially since  
10 joining the Department of Environmental Science and  
11 Policy, has focused on the use of environmental  
12 information in infrastructural and social conditions in  
13 making better management and policy decisions.

14           In the last 15 years, I focused my research on  
15 water quality and quantity conditions in waterways,  
16 social use of fisheries in the Delta and throughout  
17 California, and impacts of transportation  
18 infrastructure on fish and wildlife.

19           In that period, I've collaborated with  
20 multiple local, State and Federal organizations. I  
21 have published papers in the technical and  
22 peer-reviewed literature about procedural environmental  
23 justice, including as it relates to water decisions in  
24 the Delta, as well as issues of fish contamination with  
25 mercury, and consumption of these fish by people in the

1 Delta.

2           This is in more detail in my Statement of  
3 Qualifications, EJCW-21.

4           In terms of procedural environmental justice,  
5 as described in my written testimony, environmental  
6 justice has been firmly vetted in State and Federal law  
7 and agency policy for almost 20 years.

8           Despite these well-known principles and laws,  
9 the Twin Tunnels Project proponents did not include  
10 low-income communities and communities of color as  
11 participants in the decision-making -- and I  
12 differentiate that from participants in, maybe,  
13 outreach and decision-making itself -- nor did they  
14 address impacts to fishing and use of the Delta by  
15 nearby low-income communities and communities of color.  
16 The outreach was minimal and conducted over a decade  
17 prior to finalization of the Project.

18           The only fish consumption study that was  
19 cited, Silver, et al. 2007, EJCW-6, was not even  
20 conducted on the Delta waterways. It was conducted in  
21 a clinic in 2004.

22           In this way, the Project Proponents did not  
23 follow the most basic guidelines of environmental  
24 justice, recognition of who is impacted, describing and  
25 mitigating for the inequities of the impacts, and

1 inclusion of impacted parties in decision-making  
2 processes. And this is described in EJCW-3.

3 Just as the Project Proponents did not  
4 adequately consult or include communities in  
5 decision-making or impact analysis, they also did not  
6 include tribes in the region, as described in EJCW-5.

7 The Proponents define tribal involvement as  
8 being confined to meetings with tribes who may suffer  
9 the significant and unavoidable impacts to  
10 archeological sites and materials in EJCW-5.

11 Although these are important considerations,  
12 they don't include the current and protected use --  
13 uses of the Delta waterways as fishing and material  
14 collection sites.

15 During a State Water Board-sponsored project  
16 that I led a few years ago, members of the Miwok tribe  
17 in Sacramento and the Miwok tribe in Middleton and Elk  
18 Grove both reported to me that they use Delta waterways  
19 for fishing, described in EJCW-7.

20 There's no evidence in the EIR that either  
21 tribe or some other tribe was consulted about impacts  
22 from Project construction and operation on their use of  
23 waterways in the Delta and beyond for fishing and  
24 material collection.

25 Traditional and contemporary tribal use of

1 waterways as sites of ritual and culture and to sites  
2 of fishing are protected by the State Water Board's  
3 beneficial use designations CUL and T-Sub.

4           This failure of Project Proponents is against  
5 State and Federal guidelines regarding consultation  
6 with tribes prior to and during development of Projects  
7 that would or could cause them harm.

8           In terms of fish availability, as far as I  
9 know, I have conducted the only regional studies of  
10 fishing and fish consumption by communities and tribes  
11 along Delta waterways and in their communities, which  
12 is in EJCW-7 and 9.

13           And if we could bring up the EJCW-17.

14           (Exhibit displayed on screen.)

15           WITNESS SHILLING: This is the diagram that's  
16 in my written testimony, which is EJCW-2 on Page 6.

17           So could we go to Page 6.

18           (Exhibit displayed on screen.)

19           WITNESS SHILLING: And I just want to  
20 show . . .

21           If you could go down.

22           (Exhibit displayed on screen.)

23           WITNESS SHILLING: Down, down, down. There's  
24 a map.

25           (Exhibit displayed on screen.)



1 WITNESS SHILLING: Next page.

2 (Exhibit displayed on screen.)

3 WITNESS SHILLING: Page 2? Sorry. On Page 2.

4 (Exhibit displayed on screen.)

5 WITNESS SHILLING: There we go. Okay.

6 So, where the arrow's pointing, it says

7 "Sacramento River." Upstream of that is the Project  
8 location.

9 The darkness of those symbols indicates the  
10 number of people that fish along that stretch of the  
11 river. These were data collected by Department of Fish  
12 & Game. At the time, it was called Department Fish &  
13 Game.

14 This is also the area where I conducted a lot  
15 of the field research upstream of, and including, and  
16 downstream of the location of the Project, the intakes.  
17 It is one of the most heavily fished areas in the  
18 region and in the vicinity of Sacramento.

19 Thank you.

20 These studies were publicly funded. They're  
21 well known and freely available. Despite that, these  
22 studies were not cited in the Project documents. The  
23 only study cited was conducted prior to 2007 in a  
24 clinic in Stockton, which is the EJCW-6. And though it  
25 provided important information about the wide array of

1 ethnicities involved in fishing in the South Delta, it  
2 was not the most recent, most comprehensive, or  
3 inclusive of the sites that are directly affected by  
4 the Project.

5           According to my studies, people from at least  
6 a couple of dozen ethnicities are eating fish from  
7 Delta waterways at the rate of one to two meals per  
8 week, provide the fish as food to their families, and  
9 are engaging in a culturally important activity and  
10 value the source of protein.

11           This act of subsistence fishing and fish  
12 consumption is covered by Beneficial Uses T-Sub and SUB  
13 but there's no consideration in the EIR of potential  
14 impacts to this protected activity.

15           Even before it was designated as a beneficial  
16 use, the activity was occurring. So, prior to its  
17 designation, the use itself has still been occurring  
18 for a long time.

19           Others have or will describe the potential  
20 impacts of Project operation on endangered fish  
21 populations. However, there's no mention of the  
22 impacts to communities and tribes of loss of  
23 non-endangered edible fish populations, which is  
24 especially true at low flows, where you have higher  
25 temperatures.

1           In terms of fish contamination, not only is  
2 the quantity of edible fish at stake but also the  
3 quality.

4           In terms of potential for increased mercury in  
5 fish tissue and harmful algal blooms, with increased  
6 water temperature of both methyl mercury -- sorry --  
7 mercury methylation and entry into the food chain, and  
8 harmful -- harmful algal blooms become more likely.

9           For example, Dijkstra, et al. (2013), which is  
10 EJCW-11, demonstrated that, in estuarian conditions,  
11 increasing water temperatures from 19 degrees C to  
12 22 degrees C -- Which is exactly the range that we're  
13 looking at in the Project operation.

14           So with that 3-degree Celsius increase in  
15 temperature, there was a tripling in fish tissue  
16 mercury concentration. So a three-fold increase with  
17 just a 3-degree change in temperature.

18           Mercury methylation is carried out microbial  
19 processes, which respond quickly to change in water  
20 temperatures, both in metabolic activity and population  
21 size.

22           The modeling of impacts to water temperature  
23 by operating the Project are described within Project  
24 documents as "not predictive models of actual  
25 operations and resulting temperatures." EJCW-12.

1           In addition, the models are run at monthly  
2 time steps, so they're averaging over months. And wide  
3 swings in temperature, including high temperatures,  
4 will not be reflected in the model's representation of  
5 average conditions.

6           However, mercury methylation and  
7 bioaccumulation and harmful algal blooms don't respond  
8 gradually to changes in temperature. And that's  
9 described in EJCW-10, -11 and -14.

10           Mercury methylation and accumulation will  
11 accelerate as temperatures go up. But that newly  
12 accumulated mercury won't go away as temperatures go  
13 down. It will remain in the food chain and in fish  
14 tissue as described in EJCW-15.

15           The Project uses a standard for impacts for  
16 beneficial use of aquatic life, disregarding the fish  
17 consumption-related uses.

18           In quotes, and this is from EJCW 13 (reading):

19           "It should be noted that because  
20 aquatic life beneficial uses are the only  
21 uses expected to be affected by  
22 temperature changes under the various  
23 alternatives, the water quality chapter  
24 cross-references to Chapter 11, fish and  
25 aquatic resources, for all impact

1 assessments for temperature."

2 In other words, temperature impacts on mercury  
3 methylation and bioaccumulation in fish are not  
4 considered to be beneficial use impacts.

5 In the FEIR, Project Proponents also find that  
6 increases of 9 to 15 percent -- with unknown variation  
7 around these values -- in fish tissue mercury  
8 concentrations are possible in various Delta waterways  
9 but these are considered to be small "increases" and  
10 are "not expected to result in changes to beneficial  
11 use." That's in EJCW-13.

12 Assuming the calculated increase is correct --  
13 which I argue it is not -- a 10 percent increase in  
14 mercury is not small for subsistence fishes or their  
15 families.

16 For almost the entire scope of the issues of  
17 fish contamination, the Project Proponents are  
18 disconnected from reality. The FEIR lists Largemouth  
19 Bass as the basis for the modeling and impact analysis.  
20 However, Largemouth Bass is not only just one of over a  
21 dozen fish caught and consumed in the Delta waterways,  
22 including the Sacramento River, but is not the  
23 preferred fish for any single ethnicity that's been  
24 interviewed by me or the study EJCW-6. So that's  
25 EJCW-6 and 9.

1           The Project Proponents ignore both the science  
2 of fish use and contamination in the Delta waterways  
3 and the importance of increases in mercury in fish.

4           Their analysis appears based on an outmoded  
5 idea of white anglers in boats recreationally catching  
6 Bass and the uses of average temperatures for a process  
7 that is exacerbated by short-term spikes in  
8 temperature, not gradually affected by monthly changes.

9           In 2016, there were 144,775 annual and  
10 lifetime fishing licenses sold in counties containing  
11 the Delta and Lower Sacramento River. There were  
12 another 35,000 sold as daily licenses.

13           In a study I carried out for the Regional  
14 Board 5 in 2009, I estimated that about 10 percent of  
15 anglers and their families were consuming fish at 10  
16 times or greater the maximum recommended safe amount of  
17 fish caught in the Delta. That's in EJCW-17.

18           The importance of that 10-fold greater is that  
19 that is the level at which mercury is known to cause  
20 neurological and other harm. So the number of people  
21 potentially impacted by changes in fish quality is  
22 large.

23           Tribes and communities currently using the  
24 Delta and tributaries in subsistence and traditional  
25 ways would be adversely affected by operation of the

1 twin tunnels. This harm will occur through lack of  
2 tribal and impacted community participation in the  
3 decision-making process, perceived and actual changes  
4 in fish availability, and perceived and actual changes  
5 in fish quality. Beneficial uses SUB, T-Sub, and CUL  
6 would be negatively impacted by the preferred  
7 alternative.

8           In many ways, tribes and communities in the  
9 Delta are being sacrificed for water users and uses  
10 elsewhere.

11           For all of the reasons I've cited, in my  
12 professional opinion, the Twin Tunnels Project would  
13 result in long-term and potentially irrevocable harm to  
14 regional communities and tribes through impacts to  
15 environmental justice and consultation processes,  
16 traditional and subsistence use of fish, and fish  
17 contamination.

18           That concludes my testimony.

19           CO-HEARING OFFICER DODUC: Before we begin.

20           Miss Norris, do you need to go check on  
21 somebody?

22           WITNESS NORRIS: She was going to use the  
23 restroom. I think she should be okay. Thank you for  
24 asking.

25           CO-HEARING OFFICER DODUC: All right.

1 WITNESS NORRIS: I've taken her there twice.

2 MR. BAILEY: It takes a village.

3 (Laughter.)

4 MR. BAILEY: Actually, before we proceed,  
5 Miss Norris, I have a couple followup.

6 Since Figure 1 is already up there, that  
7 actually facilitates one question I wanted to ask  
8 Dr. Shilling to drill down on.

9 I'm familiar with your graph. It wasn't as  
10 clear to me looking at it now what some of the  
11 numerical -- what some of the numbers were  
12 corresponding with some of those shades.

13 And I was wondering if you could do two  
14 things: First would be to identify on there, maybe  
15 with the aid of the cursor -- I don't know -- to  
16 identify where the intakes are approximately?

17 WITNESS SHILLING: Okay.

18 MR. BAILEY: And then I have a followup  
19 question about the . . .

20 WITNESS SHILLING: Okay. So the light color,  
21 which is the light gray, is 1 to 75 people per river  
22 mile, and so you can see that legend in the top left.  
23 The darkest is over a thousand people per river mile.

24 And so Department of Fish & Game would survey  
25 a mile of river, then go down and survey the next mile



1 of river, and estimate the number of people total that  
2 were fishing on different stretches of the river. And  
3 they will do this every year, this survey.

4 And then the location of the Project.

5 Upstream of where it says "Sacramento River,"  
6 there's a long straightaway, and then there's a sudden  
7 bend, and that's Scribner Bend.

8 And Clarksburg's boat ramp is just downstream  
9 of that; Clarksburg and Hood are just downstream of  
10 that. So that's immediately adjacent to the intakes  
11 just upstream.

12 So the fishing activity below and above the  
13 proposed intake areas are among the highest in the  
14 Sacramento Region.

15 MR. BAILEY: Great. Thank you.

16 And then do you have, even if rough, an  
17 estimate for the total numbers involved in the . . .

18 WITNESS SHILLING: No.

19 MR. BAILEY: Above and below the --

20 WITNESS SHILLING: No, not really. Because we  
21 don't know if those people who were surveyed one day  
22 may have gone to another -- They do have some control  
23 of how they do the estimates for that duplication.

24 But the number of licenses is the best way to  
25 estimate the number of people who are fishing. Because

1 most people who get the license in the Sacramento  
2 region fish in Sacramento waterways.

3 MR. BAILEY: Thank you.

4 All right. Miss Norris, everything is okay?

5 WITNESS NORRIS: Yeah. Thank you.

6 Thank you. Yes, everything's okay. Thank you  
7 everyone.

8 MR. BAILEY: Would you please state your name  
9 and spell it for the record.

10 WITNESS NORRIS: Sherri Norris, S-H-E-R-R-I,  
11 Norris N-O-R-R-I-S.

12 MR. BAILEY: And have you examined EJCW-33  
13 titled "Errata"?

14 WITNESS NORRIS: Yes, I have.

15 MR. BAILEY: It probably should have been  
16 titled as revised but nevertheless.

17 Is it a true and correct copy of your prepared  
18 direct testimony?

19 WITNESS NORRIS: It is.

20 MR. BAILEY: And did you prepare it?

21 WITNESS NORRIS: Yes, I did.

22 MR. BAILEY: Do you have any corrections to  
23 make to your testimony?

24 WITNESS NORRIS: I do.

25 MR. BAILEY: Could we kindly bring that up so

1 as to direct the attention to those who need to see it.

2 Again, that's EJCW-33-Errata.

3 (Exhibit displayed on screen.)

4 MR. BAILEY: Got it.

5 WITNESS NORRIS: And the first one is on

6 Page 11.

7 (Exhibit displayed on screen.)

8 WITNESS NORRIS: Revised date thirty -- or,

9 sorry, Number 33.

10 (Exhibit displayed on screen.)

11 WITNESS NORRIS: There we go.

12 Okay. So -- Oops. I moved this.

13 So the sentence begins with "however," and the

14 part that I'd like to strike is, it says, "9,000 cubic

15 feet per second," and, then, right after that, it says,

16 "or 15."

17 And, thank you, Google for changing my

18 document for me.

19 It has "mission acre-feet." But you can just

20 strike "or 15 mission acre-feet" in its entirety. I

21 would just have -- I'd just strike that, too, it said

22 million or not. So from the word "or" through to the

23 word "feet." And then leave the words "of water" and

24 then the word "annually" would also be stricken.

25 That's it for that page.

1           And there's one more, and it's on Page 12, and  
2 that begins with Revised Number 36.

3           (Exhibit displayed on screen.)

4           WITNESS NORRIS: And we are looking at -- The  
5 last three words say, "since the Delta." So those  
6 three words would be stricken.

7           And it carries over to the next page all the  
8 way to the -- "DSC" would also be stricken, through to  
9 the comma, and that's it.

10          MR. BAILEY: Thank you very much.

11          WITNESS NORRIS: Thank you.

12          MR. BAILEY: Would you please summarize your  
13 testimony.

14          WITNESS NORRIS: Okay. So, my testimony  
15 begins with an understanding of the -- the -- the Water  
16 Rights Change Petition's relationship of the public  
17 trust doctrine and the connectivity to California  
18 tribes in the upper watersheds of the Sacramento River  
19 from which water's diverted, and then through to the  
20 California tribes receiving waters in the San Francisco  
21 Bay.

22          I proceed to describe how the WaterFix Project  
23 resulting FEIR was prepared and approved without the  
24 proper process to gather relevant information from all  
25 of the tribes in California who would be affected.

1           And that the result is -- of the WaterFix  
2 diversions would substantially and irreparably harm the  
3 aquatic ecosystem of the Sacramento River, the upstream  
4 watersheds from which water's diverted, and from those  
5 in the receiving waters in the San Francisco Bay.

6           This environmental degradation will result in  
7 irreparable harm to the ability of Northern California  
8 tribes to practice their subsistence fishing and  
9 cultural beneficial uses and will prohibit cultural and  
10 spiritual continuance of the people -- their peoples,  
11 and prohibit California tribes from restoring and  
12 maintaining critical habitat for food -- traditional  
13 foods, including aquatic foods, and those that rely on  
14 the water in the north -- in Northern California, and  
15 for cultural resources.

16           The tribes in Northern California are, again,  
17 place-based cultures and can't move these somewhere  
18 else. So it's extremely important that those tribes  
19 outside of the footprint area of this Project, that  
20 their information would have been included.

21           So, to -- to go into it a little more.

22           Public trust. The FEIR states that there's  
23 unavoidable risk that was identified and that any  
24 mitigation would not be sufficient to render that  
25 impact less than significant.

1           And this assumes that there would be no other  
2 options possible other than what is in the WaterFix  
3 Option 4A.

4           And I -- From my conversations that I've had  
5 with the tribes in Northern California, and from my  
6 experience and from my -- my perspective, that the  
7 process of engagement with all California tribes who  
8 will be affected, we are missing that information to  
9 advise this Water Change Petition, in particular from  
10 tribes in upstream source and downstream receiving  
11 waters.

12           The Department of Water Resources and Bureau  
13 of Reclamation chose to amend their outreach to tribes  
14 in a critical time in the development of the WaterFix  
15 plan and the subsequent public review of the FEIR.

16           The result meant that the body of information  
17 that we have is incomplete and that a plan does not  
18 adequately support or benefit the public, including  
19 tribes and tribal members who rely on these waters for  
20 food, subsistence, fishing, and cultural ways of life.

21           The existing and proposed interbasin transfers  
22 that -- where the water would be coming from to enter  
23 into the Sacramento River system were not considered  
24 and, therefore, those communities aren't -- have not --  
25 their public interests have not been protected or

1 considered.

2           Let's see. The last piece that's connected to  
3 that, from my testimony -- and I won't read the whole  
4 thing; it's obviously there -- but that the recent  
5 adoption of the Department of Water Re -- Water Board  
6 for statewide and tribal subsistence fishing and tribal  
7 cultural beneficial uses should be considered.

8           But at the time that the WaterFix was first  
9 being looked at as the option, without even that  
10 adoption of that beneficial use in place, the north  
11 coast had subsistence fishing and cultural benefits use  
12 definitions there. And, so, regardless of the timing,  
13 that information should have been brought forward a  
14 long time ago.

15           That's brief. I can go into more detail if  
16 people would like, but . . .

17           MR. BAILEY: We are ahead of schedule.

18           That concludes our direct examination.

19           Oh -- I'm sorry -- there was one other thing,  
20 just persnickety.

21           Dr. Shilling, could you -- I forgot that your  
22 Statement of Qualifications was actually separate from  
23 your testimony. So for purposes of entry into the  
24 record -- into evidence, rather, did you examine  
25 EJCW-21?

1 WITNESS SHILLING: Yes.

2 MR. BAILEY: And is it a true and correct copy  
3 of your qualifications?

4 WITNESS SHILLING: Yes.

5 MR. BAILEY: Great. Thank you.

6 That concludes our direct.

7 CO-HEARING OFFICER DODUC: All right. Thank  
8 you.

9 Why don't we take a short break since we're  
10 we've been at this for over an hour.

11 We will return at -- Oh, okay. We'll make it  
12 3 o'clock.

13 Is that too much time? 2:55. 2:55.

14 (Recess taken at 2:43 p.m.)

15 (Proceedings resumed at 2:55 p.m.):

16 CO-HEARING OFFICER DODUC: All right. It is  
17 2:55. We're back in session.

18 And turning down to DWR. I think you said 20  
19 minutes?

20 MS. ANSLEY: Yes. I'm going to try and hold  
21 it to that.

22 CO-HEARING OFFICER DODUC: Okay. So around  
23 3:15.

24 MS. ANSLEY: I have a -- I have only a couple  
25 questions for Miss Norris and for Miss Ventura



1 regarding just the general basis for their opinion and  
2 their qualifications.

3           And then the bulk of my questions are for  
4 Dr. Shilling, and I will not stray off his testimony so  
5 we will be talking with his conclusions regarding  
6 methyl mercurization, and fishing access, and impacts  
7 of the California WaterFix as alleged in his direct  
8 testimony.

9           CO-HEARING OFFICER DODUC: Thank you.

10                           CROSS-EXAMINATION BY

11           MS. ANSLEY: So, Miss Norris, I can start with  
12 you.

13           Miss Norris, have you ever testified as an  
14 expert in the State Court?

15           WITNESS NORRIS: Not in State Court, no, I  
16 have not.

17           MS. ANSLEY: How about in Federal Court?

18           WITNESS NORRIS: No.

19           MS. ANSLEY: Do you have a degree in biology?

20           WITNESS NORRIS: No. I didn't say that I did,  
21 though.

22           MS. ANSLEY: I'm sorry? I missed that.

23           WITNESS NORRIS: I did not say that I did,  
24 though, but, no, I do not.

25           MS. ANSLEY: How about hydrology? Do you have

1 any formal training in hydrology?

2 WITNESS NORRIS: No.

3 MS. ANSLEY: On Paragraph 11 -- Page 11,  
4 Paragraph 31 of your testimony, EJCW-33-Errata.

5 (Exhibit displayed on screen.)

6 MS. ANSLEY: You state that the California  
7 WaterFix will not protect -- Oh, Paragraph 31. I'm  
8 sorry.

9 (Exhibit displayed on screen.)

10 WITNESS NORRIS: The short one? Yeah.

11 MS. ANSLEY: You state that the California  
12 WaterFix will not protect endangered -- endangered fish  
13 and wildlife.

14 That could be Paragraph 32. If it is, it's  
15 my -- my mistake.

16 WITNESS NORRIS: 31 and 32, they're -- one  
17 leads into the other.

18 MS. ANSLEY: Okay. Do you see that testimony  
19 generally?

20 WITNESS NORRIS: 31 and 32? Yes, I see that.

21 MS. ANSLEY: Have you reviewed the Biological  
22 Opinions for the California WaterFix?

23 WITNESS NORRIS: I have.

24 MS. ANSLEY: And it's your understanding that  
25 these Biological Opinions were issued with a no

1 jeopardy finding?

2           WITNESS NORRIS: No. The -- The -- My  
3 testimony has to do with the fact that tribes up --  
4 be -- outside of the footprint area have not been --  
5 have not had a chance to look at the FEIR. Therefore,  
6 the information that would be in your finding would be  
7 lacking of that information from tribes up -- up and  
8 down the watershed.

9           So, in my understanding, that is that the  
10 information in your report does not include what we  
11 know to be true as far as this -- the -- what . . .  
12 what needs to happen downstream in order for those  
13 waters to be safe, and what needs to happen upstream.

14           So if you're looking at the -- only the  
15 footprint area information, and you're not including  
16 what the tribes know -- When I work with tribes, we  
17 have -- The tribes we work with have Environmental  
18 Directors that are skilled in watershed management and  
19 they did not have any opportunity to provide their  
20 information.

21           And when I talked to them about this  
22 information, they look at it and immediately were  
23 saying, "There is so much missing in here. This is not  
24 accurate."

25           So I guess I've seen your information but it

1 is not, according to what I know, true.

2 CO-HEARING OFFICER DODUC: I'm sorry.

3 I'm going to have to ask Mr. Stark to take his  
4 conversation outside.

5 WITNESS NORRIS: Sorry. Was that not clear?  
6 I'm sorry.

7 MS. ANSLEY: Yes.

8 WITNESS NORRIS: And I guess I should have --  
9 I was -- It was brought to my attention a moment ago  
10 that -- that I did not introduce myself properly.

11 So my -- myself, I -- I have been working with  
12 tribes to 2001 on information on fish consumption and  
13 what -- where -- and mercury, so some of the earliest  
14 studies that are out there with mercury in the human  
15 body was information that at the time I started, was  
16 just new.

17 Since that time, we work with tribes from  
18 South San Francisco all the way up to the northern  
19 border and all the way across. And so there's about,  
20 we figured out, 54 tribes that we work for. So I work  
21 for the California Indian Environmental Alliance and  
22 primarily with their Environmental Directors.

23 MS. ANSLEY: Okay.

24 WITNESS NORRIS: I don't know if that helps,  
25 just background.

1 MS. ANSLEY: Well, yes, I understand that.

2 And I -- I don't mean to be disrespectful but  
3 I only have a limited number of time to cross.

4 If you feel like there's additional  
5 information that you need to provide to your direct  
6 testimony, your attorney can --

7 WITNESS NORRIS: Okay.

8 MS. ANSLEY: -- ask you again on --

9 But, of course, if --

10 WITNESS NORRIS: That's fine.

11 MS. ANSLEY: -- you need a full answer, I'm  
12 not trying to cut you off, either.

13 WITNESS NORRIS: No, that's fine.

14 MS. ANSLEY: So the basis for your testimony  
15 in paragraph 32 -- and I apologize because I think I do  
16 not have the errata version. The basis is your review  
17 of the FEIR and information that you feel is missing  
18 from the FEIR; is that correct?

19 WITNESS NORRIS: I'm looking it over just to  
20 make sure, but yes.

21 MS. ANSLEY: Okay. What -- The nature of my  
22 question went to whether you were discussing any  
23 particular evidence that was -- that was included in  
24 the FEIR regarding impacts, but it sounds like that  
25 what you're saying is that information that you allege

1 is not included in the FEIR.

2 WITNESS NORRIS: It's not included in the  
3 FEIR, but also -- Also, I would state that in the  
4 second portion of that paragraph, that there's not  
5 information in the FEIR that is clear how this is the  
6 Endangered Species Act and Federal Endangered Species  
7 Act, how those species that are most concerned, of the  
8 tribes that I work with, would be protected.

9 They were not -- All of those species that are  
10 traditional species of fish were not included in those.  
11 So there's a lot of attention paid on specific species,  
12 like Largemouth Bass or Salmon and the times of year  
13 that Salmon are running those rivers, but there's not  
14 information about a multitude of species that are of  
15 concern for tribes.

16 MS. ANSLEY: By "endangered," are you  
17 referring to the Endangered Species Act?

18 WITNESS NORRIS: Some of them are from the  
19 Endangered Species Act, some of which are California.

20 For example, there's -- there's fish that are  
21 looking into Federal Endangered Species Act, like, for  
22 example, the -- We are seeing out there that there's  
23 not the Lamprey, and we're seeing decreases in number  
24 of Sturgeon that we're seeing, and we're -- So there's  
25 some of it is what I see and some of it is what are

1 fish that are on the Endangered Species Act or that may  
2 be soon. For example, in the Hitch species --

3 MS. ANSLEY: So --

4 WITNESS NORRIS: -- that are -- that have  
5 recently been put on to California.

6 MS. ANSLEY: What I'm just trying to determine  
7 is what you meant by "endangered."

8 So my understanding from your answer just now  
9 is what you meant by "endangered" here isn't  
10 necessarily limited to the Endangered Species Act.

11 WITNESS NORRIS: It's not limited to it. It  
12 is inclusive of it. And in addition to other species  
13 that tribes are concerned about that have not been  
14 studied hardly at all that we're seeing declines in.

15 MS. ANSLEY: Miss Ventura, have you testified  
16 as an expert in State Court?

17 WITNESS VENTURA: No.

18 CO-HEARING OFFICER DODUC: Have you testified  
19 as an expert in Federal Court?

20 WITNESS VENTURA: No, I have not.

21 MS. ANSLEY: Looking at your testimony, which  
22 I believe is EJCW-22 --

23 WITNESS VENTURA: Um-hmm.

24 MS. ANSLEY: -- is that correct?

25 WITNESS VENTURA: Yes.

1 MS. ANSLEY: Is the basis for your testimony  
2 regarding impacts on -- due to the California WaterFix  
3 based on Dr. Shilling's testimony?

4 WITNESS VENTURA: Largely upon that. I have  
5 looked at that.

6 The point that I am trying to put forward is  
7 that protecting subsistence fishing, as well as tribal  
8 cultural uses, is in the public interest. And if  
9 Dr. Shilling's data is correct, and there is this  
10 potential, that would be a reason to not move ahead.

11 MS. ANSLEY: Okay. But, just to make sure  
12 that I have a clear answer --

13 WITNESS VENTURA: Yes.

14 MS. ANSLEY: -- to my question, you are  
15 relying on Dr. Shilling --

16 WITNESS VENTURA: Yes, I am.

17 MS. ANSLEY: -- for potential impacts.

18 WITNESS VENTURA: Yes.

19 MS. ANSLEY: Thank you.

20 And then the remainder of my questions are for  
21 Dr. Shilling.

22 Dr. Shilling, have you ever testified as an  
23 expert in State Court?

24 WITNESS SHILLING: Yes.

25 MS. ANSLEY: In what matters were you



1 qualified as an expert?

2 WITNESS SHILLING: In that case, it was in  
3 San Mateo, and it was in relation -- I was testifying  
4 for the State in a wildlife/vehicle collision case  
5 where the state was proposed to have liability for  
6 injury.

7 MS. ANSLEY: Did you say wildlife/vehicle  
8 collision?

9 WITNESS SHILLING: Wildlife/vehicle collision.

10 MS. ANSLEY: And do you remember the name of  
11 that case?

12 Or one of the parties?

13 WITNESS SHILLING: I can pull it up right now.

14 MS. ANSLEY: Oh.

15 WITNESS SHILLING: Case number?

16 MS. ANSLEY: If you'd like, that's fine.

17 WITNESS SHILLING: It's CIV 505048.

18 MS. ANSLEY: And were there any other matters  
19 in which you were qualified as an expert in State  
20 Court?

21 WITNESS SHILLING: I was a witness for  
22 Caltrans in another case that didn't go to trial, and  
23 I'm not sure if that qualifies since I didn't -- wasn't  
24 deposed or on the stand, but I was a witness.

25 MS. ANSLEY: Back to your testimony in

1 San Mateo court, the case -- the number that you just  
2 read to me, CIV 505048.

3 WITNESS SHILLING: Yes.

4 MS. ANSLEY: What was the nature of your  
5 testimony?

6 WITNESS SHILLING: I was and am an expert on  
7 wildlife/vehicle collision in California. And I was  
8 talking about the . . . hotspots of wildlife/vehicle  
9 collisions and whether or not the incident that  
10 occurred was related to statistically significant  
11 hotspots in that particular type of incident. So it  
12 was a statistical analysis in that area.

13 MS. ANSLEY: How about Federal Court? Have  
14 you testified in Federal Court?

15 WITNESS SHILLING: No.

16 MS. ANSLEY: Looking now to your testimony,  
17 which is EJCW-2.

18 Have you performed any independent analysis or  
19 modeling in order to arrive at the conclusions you  
20 present in your testimony?

21 WITNESS SHILLING: Do you mean independent of  
22 the papers that are cited, the studies of mine?

23 MS. ANSLEY: Well, yeah. Let me be more  
24 specific.

25 WITNESS SHILLING: Okay.

1 MS. ANSLEY: So have you performed any  
2 independent analysis of modeling of rates of methyl  
3 mercury -- mercurization under the proposed Cal  
4 WaterFix?

5 WITNESS SHILLING: No.

6 MS. ANSLEY: How about any specific studies  
7 regarding impacts on fishing access for the California  
8 WaterFix?

9 WITNESS SHILLING: The word "independent" is  
10 throwing me off.

11 Do you mean did I compare where people are  
12 fishing based on my field work with where the  
13 construction activities are?

14 MS. ANSLEY: I don't. I think I'm looking  
15 for:

16 Did you conduct any additional field analysis  
17 or modeling analysis in relation to your testimony here  
18 today on the impacts of the California WaterFix?

19 WITNESS SHILLING: Not in addition to the  
20 studies I've already conducted.

21 MS. ANSLEY: I understand.

22 Your testimony discusses the recently  
23 promulgated beneficial uses: Cultural CUL, T-Sub which  
24 I believe is tribal subsistence, and subsistence which  
25 is SUB --

1 WITNESS SHILLING: Um-hmm.

2 MS. ANSLEY: -- is that correct?

3 WITNESS SHILLING: Yes.

4 MS. ANSLEY: And these were promulgated by the  
5 Water Board via resolution in May 2017; is that  
6 correct?

7 WITNESS SHILLING: Yes.

8 MS. ANSLEY: Isn't it true that these  
9 designations have been not utilized for the Delta as of  
10 today?

11 WITNESS SHILLING: As far as I know, they have  
12 not been.

13 MS. ANSLEY: Oh, okay. I'm sorry. I thought  
14 you were going on.

15 WITNESS SHILLING: I can.

16 MS. ANSLEY: How about the Sacramento River in  
17 the vicinity of the proposed intakes?

18 WITNESS SHILLING: No. Those uses are not  
19 designated. They occur, but they're not designated.

20 MS. ANSLEY: Okay. On Page 4 of your  
21 testimony -- And please stop me if you need to refer to  
22 your testimony more broadly.

23 (Exhibit displayed on screen.)

24 MS. ANSLEY: Do you have a copy of it in front  
25 of you?

1 WITNESS SHILLING: I have a hard copy but we  
2 can go on the screen --

3 MS. ANSLEY: Sure.

4 WITNESS SHILLING: -- to help everybody.

5 MS. ANSLEY: Sure. This is EJCW-2. Was it  
6 two? Yeah. Two.

7 So looking at Page 4, starting at Line --  
8 around Line 21 --

9 (Exhibit displayed on screen.)

10 MS. ANSLEY: -- and then carrying over to  
11 Page 5, you -- you discuss the Section 404 application  
12 to the Army Corps of Engineers for the California  
13 WaterFix; is that correct?

14 WITNESS SHILLING: That's correct.

15 MS. ANSLEY: And this was an application made  
16 in 2015; is that correct?

17 WITNESS SHILLING: I'm not positive the date  
18 of the application.

19 MS. ANSLEY: Is it your understanding that  
20 that process before the Army Corps of Engineers is a  
21 separate process from the proceeding before this Water  
22 Board?

23 WITNESS SHILLING: My understanding is that  
24 that application for the Army Corps is necessary for  
25 the Project to go forward.

1 MS. ANSLEY: It is your understanding that  
2 permit issuance by the Army Corps of Engineers is  
3 necessary -- a Section 404 Permit is necessary for the  
4 California WaterFix to go forward.

5 Is that your answer?

6 WITNESS SHILLING: Yeah.

7 MS. ANSLEY: Okay. But that is not a decis --  
8 The issuance of the 404 Permit is not a decision to be  
9 made by this Water Board.

10 Do you understand that?

11 WITNESS SHILLING: Yes.

12 MS. ANSLEY: Okay. Looking at Page 6 of your  
13 testimony, starting to -- the section on Impacts to  
14 Edible Fish Availability.

15 (Exhibit displayed on screen.)

16 MS. ANSLEY: So Page 6, Line 1 through Page 7,  
17 Line 5.

18 You discuss the Clarksburg boat ramp.

19 WITNESS SHILLING: Yes.

20 MS. ANSLEY: Isn't it true that the Clarksburg  
21 boat ramp will remain in place during construction of  
22 the California WaterFix as well as following the  
23 completion of the construction?

24 WITNESS SHILLING: I don't know, but that  
25 sounds like a good idea.

1 MS. ANSLEY: Is it your understanding that the  
2 California WaterFix has committed to a measure to  
3 enhance fishing access in cooperation with the County  
4 of Yolo and the Sacramento Department of Parks and  
5 Recreation? I hope I have that right.

6 WITNESS SHILLING: I didn't really direct  
7 access. I addressed the availability of fish, which I  
8 think will go down regardless of access.

9 MS. ANSLEY: On Page 7, Line 4, I thought that  
10 your testimony was saying that the intake will remove  
11 an important site of subsistence --

12 WITNESS SHILLING: Oh, yeah.

13 MS. ANSLEY: -- is that --

14 WITNESS SHILLING: The area is important.

15 But the -- I guess the point is lost that the  
16 if there's a decline of fish in that area, then people  
17 who are accessing that part of the river will not get  
18 fish and that's the primary -- one of the primary  
19 locations for fishing in the region.

20 So it wasn't the access itself that was  
21 important. It was fishing in the region of the intakes  
22 that was important.

23 MS. ANSLEY: Okay. Can we look at, then,  
24 Page 7 still.

25 You -- In Lines 16 through 20 on Page 7 --

1 (Exhibit displayed on screen.)

2 MS. ANSLEY: -- you cite a study regarding  
3 estuarine conditions increasing water temperatures from  
4 19C to 22C resulting in a tripling in fish tissue  
5 mercury concentration; is that correct?

6 WITNESS SHILLING: That's correct.

7 MS. ANSLEY: And that study is -- The basis of  
8 that conclusion is this study by . . .

9 WITNESS SHILLING: Dijkstra.

10 MS. ANSLEY: Dijkstra (2013).

11 WITNESS SHILLING: Yes.

12 MS. ANSLEY: That study was done in Maine on  
13 the Little River estuary; is that correct?

14 WITNESS SHILLING: That's correct.

15 MS. ANSLEY: And it was conducted in six salt  
16 marsh pools; is that correct?

17 WITNESS SHILLING: "Estuarine" meaning  
18 brackish water --

19 MS. ANSLEY: Is it your understanding --

20 WITNESS SHILLING: -- pools, yes.

21 MS. ANSLEY: Oh, I'm sorry. Did you finish  
22 your answer?

23 WITNESS SHILLING: Yeah.

24 MS. McCUE: To make sure I'm clear, is it your  
25 understanding that the sampling in the field study, a



1 component of that, this is reporting occurred in six  
2 salt marsh pools?

3 WITNESS SHILLING: Yes, but that doesn't mean  
4 the water is as saline as the ocean.

5 MS. ANSLEY: Can we look at EJCW-11, which I  
6 believe is a copy of this study.

7 (Exhibit displayed on screen.)

8 MS. ANSLEY: Can we go to .pdf Page 5.

9 (Exhibit displayed on screen.)

10 MS. ANSLEY: Is your conclusions regarding  
11 tripling in fish tissue mercury concentration based  
12 solely on the upper left figure there? I think this is  
13 Figure 2 of this study.

14 WITNESS SHILLING: I think so.

15 MS. ANSLEY: And it's your understanding that  
16 this is a figure based on the field study?

17 WITNESS SHILLING: Yes.

18 MS. ANSLEY: And is it your understanding --  
19 Did you draw your conclusion by reading this graph of  
20 the fitted line between those 12 points?

21 WITNESS SHILLING: Yes.

22 Well, I don't remember if the slope is in the  
23 text, which I would have used instead.

24 MS. ANSLEY: On Page 8 of your testimony, you  
25 now discuss the --

1 (Exhibit displayed on screen.)

2 MS. ANSLEY: -- temperature modeling attached  
3 to the Incidental Take Permit. I believe -- the  
4 Incidental Take Permit; is that correct?

5 On Page -- On Page 8 of your testimony?

6 WITNESS SHILLING: Yes.

7 MS. ANSLEY: Okay. And is it your  
8 understanding that modeling was -- What it does is, it  
9 incorporates the modeling for the Biological  
10 Assessment?

11 WITNESS SHILLING: Yes. I think so. Yeah.

12 MS. ANSLEY: And looking at Pages 13 through  
13 14 --

14 (Exhibit displayed on screen.)

15 MS. ANSLEY: -- you talk about changes in  
16 water temperature caused by Proposed Project.

17 Do you see that?

18 WITNESS SHILLING: 13 and 14 of . . .

19 MS. ANSLEY: Of the same page. I'm sorry.

20 WITNESS SHILLING: You mean lines?

21 MS. ANSLEY: I'm sorry. Page 8, lines 13 to  
22 14. I apologize.

23 WITNESS SHILLING: Can you repeat your  
24 question.

25 MS. ANSLEY: I -- I completely can. Sorry

1 about that.

2 WITNESS SHILLING: Okay.

3 MS. ANSLEY: So, on Page 8, Lines 13 to 14,  
4 you discuss (reading):

5 ". . . Seemingly small and thus harmless  
6 changes in water temperature caused by  
7 the Proposed Project."

8 Is that correct?

9 WITNESS SHILLING: Yes.

10 MS. ANSLEY: Now, looking back at the previous  
11 paragraph, which is Paragraph 1 through 12 --

12 (Exhibit displayed on screen.)

13 MS. ANSLEY: -- starting with Lines 5 through  
14 6, you state (reading):

15 "In drought conditions and under the  
16 preferred alternative, releases from  
17 Folsom to Lower American River and then  
18 to the Sacramento River/Delta would be as  
19 high as 70 degrees F."

20 And you cite Page 5.C-18.

21 Do you see that?

22 WITNESS SHILLING: Yes.

23 MS. ANSLEY: Isn't it true that 5.C-18 is  
24 actually a table of temperature targets used in the  
25 HEC5Q modeling?

1           WITNESS SHILLING:  Yes, for an operational  
2 regime associated with the Project.  So operating the  
3 Project.

4           MS. ANSLEY:  And then you cite a number of  
5 figures, and we can call them up -- Lines 7 through  
6 12 -- where you discuss temperature results of the  
7 modeling.

8           Isn't it true that there is no statistical  
9 difference between the Proposed Action and the  
10 No-Action --

11           (Timer rings.)

12           MS. ANSLEY:  -- and the No-Action Alternative  
13 on any of the graphs you cite here?

14           WITNESS SHILLING:  That may be true, but the  
15 mercury methylation doesn't operate based on averages.  
16 It's -- It's exacerbated by increases in temperature.  
17 And, then, if that mercury is incorporated into trophic  
18 levels, different trophic levels including fish, then  
19 it doesn't go away very quickly.

20           So spikes in temperature are very important,  
21 even if your average condition doesn't vary very much.  
22 If you have a spike, you will cause additional mercury  
23 methylation.

24           MS. ANSLEY:  I understand that that is your  
25 testimony later starting, I think, on Paragraph 13.

1           But what I'd like to concentrate here is  
2 making sure the record is clear about what these graphs  
3 actually show.

4           Can we pull up EJCW-12?

5           (Exhibit displayed on screen.)

6           MS. ANSLEY: And can we go to .pdf Page 204,  
7 if I got these all right. I tried to look up the .pdf  
8 pages.

9           (Exhibit displayed on screen.)

10          MS. ANSLEY: So this is one of the graphs you  
11 reference for river temperatures as high as 70 -- or  
12 greater than 70 degrees Fahrenheit at Knights Landing;  
13 is that correct?

14          WITNESS SHILLING: Yes.

15          MS. ANSLEY: And this graph -- Although it's  
16 not listed in your testimony, this graph provides  
17 results for both the Proposed Action and the No-Action  
18 Alternative; is that correct?

19          WITNESS SHILLING: That particular one, yes.

20          MS. ANSLEY: Okay. On Page 10 of your  
21 testimony -- I'm ready to move on past this graph  
22 unless you'd like to look at the rest of the graphs.

23          But I believe your testimony was that the rest  
24 of the graph shows the same result, that there is no  
25 statistical difference between the Proposed Action and

1 the No-Action Alternative, at least in terms of the  
2 monthly averages shown by those graphs; is that  
3 correct?

4 WITNESS SHILLING: Yes. But it's not  
5 informative when it comes to mercury methylation and  
6 the risk of mercury bioaccumulation because the monthly  
7 average it is not the way that you would index that  
8 risk.

9 As well the models, as I said, are not  
10 representative of actual conditions that would be  
11 predicted to result from operation of the Project.

12 MS. ANSLEY: Okay. My questions went to -- I  
13 understand your testimony.

14 I would respectfully move to strike. My  
15 questions were solely as to the results of those graphs  
16 which were cited in his testimony in a different  
17 paragraph.

18 WITNESS SHILLING: You also referenced the  
19 statistical relationship between the No-Action  
20 Alternative and the Project Alternative, which does  
21 relate to how the modeling and the statistical analysis  
22 is done.

23 MS. ANSLEY: I was referring to the results of  
24 that modeling.

25 WITNESS SHILLING: Yes. And you compared the

1 NAA and PA, whether or not they were statistically  
2 significantly different or similar.

3 MS. ANSLEY: Based on the averages shown on  
4 that graph and I believe you answered me.

5 WITNESS SHILLING: Including the part you  
6 struck, yes.

7 MS. ANSLEY: Yes. And -- Yes. That is a  
8 serious objection.

9 CO-HEARING OFFICER DODUC: All right.

10 MS. ANSLEY: On Page 10 of your testimony,  
11 Lines 15 through 24.

12 (Exhibit displayed on screen.)

13 MS. ANSLEY: Starting on Line 15, you say  
14 (reading):

15 "Most disturbingly, WaterFix finds  
16 that increases of 9-15 percent . . . in  
17 fish tissue mercury are possible in  
18 various Delta waterways . . ."

19 Do you see that testimony?

20 WITNESS SHILLING: Yes.

21 MS. ANSLEY: And at the end of that sentence  
22 on Line 18, you cite Chapter 8, Page 8-525 of the FEIR.

23 Do you see that?

24 WITNESS SHILLING: Yes.

25 MS. ANSLEY: Is it your understanding that

1 those are the results for Alt 4 as opposed to Alt 4A?

2 WITNESS SHILLING: Why don't we go to that  
3 page.

4 MS. ANSLEY: Sure.

5 So that would be EJCW-13, just to make it  
6 quicker and easier because they have an excerpt.

7 (Exhibit displayed on screen.)

8 MS. ANSLEY: And this is Page 8-525.

9 (Exhibit displayed on screen.)

10 WITNESS SHILLING: (Examining document.)

11 MS. ANSLEY: I personally can't see it so if  
12 you'd like to --

13 WITNESS SHILLING: It's in the bottom  
14 paragraph.

15 MS. ANSLEY: -- blow up any portion . . .

16 WITNESS SHILLING: I'm just looking at the  
17 document.

18 WITNESS NORRIS: Scroll up.

19 MS. ANSLEY: That's fine. Whatever you need  
20 to look at to confirm to yourself which alternative  
21 this is discussing.

22 WITNESS SHILLING: Yes. I think they were  
23 referring to 4.

24 MS. ANSLEY: Okay. Do you recall reviewing  
25 the -- the similar testimony on impact -- or not



1 testimony.

2 Do you recall reviewing the results of  
3 analysis in the FEIR for Alt 4A?

4 WITNESS SHILLING: Yeah, I don't recall now.

5 MS. ANSLEY: So you don't recall that all the  
6 concentrations reported there were less than -- were  
7 8 percent or less?

8 WITNESS SHILLING: No, I don't remember that.

9 But that's because it was four months ago.  
10 I'm sorry.

11 MS. ANSLEY: I have no further questions for  
12 Dr. Shilling.

13 CO-HEARING OFFICER DODUC: I don't see  
14 Mr. Herrick anymore.

15 Miss Des Jardins, do you have questions?

16 MS. DES JARDINS: Yes, I do.

17 CO-HEARING OFFICER DODUC: Miss Des Jardins,  
18 you had requested 10 minutes.

19 For whom do you have questions?

20 MS. DES JARDINS: For Dr. Shilling.

21 CO-HEARING OFFICER DODUC: All right.

22 MS. DES JARDINS: And it's about the modeling.  
23 Big surprise. So --

24 CO-HEARING OFFICER DODUC: A sense of humor's  
25 always appreciated. Thank you.

1 CROSS-EXAMINATION BY

2 MS. DES JARDINS: So, Dr. Shilling, on Page 8  
3 of your testimony, I'd like to go to Section 13.

4 (Exhibit displayed on screen.)

5 MS. DES JARDINS: We just had that up.

6 And you discuss -- On Line 21 at 13, you  
7 discuss the finding in that there's no statistically  
8 significant effect on water temperature.

9 And you say it's because of how the modeling  
10 and the statistical significance was carried out?

11 WITNESS SHILLING: Yes.

12 MS. DES JARDINS: Can -- I think you explain a  
13 little bit more, and go on to the next page. I'd like  
14 to go to Page 10 at 4.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: And you mention the  
17 temperature results are presented on a monthly time  
18 step from both HEC5Q and the Reclamation Temperature  
19 Model?

20 WITNESS SHILLING: Yeah. I see that.

21 MS. DES JARDINS: Is that correct?

22 WITNESS SHILLING: Yeah.

23 MS. DES JARDINS: And the (reading):

24 "Monthly flow and temperature  
25 results are unlikely to address the daily

1 variability in the river

2 temperatures . . ."

3 WITNESS SHILLING: Yes.

4 MS. DES JARDINS: And so the only -- You are  
5 saying they only reflect changes in the monthly means?

6 WITNESS SHILLING: Yes.

7 And so they hide any important variation at a  
8 daily or weekly timeframe when you could exacerbate the  
9 mercury methylation or other temperature-related  
10 problems.

11 And, then, even if you brought them back under  
12 control and your monthly average temperature didn't  
13 change from month to month or beyond expected, you  
14 could still cause those pollution or contamination or  
15 other problems.

16 MS. DES JARDINS: And -- And one of the things  
17 you state further there, down on Line 10, you say that  
18 there's large -- one of the reasons is that (reading):

19 ". . . Temperatures ranges within months  
20 are so large due to daily and weekly  
21 variation."

22 WITNESS SHILLING: Yeah. So if you have very  
23 wide ranges that overlap each other --

24 CO-HEARING OFFICER DODUC: Dr. Shilling --

25 MS. DES JARDINS: Yeah.

1 CO-HEARING OFFICER DODUC: -- if I might  
2 interrupt.

3 This is not just directed at Miss Des Jardins.  
4 She just happens to be the one doing it right now.

5 So many times a witness -- I mean, a wit -- a  
6 cross-examiner will just repeat what's already in the  
7 testimony without asking a question, and then the  
8 witness feels obligated to expand upon what's in his or  
9 her testimony.

10 I would ask: One, that, Miss Des Jardins, you  
11 ask a specific question and not just ask him to affirm  
12 what's already in his written testimony; and, two,  
13 Dr. Shilling, that you not expand unless specifically  
14 requested to.

15 WITNESS SHILLING: Okay.

16 MS. DES JARDINS: Well --

17 WITNESS SHILLING: I will do that.

18 MS. DES JARDINS: -- I would like to know  
19 about the daily and weekly variation in the Delta.

20 CO-HEARING OFFICER DODUC: Yes. Then ask  
21 that.

22 MS. DES JARDINS: Yeah.

23 Can you tell me a little bit about why there's  
24 large daily and weekly variation in the Delta.

25 WITNESS SHILLING: Well, you would expect, due

1 to air and temperature conditions, that you would have  
2 that variation between night and day. And then from  
3 week to week, as weather conditions change, you would  
4 also expect to have temperature differences from week  
5 to week.

6 MS. DES JARDINS: Isn't that, like, generally  
7 a property of the Bay Area, that there's very large,  
8 for --

9 WITNESS SHILLING: I think it's --

10 MS. DES JARDINS: -- example, daily  
11 variations.

12 WITNESS SHILLING: Yeah. It's a general  
13 property of anywhere you have night and day and water.

14 MS. DES JARDINS: And there's a lot of water  
15 in the Delta --

16 WITNESS SHILLING: Yes.

17 MS. DES JARDINS: -- as well as San Francisco  
18 Bay.

19 Okay. And so you're concerned -- so there --  
20 that there could be biologically meaning -- meaningful  
21 differences in daily temperatures?

22 WITNESS SHILLING: Yes.

23 MS. DES JARDINS: Because of spikes? Is  
24 that --

25 WITNESS SHILLING: Yes.

1 MS. DES JARDINS: -- because of spikes during  
2 the day?

3 So what kind of -- Under what circumstances  
4 would you see spikes in daily temperatures during the  
5 day with -- because of the Project?

6 WITNESS SHILLING: Well, if air -- Oh, because  
7 of the Project?

8 MS. DES JARDINS: Yeah.

9 WITNESS SHILLING: Under low-flow conditions  
10 in particular, when this is a critical issue, you would  
11 expect to see much greater variation because there's  
12 less water volume.

13 And so changes in air temperature and wind  
14 conditions will have a greater effect on lower-flow  
15 levels of the Sacramento River because there's less  
16 volume.

17 But this is also true of the other waterways  
18 that are part of the general operation of the Project,  
19 because at low-flow conditions for those waterways as  
20 well, you would also expect to have spikes in mercury  
21 methylation with spikes in water temperature, which  
22 originate from air temperature and wind conditions.

23 So it's not just in the vicinity of the  
24 Project. It's also the water used to operate the  
25 Project and try to control temperatures.

1           In drought conditions, or under exceptionally  
2 hot conditions, it would be very challenging to -- to  
3 manage the temperature at that location unless you had  
4 overriding legal considerations. And even those can be  
5 overturned for the sake of, I don't know, whatever  
6 reason is prevailing at the moment.

7           So the point of that is that if you create a  
8 condition where it's possible to get those increases in  
9 water temperature, you're very likely to get increases  
10 in mercury methylation.

11           MS. DES JARDINS: You also mention harmful  
12 algal blooms.

13           Do you . . . Are those correlated with spikes  
14 in temperature?

15           WITNESS SHILLING: In water temperature, yes,  
16 they're correlated with -- they can be correlated with  
17 spikes in water temperature.

18           MS. DES JARDINS: So -- So not just with,  
19 like, changes in the mean temperature but changes in  
20 the maximum temperature?

21           WITNESS SHILLING: It depends on the duration  
22 of the spike. If it's long enough for the population  
23 of algal to -- algae to actually increase and then  
24 start exponentially growing, then you would expect to  
25 get a bloom as long as you had sufficient nutrients to

1 also support the bloom.

2 MS. DES JARDINS: And then you mention young  
3 cold water-dependent fish as an example of an impact by  
4 a spike.

5 So how long of a spike would you need to kill,  
6 for example, you know, Salmon Smolts?

7 WITNESS SHILLING: If you reach 25 degrees  
8 Celsius for really not very -- on the order of hours or  
9 less, you'll kill Salmon smolt.

10 Those temperatures are reached during the  
11 migra -- the down migration period of Salmon in the  
12 Delta, especially in the San Joaquin River, less  
13 commonly in the Sacramento.

14 But if you were to -- As you approach  
15 25 degrees C, growth rate slows down, and as you hit  
16 around 25 degrees C, you're definitely going to get  
17 mortality. If you go above 15 degrees C, you affect  
18 growth rate.

19 So, really, the temperatures we're talking  
20 about here are already causing harm to the Salmon --  
21 down-migrating Salmon.

22 MS. DES JARDINS: Are you aware that Salmon in  
23 the Delta grow more slowly?

24 WITNESS SHILLING: Than?

25 MS. DES JARDINS: Than Salmon in other



1 estuaries?

2 WITNESS SHILLING: I didn't know that.

3 MS. DES JARDINS: Okay. Well, then, I won't  
4 ask you about that.

5 What other cold water-dependent fish would be  
6 affected?

7 WITNESS SHILLING: Well, in terms of  
8 anadromous fish, Steelhead would occur. There are --  
9 There are anadromous fish that are less anadromous,  
10 let's say, than Salmon, Sturgeon, Lamprey. I mean,  
11 they're definitely anadromous. We just don't think of  
12 them as much. And then the Smelt -- Delta Smelt,  
13 Longfin Smelt, they come in from the bay to -- to --  
14 into the Delta to spawn.

15 MS. DES JARDINS: So the temperature spikes  
16 also affect Delta Smelt?

17 WITNESS SHILLING: If you get warm enough  
18 temperature for a cold water-dependent fish, then you  
19 can cause reduction in growth and eventually mortality,  
20 depending on the temperature and the species.

21 MS. DES JARDINS: Okay.

22 CO-HEARING OFFICER DODUC: Hold on, please.

23 MS. ANSLEY: I believe that Dr. Shilling's  
24 answer's correct, but I object to the form of the  
25 question.



1 MS. DES JARDINS: Oh.

2 MS. ANSLEY: I do object to any testimony on  
3 temperature effects of -- due to operations that are  
4 not shown by any modeling or evidence, because he did  
5 not do any independent analysis.

6 So, to the extent he makes testimony about an  
7 impact that is not based on the Biological Assessment  
8 modeling that he references, then he is not basing his  
9 testimony on any evidence in the record.

10 CO-HEARING OFFICER DODUC: We will frame all  
11 of that as hypotheticals.

12 MS. DES JARDINS: Are you aware that this is  
13 also a hearing for the Water Quality Certification for  
14 the WaterFix Project?

15 WITNESS SHILLING: Yes.

16 MS. DES JARDINS: Do --

17 CO-HEARING OFFICER DODUC: Hold on.

18 Mr. Mizell.

19 MR. MIZELL: Yes.

20 I'd like to object as mischaracterizing the  
21 scope of this hearing. It is not a joint hearing on  
22 the Water Quality Certification.

23 CO-HEARING OFFICER DODUC: That is correct.

24 MS. DES JARDINS: Okay.

25 CO-HEARING OFFICER DODUC: The objection is

1 sustained.

2 MS. DES JARDINS: Are you aware that the  
3 information in this proceeding . . .

4 I'll just go on.

5 CO-HEARING OFFICER DODUC: Actually, you were  
6 on the right path.

7 MS. DES JARDINS: Do -- You know, are you  
8 aware that the information in this proceeding will be  
9 considered in the Water Quality Certification for the  
10 WaterFix Project?

11 WITNESS SHILLING: I'm just going to hold any  
12 opinion about that whole thing and ask that we go to a  
13 different question.

14 MS. DES JARDINS: I was just going to say --

15 WITNESS SHILLING: Just because --

16 MS. DES JARDINS: -- do you think --

17 WITNESS SHILLING: -- I don't know --

18 MS. DES JARDINS: -- that the Board --

19 WITNESS SHILLING: -- enough to answer  
20 correctly.

21 MS. DES JARDINS: -- should take subsistence  
22 fishing, beneficial use, into account when considering  
23 the Water Quality Certification?

24 WITNESS SHILLING: Yes.

25 MS. DES JARDINS: And are you aware that the

1 Department of Water Resources has a new version of the  
2 CalSim model with daily outputs?

3 WITNESS SHILLING: No.

4 MS. DES JARDINS: Okay. That concludes my  
5 questioning.

6 CO-HEARING OFFICER DODUC: Thank you.

7 Any redirect, Mr. Bailey? See, I stopped  
8 myself from calling you Mr. Colin. Mr. Bailey.

9 MR. BAILEY: I respond to either one. Thank  
10 you.

11 Just a brief few for Dr. Shilling.

12 CO-HEARING OFFICER DODUC: All right.

13 REDIRECT EXAMINATION BY

14 MR. BAILEY: Dr. Shilling, you were asked  
15 about the Clarksburg Boat Launch.

16 One of the -- Are you aware that one of the  
17 intakes is across from the boat launch?

18 WITNESS SHILLING: I believe so. I believe it  
19 is, yeah.

20 MR. BAILEY: And are you also aware that it's  
21 estimated to take a matter of some years during  
22 construction should WaterFix actually -- to construct  
23 the intakes, rather, should WaterFix be approved?

24 WITNESS SHILLING: Yes.

25 MR. BAILEY: So if there were construction

1 across the river from the Clarksburg boat ramp, could  
2 that interfere with fishing from or at the boat ramp?

3 WITNESS SHILLING: Possibly not because of  
4 access, but certainly from fish being present.

5 One of the reasons that the boat ramp was  
6 built there and that people crowd around Scribner Bend  
7 is, that's where the Sturgeon are and they're there  
8 because there's deep cold water pools. I doubt they  
9 would stay there during construction.

10 MR. BAILEY: Okay. Thank you.

11 That concludes my redirect.

12 CO-HEARING OFFICER DODUC: Any recross?

13 MS. ANSLEY: No, we don't have any recross.

14 CO-HEARING OFFICER DODUC: Does that include  
15 your case in chief, Mr. Bailey?

16 MR. BAILEY: That includes EJCW's case in  
17 chief.

18 CO-HEARING OFFICER DODUC: Would you like to  
19 move your exhibits into the record?

20 MR. BAILEY: Yes. EJ -- We would like to move  
21 EJCW Exhibits 2 through now 37, which excludes 38 which  
22 was formally Mr. Heagerty's and is now withdrawn, into  
23 evidence.

24 CO-HEARING OFFICER DODUC: Any objections?

25 MS. ANSLEY: Yes. Thank you.

1           Jolie-Anne Ansley for the Department of Water  
2 Resources.

3           As to Mr. Shilling's testimony, I'd like to  
4 move to strike his testimony regarding the Army Corps  
5 of Engineers' 404 Permit and the consultation necessary  
6 for the 404 Permit, which would be Page 4, Lines 21  
7 through Page 5, Line 13.

8           I believe it's also con -- there's also a  
9 conclusory statement on Page 11, Lines 5 through 7.

10           For the students that we had on Panel 1, I'd  
11 like to lodge a hearsay objection to EJCW-37, Page 5,  
12 the second Paragraph 21. There are two Paragraph 21s,  
13 but the second one has -- I'd lodge a hearsay objection  
14 to that paragraph.

15           And then, finally, I would like to lodge an  
16 objection to the -- the four students, Milo Wetherall,  
17 Luci Paczkowski, Allegra Schunemann and Caroline  
18 Schurz, being deemed experts in this proceeding. I  
19 believe that they are not qualified as experts in  
20 public trust resources. I believe they cited to no  
21 testimony.

22           They do have Statements of Qualifications on  
23 the back of their testimony. I'm happy to go into it.

24           But I would offer that it is more proper to  
25 change their designation from expert witness to lay

1 witness and, of course, then I would have no objections  
2 if that change was made.

3 CO-HEARING OFFICER DODUC: Mr. Bailey, your  
4 response to that last objection.

5 MR. BAILEY: I don't recall designating them  
6 as experts, but perhaps that happened.

7 I agree that they would probably be better  
8 classed as non-experts.

9 CO-HEARING OFFICER DODUC: All right.

10 MS. ANSLEY: So that would be -- just to make  
11 sure I wasn't clear for the record -- EJCW-34, EJCW-35,  
12 EJCW-36, and EJCW-37.

13 Thank you.

14 CO-HEARING OFFICER DODUC: And, I'm sorry, is  
15 it your objection to those exhibits or --

16 MS. ANSLEY: Those are the exhibits that I --  
17 of the students' testimony that I feel that should be  
18 designated as lay testimony, not expert testimony. I  
19 just failed to read their --

20 CO-HEARING OFFICER DODUC: Understood.

21 MS. ANSLEY: -- exhibit numbers.

22 Thank you.

23 CO-HEARING OFFICER DODUC: Response to any of  
24 the other objections?

25 MR. BAILEY: Just a point of clarification



1 because I think I missed it in my notes.

2           The -- The . . . objection to Dr. Shilling's  
3 reference to the Army Corps of Engineers' 404  
4 proceeding.

5           What was that objection?

6           MS. ANSLEY: So that objection is line --  
7 Page 4, Line 31 through Page 5, Line 13, and then  
8 Page 11, Lines 5 to 7.

9           And the objection would be that the Army Corps  
10 of Engineers' permitting process is outside the scope  
11 of this proceeding. It's a separate proceeding in  
12 front of another entity and another permitting Board.

13           And so the process that's done for purposes of  
14 the Section 404 Permit is not necessarily, and  
15 certainly not established in this testimony, the  
16 process that's before this Board.

17           So I would say, in the same vein that water  
18 certification and CEQA compliance and the Bay-Delta  
19 Water Quality Control Plan, that that is indeed a  
20 separate process from this proceeding.

21           MS. MESERVE: If I might inquire, however.

22           Isn't the Army Corps application, wasn't that  
23 put forth as part of the Petition, supporting the  
24 Petition?

25           MS. ANSLEY: I don't believe that we have

1 submitted that as an exhibit. I believe that you --  
2 you all submitted the 404 application as an exhibit.

3 I can let Mr. Mizell chime in. But my  
4 understanding is, Section 106 compliance, which is the  
5 Tribal Grant Program, is what Dr. Shilling is talking  
6 about here, and I think that that is outside the scope  
7 of the hearing issues.

8 CO-HEARING OFFICER DODUC: We will just take  
9 those objections under advisement.

10 All right. Thank you.

11 MS. GAYLON: Sorry. A point of  
12 clarification --

13 CO-HEARING OFFICER DODUC: Um-hmm.

14 MS. GAYLON: -- for the record.

15 You said EJCW-2 through 37, but that does not  
16 include EJCW-16, 23 or 33.

17 CO-HEARING OFFICER DODUC: Correct?

18 MR. BAILEY: Sorry. You're saying that's  
19 20 . . .

20 MS. GAYLON: Yes. You said the whole list but  
21 I'm pointing out three that should not be included.

22 16 was previously not accepted.

23 MR. BAILEY: Ah.

24 MS. GAYLON: 23 was never submitted; and 33  
25 was superseded by 33-Errata. So just for purposes of

1 clarity of the record.

2 CO-HEARING OFFICER DODUC: That's correct.

3 MR. BAILEY: Thank you for cleaning that up.

4 (Environmental Justice Coalition for  
5 Water's Exhibits EJCW-2 through  
6 EJCW-22, EJCW-24 through EJCW-33  
7 Errata, EJCW-34 through EJCW-37  
8 received in evidence)

9 CO-HEARING OFFICER DODUC: All right. Let's  
10 do some timekeeping for next week.

11 Yes, you are dismissed. Thank you --

12 WITNESS SHILLING: Thank you.

13 CO-HEARING OFFICER DODUC: -- very much. Safe  
14 travels back.

15 (Panel excused.)

16 CO-HEARING OFFICER DODUC: Unless we hear  
17 otherwise -- Unless you hear otherwise from us --  
18 Because we do have motions being submitted I believe  
19 it's tomorrow and then responses on Wednesday, unless  
20 you hear otherwise from us, when -- if we resume next  
21 Monday, we will begin with NRDC, Mr. Ouija from NRDC.

22 And I gather from the time estimates received  
23 last week that there is quite a bit of  
24 cross-examination for Mr. Obegi, so that's -- I'm  
25 guessing we'll take at least half a day.

1           So then we will get to Miss Des Jardins and  
2 PCFFA.

3           At this point, have you confirmed whether or  
4 not you're switching positions?

5           MS. DES JARDINS: Miss Doduc, PCFFA did put in  
6 a formal written request at 1:34 this afternoon to --  
7 to switch following up on Osha -- Miss Meserve's --

8           CO-HEARING OFFICER DODUC: So you are  
9 switching with . . .

10          MS. MESERVE: With the Stone Lakes' two  
11 panels, if that's okay with the hearing officers.

12          CO-HEARING OFFICER DODUC: Is that -- Are  
13 there any objections to that?

14          MR. MIZELL: Tripp Mizell, DWR.

15          We don't have an objection to the switch that  
16 was just mentioned. However, it does still leave open  
17 the question of in which order will Miss Des Jardins'  
18 panel go.

19          CO-HEARING OFFICER DODUC: Yes. So I'm asking  
20 Miss Des Jardins right now -- hold on a second -- is  
21 Dr. Fries prepared to present on Monday or Tuesday?

22          MS. DES JARDINS: Dr. Fries could present  
23 either day.

24          And if the NRDC cross went long, it might be  
25 most efficient to have him present at the end of

1 Tuesday rather than having the Stone Lakes panel start  
2 and then --

3 CO-HEARING OFFICER DODUC: I don't believe  
4 Mr. Obegi should take the entire day on Monday.

5 MS. DES JARDINS: Okay. So whatever's most  
6 efficient, as long as he can go on on the 9th or the  
7 10th, that would be great.

8 CO-HEARING OFFICER DODUC: All right. I  
9 expect we should be able to get to him the afternoon of  
10 Monday.

11 So the game plan is to begin with Mr. Obegi,  
12 and then to get to Dr. Fries.

13 And then we would get to Miss Meserve . . .  
14 yes, your two panels; right?

15 And, Miss Des Jardins, you should be getting  
16 some correspondence from us hopefully later today, if  
17 not tomorrow, regarding your subpoena witness and  
18 giving you some further instructions with respect to  
19 that.

20 MS. DES JARDINS: Thank you very much.

21 CO-HEARING OFFICER DODUC: I think that should  
22 cover us, at least for Monday, Tuesday and quite  
23 possibly Wednesday, depending on how much  
24 cross-examination is there for Miss Meserve's  
25 witnesses.

1           Are there any other housekeeping matter?

2           All right. Not seeing any, thank you all, and  
3 we will maybe see you on Monday.

4           And if we see you on Monday, we will be --  
5 where will we be? We will be -- Oh, back here, the  
6 Sierra Hearing Room.

7           (Proceedings adjourned at 3:43 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: April 8, 2018

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Candace L. Yount, CSR No. 2737