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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION)
HEARING)

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
SIERRA HEARING ROOM
1001 I STREET
SECOND FLOOR
SACRAMENTO CALIFORNIA

PART 2

Tuesday, April 10, 2018

9:30 A.M.

VOLUME 27

Pages 1 - 211

Reported By: Deborah Fuqua, CSR No. 12948
(A.M. Session)
Candace Yount, CSR No. 2737
(P.M. Session)

Computerized Transcription

1 APPEARANCES:

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present

5 Tam Doduc, Co-Hearing Officer:
6 Felicia Marcus, Chair and Co-Hearing Officer:

7 Staff Present

8 Andrew Deeringer, Staff Attorney
9 Conny Mitterhofer, Senior Water Resources Control Engr.

10

11 PETITIONERS

12 For California Department of Water Resources
13 Tripp Mizell, Senior Attorney

14 Duane Morris, LLP
By: Jolie-Anne Ansley, Attorney at Law

15 State Water Contractors
16 Becky Sheehan

17

18 PROTESTANTS

19 Local Agencies of the North Delta, Environmental
20 Council of Sacramento, Friends of Stone Lakes National
21 Wildlife Refuge, Save Our Sandhill Cranes
Osha Meserve

22 County of San Joaquin, San Joaquin County Flood Control
23 and Water Conservation District and Mokelumne River
24 Water and Power Authority
Thomas H. Keeling

25 (continued)

1

2 APPEARANCES (continued):

3

4 California Sportfishing Protection Alliance, California
5 Water Impact Network, AquAlliance

6 Michael Jackson

7

8 California Water Research
9 Deirdre Des Jardins

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1 Tuesday, April 10, 2018 9:30 a.m.

2 PROCEEDINGS

3 CO-HEARING OFFICER DODUC: All right. Good
4 morning, everyone. It's 9:30. We're back in this
5 water rights petition hearing for the California
6 WaterFix Project.

7 My name is Tam Doduc. With me to my right is
8 Board Chair and Co-Hearing Officer Felicia Marcus. To
9 my left are Andrew Deeringer and Conny Mitterhofer. We
10 are also being assisted today by Mr. Baker.

11 All right. Our usual three announcements
12 since I see one new face. Please take a moment and
13 identify the exits closest to you. In the event of an
14 emergency, the alarm will sound, we will evacuate using
15 the stairs down to the first floor and meet up in the
16 park across the street. If you're not able to use the
17 stairs, please flag down one of the safety people and
18 they will direct you into a protective area.

19 Secondly, this hearing is being recorded and
20 webcast, so please speak into the microphones after
21 making sure that it is on -- the green light should be
22 lit when it is. And please begin by stating your name
23 and your affiliation. Our court reporter is back with
24 us. We will make a transcript available at the
25 conclusion of Part 2. If you wish to have it sooner,

1 please make your arrangements directly with her.

2 And finally, most importantly, please take a
3 moment and put all noise-making devices to silent,
4 vibrate, do not disturb. All right.

5 MR. BAKER: Can we turn the name plates for
6 the court reporter?

7 CO-HEARING OFFICER DODUC: Ah, would you
8 please turn your name plates so the court reporter can
9 see them.

10 (Discussion off the record)

11 CO-HEARING OFFICER DODUC: A couple of
12 housekeeping matters. On March 19th, during the case
13 in chief for I believe it was the Water Forum,
14 Ms. Morris from State Water Contractors made an oral
15 objection, motion to strike portions of Mr. Bratovich's
16 oral testimony.

17 I indicated at the time that, when the
18 transcript is available, we would post it and allow
19 Group 11 to respond to Ms. Morris' motion/objection.
20 So Ms. Mitterhofer, will the transcript be posted later
21 today?

22 MS. MITTERHOFER: Yes, that's my
23 understanding.

24 CO-HEARING OFFICER DODUC: All right. Then
25 we'll give the Water Forum until 5:00 p.m. tomorrow to

1 respond to Ms. Morris's objection/motion.

2 Secondly, the revised order of presentation, I
3 believe was e-mailed out earlier today to everyone. It
4 reflects what we believe now to be the correct as well
5 as final, barring some catastrophe, order for
6 presentation of case in chief. The only correction I
7 will note is that, per Mr. Obegi's request yesterday,
8 NRDC et al.'s opening statement will be provided when
9 Dr. Rosenfield presents his direct.

10 Another housekeeping matter, next Friday, just
11 for planning purposes, next Friday would be I believe
12 the 12th, April 12th. Do I have that date correct?

13 CO-HEARING OFFICER MARCUS: No, the 20th.

14 CO-HEARING OFFICER DODUC: Oh, the 20th. We
15 will be adjourning earlier than usual. We may go to as
16 late as 1:00 p.m., but we will adjourn no later than
17 one 1:00 p.m. on that Friday -- oh, the 20th.

18 Ms. Mitterhofer.

19 MS. MITTERHOFER: Yes, staff just informed me
20 that the transcript was posted yesterday.

21 CO-HEARING OFFICER DODUC: All right. Again,
22 deadline for Water Forum or anyone else who wants to
23 chime in in responding to Ms. Morris' objection/motion
24 will be 5:00 p.m. tomorrow.

25 And a reminder that we will be in Byron Sher

1 Hearing Room tomorrow to hear from Mr. Baxter, and we
2 will stay as late as 7:00 p.m., though I think we all
3 wish we would not have to, in order to complete his
4 direct and cross-examination.

5 Are there any other housekeeping matters?

6 (No response)

7 CO-HEARING OFFICER DODUC: All right. At this
8 time, we will turn back to DWR for the remainder of
9 their cross-examination.

10 And at this time, would you mind giving us an
11 overview of the topics you'll be covering with the rest
12 of the panel? I believe you finished with -- actually,
13 no, you did not. Did Dr. Ivey provide the document and
14 have you had a chance to take a look at it?

15 MS. ANSLEY: Yes, Ms. Meserve provided me last
16 night with the TNC report and with a separate study,
17 and I think that those probably adequately address my
18 concerns.

19 CO-HEARING OFFICER DODUC: All right. Thank
20 you. So your topics that you'll be --

21 MS. ANSLEY: Well, I have questions today for
22 Dr. Pandolfino and Mr. Pachl. And my topics stick, of
23 course, very closely to their testimony. With
24 Dr. Pandolfino, it would be on collisions, mainly, and
25 then Mr. Pachl, Swainson's Hawk and his statements

1 regarding impacts from California WaterFix.

2 CO-HEARING OFFICER DODUC: Please proceed.

3 JAMES PACHL, ED PANDOLFINO,

4 GARY IVEY, and ROBERT BURNES

5 called as Panel 1 witnesses for Protestant

6 Groups 46, 47, and 48, having been previously

7 duly sworn, were examined and testified as

8 hereinafter set forth:

9 CROSS-EXAMINATION BY MS. ANSLEY (Resumed)

10 MS. ANSLEY: All right, all right. Everyone's
11 correcting me. Pachl?

12 WITNESS PACHL: It's pronounced all different
13 ways, but what my parents taught me was Pachl.

14 MS. ANSLEY: I will, of course, try use
15 exactly the one you want.

16 WITNESS PACHL: Pachl.

17 MS. ANSLEY: I'd like to start with
18 Dr. Pandolfino. And your testimony discusses potential
19 collisions by Sandhill cranes with transmission lines;
20 is that correct?

21 WITNESS PANDOLFINO: Yes.

22 MS. ANSLEY: And it's true that there are
23 existing -- extensive existing transmissions and
24 distribution lines in the Sandhill crane winter use
25 area of the Delta; is that correct?

1 WITNESS PANDOLFINO: I think that's correct.

2 MS. ANSLEY: To your knowledge, are these
3 transmission lines currently marked?

4 MS. MESERVE: Objection, vague --
5 (Reporter interruption)

6 CO-HEARING OFFICER DODUC: Hold on.

7 MS. MESERVE: Vague. She's not indicated
8 which transmission lines she's mentioning, and if she
9 has a diagram, perhaps she can show that.

10 MS. ANSLEY: I'm not going to show a diagram.

11 What I'm asking for is, inside the winter use
12 area -- do you understand what the winter use area of
13 the Delta is for the Sandhill crane?

14 MS. ANSLEY: To your knowledge, are any of the
15 lines within transmission area -- or within the winter
16 use area of the Delta marked currently?

17 WITNESS PANDOLFINO: I believe I've seen some
18 markers on some of the lines, yes.

19 MS. ANSLEY: Do you know the current rate of
20 collisions by Sandhill cranes in winter use area of the
21 Delta?

22 WITNESS PANDOLFINO: I do not.

23 MS. ANSLEY: Is it possible that the number of
24 collisions is very low or zero?

25 WITNESS PANDOLFINO: Since I don't know, I

1 can't really answer.

2 MS. ANSLEY: Okay.

3 Isn't it true that, under Alternative 4A -- and
4 do you understand what I mean by Alternative 4A of the
5 California WaterFix?

6 WITNESS PANDOLFINO: Yes, I've reviewed that
7 document in the past.

8 MS. ANSLEY: Isn't it true that under 4A there
9 will be no permanent transmission lines proposed by the
10 California WaterFix within the Sandhill crane winter
11 use area?

12 MS. MESERVE: Objection, vague. Again, you
13 should show a diagram, please.

14 CO-HEARING OFFICER DODUC: Are you still
15 referring to just that area?

16 MS. ANSLEY: No, now I am referring to
17 Alt 4A's facilities that are proposed by the Cal
18 WaterFix. And my question simply was wasn't he aware
19 that there are no permanent transmission lines planned
20 for Alternative 4A.

21 CO-HEARING OFFICER DODUC: Are you able to
22 answer the question?

23 WITNESS PANDOLFINO: Well, perhaps I don't
24 understand exactly what the winter use area is. I
25 mean, the winter use area extends well beyond some of

1 the direct boundaries of the project area. So I'm not
2 sure I entirely understand.

3 I know that there was something in 4A about
4 not having -- eliminating some of the permanent lines
5 that were in the Final EIR; however, there are still
6 significant amounts of temporary lines, and those could
7 be in for years.

8 MS. ANSLEY: So just to make sure that we're
9 speaking on the same page, is it your understanding
10 that Alt 4A will have temporary lines installed during
11 construction but that there are no permanent lines
12 proposed for California WaterFix.

13 MS. MESERVE: Objection, misstates the
14 witness's testimony. He is not aware of where --

15 CO-HEARING OFFICER DODUC: Hold on.

16 MS. MESERVE: -- the lines located.

17 CO-HEARING OFFICER DODUC: Hold on.

18 MS. MESERVE: She should show a figure if --

19 CO-HEARING OFFICER DODUC: Ms. Meserve,
20 enough.

21 Dr. Pandolfino, to what extent are you
22 familiar with the area being discussed under
23 Alternative 4A?

24 WITNESS PANDOLFINO: I'm not sure I know the
25 exact boundaries of Alternative 4A. I'm familiar with

1 where cranes are located in that area, but I'm not sure
2 I can, from memory, really produce the boundary of
3 Alternative 4A.

4 CO-HEARING OFFICER DODUC: So boundaries
5 aside, are you aware -- are familiar with the proposal
6 made to -- what was it again? Install temporary --

7 MS. ANSLEY: If you'd like I can orient him to
8 his own testimony.

9 CO-HEARING OFFICER DODUC: Let's to that.

10 WITNESS PANDOLFINO: No as I have already said
11 I am aware that Alternative 4A eliminates the permanent
12 lines from the area covered by Appendix 4A.

13 MS. ANSLEY: And is it your understanding of
14 the project as currently proposed proposes not only
15 marking new temporary transmission lines but also the
16 installation of flight diverters on existing permanent
17 lines in the highest risk zone for greater Sandhill
18 crane?

19 WITNESS PANDOLFINO: Yes.

20 MS. ANSLEY: On Page 3 of your testimony,
21 which is SOSC-21, you state that Yee studied
22 effectiveness of bird diverters and used an arbitrary
23 correction factor. Do you see that testimony?

24 WITNESS PANDOLFINO: Yes, I do.

25 MS. ANSLEY: Isn't it true that Yee provided

1 the formula by which he determined the 2.5 correction
2 factor?

3 WITNESS PANDOLFINO: Yes, that's true, and
4 I've looked into how he computed that.

5 MS. ANSLEY: Was that number based on studies
6 cited by Janss and Ferrer and Choudhury?

7 WITNESS PANDOLFINO: Yes.

8 MS. ANSLEY: So it is your opinion that the
9 number was arbitrary?

10 WITNESS PANDOLFINO: Yes. If one looks --
11 first of all, one of those two references simply cites
12 the other one, so there's really on one citation. And
13 that citation didn't actually do any work to determine
14 bias. That citation simply reviewed old literature
15 from a variety of areas, using variety of species and
16 came up with a couple of biased correction factors not
17 based on their own work but based on some past work.

18 And then they -- there were two factors -- not
19 to get two complicated, there were two factors that Yee
20 used. One of them, the Janss paper, used the average
21 of other studies. And the other, they kind of ignored
22 the average, but they thought they could go with the
23 low number, so they chose the lowest. And those are
24 the numbers that Yee used to produce his. So although
25 it wasn't -- his 2.5 wasn't completely pulled out of

1 the air, it was based on really flimsy support.

2 MS. ANSLEY: And then the remainder of my
3 questions are for Mr. Pachl.

4 WITNESS PACHL: Yes.

5 MS. ANSLEY: Your testimony is marked now as
6 ECOS-27 Errata; is that correct?

7 WITNESS PACHL: Correct.

8 MS. ANSLEY: Are you testifying here today as
9 an expert witness?

10 WITNESS PACHL: I am testifying as what --

11 CO-HEARING OFFICER DODUC: I'm sorry, your
12 microphone.

13 WITNESS PACHL: Thank you.

14 I'm testifying as what Ms. Meserve says is a
15 percipient expert, meaning I do not have the academic
16 qualifications, I do not have a biology degree, however
17 I have developed a certain amount of expertise and
18 knowledge based upon experience over many years and
19 reading of the literature and frequent contact with
20 experts -- you know, biological experts, both private
21 consultants and individuals with the -- in the
22 Department of Fish and Wildlife Serv- -- wildlife.

23 MS. ANSLEY: So that is your understanding of
24 what a percipient expert is?

25 WITNESS PACHL: That's what I'm told. You

1 know, maybe Ms. Meserve can add to that. I'm just
2 telling you what I know.

3 MS. ANSLEY: I want a --

4 WITNESS PACHL: You can take it for whatever
5 label you want to put on it.

6 MS. ANSLEY: I'm a little confused about --

7 CO-HEARING OFFICER DODUC: Hold it. One at a
8 time. Are you finished, Mr. Pachl?

9 WITNESS PACHL: I am, yes.

10 MS. ANSLEY: It is a little confusing whether
11 a witness disclosed as a percipient expert is intended
12 on the NOI to be an expert witness or to be some sort
13 of lay witness. Usually in my understanding, a
14 percipient witness, sometimes in a court proceeding,
15 usually with, I think, physicians are non-retained
16 experts. I'm just confirming whether he is here today
17 as an expert witness or not an expert witness.

18 CO-HEARING OFFICER DODUC: Ms. Meserve.

19 MS. MESERVE: He is not designated as an
20 expert.

21 MS. ANSLEY: So the terminology "percipient
22 witness" I should read as -- for your witnesses as lay
23 witnesses?

24 CO-HEARING OFFICER DODUC: As not an expert
25 witness.

1 MS. ANSLEY: Right.

2 MS. MESERVE: I think that would be fine.

3 MS. ANSLEY: All right. Because there are a
4 number of witnesses designated that way, so I don't
5 need to go through that each time. Okay.

6 And I think you confirmed, Mr. Pachl, that you
7 do not have a degree in biology.

8 WITNESS PACHL: That is correct.

9 MS. ANSLEY: And your training is as a lawyer;
10 is that correct?

11 WITNESS PACHL: Right.

12 CO-HEARING OFFICER DODUC: I promise not to
13 hold it against you.

14 WITNESS PACHL: That's okay. Lawyers know
15 everything.

16 CO-HEARING OFFICER DODUC: They think they do.

17 MS. ANSLEY: On Page 3 in your testimony, you
18 mention that the FEIR/S failed to mention additional
19 impacts on Swainson's hawk that could occur from tunnel
20 operations. Do you see that testimony?

21 WITNESS PACHL: Yeah, okay.

22 MS. ANSLEY: Page 3, Lines 4 through 10. And
23 on that page, you state that impacts from the
24 Cal WaterFix could include the cessation of agriculture
25 and Delta farmland. Do you see that?

1 WITNESS PACHL: Correct.

2 MS. ANSLEY: And levee failure and permanent
3 flooding?

4 WITNESS PACHL: That is correct, yes.

5 MS. ANSLEY: What is the basis for your
6 conclusion that the Cal WaterFix impacts could include
7 a cessation of agriculture?

8 WITNESS PACHL: First of all, I've heard that
9 raised before over the years from various people who
10 are expert. But as far as my own opinion goes, based
11 on what I have seen, Delta farmers, my understanding is
12 that Delta farmers irrigate with water from the Delta
13 via their riparian rights.

14 If there are excessive diversions from
15 upstream or if there is just simply not enough water
16 coming from -- or for any reason there's not enough
17 water coming from upstream, then salt water will
18 intrude because the barrier of freshwater is declining,
19 so salt water comes in. And it's pumped out for
20 irrigation. And if the salt water becomes saline -- if
21 the water becomes salty enough, it can no longer be
22 used for irrigation; the crops fail. And if that
23 becomes a permanent condition, yes, farmers could go
24 out of business.

25 And that's an issue that has been raised

1 repeatedly by others who are more knowledgeable about
2 agriculture in the Delta than I am. But it certainly
3 makes a lot of sense that, if the water -- if too much
4 water is diverted upstream, too much freshwater
5 diverted, there will be salt water coming in.

6 In fact, there have been instances
7 historically within extremely dry years where salt
8 water has gone really almost up to Sacramento,
9 historically.

10 MS. ANSLEY: So based on your answer there, is
11 it my understanding that you're not basing it on any
12 particular analysis or modeling of the impacts of
13 California WaterFix?

14 WITNESS PACHL: No. I am basing it on common
15 sense.

16 MS. ANSLEY: And you mentioned the opinions
17 and testimony of other people. You do not cite any --

18 WITNESS PACHL: No, I haven't --

19 MS. ANSLEY: -- testimony or opinions of other
20 people?

21 WITNESS PACHL: I haven't done that.

22 MS. ANSLEY: It's based on your common sense
23 understanding of the situation?

24 WITNESS PACHL: Correct, yes. If not enough
25 freshwater comes down, salt water will come in to

1 replace it. I used to be on the Bay Conservation and
2 Development Commission for a number of years, and I was
3 in the Bay Area. So I do have a little bit of
4 understanding how the bay works and how tides work and
5 salt water and so forth and so on.

6 MS. ANSLEY: Are you familiar with the
7 analyses that have been presented in this hearing
8 regarding the impacts of the California WaterFix on
9 salinity and flow?

10 WITNESS PACHL: I am not, no.

11 MS. ANSLEY: Are you familiar with Water Board
12 Decision D1641.

13 WITNESS PACHL: What's it say? I don't know.
14 I haven't read about it.

15 MS. ANSLEY: I guess that's a no, you're not
16 familiar with that decision?

17 WITNESS PACHL: Well, if I knew what it was,
18 maybe I would know about it.

19 MS. ANSLEY: Are you aware that the state and
20 federal water projects are legally required to meet
21 salinity standards for protection of Delta agriculture?

22 WITNESS PACHL: I am well aware that they are
23 required to meet salinity standards. I also know that
24 political decisions made on the moment can override
25 standards and regulations and all sorts of other good

1 things.

2 MS. ANSLEY: Do you understand those standards
3 are set by the Water Board here?

4 WITNESS PACHL: Pardon?

5 MS. ANSLEY: You understand that those
6 standards were set by the Water Board?

7 WITNESS PACHL: Yes, I understand.

8 MS. ANSLEY: Is that also the basis for your
9 opinion that cessation of agriculture will be followed
10 by levee collapse and permanent flooding is still your
11 common sense understanding of the situation?

12 WITNESS PACHL: What I have heard repeatedly
13 is that if -- first of all, the levees in the Delta are
14 maintained by local levee districts financed by the
15 local farmers with their money and whatever money they
16 can get from the state and the feds. The -- and that's
17 how they're maintained.

18 The levee are pretty shaky. They have to be
19 main attend. And if the farmers are -- for whatever
20 reason go out of business or no longer going to make
21 the effort to maintain, basically abandon, these levees
22 will not stand up. All levee have to be maintained.
23 And if they're not maintained, they will give out.

24 MS. ANSLEY: Okay. Is it your understanding
25 that there is any analysis or modeling or testimony

1 regarding the potential for levee collapse due to the
2 cessation of agriculture by the California WaterFix?

3 WITNESS PACHL: I cannot refer you to any
4 specific studies, but I have seen it in various
5 articles in the media. And it certainly makes a lot of
6 sense that this can happen.

7 I have a little bit of familiar- -- maybe more
8 than a little bit of familiarity with levees in
9 connection with some experience on behalf of
10 organizations dealing with the levees in Natomas, which
11 are a whole lot stronger than the levees down in the
12 Delta.

13 MS. ANSLEY: But you do not -- so looking at
14 Page 3, Lines 4 through 10 in your testimony, you do
15 not cite any authorities for the conclusions that you
16 draw there?

17 MS. MESERVE: Asked and answered.

18 MS. ANSLEY: Just closing the door on it.

19 WITNESS PACHL: Well, it is simply my common
20 sense, lay opinion based on knowledge. I'm sure that
21 if you want to find -- I'm sure there are studies out
22 there, and I'm sure you could find them.

23 MS. ANSLEY: What I'm trying to do is just
24 determine the basis for your conclusion.

25 WITNESS PACHL: Yeah, correct. No, yeah, I

1 have not cited any studies.

2 MS. ANSLEY: On Pages 3 to 4, you discuss the
3 California Department of Fish and Game ITP and the FEIR
4 for Swainson's hawk foraging habitat mitigation
5 measures, correct?

6 WITNESS PACHL: Correct.

7 MS. ANSLEY: And you state that the issue of
8 concern is allowing habitat mitigation to be located up
9 to 50 miles from the project area, correct?

10 WITNESS PACHL: Correct.

11 MS. ANSLEY: And you acknowledge that the
12 Swainson's hawk foraging habitat can be protected
13 within three miles of a known nest site?

14 WITNESS PACHL: Correct, yes. That's a
15 positive. The issue is whether the loss to the
16 affected population -- to the population of hawks that
17 is affected by the loss of habitat due the project is
18 to be mitigated so that the -- they will -- the hawks
19 will at least still have some way to survive. And --
20 which is why, the reason for the -- why Fish and
21 Wildlife in the past and biologists generally have
22 agreed on the 10-mile distance. Fifty miles, no,
23 that's not going to happen.

24 MS. ANSLEY: So to make sure we're both
25 speaking on the same page, the mitigation is that

1 foraging habitat will be protected from within 50 miles
2 of the project footprint but always within three miles
3 of a known nesting site; is that correct?

4 WITNESS PACHL: Correct.

5 MS. ANSLEY: Isn't it true that the reason why
6 the Department of Fish and Wildlife allows flexibility
7 in where mitigation land is purchased is it because it
8 may not be possible to purchase land within 10 miles?

9 WITNESS PACHL: That reason was not stated in
10 the documents.

11 MS. ANSLEY: Have you been involved in
12 identifying the potential locations for mitigation
13 land?

14 WITNESS PACHL: Let's see here. In the --
15 informally, yes. You know, in my role with Friends of
16 Swainson's Hawk we've, you know, had projects that have
17 come up. And, you know, I know the area fairly well,
18 and have let -- you know, looked at -- you know,
19 considered possible mitigation sites, occasionally made
20 suggestions.

21 MS. ANSLEY: Thank you, Mr. Pachl.

22 I have no further questions for the panel.

23 CO-HEARING OFFICER DODUC: Thank you,

24 Ms. Ansley.

25 Next up is Mr. Keeling, who has estimated 50

1 minutes.

2 CROSS-EXAMINATION BY MR. KEELING

3 MR. KEELING: Good morning, Tom Keeling for
4 San Joaquin County protestants.

5 I have questions for Dr. Ivey regarding
6 AMM20, primarily. And following up on his testimony
7 yesterday a little bit, questions for Mr. -- Pachl?

8 WITNESS PACHL: Correct.

9 MR. KEELING: -- about Swainson's hawk. And a
10 question for Mr. Pandolfino about mitigation measures.

11 Dr. Ivey, did you participate in preparing
12 AMM20; is that correct?

13 WITNESS IVEY: Yes, I did.

14 MR. KEELING: What was your role?

15 WITNESS IVEY: I was a consultant,
16 subconsultant, actually with the ICF International, the
17 consulting firm that had the contract and helped with
18 the Bay-Delta Plan.

19 MR. KEELING: Your modeling shows that
20 California WaterFix would result in 48 takes of greater
21 Sandhill cranes annually; is that right?

22 WITNESS IVEY: The original for the Bay --
23 that's in the AMM20, that configuration that I analyzed
24 at that time, that estimate is 48 annually, yes.

25 MR. KEELING: As I recall yesterday, you

1 testified that such a take would be illegal was the
2 word you used. Do you recall that testimony?

3 WITNESS IVEY: Yes.

4 MR. KEELING: Why would it be illegal?

5 WITNESS IVEY: As I stated yesterday, I'm not
6 a legal expert on this issue. But my understanding is
7 that, without an HCP or an NCCP, that mitigation is not
8 authorized and therefore, because it's a fully
9 protected threatened species, take would be illegal,
10 any take.

11 MR. KEELING: In other words, there's a zero
12 take without HCP?

13 CO-HEARING OFFICER DODUC: Ms. Ansley.

14 MS. ANSLEY: I'm going to lodge an objection
15 that this calls for a legal conclusion perhaps beyond
16 his capabilities as a biologist. Of course he can give
17 his understanding without his legal conclusion.

18 WITNESS PACHL: Yes, that's my understanding.

19 CO-HEARING OFFICER DODUC: So noted that it is
20 his understanding, not a legal conclusion.

21 MR. KEELING: Well, with that understanding,
22 have you ever heard anyone say it would not be illegal
23 because there would be no net loss?

24 WITNESS IVEY: I can't say that a specific
25 person may say that -- make that statement, no.

1 MR. KEELING: You never heard that as a
2 response for --

3 WITNESS IVEY: No, when we were looking at the
4 Bay-Delta Plan we were looking -- making sure there was
5 no net loss under that strategy under the Habitat
6 Conservation Plan.

7 MR. KEELING: That phrase has meaning to you
8 in the context of a habitat conservationist?

9 WITNESS IVEY: Right.

10 MR. KEELING: Let's put up on the screen
11 FSL-47, which I've highlighted my copy and put that up,
12 if you will.

13 Dr. Ivey, I'd like to ask you about some
14 phrases that appear in FSL-47, which is the Final
15 Mitigation and Monitoring Reporting Program for
16 California WaterFix, Section 4.13. Can we take a look
17 first, please, at Page 2. It would be the first page
18 of text. You see the first highlighted section --
19 portion of A -- of this document, Dr. Ivey?

20 WITNESS IVEY: Yes, I do.

21 MR. KEELING: This is the sentence that reads,
22 "Construction will be minimized during the Sandhill
23 crane wintering season to the extent practicable in
24 light of project schedule and cost and logical
25 considerations." And before I ask you the question, I

1 would like to direct your attention to two more
2 passages that use that phrase. The next is on Page 3,
3 the very next page.

4 There's a highlighted section right there. Do
5 you see that? It reads, "To insure greater Sandhill
6 crane habitat loss is avoided and minimized to the
7 maximum extent practicable, wildlife agency staff will
8 be involved discussions," et cetera. Do you see that?

9 WITNESS IVEY: I do.

10 MR. KEELING: And finally, if you turn to the
11 next page, the first -- the second highlighted portion,
12 the second one, do you see the phrase, "Minimize to the
13 extent practicable in light of project schedule and
14 cost and logistical considerations"? Do you see that?

15 WITNESS IVEY: No, it's not on the screen.

16 MR. KEELING: We have to go up a little bit
17 more. Bottom of the page.

18 WITNESS IVEY: I see it. It's not
19 highlighted.

20 MR. KEELING: It's not highlighted, but it's
21 the last bullet point there. Do you see that?

22 WITNESS IVEY: Yes.

23 MR. KEELING: Okay. My question of you as you
24 consider these passages is what does the phrase "to the
25 extent practicable" mean?

1 WITNESS IVEY: It wasn't my phrase that I
2 would have stated. I think it means that, if it's
3 impossible for whatever reason or not practical -- I
4 mean, I don't know what practical, what the definition
5 is; it could be economically not practical or not
6 feasible because the opportunities weren't available,
7 but it's a way to not meet the standards for Sandhill
8 cranes.

9 MR. KEELING: When you say "those standards"
10 you're referring to the no take or fully protected
11 status?

12 WITNESS IVEY: Yes.

13 MR. KEELING: You see it as a way to reason
14 around that standard?

15 WITNESS IVEY: Yes, that's my impression.

16 MR. KEELING: Take a look, if you will, at the
17 second highlighted passage on the Page 2. Go back a
18 couple of pages.

19 See the second highlighted passage begins with
20 the words, "To the extent feasible, construction that
21 cannot be completed prior to commencement," et cetera,
22 et cetera. Do you see that sentence?

23 WITNESS IVEY: I do.

24 MR. KEELING: What does the phrase "to the
25 extent feasible" mean to you as used in that passage?

1 WITNESS IVEY: It's similar. It means that
2 they may not necessarily try to avoid because of other
3 considerations, which might be timing and availability
4 of construction firms and their schedules, and so they
5 may weaken their objective for cranes by staying out of
6 that wintering season with that, again, kind of a
7 nebulous description of this commitment.

8 MR. KEELING: In your opinion, are these --
9 the use of these phrases in AMM20, is that use
10 compatible with the standard set by the California
11 environmental species act for Sandhill cranes.

12 CO-HEARING OFFICER DODUC: Hold on, please.

13 MS. ANSLEY: I'm going to object that there's
14 a lack of foundation here. I know that Dr. Ivey
15 participated in the creation of AMM20, but I believe
16 when we started this line of questioning, he was saying
17 that he wasn't necessarily responsible for these
18 phrases.

19 And so whether we're asking him does he know
20 what the drafter meant by those phrases or is he asking
21 him his understanding just reading these phrases now
22 cold in light of his experience with Sandhill cranes, I
23 think there's a difference.

24 CO-HEARING OFFICER DODUC: My assumption is
25 that it was the latter.

1 MS. ANSLEY: And I'd like to make sure that
2 that's clear.

3 MR. KEELING: I think the witness already
4 testified these were not his phrases but that he worked
5 on AMM20 with the petitioners.

6 CO-HEARING OFFICER DODUC: And the answer you
7 are providing to Mr. Keeling's questions are your
8 understanding based on reading these language?

9 WITNESS IVEY: Yes, that's true.

10 CO-HEARING OFFICER DODUC: Thank you.

11 MS. ANSLEY: As opposed to his understanding
12 knowing who drafted this language, what that person
13 intended. He was involved in the drafting of AMM20 --

14 CO-HEARING OFFICER DODUC: Understand.

15 MS. ANSLEY: Okay. Fine. So I just wanted to
16 make sure that what we're testifying to is different
17 than what the drafter intended with that language and
18 what he now --

19 CO-HEARING OFFICER DODUC: Dr. Ivey -- I'm
20 sorry. Is it Dr. Ivey?

21 MS. ANSLEY: Yes.

22 CO-HEARING OFFICER DODUC: You're not
23 asserting that's your understanding of what the drafter
24 initially meant?

25 WITNESS IVEY: No.

1 CO-HEARING OFFICER DODUC: Thank you.

2 MR. KEELING: Does an avoidance measure that
3 is contingent on practicality guarantee that the
4 measure will be used?

5 WITNESS IVEY: No, I don't think it does.

6 MR. KEELING: Does an avoidance measure based
7 on feasibility guarantee that it will be used?

8 WITNESS IVEY: Same answer, I don't think that
9 it does.

10 MR. KEELING: Does AMM20, in your opinion,
11 assure that the no-take standard required by CESA will
12 be achieved?

13 WITNESS IVEY: Because of those kind of weasel
14 words, I don't think it does.

15 MR. KEELING: Thank you very much.

16 Mr. Pachl.

17 WITNESS PACHL: Yes?

18 MR. KEELING: Did you have any discussions
19 with the Department of Fish and Wildlife about the
20 WaterFix's impact or potential impact on Swainson's
21 hawk?

22 WITNESS PACHL: No, I did not.

23 MR. KEELING: Did you have any such discussion
24 with the Department of Water Resources?

25 WITNESS PACHL: Nope.

1 MR. KEELING: At any point prior to your
2 testimony in this proceeding, did you express your
3 opinion to them that new mitigation habitat should not
4 be located more than 10 miles from the impacts of the
5 proposed Delta tunnels?

6 WITNESS PACHL: I had no idea that they were
7 even considering 50 miles until I saw the take permit.
8 No, I did not have the discussion with them in
9 connection with the WaterFix. In the past, there have
10 been discussions about distances from various other
11 projects. And generally, they were -- you know, wanted
12 to keep it within 10 miles of the point of impact, at
13 least as to other projects.

14 MR. KEELING: Yesterday you testified that
15 locations for new habitat do exist in the Delta within
16 that 10-mile zone. Do you recall that testimony?

17 WITNESS PACHL: I recall that testimony.
18 There is a very large amount of farmland all throughout
19 that area. And reading the documents, I frankly was
20 looking to see if Fish and Game gave a reason for the
21 50-mile -- going to the 50-mile radius, and no reason
22 was stated.

23 CO-HEARING OFFICER DODUC: Hold on, please.

24 Mr. Pachl, if I could ask you to move the
25 microphone, yes. We might be able to hear you, but the

1 people on the webcast won't.

2 WITNESS PACHL: Okay. Thank you. Go ahead.

3 MR. KEELING: Do you have any more information
4 about locations that were not apparently -- locations
5 within that 10-mile zone? Do you have any more
6 particulars about that?

7 WITNESS PACHL: No, I haven't looked at it
8 that carefully.

9 MR. KEELING: Thank you.

10 Dr. Pandolfino, yesterday you testified that
11 the mitigation measures should be put in place before
12 construction on tunnels begins. Do you remember that
13 testimony?

14 WITNESS PANDOLFINO: Yes, it was specifically
15 with regard to habitat.

16 MR. KEELING: For the Sandhill crane?

17 WITNESS PANDOLFINO: No, I wasn't talking
18 about that. I was talking about -- that specific
19 statement was related to habitat mitigation for
20 white-tailed kite.

21 MR. KEELING: Would your opinion about the
22 timing of putting mitigation measures in place be any
23 different for other birds, such as the Sandhill crane?

24 WITNESS PANDOLFINO: No, it would be the same.

25 MR. KEELING: Why, in your opinion, is it

1 important to get those mitigation measures in place
2 before tunnel construction begins?

3 WITNESS PANDOLFINO: Well, if you interrupt or
4 disrupt even a single breeding season, you're going to
5 wind up losing some birds, losing some potential
6 breeding success, possibility that nestlings die,
7 having birds simply abandon the nests, having birds
8 overstress themselves trying to support a nest when
9 they don't have foraging habitat nearby.

10 So for all those reasons, it's important to
11 have mitigation in place before you have the impacts.

12 MR. KEELING: Now, does mitigation in place,
13 as you use that phrase, does that mean having
14 designated a new area as habitat, or alternatively,
15 does it mean confirming that that new habitat is
16 actually successful for that species? Do you
17 understand my question?

18 In other words, how do you define "success"?
19 Is it having a piece of property you've now designated
20 as new habitat, or is it establishing that in fact it
21 is working as new habitat?

22 WITNESS PANDOLFINO: Well, that's a little bit
23 difficult to answer because, practically speaking, it
24 would take, you know, substantial amount of time, maybe
25 even more than a single season, to really confirm that

1 a particular piece of habitat was functioning as you
2 hoped it might. So although that would certainly be
3 ideal to have the land set aside and have proof that in
4 fact it's high quality, it's probably not practical in
5 every case.

6 MR. KEELING: Well, how long -- so at least a
7 season?

8 WITNESS PANDOLFINO: Yeah, at least a season
9 to at least have it in place. I think we know enough
10 about most of these species to have a pretty good idea
11 of what high quality habitat looks like.

12 My concerns would be more, as I pointed out
13 the white-tailed kite testimony. My concerns would be
14 more making sure that that habitat remains high quality
15 long-term, it isn't converted to some other use.

16 MR. KEELING: And I beg your pardon, I did
17 have one series of questions for Mr. Burness. Thank
18 you.

19 And thank you.

20 CO-HEARING OFFICER DODUC: And would that take
21 around five minutes?

22 MR. KEELING: It will take less than a minute,
23 I hope.

24 CO-HEARING OFFICER DODUC: Oh, okay.

25 MR. KEELING: Mr. Burness, yesterday I think

1 you said that Friends of Stone Lakes reached out to the
2 petitioners at some point; is that correct?

3 WITNESS BURNES: I -- yes, I did.

4 MR. KEELING: When was that?

5 WITNESS BURNES: That would be approximately
6 2010. I can't give you the exact date because it was
7 kind of in fits and starts.

8 I know we contacted Jerry Meral, when he was
9 acting as a spokesperson for that. So it would
10 coincide with part of his responsibilities at the time.

11 MR. KEELING: So other than Mr. Merrill, did
12 you reach out to anyone else?

13 WITNESS BURNES: That was my -- that was the
14 primary contact that we made. We wrote letters to DWR
15 as well.

16 MR. KEELING: Did you have any meetings with
17 DWR?

18 WITNESS BURNES: We had a whole series of
19 meetings with ICF, with DWR, and with various members
20 of the environmental community. Sean Wirth was
21 involved, Jim Pachl was involved at various times
22 extending for, I would say, approximately a year and a
23 half or so, discussing several of the mitigation
24 measures that are now incorporated -- or the measures
25 that were in the habitat conservation plan that are now

1 proposed as -- many of them are now proposed as
2 environmental commitments or AMMs.

3 MR. KEELING: Appreciate it. Thank you,
4 Mr. Burness. That's all.

5 CO-HEARING OFFICER DODUC: Thank you,
6 Mr. Keeling.

7 Mr. Jackson.

8 WITNESS PACHL: Can I have one more?
9 I would like to amend my answer.

10 CO-HEARING OFFICER DODUC: No, thank you.

11 WITNESS PACHL: Okay.

12 CO-HEARING OFFICER DODUC: Your attorney might
13 redirect for us.

14 WITNESS PACHL: Okay.

15 MR. JACKSON: I'm forgoing cross.

16 CO-HEARING OFFICER DODUC: Thank you,
17 Mr. Jackson.

18 Ms. Des Jardins.

19 CROSS-EXAMINATION BY MS. DES JARDINS

20 MS. DES JARDINS: Good morning. I'm Deirdre
21 Des Jardins with California Water Research. My first
22 questions are to -- is it Dr. Ivey?

23 WITNESS IVEY: (Nods head affirmatively)

24 MS. DES JARDINS: Thank you. Dr. Ivey, you
25 testified the highest densities of greater Sandhill

1 crane occur on Staten Island and the adjacent tracts?

2 WITNESS IVEY: Yes, that's true.

3 MS. DES JARDINS: Wasn't the California
4 WaterFix realigned at one point to go through Staten
5 Island?

6 WITNESS IVEY: Yes. The original
7 configurations were, I think, on Tyler Island. But
8 they moved to right down the center of Staten at some
9 point.

10 MS. DES JARDINS: Dr. Ivey, are you aware that
11 the water contractors are proposing to construct the
12 WaterFix project?

13 WITNESS IVEY: I've heard just some -- I've
14 seen some news releases to WaterFix that they're
15 getting ready to vote on funding.

16 MS. DES JARDINS: I'd like to pull up DDJ-156.

17 Mr. Ivey, this is a copy of the final draft
18 agreement regarding construction of the conveyance
19 project between the Department of Water Resources and
20 the Conveyance Project Coordination Agency. It does
21 have a specific mention of avoidance and mitigation
22 measures for Sandhill cranes.

23 CO-HEARING OFFICER DODUC: Are you familiar
24 with this document?

25 WITNESS IVEY: I don't recall seeing this.

1 MS. DES JARDINS: Were you ever -- when you
2 were consulting with ICF on AMM3, did you ever see a
3 drafts of this document?

4 WITNESS IVEY: I don't recall seeing this, no.

5 MS. MESERVE: Objection, goes beyond the scope
6 of his testimony.

7 MS. DES JARDINS: There is a specific
8 paragraph that I would like to ask which is relevant to
9 his testimony, and I'd like to go to Page 16.

10 CO-HEARING OFFICER DODUC: And when we get
11 there, please explain to me the relevancy.

12 MS. DES JARDINS: It's the second paragraph.
13 And it specifically references the "no net loss of
14 Greater Sandhill Crane usage days."

15 CO-HEARING OFFICER DODUC: So let's give
16 Dr. Ivey a chance to read the second paragraph.

17 MS. ANSLEY: Also, while he's reading it, I'd
18 like to lodge an objection that there's been no
19 foundation laid in terms of the connection between that
20 statement and the actual Cal WaterFix as proposed.

21 As noted, this is a draft agreement, and so,
22 even -- in terms of its discussion of the environmental
23 commitments, I question the relevancy of a draft
24 document as opposed to calling up the actual
25 environmental commitments.

1 MS. DES JARDINS: This shows intent.

2 CO-HEARING OFFICER DODUC: This is a draft
3 document.

4 MS. DES JARDINS: Although it's a draft
5 document, it shows intent.

6 MS. ANSLEY: And I'm fairly sure of my memory
7 from seeing this earlier in the proceeding that this is
8 an unexecuted draft document. And so I'm not sure to
9 whose intent this is necessarily going at this time.

10 MS. DES JARDINS: Uhm --

11 CO-HEARING OFFICER DODUC: Hold on. Stop.
12 Let's hear the question.

13 MS. DES JARDINS: There's a few questions.

14 Dr. Ivey, does this paragraph state that the
15 AMMs may or may not be implemented?

16 MS. ANSLEY: Again, I'm going to lodge an
17 objection to him confirming what the paragraph says
18 since we don't know that that's in any way a statement
19 of California WaterFix.

20 CO-HEARING OFFICER DODUC: Ms. Meserve.

21 MS. MESERVE: This exhibit was admitted in
22 rebuttal, so it is properly an exhibit in this
23 proceeding. I think as long as the questions are
24 around Dr. Ivey's understanding of what the document
25 says, then whatever implication there is to

1 petitioners' intent could be, you know, inferred from
2 that and then the appropriate weight given.

3 MS. ANSLEY: I think the nature of my
4 objections don't go that it was admitted as a rebuttal
5 exhibit. It's to the weight and relevancy of this
6 exhibit.

7 CO-HEARING OFFICER DODUC: All right. All
8 right. I'll go ahead and allow Ms. Des Jardins to ask
9 her questions for whatever value they provide, since
10 Dr. Ivey is not familiar with this document and can
11 only answer questions based on what he is reading.

12 Other attorneys have done the same thing in
13 terms of pulling up documents, asking witnesses to read
14 it and then answer based on what they happen to know at
15 that time.

16 MS. DES JARDINS: Does this paragraph date
17 that the AMMs may or may not be implemented and --

18 WITNESS IVEY: Yes, it does.

19 MS. DES JARDINS: Please ask your question not
20 so that the witness just reiterates what is on the
21 screen or what is in the document but that he is able
22 to share whatever expertise he could bring to this
23 proceeding.

24 MS. DES JARDINS: That was going to be my
25 follow-up question. I've learned not to do compound

1 questions.

2 So my follow-up question is does this -- does
3 this tend to confirm your opinions you expressed
4 earlier, that words like "practicable" meaning the
5 measures are not implemented?

6 WITNESS IVEY: It brings up that similar
7 issue. The performance standard "no loss of greater
8 Sandhill crane use days," we had -- my present memory
9 about the planning, we had several strategies that were
10 identified. And it may mean also that they may choose
11 among those strategies, and there are options to meet
12 that. But it does imply that it may not be
13 implemented.

14 MS. ANSLEY: And for the record, I'm just
15 going to lodge an objection as to speculative.

16 CO-HEARING OFFICER DODUC: So noted.

17 MS. DES JARDINS: Does this paragraph also
18 mention long-term responsibility for maintenance of the
19 mitigation measure?

20 WITNESS IVEY: Yes, it does.

21 MS. DES JARDINS: Does it mention
22 transitioning it?

23 WITNESS IVEY: It does.

24 MS. DES JARDINS: And does it specify who it
25 would be transitioned to?

1 WITNESS IVEY: No, it does not, to my
2 understanding.

3 MS. DES JARDINS: Are you aware of any
4 discussions about who -- what entity might take over
5 long-term responsibility for maintenance of the
6 mitigation measures?

7 WITNESS IVEY: I am not.

8 MS. DES JARDINS: Thank you that concludes my
9 question. I'd like to go back --

10 CO-HEARING OFFICER DODUC: I'm sorry. That
11 concludes your questioning?

12 MS. DES JARDINS: Questions on that document.

13 I'd like to go back to AMM20, and I'd like to
14 go to FSL-47, which is AMM20. And I'd like to go to
15 Page 4, at Line 6. Dr. Ivey, this mentions
16 undergrounding of permanent power lines. And it
17 recommends evaluating this with respect to a number of
18 factors. Is cost included in the factors?

19 WITNESS IVEY: Yes, it is.

20 MS. DES JARDINS: Is it listed as the first
21 factor?

22 WITNESS IVEY: Yes, it is.

23 MS. DES JARDINS: Do you think this is an
24 appropriate prioritization of considerations for a
25 no-take species?

1 WITNESS IVEY: Well, if the focus is on
2 no-take, no.

3 CO-HEARING OFFICER DODUC: Hold on.

4 MS. ANSLEY: I'm going to say objection, calls
5 into for speculation that that order has any sort of
6 meaning. But she can ask him whether he recalls
7 whether it has any meaning.

8 CO-HEARING OFFICER DODUC: Dr. Ivey.

9 WITNESS IVEY: I should answer that question?

10 CO-HEARING OFFICER DODUC: Please.

11 WITNESS IVEY: Yes. I don't recall whether it
12 has any meaning.

13 CO-HEARING OFFICER DODUC: All right.

14 MS. DES JARDINS: If cost was a significant
15 component of the considerations of whether to
16 underground all new permanent power lines for the
17 project, would that be in conflict with the no-take
18 requirements --

19 CO-HEARING OFFICER DODUC: I'm --

20 MS. DES JARDINS: -- potential?

21 CO-HEARING OFFICER DODUC: I'm not sure I
22 understand.

23 MS. DES JARDINS: How appropriate is it for
24 costs to be a major -- a significant factor in
25 consideration of undergrounding the permanent power

1 lines?

2 WITNESS IVEY: With respect to take?

3 MS. DES JARDINS: No-take, yeah, for a no-take
4 species.

5 WITNESS IVEY: That's a decision for the
6 agencies to make. But they shouldn't -- I mean,
7 technically, it doesn't seem legal to use the financial
8 costs to go outside the law, whatever the law is on
9 take, so.

10 MS. DES JARDINS: And has -- the final
11 decisions about power line mitigation have not yet been
12 made?

13 WITNESS IVEY: Not to my knowledge.

14 MS. DES JARDINS: So you're not able at this
15 time to say whether they -- to really evaluate whether
16 they conform with no take?

17 WITNESS IVEY: No, I can't. I mean, I have
18 not seen the latest plan for whatever developments have
19 happened. So there's no that I can answer that.

20 (Reporter interruption)

21 WITNESS IVEY: That I can answer the impacts
22 and the result.

23 MS. DES JARDINS: I'd like to go to Line 14,
24 about --

25 Can we scroll down a little? Yeah.

1 -- about power lines. This mentions
2 above-ground power lines being at least 300 feet from
3 all crane use sites.

4 WITNESS IVEY: Yes.

5 MS. DES JARDINS: Do you think that's far
6 enough away to minimize strikes?

7 WITNESS IVEY: It's far enough away to reduce
8 the strikes because lines close than that have a much
9 higher probability of being struck. But it doesn't
10 eliminate strikes.

11 MS. DES JARDINS: And it also mentions that
12 one of the ways to make them 300 feet away is to do
13 crane roost site relocation, correct?

14 WITNESS IVEY: Yes.

15 MS. DES JARDINS: What are the impacts of
16 crane roost site relocation?

17 WITNESS IVEY: Well, my opinion is, because a
18 lot of the roost sites, especially in the Delta where
19 they're using flooded ag fields to roost, those
20 birds -- greater Sandhill cranes have a winter home
21 range of about a square mile. And they'll readily
22 accept a new roost site within that, you know, radius
23 basically. So it's a pretty good option, actually, for
24 managing where the birds are spending the night to
25 avoid -- help avoid further risks for strikes.

1 MS. DES JARDINS: Okay. I'd like to go to
2 Page 5 at Line 2 And ask about foraging.

3 And this mentions minimizing pile driving and
4 construction-related loss. And would you be concerned
5 about the caveat "to the extent practical"?

6 WITNESS IVEY: Yes. Again, we talked similar
7 in those other instances. I would be concerned,
8 basically, that this is a disturbance issue that
9 prevented birds from foraging in certain areas while
10 that disturbance is occurring.

11 MS. DES JARDINS: And I'd like to go to --
12 please read Line 6 about -- it's minimizing the area
13 affected by noise exceeding 50 dB(A).

14 Would -- if there's really significant
15 infrastructure going through Staten Island and adjacent
16 islands, would minimizing area necessarily be enough?

17 WITNESS IVEY: That's difficult to answer
18 without seeing the details.

19 MS. DES JARDINS: And are the details
20 finalized at this point?

21 WITNESS IVEY: I don't think so.

22 MS. DES JARDINS: Thank you. And then I'd
23 like to go to Line 17. And this is -- discusses
24 enhancing foraging habitat. It mentions enhancing a
25 tenth of an acre of foraging habitat for each acre of

1 foraging habitat that will be directly affected by the
2 50 dB(A) construction noise, correct?

3 WITNESS IVEY: Correct.

4 MS. DES JARDINS: And is enhancing a tenth of
5 an acre of foraging habitat enough to compensate?

6 WITNESS IVEY: Well, the fact, if you read
7 further down that paragraph, that that tenth of an acre
8 is unharvested corn so that the -- all of the corn
9 grown in that 10 percent of the habitat is available,
10 it far exceeds the food value of an acre of harvested
11 corn because they remove more than 95 percent of the
12 waste -- or the corn when they harvest. So it provides
13 probably three or four times as much available food.

14 MS. DES JARDINS: What if the location -- so
15 this mentions that they need to be located -- you
16 testified about greater Sandhill cranes and energy
17 considerations. And I believe your testimony mentioned
18 there's a lot of unforaged within 2 kilometers. So
19 would the location of the enhanced foraging be
20 critical?

21 WITNESS IVEY: Yes. Yes, that's very
22 critical.

23 MS. DES JARDINS: And at this time, do you
24 know where those are?

25 WITNESS IVEY: No, I don't think that's been

1 planned yet. But, you know, they should be within a
2 mile of the roost sites because that's within their --
3 most of the greater's daily flight radius.

4 MS. DES JARDINS: Okay. So then I'd like to
5 go to Mr. Pandolfino's testimony.

6 Mr. Pandolfino, may I ask you what exhibit
7 number your testimony is? I didn't write it down.

8 WITNESS PANDOLFINO: It's SOSC-21.

9 MS. DES JARDINS: Can I go to SOSC-21.
10 SOSC-21 Errata, yeah. And I was I wanted to go to PDF
11 Page 8, at 122. Nope, that's not it.

12 Let me just ask about white-tailed kites. You
13 specifically mentioned substitution of alfalfa, the ITP
14 requiring restoration of alfalfa as a high quality
15 foraging substrate.

16 And -- but you said there's no budget
17 commitment to ensure that lands would continue to plant
18 alfalfa?

19 WITNESS PANDOLFINO: Yes, that's my
20 understanding. I think there's discussion of having
21 conservation easements that would preserve some kind of
22 agricultural use, but I didn't see anything that
23 ensured that, over time, that agricultural use would be
24 restricted to a particular crop.

25 MS. DES JARDINS: And you would -- you were

1 specifically concerned about the lack of funding for
2 that particular crop?

3 WITNESS PANDOLFINO: Yeah. My more general
4 concern is maintaining the quality habitat over the
5 long-term.

6 MS. DES JARDINS: You also mention that there
7 was a lag between the impacts on the habitat and in
8 restoration. And you were concerned about that as
9 well?

10 WITNESS PANDOLFINO: Yes.

11 MS. DES JARDINS: And you feel that's a
12 particular risk to the species?

13 WITNESS PANDOLFINO: Yes, and I think I
14 mentioned in response to an earlier question, that even
15 a year's delay is -- could mean the loss of a breeding
16 season. It could mean loss of nestlings or even a loss
17 of adults.

18 MS. DES JARDINS: Okay. Thank you.

19 That concludes my questions.

20 CO-HEARING OFFICER DODUC: Thank you. That's
21 all the cross-examination I have.

22 Redirect, Ms. Meserve?

23 MS. MESERVE: I might just check real briefly
24 with Mr. Pachl.

25 CO-HEARING OFFICER DODUC: Why don't we take a

1 short ten-minute break -- actually, shorter than that
2 we'll return at 10:40.

3 (Recess taken)

4 CO-HEARING OFFICER DODUC: All right. 10:40,
5 we're back in session.

6 Ms. Meserve, it looks like you might not do
7 redirect.

8 MS. MESERVE: That's correct. No redirect for
9 the first panel, and we're moving on to the regional
10 conservation panel.

11 CO-HEARING OFFICER DODUC: All right. Will
12 the three new witnesses please rise and raise your
13 right hands.

14 (Witnesses sworn)

15 SEAN WIRTH, JUDITH LAMARE, and DAVID YEE,
16 called as Panel 2 witnesses for Protestant
17 Groups 46, 47, and 48, having been first
18 duly sworn, were examined and testified
19 as hereinafter set forth:

20 CO-HEARING OFFICER DODUC: And 20 minutes for
21 each witness?

22 MS. MESERVE: Yes, thereabouts.

23 CO-HEARING OFFICER DODUC: All right.

24 MS. MESERVE: All right. So we will get
25 started with the regional conservation panel now. And

1 to begin with, we will be hearing from Mr. Burness.

2 DIRECT EXAMINATION BY MS. MESERVE

3 MS. MESERVE: Mr. Burness, is ECOS-1 Errata a
4 true and correct copy of your written testimony?

5 WITNESS BURNES: Yes, it is.

6 MS. MESERVE: And is ECOS-2 a true and correct
7 copy of your statement of qualifications?

8 WITNESS BURNES: Yes, it is.

9 MS. MESERVE: And is ECOS-5 a true and correct
10 copy of your PowerPoint presentation?

11 WITNESS BURNES: Yes, it is.

12 MS. MESERVE: Let's see. Let's go ahead and
13 have ECOS-5 up, please.

14 And go ahead and summarize your testimony.

15 And Mr. Burness, maybe while we're waiting for
16 that to come up, we talked a little bit about your
17 background yesterday. Maybe you could supply a little
18 bit more detail on your background to begin with for
19 preparing this testimony you're providing today.

20 WITNESS BURNES: Yes. Could you move to the
21 next slide? It sort of summarizes it.

22 I have over 40 years of work in conserving
23 Sacramento's habitat beginning as early as 1973 for the
24 Cosumnes River Basin Resource Study, which I was the
25 principal author of with Jones and Stokes Associates.

1 I managed vernal pool resource studies for the County
2 of Sacramento. I have evaluated constraints of
3 Sacramento County's growth. And I was primarily
4 responsible for developing a 1993 County General Plan
5 conservation and open space policies as well as Urban
6 Service Boundary policies.

7 And then for the last ten years, as I
8 mentioned yesterday, I've been conservation chair of
9 Friends of Stone Lakes National Wildlife Refuge. And
10 for almost the same amount of time, along with Sean, to
11 my left, the co-chair of Habitat 2020, which is an arm
12 of ECOS, the Environmental Council Of Sacramento.

13 Move to the next -- do you have any --

14 MS. MESERVE: Go ahead.

15 WITNESS BURNES: I'd like to focus my
16 testimony today on the importance of habitat lands in
17 the South Sacramento County area as well as address
18 some concerns with the Delta tunnels project that
19 perhaps may not have taken the same perspective that
20 I'm offering.

21 I'd also like to address some concerns we have
22 with the environmental commitments that are proposed as
23 part of the WaterFix project.

24 Next slide, please. Over the last 30 years --
25 well, actually let's move to the next slide after that.

1 This is a map of -- from the Draft South
2 Sacramento Habitat Conservation Plan that shows
3 Preserved Planning Unit No. 6 and the habitat cover
4 types of the area that is most -- is closest to and
5 includes the path of the tunnel and the Delta, the
6 intakes from the Sacramento River.

7 Increasingly over the last 30 years this --
8 these habitat types, a number of these habitat types
9 have been recognized as much more important than they
10 were previously. In particular, the grassland vernal
11 pool habitat with the reservoir of native flowers as
12 well as unique species in vernal pools and the value of
13 agricultural crop land to the migratory water fowl that
14 use the wetlands in this particular area.

15 You can see in this diagram with the Cosumnes
16 Preserve, with its high level of valley -- valley
17 grasslands and interspersed with wetlands. And then on
18 the west access, along I-5, the Stone Lakes area, again
19 with a lot of valley grasslands, wetlands and an area
20 of vernal pools.

21 In between, you see the cropland, both regular
22 cropland as well as irrigated pasture, that predominate
23 in the -- in the area, provide the feeding area for a
24 number of the migratory -- foraging area for the
25 migratory waterfowl.

1 I'd also like to point out the negative part
2 of this, at least from a habitat perspective, is the
3 vineyard land, which is in purple, which shows the
4 extent of which vineyards have increased in this area.
5 And although they are high value land, they are not
6 very high value habitat.

7 Could we move to the next map slide. I think
8 that's two slides over. The Department of Fish and
9 Wildlife has initiated what is called the California
10 Essential Habitat Connectivity Project to identify
11 essential habitat in the state. Their goal is to
12 identify large impact habitat landscape blocks and
13 their essential links.

14 This map is a result of that effort. And you
15 can clearly see the Cosumnes Preserve area, the
16 Cosumnes River area south of Elk Grove extending to the
17 west and almost linking up with the Stone Lakes
18 corridor, which in turn is connected to the Yolo Basin.

19 So this is -- this area is identified as a
20 significant corridor for the movement of wildlife.

21 Can we move to the next slide, please.

22 The importance that I'm showing here with
23 these -- these maps is -- has led over the years to
24 three, I think, very significant efforts to protect
25 habitat in South Sacramento County, firstly southwest.

1 The Cosumnes Preserve, with 50,000 acres in all, the
2 Stone Lakes National Wildlife Refuge, and the South
3 Sacramento Habitat Conservation Plan.

4 If we could move forward another three slides
5 to -- to that one, yes. The Cosumnes Preserve, which
6 you can see the extensive amount of protection of
7 habitat that has already occurred, began with 1500
8 acres purchased down in the Valley Oak habitat, in
9 what's called the Tall Forest by the Nature
10 Conservancy. And over the years, a number of partners,
11 including Ducks Unlimited and several state and federal
12 agency, one of which is the petitioners, have invested
13 significantly in protecting habitat along this
14 important undammed river. And we've already talked
15 about, yesterday, in our testimony about the Stone
16 Lakes National Wildlife Refuge and its history. And
17 you can see the areas that have been protected so far
18 in that area.

19 The South Sacramento Habitat Conservation Plan
20 is the third leg of what we feel are the most important
21 habitat protection initiatives in this area. And it is
22 draft now, but it is moving very close to adoption,
23 perhaps as early as this year. It would protect
24 substantial land outside of the Sacramento County's
25 Urban Service Boundary. And PPU, as I mentioned, is

1 the area where most of that -- much -- a significant
2 amount of protection would occur, primarily for
3 Sandhill crane and Swainson's hawk.

4 All in all, that particular preserve planning
5 unit, the planning calls for 9,750 acres of land to be
6 preserved in that area. Much of that would occur in
7 between the axes of the two corridors that I'm
8 describing. So this is a focus of major conservation
9 effort. And the point is that the Delta tunnel project
10 is impacting that.

11 I'd like to move on now to the next slide.
12 Perhaps one after that to the cone of depression map.

13 Moving to groundwater overdraft and our
14 concerns about that. There's been years of overdraft,
15 as this map tries to depict or depicts. You can see
16 the cone of depression to the west of the Cosumnes
17 River. That has existed for many years. And as a
18 result, the Cosumnes River has become disconnected
19 with -- or separated from its aquifer, endangering
20 riparian habitat along that portion of the river and
21 has lead to efforts by the Cosumnes Coalition and
22 others to try to augment, recharge, and restore some of
23 the lost habitat quality of the Cosumnes River.

24 The WaterFix Final EIR asserts that
25 groundwater levels will drop no more than five feet due

1 to lower flows in the Sacramento River, in fact,
2 actually most of the time no more than three feet, as a
3 result of constructing tunnel intakes and removing
4 water from the Sacramento River.

5 The concern that we have is raised by
6 Dr. Steffen Mehl, or has been raised by
7 Dr. Steffen Mehl. And his testimony -- and I can refer
8 to that if you need to -- his testimony for the
9 Sacramento County Water Agency regarding the adequacy
10 of DWR's model to -- that led to that conclusion that I
11 just cited.

12 His analysis of the stream loss effects
13 demonstrates potential adverse effect on the South
14 American River Basin. And he essentially points out
15 that there are a number of assumptions that modeling
16 process that are reasonably challengeable and advocates
17 that there be additional analysis for -- by DWR in
18 order to reassess their conclusion on the level of
19 impact.

20 Our concern is that the impact of -- the
21 potential impact that Dr. Mehl is asserting and that,
22 in subsequent testimony after I prepared this
23 testimony, that Dr. Lambie has presented as part of
24 Part 2 is that the potential impact of groundwater --
25 lowering groundwater table will -- is not just a matter

1 of impacting the well users near the tunnel itself, but
2 it also has the potential to impact the environment and
3 the natural resources of the area and undercut efforts
4 to maintain the groundwater level and to restore
5 habitat and restore connectivity of the aquifer the
6 habitat that's above it.

7 We would recommend, therefore -- if we move
8 two slides up, next slide.

9 -- that the State Board require additional
10 analysis to fully understand the effects of the new
11 diversions on reduced groundwater recharge from the
12 river before they approve any of the requested permit
13 modifications. We feel this is an important
14 consideration.

15 Moving on now to the issue of traffic and in
16 particular, truck traffic, associated with the project.
17 I'd like to move ahead just one slide for a second, and
18 then move back -- two slides. I'm sorry, two slides.

19 The hourly trip volumes were included in the
20 environmental document for a number of different road
21 segments during peak construction, which could let --
22 and the construction period could last up to 12 years
23 for the tunnels and the intakes and the forebay.

24 The projected traffic increases are constant
25 on a number of almost all of the road segments that

1 were evaluated from 6:00 a.m. to 7:00 p.m. daily.

2 The conclusion that we draw from this is that
3 almost all of that truck traffic -- because it's not
4 related to going to or coming to work -- is going to be
5 truck traffic. And primarily that that truck traffic
6 drives four- to six-axle vehicles, hauling refuse,
7 muck, from the site and transporting other materials to
8 the construction sites.

9 And what this graphic shows is that the
10 analysis in the environmental document translates to
11 about five different levels of projected traffic in the
12 various segments within the Delta area, ranging from
13 620 trucks an hour in the most impacted sections,
14 segments, which amounts to one truck every five
15 seconds, down to the lowest level, 45 trucks per hour,
16 which is about one truck per 80 seconds.

17 If you could move back to the previous slide.

18 This is my admittedly unprofessional
19 attempt -- I'm a volunteer, unpaid volunteer, and I
20 don't have access to professional GIS capabilities.
21 But it depicts the actual reaches that reflect the
22 level of trucks per minute that we just reviewed. And
23 it shows a large number of segments in the North Delta
24 which are, at the highest levels, 10.3 trucks per
25 minute. And so you can see the significant truck

1 traffic on two-lane roads that is going to be impacting
2 the area for potentially many months on end.

3 Looking at Hood-Franklin Road in particular --

4 If we could advance a couple of slides,
5 please. There's additional data on this.

6 Hood-Franklin Road is important from the Stone Lakes
7 perspective because that is the road upon which the
8 refuge headquarters and the primary visitor access
9 point is located. Without the project, average daily
10 traffic was 2,137 vehicles, of which only 27 were four-
11 to five-axle trucks, at 1 percent of the total.

12 With the project, taking the data from the
13 EIR/EIS, and if we only assume 80 percent of the trucks
14 are four- to five-axle, daily traffic is 6,448 trucks
15 per day, which is an increase of 63.5 percent of
16 big rig traffic during the construction period.

17 And this, we feel, significantly exacerbates
18 not only the impacts on wildlife but also on public use
19 of the refuge.

20 If you could move to the next slide.

21 In our communications on the environmental
22 document, we have indicated that the limited -- that
23 the truck traffic will limit regular movement of
24 animals to the different habitats, affecting habitats
25 adjacent to the roadways, limiting ability for areas to

1 be recolonized, and increase wildlife mortality due to
2 collisions and lower reproductive success.

3 Particularly since the traffic will begin at
4 6:00 and, at certain times of the year, or -- and
5 continue till 7:00 p.m., the beginning and end periods
6 are those periods in which there is more likely to be
7 wildlife movement in the area.

8 Next slide, please.

9 And also our concern is the impact on the
10 visitors station adjacent Hood-Franklin with 30,000
11 visitors annually and over 2,000 environmental
12 education programs. Truck traffic will be a safety
13 threat for buses as well as an annoyance to not only
14 wildlife that use the area but for visitor experience.

15 Next slide, please.

16 Our concern is mitigation is limited. It
17 focuses on the congested traffic segments, not on heavy
18 truck traffic use of the rural roads. Transportation
19 Mitigation Measure at 1A requires traffic management
20 plans. They do require -- there are some requirements
21 in there that specifically address Stone Lakes National
22 Wildlife Refuge, but. . .

23 Next slide.

24 And this is our essential conclusion.

25 Whatever mitigation does emerge, even if fully

1 enforced, will not significantly mitigate the impact of
2 up to ten big rigs every minute traveling down the
3 rural roads of the North Delta and adjacent counties
4 all day, day in, day out for many, many months on end.

5 The magnitude of this traffic is an additional
6 consideration among the many unreasonable impacts of
7 the Delta tunnel project on wildlife and human user
8 experience.

9 The final area that I'd like to cover and
10 perhaps one of the more important ones is the question
11 of ensuring implementation of environmental
12 commitments.

13 If you'd move to the next slide.

14 All together, the environmental commitments
15 represent a significant effort to protect 13,340 acres
16 and about 2400 acres of habitat restoration. These
17 are -- these are not mitigation measures. And there
18 are no mitigation measures in the EIR/EIS that directly
19 protect the listed species. So these commitments are
20 the mitigation for project-related habitat and unlisted
21 species.

22 The problem is that, in spite of our
23 requests -- next slide -- DWR has not provided
24 information as to how and when the habitat mitigation
25 requirements will be met. The MMRP provides only that

1 DWR will prepare a management plan for each listed
2 species habitat restoration and protection site, but it
3 wouldn't be triggered until the sites have been secured
4 for restoration.

5 Next slide. In addition, there's no upper --
6 there's only an upper and no lower commitment for
7 restoration acreage. The project encompasses the
8 entire Delta, not the primary habitat impacts, although
9 the primary impacts are mostly in the North Delta.

10 And I say Franks Tract; by the way, that's
11 actually wrong. It should be Clifton Court Forebay,
12 just for the sake of the record.

13 There are no assurances that the mitigation
14 will occur where the impacts is the greatest. That's
15 one of the comments that Jim Pachl made in the prior
16 section. And with no BDCP, there's no requirement that
17 mitigation occur in the project area.

18 These problems are of particular concern
19 to us -- next slide -- who have worked so hard to
20 protect the regional habitat that I discussed at the
21 outset. So we are seeking assurances that the
22 environmental commitments will be met close to areas
23 with habitat loss and without the arbitrary constraint
24 for the legal Delta boundary.

25 Therefore, we are recommending -- if we could

1 go straight to the -- well, the next slide -- back up
2 one. Just pointing out that there are a number of
3 efforts to reduce and cut costs associated with the
4 project that still remain to be prepared -- play out.
5 There is resistance paying for the tunnels. DWR is
6 looking for ways to scale back the project. We don't
7 know what that is, but we would anticipate cost cutting
8 will be a constant effort if this project moves
9 forward.

10 So as a result -- next slide -- we recommend
11 that the State Water Board, if they approve this
12 project, that they additional conditions that would
13 obligate the petitioners to do the following things.

14 And I will read these so that you get the full
15 impact here. That they mitigate to the full extent the
16 acreage commitments in the MMRP; that they develop
17 within 18 months in consultation the state, federal,
18 and other wildlife management entities an
19 implementation plan that identifies priority areas and
20 time lines for acquiring fee title/easements and for
21 restoration, and that they provide habitat protection
22 and restoration in proximity to the location of the
23 impact; they complete acquisition -- they complete
24 acquisition no later than 10 years and restoration
25 projects no later than 20 years from the date of Board

1 approval, and, finally, that the conditions establish
2 and meet interim progress benchmarks.

3 We think that, if you move forward with the
4 project, these are essential additional conditions to
5 ensure the protection of natural resources and habitat.
6 Thank you.

7 MS. MESERVE: Mr. Burness, just one point of
8 clarification from your testimony.

9 On I think it's Slide PDF 11, if you could go
10 back to this, please. It shows the areas in green. Is
11 that -- is that the refuge boundary, or is that the
12 areas that are protected under state ownership?

13 WITNESS BURNES: Those are areas that are
14 protected either in fee title ownership or with
15 easements that are managed for conservation purposes.

16 WITNESS WIRTH: By --

17 WITNESS BURNES: By -- in addition to the
18 state.

19 MS. MESERVE: But that map doesn't show the
20 refuge boundaries.

21 WITNESS BURNES: No, it doesn't.

22 MS. MESERVE: Okay. Thank you.

23 WITNESS BURNES: If I implied that, it was a
24 mistake.

25 MS. MESERVE: Let's move on, then, to

1 Mr. Wirth.

2 Mr. Wirth, is SOSC-6 a true and correct copy
3 of your written testimony?

4 WITNESS WIRTH: Yes, it is.

5 MS. MESERVE: And is SOSC-8 a true and correct
6 copy of your PowerPoint?

7 WITNESS WIRTH: Yes, it is.

8 MS. MESERVE: Did you prepare a statement of
9 qualifications for this testimony?

10 WITNESS WIRTH: I did. It did not make its
11 way into it.

12 MS. MESERVE: And -- through an administrative
13 oversight. But you did receive a BA in zoology from
14 UC Berkeley; is that correct?

15 WITNESS WIRTH: That is correct.

16 MS. MESERVE: And you have a master's in
17 English from S.F. State?

18 WITNESS WIRTH: That is correct as well.

19 MS. MESERVE: Okay. And now let's go ahead
20 and summarize -- I believe in your testimony you have
21 spelled out some of your background that assisted you
22 in preparing this. If you could go ahead and discuss
23 that briefly.

24 WITNESS WIRTH: Sure. In 2005, I was a
25 founding member for a group called Save Our Sandhill

1 Cranes. It was an effort to create a group focused on
2 the preservation of wintering grounds for the greater
3 Sandhill crane in our region.

4 Very shortly thereafter, I became a
5 stakeholder for the South Sacramento Habitat
6 Conservation Plan, which is looking at habitat
7 conservation issues in the southern part of the county
8 as a way to offset development proposed inside the
9 urban development area. I participated in that up
10 until now, that is the last 12 years.

11 Because of my participation in the crane
12 group, we joined the Environmental Council Of
13 Sacramento. I became a board member there. I became
14 an executive committee member for the local group of
15 the Sierra Club, which led to my becoming part of the
16 chapter, which is a broader range of the Sierra Club.
17 The local chapter is 24 counties, 11 groups.

18 I've been the conservation chair for the
19 chapter for the last five years, so I deal with a very
20 broad region of California dealing with conservation
21 issues. Not much happens that doesn't go across my
22 desk.

23 I am part of the Crane Technical Advisory
24 Committee. This is a committee that formed actually
25 after the Bay-Delta Conservation Plan, after -- when it

1 was identified by both scientists, bureaucrats, and
2 environmentalists that the crane was really struggling
3 in the Delta. And it was an effort to create a
4 statewide strategy to deal with crane conservation
5 going forward. There is no recovery plan for the
6 crane.

7 And because of my participation in the crane
8 group, Friends of Stone Lakes asked me to consult with
9 them for the stakeholder meetings for terrestrial
10 impacts for the Bay-Delta Conservation Plan. So I was
11 involved in all of those meetings and provided quite a
12 bit of input in terms of the greater Sandhill crane
13 efforts.

14 MS. MESERVE: And then just to clarify, so in
15 your role as conservation chair of the Mother Lode
16 Chapter of the Sierra Club, do you prepare a lot of
17 comments and analysis of projects throughout the
18 region?

19 WITNESS WIRTH: Unfortunately, I prepare the
20 comments for not only the Sierra Club but for ECOS and
21 Habitat 2020, focusing on biological resource impacts.
22 So I'm basically the guy for those groups that does all
23 of those comments and analyses. And I've been doing
24 that for the last 12 years.

25 MS. MESERVE: Okay. Now moving on to your

1 testimony for this panel, can you go ahead and
2 summarize your testimony using your PowerPoint SOSC-8.

3 WITNESS WIRTH: Sure.

4 As an aside, I spent a lot of time in the
5 field observing local wildlife. So I provided a bunch
6 of photographs to entertain you during my summary,
7 presentation of my summary.

8 We can go to the third one, since I've already
9 summarized the introduction.

10 As part of my participation in the stakeholder
11 meetings and because of my participation in the South
12 Sac Habitat Conservation Plan, we were very concerned
13 from the very beginning that, since the impacts to
14 Stone Lakes and a lot of the impacts from the tunnels
15 were occurring in the same footprint as the South
16 Sacramento Habitat Conservation Plan, that there was an
17 inherent conflict in that.

18 And it was very concerning because we had
19 spent at that point I think about 16, 17 years working
20 on the HCP. And having another conservation plan being
21 implemented in the same footprint would be potentially
22 very negative.

23 The South Sac HCP, which Rob has already
24 mentioned, it's a very large plan area. It's over
25 317,000 acres. When fully completed it's going to

1 result in 36,000 acres of conservation. Rob also
2 mentioned the importance of Preserved Planning Unit 6.

3 Jump to the next slide. The HCP is divided
4 into preserved planning units. And the preserved
5 planning units have distinct qualities as well as
6 distinct geographies. Preserved Planning Unit 6 would
7 be the preserved planning unit that all the Stone Lakes
8 impacts and the North Delta impacts would occur. It is
9 the -- one of the largest of the preserved planning
10 units, 95,196 acres.

11 There's already a fair bit of conservation
12 that has occurred in there, as indicated by Rob's map.
13 There's 28,079 already conserved in Preserved Planning
14 Unit 6. There's also 3,436 acres of low-density
15 development. And this would mean that, in Preserved
16 Planning Unit 6, for the inventory for impacts in the
17 South Sac Habitat Conservation Plan, there would be
18 roughly 63,657 acres remaining. That would be the land
19 that could be drawn from to mitigate for urban impacts.

20 We can jump to the next slide. It's really
21 important to understand that Prepared Planning Unit 6
22 is the population stronghold for Sandhill crane and
23 Swainson's hawk in the South Sacramento Habitat
24 Conservation Plan. For Swainson's hawk, 71 percent of
25 the occurrences occur in Preserved Planning Unit 6.

1 For greater Sandhill crane, 92 percent.

2 And it's actually probably significantly more
3 important than those numbers indicate for the crane
4 because a lot of the occurrence data in the California
5 Natural Diversity Database has flyovers. So these are
6 the areas the cranes are using. The vast majority of
7 their roost sites are in Preserved Planning Unit 6.
8 The vast majority of their forage is in Preserved
9 Planning Unit 6. So it's a very, very important part
10 of that plan for the Sandhill crane. It's also the
11 very same footprint that the Bay-Delta Plan, which is
12 now the California WaterFix, is impacting.

13 We can jump to the next slide.

14 So there are conservation targets for each of
15 the planning units. As Rob already mentioned, the
16 target for Preserved Planning Unit 6 is 9,750 acres.
17 These are numbers for conservation for larger of the
18 avian species -- so greater Sandhill crane,
19 white-tailed kite, northern harrier, Swainson's hawk.

20 Next slide. The reason why it's important is
21 there's a concept call a feasibility of acquisition.
22 And this concept is a way to approach the difficulty of
23 achieving your conservation targets. So as an example,
24 if you had 100 acres and you needed to get 50 acres of
25 that footprint to satisfy your conservation targets,

1 you would need to get 50 percent of that available
2 land. So the ratio would be a 50 percent ratio. And
3 as is already quite obvious to you, I'm sure, the
4 higher the ratio, the more difficult it is to succeed
5 in acquiring that target.

6 So the feasibility of acquisition out of the
7 gate was a great concern because that would be a way to
8 approach what impact the additional effort from this
9 tunnels project would have on the effort for the
10 Habitat Conservation Plan to achieve its conservation
11 targets.

12 So we were very concerned about it from the
13 very beginning. And can you do some kind of simple
14 math and take a look at what the feasibility for
15 acquisition for the Habitat Conversation Plan would be.
16 So we know we need 9,750 acres. Based on the math I
17 already provided, there's 63,657 acres of available
18 inventory. Take the first number, divide it by the
19 second one; that gives you a starting feasibility, and
20 it's 15.3 percent.

21 It's important to note two things at this
22 point. The first is that that does not at all consider
23 floodplain or elevation. For Swainson's hawk in
24 particular, you're not allowed to mitigate below sea
25 level. Floodplain is a huge concern for obvious

1 reasons, and it does tend to overlap with a lot of the
2 sea level elevations as well. So the actual amount of
3 available inventory that you could use is considerably
4 less. I have since done some calculations; they're not
5 included in here, so I won't be able to bring them up.
6 But the picture is actually a lot worse out of the
7 gate.

8 The second thing to note is that the
9 California Department of Fish and Wildlife asserted
10 during the entire process to create the HCP that
11 15 percent was the desirable target. If you went above
12 15 percent, the feasibilities became concerning.

13 We can see an easy example of that with the
14 Natomas plan. Recently there was land that was
15 purchased within 200 feet of the runway for Swainson's
16 hawk, an airport runway, not the most desirable. And
17 this is an artifact of a very high feasibility for
18 acquisition, extraordinarily high prices and very
19 limited available land. So the feasibility is a huge
20 concern for being able to implement your conservation
21 strategy and actually meet your conservation targets.

22 So what does that mean in terms of this new
23 project and its impact on the South Sac HCP's
24 feasibility for acquisition? It was, frankly, quite
25 difficult to figure out because there is not, at least

1 to my knowledge and my searching, any indication where
2 mitigation acquisitions occur on the ground. But since
3 Preserved Planning Unit 6 is the stronghold for
4 Sandhill crane, it's the most important area in the
5 North Delta for Sandhill crane, the conservation for
6 Sandhill crane and for Swainson's hawk need to occur in
7 Preserved Planning Unit 6, at least a significant
8 portion of it.

9 So the roughly 4,000 acres of conservation for
10 crane, Swainson's hawk, if you figure just a range of
11 2,000 to 4,000 acres -- we don't know exactly, just as
12 an exercise. If you looked at a range between 2,000
13 and 4,000 acres in PPU 6, it would mean out of the gate
14 the feasibility of acquisition is now 18.4 percent to
15 21.6 percent.

16 And that's not including elevation. If you
17 look at elevation, the numbers are substantially worse,
18 much more difficult. So for Swainson's hawk it's --
19 that does not fully demonstrate how difficult it would
20 be to implement the conservation strategy.

21 What does this mean practically? It means
22 that you have a lot of competition. Prices are getting
23 very high. So the prices for buying conservation land
24 are very high. And that directly impacts the fee
25 structure for the HCP, which means, when you go to buy

1 your house, you're paying more money. You're paying
2 more money because it cost more money to buy the
3 conservation land that was needed in order to get the
4 permit to build the house in the first place. So it
5 has a large regional impact even beyond the
6 environment.

7 The second thing we are very, very concerned
8 about is that, unlike the South Sacramento Habitat
9 Conservation Plan, which was extremely explicit that
10 they would only acquired land for conservation from
11 willing sellers, the Bay-Delta folks and now the
12 WaterFix has retained the ability to use eminent
13 domain. Doesn't mean they will do it, but they
14 maintain that ability.

15 This is a very chilling prospect for many of
16 the private landowners that that are in the South
17 Sacramento Habitat Conservation Plan area. They're
18 already very concerned -- not all of them; many of them
19 are very concerned about the play of big government.
20 They're concerned this is going to have an impact on
21 their ability to do what they want to do on their land,
22 even their ability to own their land.

23 It's not accurate. It's not necessarily
24 logical because the HCP for South Sacramento doesn't
25 have any possibility of eminent domain. It doesn't

1 matter. If you talk to them, they are extremely
2 concerned, extremely paranoid. That creates a chilling
3 effect in terms of people being receptive to the South
4 Sac HCP. That's out of the gate, gives a chilling
5 effect. It can be brushed easily with the same broad
6 stroke. And that's a very, very big concern.

7 We had a -- we need to jump three sides, I'm
8 sorry. We had these discussions in the stakeholder
9 meetings, and we had an actual solution we felt that
10 would work, a way to do the conservation for what was
11 then the Bay-Delta Conservation Plan and what is now
12 the California WaterFix -- to do that conservation and
13 minimize the impact on the HCP.

14 And this had to do with the fact that there
15 was a local municipality that made an effort to grow
16 far south of their city limits, Elk Grove. And because
17 of that effort -- which they lost and have since then
18 recouped and are trying to do again -- it dramatically
19 increased the cost of those lands. There was a
20 perception that these lands would eventually urbanize,
21 therefore they were more valuable, so the speculative
22 price was significantly higher.

23 The fee structure for the HCP was such that it
24 didn't necessarily have a budget to go buy a bunch of
25 land that was three or four times the cost of a

1 standard piece of farmland to the south of there. So
2 to purchase land in that footprint would have a very
3 little impact on the HCP. And the HCP couldn't really
4 afford land much anyway. That was a suggestion that
5 was heard, but it was denied because that particular
6 geography was not in the jurisdictional footprint of
7 the Delta.

8 And to my knowledge, we are no longer limited
9 by the jurisdictional footprint of the Delta because
10 there is no Bay-Delta Conservation Plan. And if we're
11 looking to do the best conservation possible for these
12 species, this really should be a target area. It's
13 going to be more expensive, but it's going to provide
14 significant positive benefits to the species.

15 Beyond just securing good, high quality
16 habitat, it will create a greenbelt that will make it
17 more difficult for areas south of the greenbelt to
18 develop, which will ensure, which will ensure the
19 greater success of the South Sacramento Habitat
20 Conservation Plan. So rather than impacting it and
21 competing with it and limiting it, there's a
22 possibility to actually assist that plan. And that is
23 our recommendation.

24 Moving on -- that's the recommended condition
25 for of approval. See if you can skip one -- but go

1 slow and see the pictures. Next one.

2 Okay. These are comments specifically for
3 Sandhill crane. I was basically brought in as a
4 consultant because of my experience doing crane
5 conservation for the last 12 years.

6 And this is a concern that came up right out
7 of the gate. And it relates to some of the language
8 that was discussed in cross, "if practical," "if
9 feasible."

10 Skip to the next slide. So there is a roost
11 site in Stone Lakes that's the northernmost roost site
12 for Sandhill cranes in the county. And it's already
13 very, very constrained.

14 Can we pull up SOS-9, the map.

15 Now, this map basically is intended to give
16 you an idea of out of the gate how constrained that
17 roost site already is. You have construction that's
18 planned very close, but if you look to the north and
19 you look to the east, you see already an extraordinary
20 amount of urbanization. So those areas are not at all
21 possible for Sandhill cranes to forage. So having a
22 bunch of impacts there and having the roost site
23 abandoned was a real possibility, and with language
24 like "if feasible," "if practicable," were very, very
25 concerning. And we brought that up.

1 When we said we're very concerned about the
2 noise impacts, we were given the example of Cosumnes
3 pond across from the visitor center -- Highway 5's
4 right there; that's a lot of noise. This is true, but
5 it's a white noise. We were concerned about pile
6 driving, large machines, noises that were far more
7 disruptive, and particularly pile driving because, if
8 you're trying to think of something that's a correlate
9 to pile driving, the closest thing would be hunting.

10 And we already know from research in the field
11 by Dr. Ivey that these cranes don't like to be where
12 hunting occurs. So we felt that just saying, "if
13 practical or feasible, we're going to do these things,"
14 and they don't happen, abandonment's a real
15 possibility. More needed to be done.

16 So we suggested creating a new roost site
17 within one mile, one mile further from the disturbance.
18 And to increase the likelihood that this would succeed,
19 we also suggested a term we call super charging their
20 feeding opportunities, which has been translated to
21 enhanced feeding opportunities. The idea was create an
22 enticement to keep these birds there so they don't
23 abandon, which came out of the realization that cranes,
24 greater Sandhill cranes, have a very small range
25 anyway. They work that range quite heavily. They

1 would here for sure because there's so little remaining
2 habitat they can even use within their normal roosting
3 range, which is 1.9 kilometers, 2 miles to the HCP, 1.9
4 kilometers according to Gary's research.

5 So having this additional enticement to stay
6 made a whole lot of sense. The food thing came out of
7 what New Mexico does. They provide a lot of additional
8 food. So for Bosque throughout the rest of New Mexico,
9 they do a lot of unharvested crops, and this is a way
10 that they help feed their birds there.

11 So there was no direct literature indicating
12 this might work, but there was some reasons to believe
13 that it might. And I think that's really important to
14 understand, that is that we were trying to do our best
15 to come up with something that might work. Just
16 saying, "Well, there probably won't be a problem," was
17 unacceptable to us. So we said what is a solution?
18 This is a solution we came up with, and it was a
19 reasonable solution. It does make some sense.

20 We have no idea if it'll to work. There's no
21 literature to indicate that having a new roost site
22 with enhanced forage is going to offset potentially
23 very large, long-scale disturbances, including
24 potentially pile driving. So we don't know if it's
25 going to work. We're hoping it works, but we don't

1 know. So it's important to note, number one, this is
2 experimental.

3 The second thing that's important to note is
4 that the way that the AMM is written, these particular
5 attributes that are going to be added to deal with this
6 potential impact are planned to be put in place one
7 season before the impact. I'm not sure where they got
8 one season. I have a lot of confidence, as I believe
9 Gary Ivey does, that they'll be able to find these
10 things in one season. But are they going to be tied to
11 them enough that, when these huge impacts occur one
12 season later that they won't impact the area? I don't
13 know.

14 It seems -- it seems fairly risky. It would
15 be a lot more sensible, common sense, to put these this
16 place longer, to have it be a longer part of the local
17 crane culture. This is an area that has a good roost
18 site. It's also got a lot of extra food, they don't
19 have to go very far. Entice it further with a longer
20 time frame. That just makes good sense.

21 And I've also now -- we've got to jump through
22 a bunch of these slide, but go slow so you can see the
23 pictures.

24 MS. MESERVE: So we'd be going back to SOSC-8.
25 And then, yes, I don't want to take that time away from

1 our last couple panelists. So do you have one more
2 major point?

3 WITNESS WIRTH: Yes. The one last major point
4 is that the wetland impacts are extraordinarily huge.
5 In my experience, working on environmental impact
6 reports and statements, I've never seen anything like
7 it, astronomical.

8 I gave some examples in the testimony just to
9 give it a sense of scale based on things I've worked
10 on. And it's -- I think it's greater than anything any
11 of us have ever seen. And that's very concerning.

12 I would just like to wrap up by saying that,
13 even with all the mitigations in place, I believe this
14 to be a very large and difficult impact to the region,
15 non-mitigatable. Thank you.

16 CO-HEARING OFFICER DODUC: Can we -- I won't
17 use up his time or your time, but can we scroll through
18 the PowerPoint? There's some great photos.

19 MS. MESERVE: I was just going to ask one more
20 question, Mr. Wirth. I didn't mean to cut you off so
21 abruptly.

22 WITNESS WIRTH: No, it was welcomed.

23 MS. MESERVE: I think you had an example in
24 order to put the wetlands impact in context as compared
25 to South Sac HCP.

1 WITNESS WIRTH: I did.

2 MS. MESERVE: So go ahead and cover that.

3 WITNESS WIRTH: That's what I'm most familiar
4 with. So the South Sacramento Habitat Conservation
5 Plan, which is enormous, absolutely huge, is working on
6 an integrated 404 permit, which is the first of its
7 type in the country. And as part of that, there is a
8 programmatic general permit. And that's going to cover
9 the vast majority of the impacts.

10 And the way the PGP is worked out, it's in
11 five-year lots, no more than 120 acres per five-year
12 lot for a planning area that's 317,000 acres --
13 absolutely enormous, thousands of acres of new urban
14 development.

15 To take a look at that in contrast to the
16 Bay-Delta Conservation Plan, it's equivalent to 30
17 years of PGP permits, which is extraordinary. It's
18 absolutely -- it's remarkable.

19 MS. MESERVE: Okay. So thank you, Mr. Wirth.

20 We'll go on, then, to Dr. Lamare.

21 And Dr. Lamare, is ECOS-11 Errata a true and
22 correct copy of your written testimony?

23 WITNESS LAMARE: It is.

24 MS. MESERVE: And is Echo-12 a true and
25 correct copy of your statement of qualifications?

1 WITNESS LAMARE: It is.

2 MS. MESERVE: And is ECOS-13 a true and
3 correct copy of your PowerPoint presentation?

4 WITNESS LAMARE: It is.

5 MS. MESERVE: And in preparation for your
6 testimony, did you review portions of the EIR and other
7 associated materials?

8 WITNESS LAMARE: Yes.

9 MS. MESERVE: And if you could go ahead, then,
10 and summarize your testimony, beginning with your
11 background and qualifications for presenting it.
12 Thanks.

13 WITNESS LAMARE: Good morning. I am a retired
14 political scientist with experience in air quality
15 planning and policy. My Ph.D. is from UCLA where I
16 trained in public policy, public administration, state
17 and local government, quantitative methods, public
18 policy evaluation and government performance metrics.

19 My dissertation was on transportation policy.
20 At that time, transportation was considered the source
21 for unmitigated air pollution problem in the Los
22 Angeles air basin.

23 I taught at the university level. I worked
24 for the California Senate Office of Research. And from
25 1983 to 2005, I was an air quality consultant for a

1 public health nonprofit organization guiding the
2 activities of a regional clean air coalition. And our
3 focus was -- became the NOx reduction that we needed to
4 reach clean air standards for the Sacramento region and
5 that was to come from heavy duty vehicles.

6 So we advocated for a heavy duty diesel
7 incentive programs which included the Carl Moyer
8 Program, which actually was initiated within this
9 partnership.

10 So my goal today is to show the project from
11 the viewpoint of the public's interest in air quality
12 that meets public health standards.

13 So, Osha, should I go on then?

14 MS. MESERVE: Yes, please go on. Sounds like
15 you wanted to use ECOS-13, Page 2 to begin with?

16 WITNESS LAMARE: Let's start -- let's look at
17 the air basins. So the foundation of air quality
18 analysis is the air basin and the Federal Clean Air
19 Act, which mandates planning that will show attainment
20 of clean air standards those standards. Those
21 standards are based on public health. So the air
22 quality plans are created at the local regional level,
23 and then they're approved by the state and federal
24 governments.

25 The Delta tunnels project is not included in

1 any air quality plan. Projects that are receiving
2 federal approval must meet a conformity determination
3 test to show that they don't conflict with existing air
4 quality plans. So for the Delta tunnels project to
5 meet this conformity determination test, it must
6 completely offset emissions that are above a threshold
7 stated in each plan for each pollutant admitted.

8 So this is covered in the binder, the
9 testimony. But to keep it simple, I'm just going to
10 throw this on ozone non-attainment and ozone
11 precursors. There are other pollutants involved.

12 Please put up ECOS-16, Page 1. Looking at
13 this slide, you will see the project in yellow. It's a
14 36-mile-long project. The black lines are the material
15 haul corridors, and -- that serve the construction.
16 And the red dots are indicative that the entire area is
17 non-entertainment for ozone standard, the federal ozone
18 standard.

19 So the green area is in the far eastern part
20 of the San Francisco Bay Area Air Quality Management
21 District. The red area is -- or pink is the San
22 Joaquin Valley Air Pollution Control District, that air
23 basin. And then the remainder of the project is the
24 south part of the Sacramento air basin. So here you
25 see these three air basins coming together. It's

1 really margins of the basin where this project is.

2 So if we could put up ECOS-13, Page 8, please.

3 These three basins, because of their plans,
4 have different thresholds by which -- you know, whether
5 they're -- the emissions exceed a threshold that's
6 required for a conformity determination.

7 So this slide shows you that -- and that's
8 based on the severity of the ozone problem in each
9 basin. So the Bay Area is on the far right, and San
10 Joaquin basin is on the far left. And you can see that
11 the -- is in the middle. The San Joaquin Valley air
12 basin is in the middle. The Sacramento non-attainment
13 area is on the left.

14 So you can see that the threshold for the San
15 Francisco Bay Area air basin is ten times higher than
16 the threshold for the San Joaquin basin. And likewise,
17 the Sacramento basin threshold is several times the San
18 Joaquin threshold.

19 So the project can emit 10 times as much NOx
20 and ROG in the Bay Area portion of the project as it
21 can in the San Joaquin portion of the project. And
22 these are the elements that go together under
23 meteorological conditions that form ozone.

24 Remember, only emissions above the threshold
25 will be mitigated under this plan or, as in the

1 language of the plan, be offset.

2 If the San Joaquin Valley air basin standard
3 were applied to all the emissions in the project, then
4 an additional 558 tons per year of NOx and an
5 additional 444 tons of reactive organic gas would have
6 to be offset by the project. That's a difference of
7 40 percent.

8 So because we do planning this way and split
9 the project into three parts, look at them separately
10 with different standards, there are many emissions here
11 that will not be offset.

12 Could we look then at -- I'm sorry. The slide
13 number is not on my copy.

14 MS. MESERVE: I believe this is the one you
15 were going to discuss from the EIR. We don't have a
16 slide.

17 WITNESS LAMARE: Yeah, I apologize.

18 So general conformity is described. And there
19 is a general conformity determination for this project.
20 And it goes through all of the requirements for a
21 general conformity. It confirms that the project is
22 not exempt from a general conformity requirement, that
23 it must be -- it must address those criteria that any
24 project that's not in an air quality plan and will have
25 excess emissions over the threshold must address these

1 things.

2 So one of the requirements is that the general
3 conformity evaluation must consider both direct and
4 indirect emissions. However, this project's conformity
5 analysis specifically did not consider the emissions I
6 just talked about, the emissions that are technically
7 in the San Francisco Bay portion or the Sacramento
8 portion that are above the threshold for San Joaquin
9 Valley. And so it's possible to consider that these
10 are indirect emissions, incorrect emissions effecting
11 the San Joaquin Valley air basin.

12 Could we put up ECOS-14, Page 5. So I'm sure
13 you're aware of the California Air Resources Board,
14 who's done extensive studies on transport of air
15 pollutants. And this little chart identifies the
16 patterns that they have found. And the San Francisco
17 Bay Area transport to the San Joaquin Valley, depending
18 on the weather, is either overwhelming, significant, or
19 insignificant. And similarly the Sacramento area at
20 times does have transport to San Joaquin Valley; it's
21 significant or insignificant.

22 So we would know from past research that there
23 is transport eastward, the prevailing winds are
24 eastward.

25 So could we please put up ECOS-14, Page 26.

1 And these -- this is going to show the geographic
2 features and specifically the mountainous topography
3 that separates the Bay Area from the San Joaquin
4 Valley. We're all familiar with this, but just to
5 refresh and set the scene.

6 The project area would be very far to the
7 north, northwest here, between the Carquinez Straits
8 and, you know, Pacheco Pass. It's north of Pacheco
9 Pass. And the mountainous -- there are two places
10 where east flowing prevailing winds push pollutants
11 into the valley. Under most conditions, the pollutants
12 are not coming back out to the Bay Area or going north.

13 So the slide is meant to illustrate that these
14 are the areas involved and the topography is such that
15 the results of the project in terms of air emissions
16 are going to come into the San Joaquin Valley.

17 So the project -- can we see ECOS-13, Page 12,
18 please.

19 So why was no transport or dispersion analysis
20 done of the project in terms of where pollutant was
21 going to go? This was the explanation from the project
22 proponents that was given in Response to Comments in
23 the EIR. It's a little difficult to grasp.

24 And I think the way to understand this, the
25 claim is that thresholds have been adopted given the

1 plans, and they take into consideration transport. But
2 the way to understand this is that this project is not
3 a part of any plan, and therefore, it has to be
4 evaluated in terms of transport aside from the -- you
5 know, the existing plans and the existing thresholds.

6 This is -- looking at this as a matter of
7 public interest, the magnitude and the specific
8 location of this project, the fact that it's not
9 included in any air quality plan, and it requires a
10 conformity determination I would argue means that a
11 transport and dispersion analysis is needed to fully
12 account for the public health impacts, the air quality
13 impacts of the project.

14 So we've been talking about the pollution
15 that's coming from the project and where the impact
16 will be. So now I'd like to talk about the offsets.

17 And that would be ECOS-13, Page 13.

18 So the location of the offsets is -- is not
19 focused on the area of impact. Because of the way air
20 quality planning works, the offsets may be done by air
21 basin, and so the emissions that occur in one air basin
22 would be offset in that air basin.

23 And that means that the emission impacts of
24 this project, which as I've described as occurring most
25 heavily in the northern San Joaquin air basin, are

1 going to be mitigated anywhere in the Sacramento air
2 basin and anywhere in the Bay Area Air Quality
3 Management District and anywhere in the San Joaquin
4 Valley air basin.

5 There are various reasons why that happens.
6 And it's just that this project -- its magnitude and
7 it's unique location -- it becomes a perverse effect
8 that the mitigation could occur in Auburn and Gilroy
9 and Mill Valley and Bakersfield. It's not necessarily
10 going to happen downwind from this source.

11 Another issue I think other people have
12 addressed in terms of one of the risks involved with
13 the pollution reduction measures that are proposed,
14 certainly feasibility is an -- of an offset program
15 that relies upon voluntary participation of owners of
16 engines to replace or retrofit those diesel engines in
17 buses, trucks, and locomotives is risky because you're
18 asking someone who owns something to do something
19 different than they might otherwise do with their
20 business plan.

21 And there is a limit that -- what can be
22 achieved because there's normal vehicle turnover, and
23 then there are regulatory requirements that come into
24 play that mandate that vehicle owners of trucks, buses
25 locomotives and so on have certain quality of engine,

1 certain level of pollution control on their engines.

2 And the state and federal governments have
3 progressively increased their requirements over time,
4 so these programs have been in operation for 20 years.
5 We've been doing incentive programs to get people to
6 change out their engines. And it happens. It has
7 happened. There is a record of success of using these
8 kind of programs. But it's not a guaranteed program.

9 And we do know that, in January 2 of 2023, all
10 trucks and buses and fleet operation and all trucks
11 entering ports or rail yards will need to have a 2010
12 engine, model engine, or the equivalent. So at that
13 point, there's no more incentive. If people are
14 required to have a certain engine, you're not going to
15 be able to use an incentive program to get an offset.
16 So it's a changing scene, and it's not an easy target.

17 Guarantees are missing that the needed offsets
18 can be obtained in the time frame required. And I did
19 want to mention that there's nothing here that says,
20 well, DWR will have in place with each air district a
21 firm contract about these emission offsets,
22 guaranteeing that they will be achieved.

23 And it's also the case that DWR, if for any
24 reason wants to, they can substitute their own
25 mitigation monitoring program, which in the mitigation

1 monitoring program doesn't really have characteristics
2 that are different than the one they are doing with the
3 air districts.

4 But it's troubling. And both the U.S. EPA and
5 the Sacramento Air Districts submitted comments
6 cautioning that offsets may become scarce or
7 prohibitively expensive in later years or in certain
8 years. Well, I think they might have been referring to
9 anything after 2023.

10 The Emission Reduction Program then relies on
11 mitigation measures that are risky. And that
12 contingency program that was written in to assure you
13 that they would be able to back stop any risk in the
14 mitigation program is also speculative. It's the same
15 measures. It's just that DWR will now implement these
16 measures.

17 DWR is an agency with no air quality
18 experience, managing risk of that, the primary program,
19 which has at least the authority of air districts
20 behind it may fail.

21 Competition for offsets would also increase.
22 And I would be concerned, too. I think that the
23 U.S. EPA was pointing to, like, the high-speed rail
24 project being -- which is about 589 tons of pollutants
25 requiring offsets occurring at the same time, competing

1 for the same offsets.

2 In that case, it's the same -- it's just
3 driving the cost of offsets up. It doesn't necessarily
4 mean they will be there to be bought. And in the case
5 of the high-speed rail, the San Joaquin Valley Air
6 District did require that the -- because it was in
7 their district alone, and they had that ability. They
8 required that a contract be signed between them and the
9 project proponent prior to the approval of the project
10 guaranteeing that these emission reductions would
11 happen.

12 So just a couple more points. General
13 conformity requirements can be lost. They're reviewed
14 every five years. The determination for the project
15 could be lost. In other words, the federal permit
16 could be withdrawn because the project no longer meets
17 the conformity determination that was originally
18 submitted. Just a risk that you start a project and
19 lose a conformity determination, it's not a sustainable
20 way to do the project. It's not in the public interest
21 to begin something that you can't be assured you can
22 finish, that you will have the permits to finish.

23 Finally, the cumulative offset burden for DWR
24 is really high because not only they have these
25 criteria pollutants to offset, they also have to offset

1 greenhouse gas emissions under state law. It's many of
2 the same kinds of programs have to be put in place and
3 delivered. And it's simply the magnitude of this
4 project is such and the air quality impacts are such
5 that it's going to be a very hard bar for the DWR and
6 the mitigation program for greenhouse gasses also --
7 "to be determined," "we'll get there when we get there"
8 and "these are the kinds of things that we think we'll
9 do."

10 So I did suggest several -- I would suggest to
11 the Water Board that they -- if they want approve this
12 project that they wait until they get assurances about
13 a number of things here to assure that the public
14 interest and the air quality is protected. And I will
15 leave it to your discretion to figure out what is the
16 best way to do that.

17 But I wanted to make some suggestions about
18 some things that could be done: enforceable deadlines,
19 permit suspension conditions, annual reports that
20 actually project out and show contracts prospectively
21 for two or three years rather than just reporting,
22 like, "what we did last year." That's really not
23 accountability.

24 Be to be accountable in air quality emissions,
25 you need to get out quite a few years and say, "Here is

1 what is going to happen in those years, and this is why
2 we believe it is going to happen."

3 In my opinion, this project as planned is
4 detrimental to the public interest, both in project
5 area and elsewhere. And this project would result in
6 an unfair air pollution burden in the San Joaquin
7 Valley, which is already impacted by severe air quality
8 problems and routinely gets transport. These
9 conditions which I've suggested would not prevent the
10 damage to public interest but could limit the severity.

11 Thank you.

12 MS. MESERVE: Thank you, Dr. Lamare.

13 We will now move on to our last witness,
14 Mr. Yee.

15 And, Mr. Yee, is SOSC-72 a true and correct
16 copy of your written testimony?

17 WITNESS YEE: It is.

18 MS. MESERVE: And is SOSC-73 a true and
19 correct copy of your statement of qualifications?

20 WITNESS YEE: It is.

21 MS. MESERVE: And could you please describe a
22 brief description of your background for preparing this
23 testimony?

24 WITNESS YEE: I was born in Stockton in 1954
25 and became an avid bird watcher by the time I was 10. I

1 remember it well. It was on a magical day on
2 Christmas. And I pursued bird watching as a hobby to a
3 point where, by the time I was in high school, I wanted
4 to pursue a profession in bird science, bird
5 conservation. And so did that.

6 Went to UC Santa Cruz for four years, came
7 home after that and decided to work with my family.
8 And I stayed there, and I worked as a chemist, but I
9 continued to do a lot of bird study in the area so I've
10 been in the Stockton-Lodi area all my life.

11 MS. MESERVE: And why are you here testifying
12 today?

13 WITNESS YEE: I'm here to testify not only on
14 my bird observations in the area that would be affected
15 by the tunnel project, but also by how I see the -- any
16 kind of environmental impact. We're talking about with
17 the tunnels, how it would affect what I would describe
18 as the cultural aspect of how changing the environment
19 affects the relationship between the community and the
20 environment.

21 I think the best way to -- for me to address
22 that is in my own personal life. And my father
23 immigrated to the United States in -- as a child from
24 China when he was very young. My mother's grandparents
25 immigrated from Japan to California. And so they're --

1 they chose to, you know, stay in the Stockton area
2 after meeting and marrying at EOP in Stockton. And
3 they could have gone anywhere, but they chose to stay
4 in the Stockton area.

5 And I know this is because, when I was raised,
6 they loved to go fishing. And whether I liked it or
7 not, I had to go. And my father bought a boat, and we
8 were on the Delta every weekend. I am sure that is
9 what helped to promote my interest in wildlife
10 observation.

11 Fortunately, for them, I became a -- I loved
12 watching birds because, being out with them in the
13 outdoors there really, really made me happy. And even
14 on that day when we were not getting a bite fishing,
15 just for us to be out there, I was happy. They were
16 happy. I didn't know why they were happy, but I knew
17 why I was happy. And that was because I just loved
18 being with them, and I loved observing all the
19 wildlife.

20 Later, when I got in high school, my father
21 really got involved in golf. And, you know, you can
22 golf anywhere, anywhere in the world. But he joined
23 the Stockton Golf and Country Club. I had to become a
24 member. I became an okay golfer. My brother became a
25 great Golfer.

1 But it was well known, when I was out golfing
2 with my family, I always had my binoculars with me. By
3 high school, I was into it. And they did not -- my
4 family did not discourage me from doing it. Even when
5 we were doing family things like being out on the golf
6 course.

7 And so my identity in being with my family,
8 being in the Stockton-Lodi area out with them was so
9 tide to us being outdoors. And for me, it was a big
10 part of my birding. I mean, birding was my life. I
11 mean I -- it's what I wanted to do. It's what gave me
12 the greatest joy. And yet I was able to do it within
13 the context of my family in the Delta.

14 We would go to golf courses in the area. And
15 alls I know is lots of trees, lots of water, I could
16 see birds. We went out on a picnic, it was always out
17 on the Delta. And there I got to show -- I can see
18 cranes, Swainson's hawks, and I could share that with
19 my family. And even though my family -- they weren't
20 birders; they identified with my great love for
21 birding, and it became a part of their lives.

22 When I came back from college, met my wife, we
23 could have moved anywhere. And we talked about that
24 all the time. She's not a native to Stockton. Should
25 we move to where she was born or where her family was

1 over in the Bay Area? And we chose to stay in the
2 Stockton-Lodi area a lot of it because of the
3 environment. Yeah, family and friends was a big part
4 of it. But we loved, she loved -- she loved the
5 outdoors. That was how we met. And she loved the
6 environment.

7 As I continued to be active in birding and I
8 decided to update the San Joaquin County bird
9 checklist, which essentially is documenting and then
10 publishing the status and distribution of all the birds
11 in San Joaquin County, I became really, really involved
12 in knowing intimately the Delta, the habitats, bird
13 life.

14 Went on to publish the checklist of the birds
15 of San Joaquin County in 1988, and I've been updating
16 that ever since. It's just an ongoing thing. It's one
17 of my great passions in life.

18 And in the process of doing that, I've come to
19 really understand how land use changes affect habitat,
20 birds, and ultimately how it affects people that enjoy
21 the birds and just enjoy wildlife. The whole bird
22 festival craze in this country really came to
23 California in the late '80s. And by the '90s, a lot of
24 bird festivals are being formed. It's a great way for
25 each community to kind of get involved with their local

1 wildlife.

2 In the '90s, I was real involved in forming --
3 helping to form bird festivals in Stockton and Lodi and
4 Galt. And all of them worked within the areas that
5 would be impacted by the tunnels.

6 One thing I've come to really, really see in
7 working with these bird festivals, educating people,
8 taking people out that really -- they love the
9 outdoors, but just getting a sense of what's in their
10 backyards, it just totally allows them to say, "This is
11 home. This is where I want to stay. This is part of
12 my identity."

13 You know a big part of is job, big part of it
14 is family, a big part is friends. But where you live
15 and what's going on in your environment is so key to
16 making you feel like this is where I want to be and
17 this is where I want to contribute.

18 I know I want to contribute to my community
19 because of what it offers to humanity and not just
20 because it's a job and not just because I have a home.
21 It's because it's healthy, and I want to give back to
22 that.

23 I think one of the most -- not in the thing
24 here but just last week happened to go out to lunch
25 with my 30-year-old nephew. My wife and I don't have

1 kids, and so we are very attached to my brother's three
2 boys. We've got three nephews, and my brother said,
3 "You take the boys out. That's one thing that I don't
4 do. You take them out."

5 His oldest brother now lives in San Francisco,
6 got a good job out there, and that's where he's raising
7 his family. And my nephew's been thinking of moving to
8 San Francisco because, after all, that's where his
9 older brother lives, and he has lots of job
10 opportunities out there.

11 And just last week, we went out to lunch. And
12 he said, "You know something, Uncle David? I've been
13 really thinking about this but" -- and this is totally
14 without me prompting him, "All the things that you and
15 Aunt Sue did, taking me out, getting a sense of
16 Stockton and Lodi, I love it here." I was shocked.

17 "You love it here?" I said, "Why?"

18 "Warm summer days out in the Delta. I don't
19 know the birds like you do, Uncle David, but I like
20 them. I want to stay here. This is my home. And I
21 want to figure out how to give back to this place."

22 I think that is so key because you know, a lot
23 of people, they move to areas, and it's just a place to
24 live. It's work related, you know. But that kind of
25 passion for a place, that is priceless. That's what

1 communities need. They need people that go, "This is
2 my home. This is where I want to live. This is where
3 I want to raise a family and give back."

4 And he said the key reasons why he wanted to.
5 He has family in San Francisco. He said, "I like
6 access to the outdoors. I like going out and driving
7 for miles where there's not a lot of noise. I want to
8 be able to do that all my life. I want to stay right
9 here in the Stockton-Lodi area."

10 And I think that's key. I think that's a
11 very, very important part of life here in the valley.
12 It's going to be impacted by the tunnels. I'm not
13 against, you know, making things better for humanity.
14 But at the same time there's a price to be paid any
15 time we start changes things in big dramatic ways.

16 MS. MESERVE: Okay. Just to clarify a couple
17 things, you mentioned you do work as a chemist, but you
18 also do take a lot of folks out on bird tours?

19 WITNESS YEE: Yes, that's my part-time job,
20 every week. It's something I've been doing all my
21 life. Even currently, I teach classes for both UOV and
22 Delta on the side as an educational opinion to keep
23 people at least aware of what's around them.

24 MS. MESERVE: And then just toward the end of
25 your testimony, you have a couple of examples to help

1 understand pictorially what the birding is in our area.

2 So if I could just ask you briefly, could we
3 look, please, at LAND-120. And I just want to ask you
4 how you put together the eBirding map starting with
5 LAND-120. Are you familiar with this overview map?

6 WITNESS YEE: Yes, LAND-120 is an area map of
7 the region that -- where the project will occur. And
8 there overlaid on the map is the projected
9 infrastructure, the main infrastructure of the tunnel
10 project.

11 MS. MESERVE: And do you have any sense of how
12 the LAND-120 was prepared by BSK Associates?

13 WITNESS YEE: They use a GIS map, and then it
14 had all of the data that was provided, I guess, over
15 the past years, and then they overlaid that data onto
16 the map.

17 MS. MESERVE: And that's reflected in the
18 legend at the --

19 WITNESS YEE: Correct. It was done by BSK
20 Associates, a professional group.

21 MS. MESERVE: And then if we could look at
22 SOSC-77 which is the eBird map that you discussed in
23 your testimony as well, are you familiar with this
24 figure?

25 WITNESS YEE: Yes. So this is using

1 essentially the LAND-120 map. And then it's providing
2 -- essentially all of those squares are birder visits
3 to a designated spot. These squares are provided by an
4 organization called eBird. eBird is a huge data
5 gathering program that was formed and maintained by the
6 Cornell Lab of Ornithology in New York and the National
7 Audubon Society, so I figure about 15 years ago. And
8 it's just an amazing, amazing resource today.

9 And so what those boxes show is birder visits
10 that use eBird. Now, it's been estimated that the
11 number of active birders that use eBird is very small.
12 eBird is really for birding nerds, people like me that
13 are totally obsessed with it. It doesn't represent the
14 full birder population. It's estimated that today,
15 about 200,000 people use eBird in the country, a very
16 small percentage of what is estimated to be the number
17 of birders in the country. I think 200,000 is roughly
18 about 1.7 percent of the -- what the census shows that
19 are birders.

20 So, but, even in spite of that. Using the
21 eBird numbers for all of these designated spots, the
22 numbers are significant. And so what the map actually
23 shows is we decided to multiply the number of birder
24 visits to all of these spots by 10. And that's a very
25 low number because if it's truly only 1.7 percent, we

1 probably should multiply it by 50. But we only
2 multiplied it by 10. And even using the multiplier of
3 10, the number of visits -- and this is during a period
4 of five months from November of, I believe, maybe to
5 '15 to March of 2016, this shows that the number -- the
6 dark blue, conservatively, 5,000 birders are visiting
7 those things just in a five-month period.

8 That means that, you know, 1,000 birders per
9 month in one little time are visiting. And that's with
10 the very, very conservative numbers. It just shows how
11 many people in these communities -- Elk Grove, Galt,
12 Lodi, Stockton -- are visiting these areas, taking
13 people out there, whether it's good for their families,
14 whether they're really just out there just kind of
15 casually going out there on a stroll just to enjoy the
16 area, this is what they do to get away from the hectic
17 days of their lives. They go out there.

18 I know that because, when I'm out there, it's
19 like that. There are people everywhere out there.
20 It's a very busy spot. People are just out there
21 having a good time. Another thing that this map also
22 shows is that in areas that are very rural -- you know,
23 I think one of the most amazing things that occurs out
24 there is we're out there and so are the local
25 landowners, like the farmers. And we go up, and they

1 talk. And the farmers are the ones that are excited to
2 see us out there because they love sharing their
3 wildlife -- they always call it "my wildlife, my
4 cranes, my ducks," and share it with us.

5 MS. MESERVE: And we're almost wrapped up
6 here. We just have a couple minutes. Thank you.

7 Okay. So is it fair to say, Mr. Yee, that the
8 map shown here is just for the demonstration of showing
9 there's quite a few birders in the project area?

10 WITNESS YEE: Yes, a significant number.

11 MS. MESERVE: And then in thinking about -- in
12 trying to determine what the overall number of birders
13 was, did you also refer to a report by the National
14 Fish and Wildlife Service, SOSC-76, the National Survey
15 of Fishing and Hunting? Was that part of what you
16 looked at in trying to figure out --

17 WITNESS YEE: Yes, yes, yes. As an active
18 birder, we're always looking at those numbers. Putting
19 on these bird festivals, we're always focusing on those
20 surveys, those statistics that are provided to show the
21 number of people that are actually coming out here so
22 that we could put these events on.

23 So it is a lot. It's not only -- of course,
24 you know, those are often very money driven numbers.
25 They want to know what the economic effect is of

1 birders in an area. But like I said, it's not just
2 dollars. It's also what it's doing culturally for the
3 people, them wanting to stay there, live there, raise
4 their families, and give back.

5 MS. MESERVE: And then just thinking about the
6 tunnels project as you understand it from one of the
7 documents you reviewed, how in summary, do you think
8 that project, if built, would affect birding and
9 recreation in the project area?

10 WITNESS YEE: Well, number one is as was
11 mentioned by the other speakers here, number one, it
12 will affect the presence of the birds. Any time you
13 change the habitat, you're affecting available habitat
14 for the birds. It disrupts just birds and their
15 presence, that's number one.

16 Number two, just all of the construction
17 noise, like what Sean said, it will affect the birds'
18 presence. It also just affects just the ability for
19 birders to enjoy the area.

20 I'm not going to go to an area that's having
21 construction. If there's construction site going, I
22 don't care if it is the most wonderful pristine spot,
23 it used to be, I will avoid it. So just construction
24 and all the noise, obviously it's affecting birds, but
25 it will affect birders. They don't want to go there.

1 And finally, there's big access issues when
2 you have big projects. And a project of this kind
3 that's going to go for many, many, many years, even all
4 those blue dots that are miles away from the immediate
5 site, access to that site is affected. I mean, you
6 just can't get to those spots once there is a project
7 of this magnitude that starts. And so you just won't
8 be able to get there, even if you wanted to go there.

9 MS. MESERVE: And so, Mr. Yee, do you agree
10 with the CEQA document, the EIR, and the findings for
11 that the tunnels would have a significant and
12 unavoidable impact on recreation, including bird
13 watching?

14 WITNESS YEE: Undeniably.

15 MS. MESERVE: Thank you. That concludes our
16 direct testimony.

17 CO-HEARING OFFICER DODUC: Thank you very
18 much. We have about an hour, hour and a half of cross,
19 so let's go ahead and take our lunch break, and we'll
20 return at 1:10. And when we do, Ms. Ansley -- well,
21 everyone but especially Ms. Ansley, I would like to at
22 some point today before we adjourn sort of go through
23 the remaining cases in chief and get an estimate of
24 cross, just so we can put a -- plan out our remaining
25 time. So just a heads up for you right now.

1 MS. ANSLEY: Yeah. I mean, I'm happy to make
2 some sort of gross estimate, but I will have to
3 slightly overestimate because the further away the
4 parties, we may still be refining questions.

5 CO-HEARING OFFICER DODUC: Understand.

6 MS. ANSLEY: Thanks.

7 CO-HEARING OFFICER DODUC: Looking ahead, I'm
8 wanting to at least hear, you know, North Delta
9 C.A.R.E.S., Mr. Porgans, Snug Harbor, and Ms. Womack a
10 rough estimate of when we might get to them.

11 All right. With that, we'll return at 1:10.

12 Thank you.

13 (Luncheon recess taken at 12:09)

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1 Tuesday, April 10, 2018 1:10 p.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: All right. It is
5 1:10.

6 We are reconvening with cross-examination by
7 the Department of Water Resources.

8 And I believe you had estimated 20 to 30
9 minutes.

10 MS. ANSLEY: That's probably accurate. Maybe
11 even a little shorter.

12 I -- In -- As a preface, I do not have
13 questions for Miss Lamare so I don't know if that means
14 anything, but . . .

15 CO-HEARING OFFICER DODUC: What about
16 Mr. Jackson, Mr. Keeling, Mr. Ruiz, who is not here,
17 and Miss Des Jardins, who is not here?

18 MR. KEELING: I have no questions for
19 Dr. Lamare.

20 MR. JACKSON: I have no questions for
21 Dr. Lamare.

22 CO-HEARING OFFICER DODUC: Okay. Well, you
23 can't leave yet because we've got two cross-examiners
24 missing as of now.

25 MS. ANSLEY: My questions are for Wirth.

1 (Witness Wirth enters hearing room.)

2 CO-HEARING OFFICER DODUC: Who's right here.

3 We've been waiting.

4 WITNESS WIRTH: Oh, I'm sorry.

5 The bathroom's so far away.

6 MS. ANSLEY: It's fine. I'm not totally

7 100 percent . . .

8 Good afternoon. My name is Jolie-Ann Ansley.

9 I'm with the DWR Department of Water Resources.

10 My first set of questions is for Mr. Wirth.

11 Would you like me to run through the topics

12 and the people, Hearing Officers?

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

14 MS. ANSLEY: Yes.

15 So for Mr. Wirth, I have some questions

16 regarding his qualification.

17 I have a number of questions regarding the

18 South Sacramento HCP, which he provides pretty

19 extensive testimony on; AMM20; and then . . . I believe

20 that is the topics of my -- for Mr. Wirth.

21 I have a very limited number of questions for

22 Mr. Yee, primarily on his -- the map he showed us

23 earlier regarding the eBird survey.

24 And then, for Mr. Burness, I have just a very

25 limited amount of questions which come directly off his

1 topics, which would be wildlife impacts, groundwater
2 impacts and traffic impacts.

3 CO-HEARING OFFICER DODUC: All right. Please
4 proceed.

5 CROSS-EXAMINATION BY

6 MS. ANSLEY: Mr. Wirth, you're testifying here
7 as an expert witness?

8 WITNESS WIRTH: I believe as a percipient
9 witness.

10 MS. MESERVE: Mr. Wirth is listed as an
11 expert.

12 MS. ANSLEY: And I believe that, just to
13 shortcut some of my questions, that you testified
14 earlier that it is indeed true that there was no
15 Statement of Qualifications for Mr. Wirth submitted in
16 this proceeding?

17 MS. MESERVE: That's correct.

18 MS. ANSLEY: Do you have a copy of his
19 Statement of Qualifications now that I could look at?

20 MS. MESERVE: I did not bring that. I may
21 have an incompleated one that I could give you. I'll
22 try to find it.

23 Mr. Wirth does, however, discuss his
24 background and education to some extent in his
25 testimony itself on the first page.

1 And so I think that's what -- At this point,
2 since we weren't able to get the actual SOQ into the --
3 submitted with his testimony, that's what we would be
4 relying on for his expert status.

5 MS. ANSLEY: And my understanding was that you
6 supplemented that earlier today with questions when you
7 did Mr. Wirth's direct testimony?

8 MS. MESERVE: I was just trying to get him to
9 talk about his background and, again, with reference to
10 what was in the testimony.

11 MS. ANSLEY: Okay. Can I leave this right
12 here just a second --

13 MS. MESERVE: Absolutely.

14 MS. ANSLEY: -- and I'll get it back to you.

15 Mr. Wirth, you're designated as an expert in
16 impacts on wildlife; is that correct?

17 WITNESS WIRTH: Well, I would say more
18 conservation, but, yeah, that would be include impacts
19 on wildlife. I spent hours at a time analyzing impacts
20 in the environmental documents.

21 MS. ANSLEY: And do you recall from this
22 morning, when you were asked by Miss Meserve, that you
23 have a degree in zoology from U.C. Berkeley?

24 WITNESS WIRTH: That is correct.

25 MS. ANSLEY: An undergraduate degree?

1 WITNESS WIRTH: Undergraduate degree.

2 MS. ANSLEY: And your -- I do see that you
3 have conservation experience and work experience, and
4 you did highlight that earlier today.

5 If I could --

6 MS. MESERVE: (Handing document to counsel.)

7 MS. ANSLEY: -- ask you a little bit about
8 what your current job is.

9 WITNESS WIRTH: By "job," you mean what I get
10 paid for? I retired some time ago.

11 MS. ANSLEY: Okay.

12 WITNESS WIRTH: So, for the last 13 years,
13 I've been working more than full-time as an
14 environmental activist for various groups.

15 MS. ANSLEY: And these are the groups that
16 you've listed here --

17 WITNESS WIRTH: Yeah.

18 MS. ANSLEY: -- on Page 250 of your testimony?

19 WITNESS WIRTH: Right.

20 I would say that's it's a lot more work than
21 anything I ever did for money.

22 (Laughter.)

23 MS. ANSLEY: I am not doubting that, sir.

24 Just very quickly, I'd like to ask you a
25 couple questions about your -- your biological

1 background.

2 WITNESS WIRTH: Sure.

3 MS. ANSLEY: And I understand that the groups
4 that you advocate for are environmental groups.

5 WITNESS WIRTH: Right.

6 MS. ANSLEY: After you received your degree
7 from U.C. Berkeley, your undergraduate degree, did you
8 go on and receive any formal training in biology?

9 WITNESS WIRTH: I did not.

10 MS. ANSLEY: Did you ever work as a Biologist?

11 WITNESS WIRTH: I did not.

12 MS. ANSLEY: Did you -- And when I say did you
13 work as a Biologist, I'm including did you ever perform
14 field research in biology?

15 WITNESS WIRTH: No.

16 MS. ANSLEY: Okay. And you do not have any
17 published papers regarding wildlife.

18 WITNESS WIRTH: No.

19 MS. ANSLEY: Okay.

20 WITNESS WIRTH: My experience is through the
21 conservation work I did for those groups.

22 MS. ANSLEY: Thank you. I understand.

23 And the nature of the work that you did with
24 these groups, is it in large part providing comments
25 and input on government documents, such as FEIR -- such

1 as EIRs?

2 WITNESS WIRTH: It's one of the things that I
3 do. It's the least pleasurable thing that I do, but
4 it's one of the things.

5 I'm in leadership for most of those groups so
6 there's a lot of meetings, there's lot of lobbying and
7 interaction on top of that.

8 But in terms of the technical work, that's
9 probably the most technical thing I do.

10 MS. ANSLEY: Is providing input on --

11 CO-HEARING OFFICER DODUC: Right, the
12 biological resource.

13 I basically write all of the comments for the
14 Biological Research sections of the EIRs, EISs, and
15 have done so for the last 12 years.

16 MS. ANSLEY: Okay. And that's the nature of
17 your expertise in . . .

18 That's the basis for your expertise in
19 wildlife impacts?

20 WITNESS WIRTH: I would say that, and having
21 to work with scientists like Dr. Ivey in doing that
22 work, trying to get background from other experts in
23 the field.

24 MS. ANSLEY: Okay.

25 WITNESS WIRTH: A lot of the issues that we

1 were involved in required quite a bit of on-the-ground
2 examination, too. So we -- we're familiar with the
3 terrain; we're familiar with the -- with the species,
4 all of them.

5 MS. ANSLEY: And I think you were also -- You
6 were also listed as an expert on the inadequacy of
7 mitigation and in -- and of review.

8 And what is the basis for your expertise on
9 mitigation measures?

10 WITNESS WIRTH: It would be 12 years working
11 for the South Sac HCP preparation, as a volunteer but
12 at a very deep level.

13 There were stakeholders and there were those
14 that went to all the meetings and actually worked on
15 the language. I was the latter.

16 MS. ANSLEY: Okay.

17 WITNESS WIRTH: We worked extensively on
18 mitigation, and that would be not just the plan
19 preparers but with the agencies.

20 So there's many, many years of that, many,
21 many years of researching and thinking about how to
22 make the most effective mitigation measures, as well as
23 seeing what was typical for a given species in a given
24 geography.

25 MS. ANSLEY: Sorry. I'm crossing off my

1 questions because we are shortcutting your Statement
2 of --

3 WITNESS WIRTH: Because I'm answering so good?

4 MS. ANSLEY: Uh-huh.

5 Okay. I'd like to move on, then, to the South
6 Sacramento Habitat Conservation Plan.

7 So your testimony raises concerns regarding
8 impacts -- potential impacts between implementation of
9 the Cal WaterFix and the South Sacramento Habitat
10 Conservation Plan; is that correct?

11 WITNESS WIRTH: Correct.

12 MS. ANSLEY: And the habitat -- The South
13 Sacramento Habitat Conservation Plan has not been
14 finalized and approved; has it?

15 WITNESS WIRTH: It has not. But as of last
16 night, it got a four-to-one vote with the County
17 Planning Commission for recommendation for approval for
18 the county in an upcoming hearing.

19 So it's -- It's been almost 25 years in the
20 making and we're down to the last several months, so --

21 MS. ANSLEY: What would be the next step?

22 WITNESS WIRTH: The next step?

23 MS. ANSLEY: Um-hmm.

24 WITNESS WIRTH: They have to get approval from
25 the -- from the County. They have to get all the

1 municipal approvals. And then it goes back to the
2 register and then it begins implementation, so
3 potentially by the end of the year.

4 MS. ANSLEY: And one of the main concerns you
5 raise is in terms of acquisition of habitat
6 conservation areas; is that true?

7 WITNESS WIRTH: That's correct.

8 MS. ANSLEY: And isn't it true that Cal
9 WaterFix mitigation will occur over an area larger than
10 the boundaries of the South Sacramento HCP?

11 WITNESS WIRTH: This is true. But the point
12 that I tried to make, hopefully, clear enough was that
13 many of the impacts are within the Preserve Planning
14 Unit 6 of the HCP, which is already designated as a
15 stronghold for Crane population and various other avian
16 species.

17 So it would be biologically problematic to go
18 mitigate elsewhere for impacts in this really important
19 area for those species.

20 So, yeah, you could -- you could avoid
21 confrontation and competition with the HCP by
22 mitigating someplace far, far away, but I don't believe
23 that really addresses the impacts to the species in
24 that geography.

25 MS. ANSLEY: Is it your understanding there's

1 mitigation land opportunities west of the Sacramento
2 River in Yolo County?

3 WITNESS WIRTH: Is it my understanding?

4 MS. ANSLEY: Yeah.

5 WITNESS WIRTH: Based upon some of the
6 stakeholders meetings, yes.

7 MS. ANSLEY: And those would be outside the
8 South Sacramento HPC?

9 WITNESS WIRTH: Potentially, yes. Yes.

10 MS. ANSLEY: Oh, okay.

11 And are you familiar with Chapter 12 of the
12 FEIR, which is submitted here as SWRCB-102?

13 WITNESS WIRTH: I've read it, not recently,
14 but yes.

15 MS. ANSLEY: And isn't it true that Chapter 12
16 has an analysis of the impacts of the alternatives on
17 acquisition and restoration in conjunction with other
18 conservation plans, including the South Sacramento HCP?

19 WITNESS WIRTH: Yes.

20 MS. ANSLEY: And you're familiar with this
21 analysis?

22 WITNESS WIRTH: I read it. I don't know if I
23 could speak authoritatively. It's been awhile since I
24 read that particular section. But I remember when
25 reading it thinking that it did not fully address the

1 issue.

2 MS. ANSLEY: But you do not cite that analysis
3 in your testimony?

4 WITNESS WIRTH: No.

5 MS. ANSLEY: On Page 7 of your testimony, you
6 stated concern that the use of eminent domain would
7 have a chilling effect on willing sellers of land for
8 the South Sacramento HPC, specifically; correct?

9 WITNESS WIRTH: Yes.

10 MS. ANSLEY: Is your opinion based on any
11 research or study results?

12 WITNESS WIRTH: My opinion is based upon
13 feedback from landowners within the HCP footprint. The
14 very first thing that many of them said, when they
15 found out there was going to be a Habitat Conservation
16 Plan in their geography, was that, "That's awful.
17 They're going to take my land under eminent domain."

18 So this is something that the folks who worked
19 on the HPC had to deal with as a problem with getting
20 their Plan to be presentable and acceptable to local
21 landowners.

22 MS. ANSLEY: Was that -- Is that -- Is that
23 feedback written up anywhere in any sort of report or
24 analysis?

25 WITNESS WIRTH: Not that I'm aware of, no.

1 MS. ANSLEY: On Page 8, you recommended the
2 Cal WaterFix acquire a majority of its mitigation
3 acreage in the Elk Grove area --

4 WITNESS WIRTH: Correct.

5 MS. ANSLEY: -- is that correct?

6 WITNESS WIRTH: Yes.

7 MS. ANSLEY: And the reasoning is, is that
8 because the land prices there are inflated and beyond
9 the budget of the South Sacramento HCP?

10 WITNESS WIRTH: It was really two-fold:

11 The first was that, yes, because of the
12 increased speculative value of those properties, the
13 HCP really couldn't acquire very much of that area.

14 There's a requirement in there they have to
15 get 1,000 acres of upland forage, of which that could
16 be in that Elk Grove footprint. So if they were to
17 purchase land in there, it wouldn't have an impact of
18 HCP's ability to buy that land because they couldn't
19 afford it.

20 And the second was that it would provide a
21 somewhat significant conservation benefit to the HCP
22 because it would potentially aid in the creation of a
23 greenbelt, which would make the likelihood of
24 development south of that greenbelt less likely,
25 somewhat insulating the price pressures on land south

1 of there.

2 So the basic -- the basic concern was that
3 when that SOI was denied, there was still a belief that
4 sometime in the near future that land could be
5 urbanized. As a result of that, the values are three
6 to four times standard ag land in that area.

7 If there was a way to purchase some of that
8 land and set it aside as a greenbelt, it makes that
9 likelihood far less, makes that land far more
10 affordable.

11 MS. ANSLEY: Far more affordable for the DWR
12 if it was to purchase that mitigation land?

13 WITNESS WIRTH: It would basically be for
14 anybody.

15 If you think you can take land and urbanize
16 it, that's the maximum amount of money you're going to
17 be able to get.

18 To the degree that you can remove that
19 likelihood, land prices are based upon the value of the
20 actual land in its current state as agriculture as
21 opposed to the potential to urbanize it.

22 MS. ANSLEY: And is it your understanding that
23 the DWR Cal WaterFix will not have some of the same
24 budgetary pressures that would be guiding the choices
25 of the South Sacramento HCP?

1 WITNESS WIRTH: So, as I believe I indicated
2 in the testimony, this was something that was discussed
3 as part of the stakeholder meetings.

4 And the general tenor of the stakeholder
5 meetings were that these species are going to get a
6 major upgrade based on the Bay-Delta Conservation Plan.
7 "Whatever you want, we'll make it happen. We got
8 7,000 acres of Crane habitat."

9 I mean, it's really a very inflated sense of
10 benefit for these species.

11 We brought it up in that context. So this is
12 something you guys want to do and you're claiming you
13 can do whatever we need done. This would be a way to
14 do it.

15 And it was denied not because of economic
16 feasibility but because it was outside the
17 jurisdictional Delta.

18 MS. ANSLEY: So on Page 9 of your testimony,
19 you refer to the Avoidance and Minimization Measure 20,
20 which we've been talking about --

21 WITNESS WIRTH: Correct.

22 MS. ANSLEY: -- for the last day or so.

23 WITNESS WIRTH: Um-hmm.

24 MS. ANSLEY: AND you raised concerns regarding
25 disturbances within the .75 miles of roost -- of a

1 roost site that the AMM language uses.

2 And I think we talked about the language -- Or
3 you talked about the language to the extent
4 practicable?

5 WITNESS WIRTH: And feasible, yes.

6 MS. ANSLEY: Doesn't the remainder of AMM20 --
7 and we can pull it up -- that talks about the .75-mile
8 non-disturbance buffer provide an additional list of
9 measurements that will be implemented if that
10 non-disturbance measure -- or buffer is not
11 practicable?

12 WITNESS WIRTH: Right.

13 Well, if you -- If you need my testimony, that
14 section's more of a narrative. And that narrative
15 basically speaks to why the additional roost site and
16 the additional enhanced foraging was added.

17 We were -- We were involved in the stakeholder
18 process to get those added. That speaks to how that
19 happened.

20 MS. ANSLEY: Okay. But I think that my
21 question was: Isn't it true that there are additional
22 measures listed in AMM20 if the .75-mile
23 non-disturbance buffer proves to not be practical; is
24 that correct?

25 WITNESS WIRTH: Correct.

1 And the -- the testimony basically states that
2 those measures were measures that we largely suggested.

3 And we suggested them because, the way it was
4 worded initially, it wasn't going to be a problem. If
5 feasible and practical, it was not going to be a
6 problem.

7 We were very concerned it was going to be a
8 problem and insisted they make an effort that, if it
9 did become a problem, there was a way to resolve it.

10 So that suggestion of that roost site, that
11 was a suggestion to the stakeholders, as was the
12 enhanced foraging.

13 MS. ANSLEY: Okay. I just wanted to make it
14 clear, though, for the record that there are additional
15 measures beyond the .75-mile non-disturbance buffer.

16 WITNESS WIRTH: Right.

17 MS. ANSLEY: And I understand what you're
18 saying --

19 WITNESS WIRTH: I thought that was.

20 MS. ANSLEY: -- is that was supposed to --

21 WITNESS WIRTH: I thought that was implicitly
22 clear in the testimony, so, yeah, that is correct.

23 MS. ANSLEY: And are you familiar with the
24 environmental commitments adopted as part of the Cal
25 WaterFix in 2017?

1 WITNESS WIRTH: I read them.

2 MS. ANSLEY: And are you familiar with the
3 acres of restoration that these environmental
4 commitments contain?

5 WITNESS WIRTH: I read them. I don't remember
6 them in any great detail beyond maybe ball parks.

7 And for -- Well, there are concerns with --
8 with -- Well, you didn't ask in a question so never
9 mind.

10 MS. ANSLEY: Mr. Yee.

11 WITNESS YEE: Um-hmm.

12 MS. ANSLEY: You were also listed as an expert
13 here today.

14 WITNESS YEE: Yes.

15 MS. ANSLEY: And you're listed as an expert in
16 wildlife impacts and birding?

17 WITNESS YEE: Yes.

18 MS. ANSLEY: And your long -- your
19 qualifications are that you are a long-term avid bird
20 watcher?

21 WITNESS YEE: Yes.

22 MS. ANSLEY: Do you have any training or
23 expertise in recreation management?

24 WITNESS YEE: No formal training.

25 MS. ANSLEY: And I understand that, when you

1 said earlier that you teach classes, I believe you
2 said, at -- is it UOP on birding?

3 THE WITNESS: Yeah. In junior College Delta.

4 MS. ANSLEY: Do you have any formal training
5 or expertise in wildlife management?

6 WITNESS YEE: Nothing more than what I got
7 when I went to U.C. Santa Cruz.

8 MS. ANSLEY: And your Statement of
9 Qualifications state that you've done biological
10 consulting?

11 WITNESS YEE: Yes.

12 MS. ANSLEY: What is the nature of that work?

13 WITNESS YEE: Bird surveys.

14 MS. ANSLEY: And are you the author of any
15 published research papers?

16 WITNESS YEE: We.

17 MS. ANSLEY: Were those listed -- I'm sorry --
18 in your Statement of Qualifications?

19 WITNESS YEE: Well, the biggest thing that
20 I've authored is the checklist for the birds of
21 San Joaquin County.

22 But then I also been involved with western
23 field ornithologists, and they have a publication. And
24 I have authored some papers for that publication.

25 MS. ANSLEY: And you provided testimony

1 earlier on both LAND-120 and the map SOSC-77? That
2 was --

3 WITNESS YEE: Yes.

4 MS. ANSLEY: Okay. And I don't recall seeing
5 your testimony regarding LAND-120 in your -- I remember
6 you citing LAND-120 in your testimony.

7 Can we call up LAND-120? And then, after
8 that, we'll move to SOSC-77.

9 (Exhibit displayed on screen.)

10 MS. ANSLEY: Oh, thanks.

11 And can you zoom out a little just so that
12 everybody can see . . .

13 (Exhibit displayed on screen.)

14 MS. ANSLEY: . . . the map here.

15 And I believe you testified that you used this
16 map as a base map for your SOSC-77; is that correct?

17 WITNESS YEE: That's correct.

18 MS. ANSLEY: And did you create SOSC-77?

19 WITNESS YEE: I do not. I was at the meetings
20 where this map was talked about, and so I was there
21 when the aspects of this map was being talked about,
22 but I actually was not directly involved in putting it
23 together.

24 MS. ANSLEY: Okay. And you didn't direct the
25 preparation of LAND-120 here.

1 WITNESS YEE: Did not.

2 MS. ANSLEY: And you didn't direct the
3 placement of any facilities on that map; correct?

4 WITNESS YEE: I did not.

5 MS. ANSLEY: Okay. It was a little confusing
6 from your testimony earlier.

7 And can we look at SOSC-77, please.

8 And you do not work for BSK Associates in any
9 manner.

10 WITNESS YEE: I do not.

11 MS. ANSLEY: Okay.

12 (Exhibit displayed on screen.)

13 MS. ANSLEY: And so I assume that you directed
14 the preparation of this map, however; right?

15 WITNESS YEE: I worked with Ed Pandolfino on
16 this.

17 MS. ANSLEY: And he had the drafting
18 capabilities to create this map?

19 WITNESS YEE: He does.

20 MS. ANSLEY: And you all used the LAND-120 map
21 as a base map to create this image; is that correct?

22 WITNESS YEE: Correct.

23 MS. ANSLEY: And you obtained that from . . .

24 WITNESS YEE: From the previous LAND map.

25 So -- So we obtained the BSK land use map.

1 MS. ANSLEY: Right.

2 WITNESS YEE: And then we applied the Ebert
3 data over it.

4 MS. ANSLEY: Right. Okay.

5 And you obtained that from Miss Meserve,
6 LAND-120?

7 WITNESS YEE: Yes.

8 MS. ANSLEY: Okay. And this map shows data
9 that you derived from the eBird website that you
10 described in your testimony on Page 4.

11 WITNESS YEE: Correct.

12 MS. ANSLEY: And you multiplied that by 10; is
13 that correct?

14 WITNESS YEE: That's right.

15 MS. ANSLEY: Right.

16 MS. MESERVE: Objection: Misstates testimony.

17 MS. ANSLEY: Oh.

18 MS. MESERVE: I don't think he says anywhere
19 that he received it off of the website of eBird.

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

21 That's --

22 MS. ANSLEY: How did you derive the data that
23 you -- that you referenced as sourced from eBird?

24 WITNESS YEE: They --

25 (Timer rings.)

1 WITNESS YEE: -- do have a website, and so we
2 accessed the website.

3 Ed Pandolfino also called directly to the
4 people there and so -- and we conferred on that. So it
5 was done, I suppose.

6 MS. ANSLEY: I believe you testified that
7 it's -- it's a database?

8 WITNESS YEE: Yes.

9 MS. ANSLEY: Okay. So you extracted records
10 from that database --

11 WITNESS YEE: Yes.

12 MS. ANSLEY: -- maintained by eBird.

13 WITNESS YEE: Yes. It's open to the public.

14 MR. MIZELL: Right. Okay. And --

15 CO-HEARING OFFICER DODUC: Miss Ansley, how
16 much additional time do you need?

17 MS. ANSLEY: I have -- This is the last series
18 of questions for Mr. Yee just on this map, so a couple
19 more questions.

20 And then I have a very short amount of
21 questions for Mr. Burness.

22 So I don't think I'm going to be more than 15
23 minutes.

24 CO-HEARING OFFICER DODUC: All right. Fine.

25 MS. ANSLEY: I believe my only question is:

1 To multiply by 10, you didn't use any data or
2 study of the number of birders within the Delta; is
3 that correct?

4 WITNESS YEE: No.

5 MS. ANSLEY: That was based on your opinion of
6 a conservative estimate of the number of birders; is
7 that correct?

8 WITNESS YEE: No. The -- I mean, how the --
9 The multiplier of 10?

10 MS. ANSLEY: Yes.

11 WITNESS YEE: The multiplier of 10 was used
12 based on the fact that, currently, it's a estimated
13 about 200,000 people -- birders use eBird. And that
14 number represents about less than 2 percent of what the
15 nationwide censuses of who are birders.

16 So, if we really wanted to use that 1.7, I
17 should have timed it by 50. But we timesed it by 10 to
18 be very conservative.

19 MS. ANSLEY: But that was a number derived
20 from national --

21 WITNESS YEE: Yes.

22 MS. ANSLEY: -- estimates of birders.

23 WITNESS YEE: In the U.S. Fish and Wildlife
24 survey of 2016.

25 MS. ANSLEY: And just to make sure that we're

1 being clear for the record, I believe your testimony at
2 Page 11 actually says 300,000, not 2,200,000.

3 Is that something you want to correct or is
4 the number 300,000?

5 If you look at Page 4, Line 11 and 12 .

6 And I'm happy to go with whatever number you
7 want. I'm just am pointing out that that's --

8 WITNESS YEE: 300.

9 MS. ANSLEY: Okay. That's fine.

10 WITNESS YEE: I made a mistake, yes.

11 MS. ANSLEY: And so the -- I think the basis
12 of what I'm trying to get at is, the 10 is your opinion
13 of what a conservative multiplier would be --

14 WITNESS YEE: Yes.

15 MS. ANSLEY: -- based on your understanding of
16 the national birding figures and the number of people
17 who use eBird; is that correct?

18 WITNESS YEE: That's correct.

19 MS. ANSLEY: It was not based on any studies
20 or reports of the number of birders specifically within
21 the Delta.

22 WITNESS YEE: No.

23 MS. ANSLEY: Okay. Mr. Burness.

24 WITNESS BURNES: I await eagerly.

25 MS. ANSLEY: Yes. I know I'm very scary.

1 You were listed as a percipient expert, which
2 we've established earlier today -- I think today.

3 We established earlier means that you are not
4 an expert witness here testifying today; is that
5 correct?

6 WITNESS BURNES: I'm testifying based upon my
7 experience of 40 years in the profession that relates
8 to habitat protection and conservation.

9 MS. ANSLEY: And you were -- Excuse me if I
10 have this wrong.

11 My memory of your statements is -- or your
12 qualifications is that you were an environmental
13 planner for many years in Sacramento County?

14 WITNESS YEE: Yes.

15 MS. ANSLEY: Okay. Do you have any experience
16 in conducting traffic analysis?

17 WITNESS YEE: I have not con -- Well, I take
18 that back.

19 I did do a parking study on that adequacy of
20 parking requirements in my early years with -- with
21 Sacramento County.

22 MS. ANSLEY: Aside from that parking studies,
23 have you done any analysis of road networks or level of
24 service?

25 WITNESS BURNES: Not original analysis. I

1 have evaluated and -- and included that in
2 deliberations about planning decisions.

3 MS. ANSLEY: And you also -- What is your
4 background and formal education in wildlife management?

5 WITNESS BURNES: I have a biological sciences
6 degree from the University of California at Davis,
7 which was a factor in my becoming an environmentally
8 oriented planner.

9 MS. ANSLEY: Did you have any formal training
10 after your undergraduate in wildlife management?

11 WITNESS BURNES: No.

12 MS. ANSLEY: Have you ever conducted any
13 research on connectivity or movement of wildlife?

14 WITNESS BURNES: Not -- Not original
15 research.

16 I have collaborated with -- on vernal pool
17 studies and connectivity issues with -- with them, but
18 I was collaborating with other scientists.

19 MS. ANSLEY: On Page 2 of your testimony, you
20 state that the Delta Tunnels Project will cause a
21 substantial disruption to the continuity of the
22 Sacramento River corridor due to the removal of
23 riparian habitat for the intakes?

24 Do you -- Do you see that testimony on Page 2?
25 It's Lines 23 to 28.

1 WITNESS WIRTH: 23?

2 MS. ANSLEY: And I think it carries to the
3 next page.

4 WITNESS BURNES: (Examining document.) Okay.

5 MS. ANSLEY: Do you know the number of
6 riparian habitat impacted by the Alt 4A intakes?

7 WITNESS BURNES: I'm sorry. What was that
8 again?

9 MS. ANSLEY: Do you know the number of acres
10 of riparian habitat impacted by the Alt 4 intakes?

11 WITNESS BURNES: Not off the top of my head.

12 MS. ANSLEY: Is your testimony in that section
13 based on an analysis of wildlife movement impacts along
14 the Sacramento River?

15 WITNESS BURNES: No.

16 MS. ANSLEY: On Page 3 -- At the top of
17 Page 3, you go on to state that the importance of this
18 corridor will be amplified due to climate change.

19 Do you see that testimony.

20 WITNESS BURNES: Um-hmm.

21 MS. ANSLEY: Are you basing that opinion on
22 any study or analysis of impacts of climate change on
23 wildlife movement?

24 WITNESS BURNES: It's based upon my general
25 knowledge of the impacts of climate change on wildlife.

1 MS. ANSLEY: And what is your background
2 working in climate change?

3 WITNESS BURNES: I do not have any direct
4 background in climate change studies.

5 MS. ANSLEY: On Pages 4 to 6 of your revised
6 testimony -- I should say for the record this is
7 ECOS-1-Errata -- you discuss groundwater aquifer
8 impacts.

9 WITNESS BURNES: Yes.

10 MS. ANSLEY: And you note that the -- You note
11 the finding in SR -- SWRCB-108 that groundwater levels
12 are projected to drop no more than 5 feet along the
13 Sacramento River.

14 WITNESS BURNES: Yes, I cite that.

15 MS. ANSLEY: And you're aware that that's
16 under Alt 1B and 1C?

17 WITNESS YEE: Yes.

18 MS. ANSLEY: Okay. And that this was modeled
19 to occur approximately 1 percent of the time; is that
20 correct?

21 WITNESS BURNES: Um-hmm.

22 MS. ANSLEY: And 99 percent of the time, the
23 modeling showed 0 to 3 feet?

24 WITNESS BURNES: Yes.

25 MS. ANSLEY: Okay. And were you aware that

1 flows for Alt 4 and Alt 4A have higher Sacramento River
2 flows than Alt 1B and 1C?

3 Were you aware of that?

4 WITNESS BURNES: No.

5 I was aware that the argument that DWR made
6 that -- was that Alt 4A and Alt 1A and B were
7 comparable. The model was compar -- had comparable
8 results.

9 MS. ANSLEY: And you reviewed SWRCB-108. I
10 believe you cited to it in your testimony. Let me see.

11 On -- Yes, on Page 5, Line 1.

12 WITNESS BURNES: Um-hmm.

13 MS. ANSLEY: And you're familiar with that
14 section of SWRCB-108?

15 WITNESS BURNES: I'd have to look it up
16 again.

17 What . . .

18 MS. ANSLEY: And that is the -- That is the
19 impetus for my question of --

20 WITNESS BURNES: Yes.

21 MS. ANSLEY: -- whether you were aware that
22 Alt 4A have higher -- and Alt 4 have higher Sacramento
23 River flows than Alt 1B and 1C.

24 WITNESS BURNES: Yes, right. And I have
25 read -- I have read SWC-108 -- SWRCB-108.

1 MS. ANSLEY: And do you state on Page 5 that
2 these lower groundwater levels that you pre -- that you
3 are discussing would shrink wetlands and reduce flows
4 for Salmon on the Consumnes River?

5 Do you see that testimony.

6 WITNESS BURNES: Yes.

7 What I'm -- What I'm trying to communicate in
8 my testimony is that the habitats in the Consumnes
9 River, and in the area in general, are being impacted
10 by the disconnect with groundwater due to groundwater
11 overdraft;

12 That there has been evidence presented in
13 these hearings that contest the assumptions used by DWR
14 and raise the possibility that the impact of the
15 reduced flows in the Sacramento River could -- could be
16 greater than DWR's analysis shows, and that those
17 assumptions made in that study should be reviewed.

18 My point here in this testimony is to -- to
19 su -- essentially support that -- that testimony and to
20 point out that there is the potential to impact more
21 than just users involved with wells in the area but
22 also the environment -- the resources of the Consumnes
23 River and the Sacramento, and the Stone Lakes area.

24 MS. ANSLEY: And you're relying, I believe --
25 if I look at Page 5 correctly -- on the testimony of

1 Steffen Mehl in Parts 1 and 2 of this proceedings?

2 WITNESS BURNES: Yes.

3 MS. ANSLEY: Are you aware of any analysis of
4 impacts to flow on the Consumnes River?

5 WITNESS BURNES: No.

6 MS. ANSLEY: How about any analysis --

7 WITNESS BURNES: On this Project?

8 MS. ANSLEY: Yes, of this Project on the
9 Consumnes River?

10 Is the answer still no?

11 WITNESS BURNES: The answer is no.

12 MS. ANSLEY: And how about impacts to Salmon
13 on the Consumnes River? Are you aware of any analysis?

14 WITNESS BURNES: No.

15 MS. ANSLEY: My last few questions are
16 traffic, and I may go over by a minute or two.

17 So on Pages 6 to 8, you discuss potential
18 traffic impacts of the California WaterFix; correct?

19 WITNESS BURNES: Yes.

20 MS. ANSLEY: And on Page 6, you state that the
21 difference between the (reading):

22 ". . . baseline and project plus baseline
23 traffic for all segments remains constant
24 throughout the day . . ."

25 WITNESS BURNES: Yes.

1 MS. ANSLEY: Leading to a conclusion

2 (reading):

3 ". . . that the vehicles will be trucks."

4 WITNESS BURNES: Yes.

5 MS. ANSLEY: You've reviewed Chapter 19 and
6 Appendix 19A of the FEIR on transportation?

7 WITNESS BURNES: I have reviewed parts of it.

8 MS. ANSLEY: Have you reviewed Appendix 19A,
9 which is the traffic analysis?

10 WITNESS BURNES: I'm not sure exactly whether
11 I have.

12 What I have reviewed is . . . the -- see if I
13 can get the reference here -- Attachment E Modified --
14 Modified Pump -- Pipeline/Tunnel Alternatives 4 and 4A,
15 Hourly Roadway Volumes and LOSC Threshold Charts, which
16 are somewhere in the mass of documents. I have no idea
17 what chapter or wherever they are.

18 MS. ANSLEY: Did you extract those tables
19 yourself from the FEIR?

20 WITNESS BURNES: I -- I basically noted that,
21 in many of the segments, that the difference between
22 the Project impacts and the baseline traffic were
23 constant throughout the day. That is a pattern
24 consistent with the analysis.

25 MS. ANSLEY: I'm sorry. But my question was:

1 Did you extract those tables yourself to do
2 your --

3 WITNESS BURNES: This is --

4 MS. ANSLEY: -- prepare your testimony?

5 WITNESS BURNES: This is a copy of the --

6 MS. MESERVE: Maybe you can read it.

7 MS. ANSLEY: That's fine.

8 Where did you obtain those copies?

9 And, I guess --

10 WITNESS BURNES: From the environmental
11 document.

12 MS. ANSLEY: Oh, okay. That was my question,
13 was who --

14 MS. MESERVE: Sorry. Excuse me.

15 The citation is SWRCB-102 --

16 WITNESS BURNES: Okay. Oh, there it is.

17 MS. MESERVE: -- Attachment E (reading):

18 "Modified Pipeline . . . Alternative
19 4 and 4A, Hourly Roadway Volumes and LOS
20 Threshold Charts."

21 MS. ANSLEY: And you originally pulled these
22 materials for your use; is that correct? They were not
23 provided to by anybody else?

24 WITNESS BURNES: Yes, I did.

25 MS. ANSLEY: Okay. And are you aware that the

1 modeling for traffic impacts by the California WaterFix
2 did not only include trucks but also included estimates
3 of employee trips?

4 WITNESS BURNES: Yes.

5 And if they -- If they had used -- If -- If
6 the data showed that there was an increase in employee
7 trips at the beginning and the end of the day, I would
8 have understood that that was going to be employee
9 trips.

10 However, when a -- the baseline -- the
11 difference between the baseline and the Project impacts
12 are constant throughout a 14-hour day, that suggests to
13 me that that is not employing this travel.

14 MS. ANSLEY: Is it your understanding that the
15 modeling done for traffic impacts was based on a
16 worst-case scenario in which all construction and
17 employee trips were assigned to the roadway network for
18 each analysis hour?

19 WITNESS BURNES: Yes --

20 MS. ANSLEY: You're --

21 WITNESS BURNES: -- I was.

22 MS. ANSLEY: -- aware of that?

23 WITNESS BURNES: I was. And, actually, in
24 our letters to DWR, we asked for more explicit data
25 about the timing of those construction impacts to

1 evaluate the extent of the impact, and that was never
2 forthcoming.

3 MS. ANSLEY: And my last three questions are
4 on environmental commitments. I'm not sure that I said
5 that earlier.

6 On Page 9, you state there are (reading):

7 ". . . no assurances that Project
8 mitigation will occur where Project (sic)
9 impacts were (sic) greatest."

10 Do you see that?

11 WITNESS BURNES: Yes.

12 MS. ANSLEY: That was -- excuse me --
13 approximately Lines 20 to 27.

14 Are you familiar with the concept of
15 conservation zones and restoration opportunity areas
16 identified by the Cal WaterFix Project?

17 WITNESS BURNES: Generally.

18 MS. ANSLEY: And are you power that -- Are you
19 aware in SWRCB-1 -- Are you aware of SWRCB-111 which is
20 the Mitigation Monitoring Reporting plan --

21 WITNESS BURNES: Yes.

22 MS. ANSLEY: -- or Program.

23 Are you familiar with the terrestrial biology
24 resource restoration and protection principles for
25 implementing environmental commitments that are

1 included in that plan?

2 WITNESS BURNES: I believe so, yes. I read
3 that section.

4 MS. ANSLEY: Is it your understanding that
5 those principles identify specific conservation zones
6 where environmental commitments will occur.

7 WITNESS BURNES: Yes.

8 MS. MESERVE: Objection: Vague.

9 Can you refer to a specific part of
10 SWRCB-11 -- 111?

11 MS. ANSLEY: Sure.

12 MS. MESERVE: It looks like a 500-page
13 document.

14 MS. ANSLEY: This would be Table 5-2.

15 WITNESS BURNES: Okay. Yes, right. And they
16 mention the conservation zones.

17 MS. ANSLEY: I have no further questions.

18 CO-HEARING OFFICER DODUC: Thank you,
19 Miss Ansley.

20 MS. ANSLEY: Thank you all.

21 CO-HEARING OFFICER DODUC: I don't see
22 Mr. Ruiz or Mr. Herrick here, so we -- Oh, I see
23 Miss Des Jardins.

24 Miss Des Jardins, do you have questions --

25 (Alarm sounds.)

1 (OVER THE INTERCOM): Attention all building
2 occupants. Attention all building occupants.

3 An alarm has sounded on Floors 14, 15 and 16.
4 We are in the process of investigating the alarms.

5 Floors 14, 15 and 16, please continue with
6 your relocation procedures. All other floors, please
7 wait for an upcoming announcement.

8 I repeat: Attention all building occupants.

9 An alarm has sounded on Floors 14, 15 and 16.
10 We are in the process of investigating the alarm.

11 Floors 14, 15 and 16, please continue with
12 your relocation procedures. All other floors, wait for
13 an upcoming announcement.

14 CO-HEARING OFFICER DODUC: All right
15 Miss Des Jardins, do you have questions for Dr. Lamare?

16 MS. DES JARDINS: Yes.

17 CO-HEARING OFFICER DODUC: Sorry, Doctor. Do
18 not get to leave.

19 So, since Mr. Ruiz/Herrick are not here,
20 Mr. Keeling, you're up.

21 MS. MESERVE: I apologize. I think I was
22 supposed to tell you that Mr. Ruiz could not make it
23 today. He had to attend to other matters. I
24 apologize.

25 CO-HEARING OFFICER DODUC: All right.

1 Mr. Keeling had estimated five minutes.

2 MR. KEELING: I may have underestimated but
3 not by much.

4 I will have questions only for Mr. Burness and
5 Mr. Wirth.

6 For Mr. Burness, about management plans for
7 new habitat, habitat mitigation, timing of mitigation.

8 And for Mr. Wirth, primarily timing of
9 mitigation.

10 CROSS-EXAMINATION BY

11 MR. KEELING: Good afternoon, Mr. Burness.

12 WITNESS BURNESSE: Good afternoon.

13 MR. KEELING: Could we -- Could we project
14 ECOS-1-Errata, Page 9.

15 (Exhibit displayed on screen.)

16 MR. KEELING: First complete paragraph.

17 (Exhibit displayed on screen.)

18 MR. KEELING: And bring it up a little bit so
19 we have the first complete paragraph.

20 (Exhibit displayed on screen.)

21 MR. KEELING: There you go.

22 Mr. Burness, do you see the paragraph that
23 begins around Line 11?

24 WITNESS BURNESSE: Yes.

25 MR. KEELING: In which you say that to your

1 knowledge (reading):

2 ". . . DWR has provided no information as
3 to how and when the habitat mitigation
4 commitments will be met."

5 WITNESS BURNES: Yes.

6 MR. KEELING: And you reference a Management
7 Plan for each listed species Habitat Restoration and
8 protective -- Protection site.

9 My question is, since you wrote this, to your
10 knowledge, has DWR prepared a Management Plan for any
11 of the species habitat subject to a Habitat Restoration
12 and Protection Plan.

13 WITNESS BURNES: No. And, actually, the way
14 I read the MMRP language, it suggested that wouldn't be
15 prepared until after the acquisition is made. It's
16 really a Management Plan.

17 So without any commitment as to when lands
18 would be purchased, there would be no timeline for
19 preparing those plans.

20 MR. KEELING: So --

21 WITNESS BURNES: Management Plans.

22 MR. KEELING: -- if -- if this -- If the Board
23 is going to consider approving the Project, where would
24 you direct the Board's attention to the particulars of
25 that Management Plan?

1 WITNESS BURNES: I can't.

2 MR. KEELING: You heard this morning, I
3 believe, Dr. Pandolfino's testimony that mitigation
4 habitat should be in place before construction begins.

5 Do you recall that?

6 WITNESS BURNES: Yes.

7 MR. KEELING: Do you agree with that?

8 WITNESS BURNES: I agree that -- that perhaps
9 not in all cases, but in certain cases, for example,
10 the Sandhill Crane mitigation, that that is a very good
11 objective to implement.

12 I think you have to look at each -- each
13 mitigation priority and determine when, you know, it's
14 appropriate.

15 But ideally, yes, the sooner the better. It's
16 cheaper, number one thing, to implement. Land prices
17 are lower.

18 MR. KEELING: Well, let's take a look. Let's
19 go to Page 10 of ECOS-1-errata.

20 (Exhibit displayed on screen.)

21 MR. KEELING: Lines 14 roughly through 19.

22 Do you see that, sir.

23 WITNESS BURNES: Um-hmm.

24 MR. KEELING: These maximum timeframes in your
25 testimony, if I understand them correctly, run from

1 Board approval, if, in fact, it's approved --

2 WITNESS BURNES: Um-hmm.

3 MR. KEELING: -- to habitat mitigation
4 establishment; is that right?

5 WITNESS BURNES: Right.

6 MR. KEELING: You didn't mean to suggest by
7 these timeframes, did you, that you think it would be
8 okay to actually begin construction of the tunnels
9 before the new mitigation habitat is in place?

10 WITNESS BURNES: No.

11 MR. KEELING: Since you prepared your
12 testimony, has anything happened, to your knowledge,
13 that increases your concerns about loss of avian
14 habitat due to urban development?

15 WITNESS BURNES: Yes, definitely. The recent
16 actions by the City of Elk Grove -- or by the local
17 Agency Formation Commission to expand growth south of
18 what is the Sacramento County urban service boundary,
19 will increase speculative pressure.

20 Elk Grove City is -- is already planning to
21 amend their General Plan to incorporate much of the
22 development of the foraging habitat that is critical to
23 the avian species in the Stone Lakes area and the
24 Consumnes Reserve.

25 MR. KEELING: So this further squeezes --

1 WITNESS BURNES: Right.

2 MR. KEELING: -- the habitat you referred to
3 earlier --

4 WITNESS BURNES: Right.

5 MR. KEELING: -- in your testimony.

6 Taking a look at that same page, let's go on
7 up to Lines 2 through 6.

8 (Exhibit displayed on screen.)

9 MR. KEELING: Here, you -- I think you --
10 Correct me if I'm wrong, but I thought your point here
11 is that financial pressures were will likely undermine
12 efforts to fulfill environmental commitments --

13 WITNESS BURNES: Yes.

14 MR. KEELING: -- am I right?

15 WITNESS BURNES: That's correct.

16 We certainly cite an example, the whole
17 one-tunnel concept as being just one example of what
18 will be a continuing array, I believe, of financial
19 pressures on this fairly large-scale project.

20 MR. KEELING: So if you can explain a little
21 bit so I understand.

22 Why does the one-tunnel concept concern you
23 about this?

24 WITNESS BURNES: It is a recognition, as I
25 understand it following this whole process closely,

1 that there are some real questions about the financial
2 feasibility of this that have led some of the potential
3 supporters to either withhold or not approve financial
4 support.

5 MR. KEELING: Are you aware of any proposals
6 by either Petitioner, the Bureau or DWR, that would
7 guarantee timely and complete implementation of the
8 environmental commitments?

9 WITNESS BURNES: No. That's one of the
10 primary concerns of my testimony.

11 MR. KEELING: Thank you, Mr. Burness.

12 Mr. Wirth.

13 (Timer rings.)

14 CO-HEARING OFFICER DODUC: A few more minutes,
15 Mr. Keeling?

16 MR. KEELING: Well, whew.

17 (Wiping face with Cal Berkeley hankie.)

18 (Laughter.)

19 CO-HEARING OFFICER DODUC: As much time as you
20 want, Mr. Keeling.

21 MR. KEELING: Thank you.

22 (Laughter.)

23 MR. JACKSON: Can we get a picture of that to
24 send to his Stanford friends?

25 CO-HEARING OFFICER MARCUS: That was

1 impressive.

2 CO-HEARING OFFICER DODUC: Good one. That was
3 good. That was good.

4 CO-HEARING OFFICER MARCUS: Yeah.

5 (Laughter.)

6 MR. KEELING: Can we turn to SOSC-6, Page 12.

7 (Exhibit displayed on screen.)

8 MR. KEELING: Lines -- Make it -- Well,
9 starting at the top and -- the first top -- half of the
10 page.

11 Mr. Wirth, as I understand this, for both new
12 roosting sites and new foraging opportunities, you
13 recommend two seasons in advance of the impacts; is
14 that correct?

15 WITNESS WIRTH: I believe I said a minimum.

16 MR. KEELING: At a minimum.

17 WITNESS WIRTH: At a minimum.

18 MR. KEELING: I want to make sure I'm clear on
19 this.

20 That's two years before any WaterFix
21 construction begins that would impact the species
22 involved here.

23 WITNESS WIRTH: Correct.

24 It's pretty clear that Cranes would likely
25 find it right away. That's a very constrained area.

1 They're going to be heavily active in that
2 1.9-kilometer radius from their roost site. They'll
3 find it fairly quickly.

4 There's a lot of extra forage there. They'll
5 find that as well.

6 The bigger question is, will they stay there
7 once the impact from the pile driving and other
8 construction activities begin. It's a very philopatric
9 species. They're very loyal to their particular sites.

10 For a Crane photographer, this is nice,
11 because you can expect every night to see the same
12 Greater Sandhill Cranes in the same spot, in the same
13 pond. So it makes it a little more predictable when
14 you're trying to find good subject matter for shooting
15 pictures.

16 It's a bit problematic when you're looking at
17 that in the context of a potentially very large impact
18 on a roost site of a very philopatric species.

19 So enticement. The idea of the roost site was
20 to move them further from the sound so the sound has
21 less of an impact, but also to put that enhanced forage
22 there to keep them there, to offset it. There's a lot
23 of good food, easy to get, nearby the roost site. We
24 don't know if it'll work. We hope so.

25 MR. KEELING: That word you used when you said

1 it was philopat . . .

2 WITNESS WIRTH: Philopatric.

3 MR. KEELING: Philopatric.

4 WITNESS WIRTH: That means loyal to place.

5 MR. KEELING: Thank you very much.

6 Did you propose this timeframe to DWR or to
7 the Department of Fish and Wildlife?

8 WITNESS WIRTH: We posed: The sooner, the
9 better. We posed that they begin it immediately -- and
10 this was now a couple of years back -- begin it now,
11 start doing this now, make it part of the longer-term
12 culture of the Crane, of a philopatric species, so it
13 becomes very used to that situation and that food
14 arrangement.

15 It is -- You can imagine, from a common-sense
16 perspective and look at it, from how would you feel.
17 You move to a new area because it's got a roost spot
18 and lots of food nearby and suddenly hear a big
19 terrible sound. You've been there for one season. I
20 mean, what is your loyalty?

21 MR. KEELING: Reminds me of the time I spent a
22 summer near USC.

23 I can say that; can't I?

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

25 MR. KEELING: Thank you very much, Mr. Wirth.

1 WITNESS WIRTH: You're very welcome.

2 MR. KEELING: And that's all.

3 CO-HEARING OFFICER MARCUS: Thanks.

4 CO-HEARING OFFICER DODUC: Ah, Mr. Keeling
5 scored so many points today.

6 (Laughter.)

7 CO-HEARING OFFICER DODUC: Good job,
8 Mr. Keeling.

9 MS. MESERVE: I was wondering what that rag
10 was.

11 CO-HEARING OFFICER DODUC: Mr. Jackson, you're
12 up.

13 CROSS-EXAMINATION BY

14 MR. JACKSON: Mr. Yee, could you estimate for
15 me how much time you've spent in the Delta in your
16 lifetime.

17 WITNESS YEE: I would say on the average, per
18 week, maybe five to seven hours a week all my life.

19 MR. JACKSON: And during that period of time,
20 have you seen changes in the Delta?

21 WITNESS YEE: In my lifetime, dramatic.

22 MR. JACKSON: Would you describe them.

23 WITNESS YEE: Well, it's land use and
24 population growth. So the biggest changes are result
25 of just more urbanized use, less farmland, more

1 development, switching of ag practices.

2 MR. JACKSON: Have those had visible effects
3 on your birding in the Delta?

4 WITNESS YEE: Yes.

5 MR. JACKSON: And would you describe those.

6 WITNESS YEE: Number one, just in terms of
7 just bird density. And for me, it's dramatic because,
8 again, I spent all these hours, and that's what I do as
9 my thing.

10 The bird numbers overall are less, and they're
11 just due to that. You know, there's probably a lot of
12 other factors that can contribute but I would say those
13 are the biggest factors that contribute to less birds.
14 That's number one.

15 And then, number two, if -- for me personally
16 on my end is, it's a matter of less access and less
17 habitat. You know, birds might be there but if they're
18 just less habitat, I can't see them. I can't access
19 them.

20 MR. JACKSON: Do you have an opinion of what
21 would happen if the truck traffic we've talked about,
22 the pile driving we've talked about, the . . . changes
23 in agricultural use that you've seen over a period of
24 time, would that tend to accelerate the loss of bird
25 density, in your opinion?

1 WITNESS YEE: I would say so, based on just
2 the scope of this Project. Big Projects affect things
3 dramatically, and I've seen this a lot.

4 MR. JACKSON: Thank you, sir.
5 You've kind of got those things turned.

6 WITNESS WIRTH: (Turning name tags toward
7 counsel.)

8 MR. JACKSON: Thank you. I have been going in
9 and out today.

10 Mr. Wirth, in your work for environmental
11 advocacy with a number of groups that relate to the
12 Delta, have you spent a lot of time in the Delta?

13 WITNESS WIRTH: An enormous amount of time. I
14 do wildlife photography, too. That's a wonderful area
15 to seek subjects.

16 MR. JACKSON: And during the time you've been
17 in the Delta, have -- have you also observed the loss
18 in bird density that Mr. Yee is talking about?

19 WITNESS WIRTH: I think it would depend upon
20 the bird.

21 The Crane is an interesting example. It's
22 easier to see them in denser numbers because they're
23 being shoehorned into smaller and smaller areas. So it
24 depends on the species.

25 MR. JACKSON: And in -- in -- in regard to

1 the -- to the Crane, in looking at the -- the maps that
2 have been shown for the testimony of this panel, it
3 looks like an awful lot of time and money and community
4 spirit, I would guess --

5 (Alarm sounds.)

6 MR. JACKSON: -- has been put into -- Excuse
7 me.

8 (OVER THE INTERCOM): Attention all building
9 occupants. Attention all building occupants.

10 An alarm sounded on Floors 14, 15 and 16.

11 Thank you for participating in our fire drill.

12 Please return to your designated work areas.

13 I repeat:

14 Attention all building occupants.

15 A fire alarm sounded on floors 14, 15 and 16.

16 Thank you for participating in our fire drill.

17 Please return to your designated work areas.

18 Thank you.

19 MR. JACKSON: It -- It looks as if the area

20 Stone Lakes and the Consumnes Reserve and . . .

21 WITNESS WIRTH: (Nodding head.)

22 MR. JACKSON: . . . have had a lot of people
23 in the community put a lot of time and effort and heart
24 into trying to secure those areas.

25 WITNESS WIRTH: An enormous amount of money as

1 well.

2 MR. JACKSON: The . . . The northern part of
3 that, of Stone Lakes, looks to me just from the maps
4 like it's being squeezed to the point that that habitat
5 may be gone in 20 years.

6 WITNESS WIRTH: Even if the habitat remains,
7 one of the things you have to consider is that a lot of
8 the effort was on protecting the avian species.

9 And though they might live there and utilize
10 that habitat, it's not their only sole-use area.
11 They're going to be flying out to other nearby areas.

12 As an example, the area that Rob was asked
13 about recently in terms of changes, that areas south of
14 Elk Grove. A lot of those avian species fly out of
15 Stone Lakes and use nearby areas.

16 So the impact from a project like this would
17 not be just on the Stone Lakes but nearby areas as
18 well.

19 MR. JACKSON: Now, the Consumnes Preserve is
20 an important part of the Sacramento County's
21 contribution to attempting to sustain the environment;
22 isn't it?

23 WITNESS WIRTH: Extraordinarily so, yes.

24 MR. JACKSON: And it's well known throughout
25 California and maybe the world.

1 WITNESS WIRTH: It's a -- I would say an
2 international birding hot spot, wouldn't you say,
3 David?

4 WITNESS YEE: Um-hmm.

5 MR. JACKSON: And the Delta itself is an
6 international birding hot spot; is it not?

7 WITNESS WIRTH: Yes.

8 MR. JACKSON: So, putting aside 13 years of
9 pile driving, and trucks, and that sort of thing, is
10 this -- I think you indicated that this was a -- a much
11 larger wetland fill than you had ever seen in
12 your . . .

13 WITNESS WIRTH: Definitely than I've ever
14 seen. But I went a little further than that and talked
15 to other people who've done environmental review and
16 it's more than anybody I knows has seen, either.

17 MR. JACKSON: Has there ever been a wetland
18 fill of this size in the United States, to your
19 knowledge?

20 WITNESS WIRTH: I don't know. I would assume
21 possibly some of the dam projects, but I don't know.

22 MR. JACKSON: Do you know of any in California
23 of its size?

24 WITNESS WIRTH: I do not.

25 MR. JACKSON: Anywhere on the West Coast of

1 this size?

2 WITNESS WIRTH: I don't know of any, so . . .

3 MR. JACKSON: Has your expertise developed,
4 working as a volunteer for all of these groups and
5 writing all these reports, extended to non-avian
6 species?

7 WITNESS WIRTH: Yes.

8 MR. JACKSON: Well, I'm a lawyer, and we have
9 an -- some of us have an affinity for Snakes.

10 WITNESS WIRTH: Giant Garter Snake?

11 MR. JACKSON: Yeah.

12 WITNESS WIRTH: Yeah. I like the Giant Garter
13 Snake, too.

14 It's tough to rally a lot of public support
15 behind a Snake, though.

16 MR. JACKSON: Yeah. I understand that, and
17 that's why we have these Bar Association meetings,
18 but . . .

19 (Laughter.)

20 MR. DEERINGER: Nice.

21 MR. JACKSON: In any event.

22 What kind of habitat does the Snake need?

23 WITNESS WIRTH: Well, its original habitat
24 would have been emerging wetlands. And it has to be an
25 area of a reasonable depth with a reasonable amount of

1 open water, as well as reed cover. And it also needs
2 an upland for its refugia.

3 So during either very hot or very cold spells,
4 it will leave the water and go into an underground den.
5 So it needs that entire complement of available
6 habitats in order to survive.

7 Interestingly, in our area -- we've destroyed
8 a lot of our original emerging wetlands -- they've been
9 able to the use rice paddies as a surrogate wetland
10 because it has the basic components.

11 MR. JACKSON: So -- And that's true in the
12 Sacramento Valley as well --

13 WITNESS WIRTH: Yes.

14 MR. JACKSON: -- correct?

15 WITNESS WIRTH: Correct.

16 MR. JACKSON: And it's also for the basis for
17 the Giant Garter Snake in the tiny refugia that's left
18 in the San Joaquin.

19 WITNESS WIRTH: Yeah. In -- In my example,
20 the refugia is a -- it's a particular type of den --

21 MR. JACKSON: Right.

22 WITNESS WIRTH: -- so a rodent hole they then
23 use.

24 So "refugia" can also mean a refuge for the
25 species. I was speaking specifically to a habitat type

1 for that individual species.

2 MR. JACKSON: Now, how do Garter Snakes work
3 with truck traffic?

4 WITNESS WIRTH: Well, if they're near the
5 trucks, they might get squished. That's the obvious
6 thing. They do cross roads. That's a potential issue.

7 The biggest impact to them has been habitat
8 loss. So, you have a species that has a fairly large
9 number of young. You have fairly limited habitat.
10 That's going to mean the species is going to need to
11 disperse.

12 And it would be at the dispersal point that
13 the greatest danger arises because they're going to be
14 leaving their emergent original wetlands they grew up
15 in, head out someplace else, and that could be crossing
16 roads. Greater traffic, greater jeopardy for the
17 species.

18 MR. JACKSON: Did you see any sort of
19 mitigation for that problem?

20 WITNESS WIRTH: I'll have to say, I did not
21 particularly focus on Giant Garter Snake.

22 MR. JACKSON: Okay.

23 WITNESS WIRTH: Much more so on the avian
24 species. So I could not answer that accurately.

25 MR. JACKSON: Well, I noticed that the --

1 the -- And I live in mountains, so we're interested in
2 connectors.

3 WITNESS WIRTH: Um-hmm.

4 MR. JACKSON: And it looked to me like the
5 original plan for the . . . for the Consumnes Preserve
6 and the Yolo Preserve, and the . . . Sacramento plan
7 for six -- is it? -- Area 6.

8 WITNESS WIRTH: Preserve Planning Unit 6?

9 MR. JACKSON: Yeah.

10 WITNESS WIRTH: Yeah.

11 MR. JACKSON: Were that some thought had gone
12 into that in trying to connect -- to build connectors.

13 Is that true?

14 WITNESS WIRTH: Preserve Planning Unit 6 is
15 largely a unit that focuses on avian species. And
16 unlike a lot of land-borne terrestrial species, these
17 guys can fly. So the idea of having a very large
18 preserve to minimize edge effects isn't as much of a
19 concern.

20 So there was a contemplation that, for
21 Preserve Planning Unit 6, you could have various sites
22 spread about the landscape as opposed to something that
23 would be more like a connector.

24 So a connector would be really important for
25 the Giant Garter Snake. It would be really important

1 for something like American Badger but less so for
2 avian species. And that Preserve Planning Unit was
3 largely designed to avian species.

4 So it's an issue. It's a definite issue for a
5 species like the Giant Garter Snake.

6 MR. JACKSON: Now, in the -- In the remainder
7 of the Delta, are the terrestrial species likely to be
8 affected by the noise, the traffic, the fragmentation,
9 the lack of connectivity, in your opinion?

10 CO-HEARING OFFICER DODUC: Hold on, please.

11 Miss Ansley.

12 MS. ANSLEY: Yeah.

13 I'm going to say vague and ambiguous as to the
14 species we're talking about now.

15 And I believe Mr. Wirth testified that he
16 concentrated mainly on avian species here, but perhaps
17 that can be clarified.

18 MR. JACKSON: Mr. Wirth, did you understand
19 the question?

20 CO-HEARING OFFICER DODUC: Did you understand
21 the question and are you able to answer?

22 WITNESS WIRTH: That's true.

23 But this is also very obviously a large
24 Project with significant impacts, and those would have
25 a detrimental impact on the environment for any area in

1 the Delta where it was on the ground.

2 MR. JACKSON: Have you ever read the Delta
3 Reform Act?

4 WITNESS WIRTH: I have not.

5 MR. JACKSON: Okay. Thank you.

6 Mr. Burness, somewhat the same set of
7 questions.

8 WITNESS BURNESSE: Okay.

9 MR. JACKSON: If, in fact, a series of tunnels
10 and shafts are built that run through the Delta, is
11 there a potential to cause connectivity problems
12 between one side or the other?

13 WITNESS BURNESSE: In the long term, the -- the
14 disruption of a connectivity issue would be primarily
15 around the forebay.

16 Most of the -- of the tunnel itself will be
17 buried and there will be just the shafts, which aren't
18 going to be a major connectivity problem.

19 In the short term, there could be some larger
20 issues.

21 MR. JACKSON: I'm going to ask you kind of a
22 hypothetical question now. And any of the people on
23 the panel who want to take a crack at it, can.

24 Tunnel muck -- the stuff they dig out when
25 they build these tunnels -- are going to be spread

1 throughout the Delta.

2 I want you to assume that the amount of this
3 tunnel muck is equal to 13 and a half times the Great
4 Pyramid of Giza.

5 When you spread out the tunnel muck, is it
6 still a wetland?

7 WITNESS BURNESSE: No.

8 CO-HEARING OFFICER DODUC: Miss Ansley.

9 MS. ANSLEY: Yes.

10 I think that's an incomplete hypothetical that
11 assumes a lot of facts not in evidence.

12 And I'm not really sure whether he's talking
13 about spreading the tunnel muck over the entire Delta
14 or if he's referencing the sites that have been
15 identified previously here on maps.

16 So I really don't know where his 13 pyramids
17 of Giza are intended to be located.

18 MR. JACKSON: You know, I really don't know,
19 anymore, where they're intended to be located, either,
20 because we've had so many changes in the concept that
21 is this engineering experience.

22 So my hypothetical is that if you add 13 and a
23 half pyramids of Giza worth of muck somewhere in the
24 Delta, you're going to affect some wetland, avian,
25 terrestrial species.

1 WITNESS BURNES: I -- What I can go by, and
2 from my perspective, is the maps submitted by the
3 Proponents that show where the tunnel muck storage
4 areas are going to be.

5 MR. JACKSON: All right. Talk to me about
6 those.

7 WITNESS BURNES: And they -- They are not --
8 They are in a variety of different locations throughout
9 the area, primarily in the vicinities of the shafts.

10 In the -- In the forebay area, they are
11 located on Zacharias Island -- if they're still going
12 to do that, but they're planning on it in terms of the
13 maps that are available -- and on property owned by DWR
14 for the old Peripheral Canal site. Those are in areas
15 of larger grapes now.

16 And, ultimately, if they are restored properly
17 in the long term, the -- the muck storage areas could
18 be restored for wildlife values.

19 In fact, we've had discussions in our
20 discussions with DWR with the stakeholders about the
21 long-term conversion of Zacharias Island to have a
22 acceptable wildlife habitat.

23 We remain skeptical based upon some of the
24 chemicals that might be in that muck --

25 MR. JACKSON: Yeah.

1 WITNESS BURNES: -- in terms of how that
2 might work, but there is a potential for it.

3 MR. JACKSON: And if you spread the 13 and a
4 half pyramids along -- say, a foot deep, and it dries,
5 what happens to it? Does it go into the air?

6 WITNESS BURNES: I'm -- I'm going to -- Well,
7 it all depends on the composition of that muck. If
8 it's -- If there's a lot of peat in it, yes, there
9 would be a lot of oxidation when it dries.

10 But not knowing exactly the composition of
11 muck, it's hard to answer that.

12 MR. JACKSON: Right.

13 And if the muck dries, are there winds in the
14 Delta that could take it into the air?

15 WITNESS BURNES: Yes.

16 MR. JACKSON: Is it east or west of the City
17 of Stockton and the City of Sacramento?

18 WITNESS BURNES: Prevailing winds would be
19 onto the -- to the east.

20 MR. JACKSON: Into the cities.

21 WITNESS BURNES: Into the cities.

22 MR. JACKSON: Did you see anything dealing
23 with that?

24 Maybe Ms. Lamare?

25 Did you see anything indicating -- First of

1 all, is it possible for the muck that is spread into
2 the wetland to dry and . . . sort of become the same as
3 the Salton Sea or the area around Kern in terms of just
4 lifting the earth into the air?

5 MS. ANSLEY: (Approaching podium.)

6 CO-HEARING OFFICER DODUC: It's his
7 hypothetical, Miss Ansley.

8 WITNESS LAMARE: I don't know, but I did not
9 see anything in the air quality analysis to address
10 that.

11 MR. JACKSON: Are you familiar with -- with
12 the Salton Sea area?

13 WITNESS LAMARE: Vaguely.

14 I think the issue you're getting to is the
15 dispersion of particulate matter.

16 MR. JACKSON: Yes.

17 WITNESS LAMARE: And in a construction
18 project, it's very typical for the regulatory
19 authorities to require control over particulate matter
20 dispersion, so you will often see those trucks watering
21 around construction areas to keep the dry dust from
22 blowing away.

23 So, you know, this would require a lot of work
24 to keep it from -- from becoming . . . a problem for
25 people that are living downwind.

1 MR. JACKSON: Did you see a -- I understand
2 we've only got conceptual engineering, but did you see
3 a conceptual plan for the air quality -- potential air
4 quality impacts of the spread-out muck --

5 WITNESS LAMARE: I did not --

6 MR. JACKSON: -- going into the air?

7 WITNESS LAMARE: I did not see any analysis
8 for managing the muck debris, the air quality impacts
9 of that. I didn't look for it, but I didn't see it in
10 the Final EIR air quality section.

11 MR. JACKSON: I guess the final question would
12 be for Mr. Burness.

13 Mr. Burness, did you . . .

14 As you sit here today, do you know that --
15 that the Sacramento-Stockton Delta Region . . . has
16 appropriate mitigation in all of the areas that you
17 looked at for this Project?

18 WITNESS BURNESSE: I believe it does not, and
19 I'm trying to make that argument today.

20 MR. JACKSON: And one of the Board's -- You
21 know, people talk about EIRs. But one of the
22 Board's -- The thing that the Board is looking at under
23 their statutes is whether or not there is a potential
24 for an unreasonable effect on wildlife.

25 WITNESS BURNESSE: Yes.

1 MR. JACKSON: Do you believe that there is?

2 WITNESS BURNES: I believe that there is, and
3 part of that is because of the uncertainty of
4 mitigation.

5 But even without that, even without that, or
6 even with that certainty, I still think that the
7 overall scale of the Project and the impacts would
8 result in unreasonable impact on the environment.

9 MR. JACKSON: Mr. Wirth, do you agree with
10 that?

11 WITNESS WIRTH: I do. It says as much in the
12 testimony.

13 MR. JACKSON: All right. Mr. Yee, do you
14 agree with that?

15 WITNESS YEE: I do.

16 MR. JACKSON: Dr. Lamare?

17 WITNESS LAMARE: I'm sorry. I wasn't
18 listening.

19 MR. JACKSON: Okay. Then what I'll do is just
20 assume that --

21 WITNESS LAMARE: Could you repeat the
22 question, please?

23 MR. JACKSON: Yes.

24 Do you agree that there is a potential for
25 this Project to cause an unreasonable effect on fish

1 and wildlife?

2 Or is that outside your area?

3 WITNESS LAMARE: That's outside of my ex --

4 MR. JACKSON: That's why.

5 WITNESS LAMARE: -- of being here --

6 MR. JACKSON: I didn't ask.

7 WITNESS LAMARE: -- of being here today.

8 MR. JACKSON: Thanks.

9 CO-HEARING OFFICER DODUC: Thank you,
10 Mr. Jackson.

11 Miss Des Jardins.

12 Let me check with the court reporter.

13 Are you okay going for about another 10
14 minutes?

15 THE REPORTER: Sure.

16 CO-HEARING OFFICER DODUC: I promise we'll
17 wrap up thereafter, unless there's redirect.

18 And if there is, we'll take a break.

19 MS. MESERVE: Yes, I do have a couple of
20 redirect questions. I don't think it'll take long.

21 MS. DES JARDINS: I -- I may have a little bit
22 more than 10 minutes. There was a few questions that
23 came up when I heard the testimony.

24 CO-HEARING OFFICER DODUC: In that case, we
25 are taking a break.

1 MS. DES JARDINS: Okay.

2 CO-HEARING OFFICER DODUC: And we will return
3 at 2:35.

4 MS. DES JARDINS: Thank you.

5 (Recess taken at at 2:25 p.m.)

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1 Tuesday, April 10, 2018 2:35 p.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: 2:35. We're back
5 in session.

6 Miss Des Jardins, how much time do you
7 anticipate needing?

8 MS. DES JARDINS: I would ask for 20 minutes,
9 but I believe that it'll only take 15.

10 CO-HEARING OFFICER DODUC: Okay. We'll give
11 you 15.

12 MS. DES JARDINS: Okay.

13 CROSS-EXAMINATION BY

14 MS. DES JARDINS: Mr. Wirth, you state that
15 the wetland impacts of this Project are the largest
16 you've ever seen?

17 WITNESS WIRTH: Correct.

18 MS. DES JARDINS: And what's that based on?

19 WITNESS WIRTH: It's based upon 12 years of
20 environmental review, and it's based upon talking to
21 folks that have also done environmental review.

22 MS. DES JARDINS: Are you aware that there are
23 also 21 million cubic yards of borrow fill proposed for
24 the new Project in addition to -- that that will be
25 used to, like, fill in pad sites?

1 WITNESS WIRTH: I wasn't familiar with the
2 specific volume but was aware of the principal.

3 MS. DES JARDINS: Has any -- Has DWR -- In
4 your meetings, did DWR ever discuss where the borrow
5 areas would be for the shaft pads?

6 WITNESS WIRTH: Not that I recollect.

7 MS. DES JARDINS: Did they ever give you an
8 indication of acreage that would be needed to generate
9 that much borrow fill for their construction project?

10 WITNESS WIRTH: Not that I recollect.

11 MS. DES JARDINS: Are you aware of any maps
12 with borrow sites?

13 WITNESS WIRTH: I did not see them. Doesn't
14 mean they're not there, but I did not see them.

15 MS. DES JARDINS: I'd like to pull up the --
16 I'm going to ask you about a specific part of the
17 mitigation commitments.

18 Can we pull up Exhibit SWRCB-111.

19 And while we're doing that:

20 If -- Could borrow areas also potentially --
21 (Exhibit displayed on screen.)

22 MS. DES JARDINS: -- expose soil in a way that
23 would -- could cause it to -- to be airborne?

24 WITNESS WIRTH: Sure. Anytime soil is
25 exposed, it could dry and become airborne.

1 MS. DES JARDINS: Thank you.

2 And can we go to Page 214. This is Avoidance
3 and Mitigation (sic) Measure 6 --

4 (Exhibit displayed on screen.)

5 MS. DES JARDINS: -- which is -- It should be
6 .pdf -- It should be Page 3-51.

7 (Exhibit displayed on screen.)

8 MS. DES JARDINS: There it is.

9 And this is the Environmental Commitment for
10 (reading):

11 "Disposal and Reuse of Spoils,
12 Reasonable Tunnel Material, and Dredged
13 Material, Restoration of Temporarily
14 Affected Natural Communities."

15 Are -- Are you familiar with this?

16 WITNESS WIRTH: I saw it, did not review it,
17 did not give it any thought.

18 MS. DES JARDINS: I would like to ask you --
19 Let's go down to Page 3-52.

20 MS. MESERVE: And Miss Des Jardins, just a
21 clarification.

22 This is Avoidance and Minimization Measure.

23 MS. DES JARDINS: Minimization measures.

24 And if you could read the part starting on
25 Line 34 at the bottom about (reading):

1 "Placement of material in sensitive
2 natural communities . . ."

3 WITNESS WIRTH: (Examining document.)

4 Okay.

5 MS. DES JARDINS: And can we scroll down to
6 the next page to see the rest of the page.

7 (Exhibit displayed on screen.)

8 WITNESS WIRTH: (Examining document.)

9 MS. DES JARDINS: Does this state it
10 (reading):

11 ". . . Will be avoided or minimized to
12 the extent feasible . . ."

13 WITNESS WIRTH: Extent feasible (reading):

14 ". . . Minimized to the extent
15 feasible . . ."

16 MS. DES JARDINS: Are you -- Does that -- Does
17 that raise concerns for you?

18 WITNESS WIRTH: Sure.

19 MS. DES JARDINS: Why?

20 WITNESS WIRTH: Well, an example: Putting a
21 bunch of material near a vernal pool, the 250-foot
22 distance is the standard distance that the Feds are
23 looking for in terms of indirect effects on a vernal
24 pool.

25 But it wouldn't take a lot for some of that

1 material will find its way into the pool. Vernal pools
2 are very specific. They take a very, very long time to
3 form. So any additional material would be very
4 problematic.

5 MS. DES JARDINS: If the material was piled
6 10 feet high, would that make it more likely to find
7 its way with runoff?

8 WITNESS WIRTH: I would think runoff and
9 potentially wind would both be a problem.

10 MS. DES JARDINS: Okay. Thank you.

11 And then, Dr. Lamare, I'd like to ask you
12 about the Air Quality Measure.

13 If we could go to Page 2-124.

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: And let's go up to the top
16 of this, please.

17 (Exhibit displayed on screen.)

18 MS. DES JARDINS: And this is the Air Quality
19 Mitigation Measure.

20 And . . . it -- it describes the action at
21 Line 8.

22 If you could read that, please.

23 WITNESS LAMARE: (Examining document.)

24 Could you scroll it up?

25 (Exhibit displayed on screen.)

1 WITNESS LAMARE: How far do you want me to
2 read?

3 MS. DES JARDINS: Just the first paragraph.

4 WITNESS LAMARE: (Examining document further.)
5 Okay.

6 MS. DES JARDINS: Dr. Lamare, does this
7 describe a plan to be developed in the future? An Air
8 Quality Management Plan?

9 WITNESS LAMARE: Yes.

10 MS. DES JARDINS: Does this -- So, at this
11 point, is there any way for -- that you would be able
12 to assess the adequacy of the plan?

13 WITNESS LAMARE: Well, I could look at these
14 measures, which are the bullet points below what they
15 intend to include.

16 MS. DES JARDINS: All right. Let's scroll
17 down so you can look --

18 WITNESS LAMARE: Location, timing.

19 MS. DES JARDINS: -- at them a little.

20 (Exhibit displayed on screen.)

21 WITNESS LAMARE: (Examining document further.)
22 Okay. So could we move on?

23 MS. DES JARDINS: Yeah. Let's go to the next
24 page. There's a few more bullet points.

25 WITNESS LAMARE: (Examining document further.)

1 I'm really having trouble figuring out how
2 this relates to the Mitigation Monitoring Plan that I
3 reviewed with the specific Mitigation Measures.

4 MS. DES JARDINS: Okay.

5 WITNESS LAMARE: I . . .

6 MS. MESERVE: I think maybe the foundation for
7 this is a bit lacking.

8 But can you clarify what this document is?

9 MS. DES JARDINS: So this is the --

10 WITNESS LAMARE: This --

11 MS. DES JARDINS: -- the Department --

12 WITNESS LAMARE: -- has to do with the
13 Environmental Commitments.

14 MS. DES JARDINS: This is DWR's Air Quality --

15 CO-HEARING OFFICER DODUC: Okay. I need only
16 one person to speak at a time, please.

17 Who wants to go?

18 MS. DES JARDINS: Me?

19 CO-HEARING OFFICER DODUC: Okay.

20 MS. DES JARDINS: So this is Avoidance and
21 Mitigation Measure AQ-24, which is to deal -- which is
22 DWR's adopted Avoidance -- Avoidance and Minimization
23 Measure for air quality impacts.

24 CO-HEARING OFFICER DODUC: Does that help,
25 Dr. Lamare?

1 WITNESS LAMARE: This has to do with
2 Environmental Commitments 3, 4 and 6-11.

3 So, there are two parts to offsetting the
4 emissions of the Project.

5 Part 1 is the Environmental Commitments.
6 Those are built in to the Project.

7 So this may be listed in the MMRP as AQ-24,
8 but what it has to do with is environmental commitments
9 that the Project makes it a part of the Project.

10 The mitigation measures to address the
11 unmitigated emissions after they've done this, you
12 know, are the major part of the mitigation program that
13 I reviewed.

14 I didn't spend a lot of time reviewing the
15 environmental commitments. I read it. It's standard
16 boilerplate stuff we're going to do when we do a
17 construction Project.

18 Okay. I'm sorry.

19 MS. DES JARDINS: That's okay.

20 Mr. Jackson asked you about potential issues
21 with particulate matter, and there's a very large
22 amount of reusable tunnel material that would be
23 generated.

24 Would you expect this to have any kind of
25 specific measures that might deal with potential air

1 quality impacts?

2 WITNESS LAMARE: Yes.

3 MS. DES JARDINS: And do you see any there?

4 WITNESS LAMARE: I haven't seen that yet.

5 MS. DES JARDINS: I'd like to go down to --

6 There's also an issue about -- The next one is a -- And
7 this is a plan that would be developed in the future.

8 Did you see that?

9 WITNESS LAMARE: Exactly, yeah. I understand
10 that.

11 The fact that this Project is of such a
12 magnitude, and the issues that you're dealing with with
13 the muck or whatever it's actually called in this
14 document, makes it difficult to assume that you can
15 mitigate it with the standard measures.

16 Standard measure is: They water dry
17 particulate matter to keep it from going off in the
18 wind.

19 And local Air Districts are accustomed to
20 dealing with particulate matter from construction.

21 I didn't see anything in the document that
22 specifically addressed the relocation of the muck
23 material and how pollution from that source would be
24 controlled.

25 They don't have to develop this plan with the

1 Air Districts. To be determined. Like a lot of the
2 mitigation program, to be determined.

3 MS. DES JARDINS: Doesn't it say here on
4 Lines 10, that (reading):

5 ". . . DWR shall attempt to enter -- in
6 good faith to enter into development
7 mitigation contracts with local air
8 districts . . ."

9 WITNESS LAMARE: It does.

10 MS. DES JARDINS: Does that indicate that DWR
11 thinks that the local Air Districts would regulate the
12 Project?

13 WITNESS LAMARE: It does -- No, it does not
14 say the DWR will comply with all local Air District
15 regulations on particulate matter. In that particular
16 paragraph, it doesn't say that. It says: We will
17 develop mitigation contracts.

18 MS. DES JARDINS: Okay. And I'd like to just
19 go briefly to the next page, which has --

20 (Exhibit displayed on screen.)

21 MS. DES JARDINS: This is a (reading):

22 ". . . Health Risk Assessment to Reduce
23 Potential Health Risks from Exposure to
24 Localized DPM and PM
25 Concentrations . . ."

1 Is "PM" particulate matter?

2 WITNESS LAMARE: That's right.

3 MS. DES JARDINS: And then I'd like to ask:

4 On Line 1 to 2, if you could look at that for
5 a minute.

6 WITNESS LAMARE: (Examining document.)

7 MS. DES JARDINS: It talks about performing
8 (reading):

9 ". . . A health risk assessment for (sic)
10 sensitive receptors . . . within half a
11 mile of project activities."

12 Are sensitive receptors things like
13 residences?

14 WITNESS LAMARE: Yes.

15 MS. DES JARDINS: Schools?

16 WITNESS LAMARE: Schools. Nursing homes,
17 hospitals, schools, yeah.

18 MS. DES JARDINS: So they discuss potential
19 additional measures on Page -- on Para -- Lines 10 to
20 13.

21 Can you read the one (reading):

22 "Examples of potential additional
23 measures include" -- and they discuss --
24 "construction of vegetative buffers and
25 receptor relocation."

1 CO-HEARING OFFICER DODUC: And your question
2 is?

3 MS. DES JARDINS: Does -- Would "receptor
4 relocation" mean potentially just relocating people --

5 WITNESS LAMARE: Yes.

6 MS. DES JARDINS: -- where there was so much
7 dust it was affecting people's health?

8 WITNESS LAMARE: Yes.

9 MS. DES JARDINS: Thank you.

10 And so I have a few questions.

11 Mr. Burness, you mentioned that the Consumnes
12 River had been separated from its aquifer.

13 And I was wondering what kind of impacts that
14 could have on the riparian vegetation along the river.

15 WITNESS BURNES: Well, the riparian
16 vegetation depends upon contact -- some of the species
17 depend upon contact -- well, all of them do -- with
18 groundwater when the river dries up.

19 And unless they're adapted to that condition,
20 such as the Cottonwood Tree might be, they -- they
21 won't survive in the long term, and this is having
22 impacts on the Consumnes Preserve today.

23 MS. DES JARDINS: Are trees dying?

24 WITNESS BURNES: Yeah.

25 MS. DES JARDINS: And what happens when the

1 trees start dying?

2 WITNESS BURNES: The habitat -- habitat
3 values change. Other species come in.

4 MS. DES JARDINS: And you also refer to a cone
5 of depression.

6 WITNESS BURNES: Um-hmm.

7 MS. DES JARDINS: If the cone of depression
8 continues or gets work, what kind of impacts could that
9 have on riparian vegetation?

10 WITNESS BURNES: Well, it -- it could
11 increase the area of disconnect between the aquifer and
12 the -- and the riparian habitat, or any habitat for
13 that matter that depends upon the groundwater for its
14 sustenance.

15 MS. DES JARDINS: So you could have a loss of
16 riparian vegetation because of the groundwater?

17 WITNESS BURNES: Additional loss, yes.

18 MS. DES JARDINS: And that would affect
19 riparian species?

20 WITNESS BURNES: Um-hmm.

21 MS. DES JARDINS: Thank you.

22 My final question for Mr. Wirth.

23 With regard to your testimony on traffic
24 impacts, are you aware that State Route 84 --

25 Oh. Mr. Burness, are you aware State Route 84

1 is listed on CalTrans as a limited-use route and --

2 WITNESS BURNES: I'm sorry. Which -- State
3 Route 84?

4 MS. DES JARDINS: 84, yeah.

5 WITNESS BURNES: Being which -- I'm not sure
6 I know all the numbers. Which . . .

7 MS. DES JARDINS: Yeah. State Route 84 is
8 listed as a limited-use route.

9 WITNESS BURNES: State Route 84 is what?

10 MS. MESERVE: Is that also Jefferson
11 Boulevard?

12 MS. DES JARDINS: Yes.

13 WITNESS BURNES: Okay. Okay. I don't know
14 all the numbers.

15 MS. DES JARDINS: Yeah. So you're aware it's
16 as a limited-use route and heavy vehicles are supposed
17 to avoid it?

18 WITNESS BURNES: I was not aware of that. I
19 was just going by the segment analysis that was done.

20 MS. DES JARDINS: Okay. Thank you.

21 That concludes my questions.

22 CO-HEARING OFFICER DODUC: Miss Meserve, your
23 redirect, which you said was just a few questions.

24 MS. MESERVE: Yeah. I just have a couple of
25 questions for three of the -- three of the four

1 witnesses. So I'll just go through those now.

2 REDIRECT EXAMINATION BY

3 MS. MESERVE: I'll start out with Mr. Yee.

4 And if we could please have on the projection
5 screen SOSC-77.

6 I just wanted to clarify a couple of points
7 that you got questions on with respect to this figure.

8 (Exhibit displayed on screen.)

9 MS. MESERVE: Mr. Yee, is the purpose of the
10 SOSC-77 map shown here to generally show birder
11 locations in the Delta?

12 WITNESS YEE: Yes. It is a representation of
13 birding locations that, by and large, have been well
14 established for decades.

15 They're not just random spots where people
16 just pull over and start to bird watch. In almost all
17 instances, these are all locations that have been well
18 established by bird watchers going back pretty much to
19 the '40s.

20 And then they were used as primary spots for
21 bird censuses, especially Christmas bird counts,
22 breeding bird surveys, field trips for both Audubon
23 Chapters and schools and stuff like that.

24 So, in almost all instances, eBird usually has
25 a GPS coordinate for those locations. Very rarely are

1 they just random spots.

2 MS. MESERVE: And you described in your
3 testimony that you conduct birding tours in the area.

4 So, these locations in general coincide, do
5 they not, with locations you're familiar with yourself?

6 WITNESS YEE: Correct.

7 MS. MESERVE: And just to clarify the purpose
8 of the figure.

9 It doesn't attempt to provide a numerical
10 representation of the exact number of birders in the
11 area; does it?

12 WITNESS YEE: No. It's not a formal study at
13 all. It's just raw data that is available.

14 MS. MESERVE: And it's just to show, in
15 general, bird use in the area of the Project; correct?

16 WITNESS YEE: That's correct.

17 MS. MESERVE: Thank you, Mr. Yee.

18 And then, Mr. Wirth, just to clarify a little
19 bit about your expertise in ecological wildlife issues.

20 In conjunction with your work for conservation
21 groups, do you often do site visits and that kind of
22 thing?

23 WITNESS WIRTH: On occasion, yes.

24 MS. MESERVE: And when you do those kind of
25 visits, do you observe wildlife and birds?

1 WITNESS WIRTH: Yes.

2 MS. MESERVE: And have you become familiar
3 with the behaviors of birds and other wildlife through
4 those types of site visits?

5 WITNESS WIRTH: Through them and through
6 independent birding and photography.

7 MS. MESERVE: And then, in addition, there was
8 some discussion about the availability of mitigation
9 lands.

10 It was suggested on cross-exam that there was
11 mitigation to the west of the river that could be
12 protected by DWR for -- for mitigation; correct?

13 WITNESS WIRTH: Yeah. That was something that
14 came up in the stakeholder meetings.

15 MS. MESERVE: Yeah.

16 And if we could see -- maybe it would be
17 helpful -- SOSC-9, the figure.

18 And the areas that are to the west of the
19 river --

20 (Exhibit displayed on screen.)

21 MS. MESERVE: -- that was referenced in that
22 question, are those, to your knowledge, already pretty
23 much protected from development due to the zoning and
24 the Resource Management Plan for the --

25 WITNESS WIRTH: Yeah. To my knowledge,

1 there's no easement or fee title held by a conservancy.

2 But they are an agriculture and Yolo County
3 has a very strict series of ordinances for doing that
4 type of development. So the risk of that urbanizing
5 any time soon is extraordinarily small, whereas the
6 area we were discussing, south of Elk Grove, the risk
7 is imminent.

8 MS. MESERVE: And, in addition -- Just still
9 thinking about the lands to the west of the river that
10 were discussed in cross, in addition to the county
11 zoning, doesn't the Resource Management Plan adopted by
12 the Delta Protection Commission for the Primary Zone in
13 particular also include very strict restrictions on
14 growth?

15 WITNESS WIRTH: Yes.

16 MS. MESERVE: So, thinking now to the location
17 of mitigation land that you suggest in Page 8 of your
18 testimony, why do you think that land would provide
19 much better mitigation for impacts from the tunnels
20 than lands to the west?

21 WITNESS WIRTH: It's because, though both
22 areas are being used by Cranes, flying over for forage,
23 if we were able to preserve the land south of Elk
24 Grove, it would not only not compete with the Habitat
25 Conservation Plan, we would benefit it.

1 We would benefit it by less being speculative
2 pressure in that area, thereby reducing prices south of
3 there.

4 MS. MESERVE: And given your understanding of
5 the scale of the impacts of the Project, sort of
6 squeezing on the west side of the Refuge, do you think
7 that that kind of mitigation would be appropriate for
8 this Project, the tunnels?

9 WITNESS WIRTH: Are you asking if I think it's
10 appropriate to mitigate to the west of the river?

11 MS. MESERVE: No.

12 I'm asking, given the scale of the impact on
13 habitat from the tunnels shown on the left side of the
14 figure we're looking at here, and then the existence of
15 the urbanization on the east, is it your opinion that
16 mitigating in that area you suggested on Page 8 would
17 be appropriate in this instance if the Project was
18 going forward?

19 WITNESS WIRTH: Yes.

20 MS. MESERVE: Okay. And then I just had a
21 couple --

22 WITNESS WIRTH: An enormous amount of money is
23 being spent to build the actual infrastructure. And it
24 would be appropriate, given the extraordinary level of
25 impact to the Stone Lakes and that particular roosting

1 population, to have a more-than-standard funding for
2 mitigation.

3 MS. MESERVE: And to have it placed, moreover,
4 in locations that would be effective in protecting the
5 area.

6 WITNESS WIRTH: Absolutely.

7 MS. MESERVE: And then, Mr. Burness, you were
8 asked about your experience with climate change
9 analysis.

10 And in -- In your experience, working for the
11 County of Sacramento and then in your volunteer work
12 for ECOS and Friends of Stone Lakes, are you familiar
13 with climate change analyses in environmental documents
14 that you review?

15 WITNESS BURNES: Generally, yes.

16 MS. MESERVE: And so are you familiar with the
17 general can climate change concerns, like rising
18 temperatures or rising sea levels?

19 WITNESS BURNES: Definitely. And it's
20 certainly an issue here.

21 MS. MESERVE: And so you do have some
22 familiarity upon which to make conclusions with respect
23 to concerns about the Project in the context of climate
24 change.

25 WITNESS BURNES: Yes.

1 MS. MESERVE: Thank you.

2 Nothing further.

3 CO-HEARING OFFICER DODUC: Recross?

4 MS. ANSLEY: Jolie-Anne Ansley for the
5 Department of Water Resources.

6 RECCROSS-EXAMINATION BY

7 MS. ANSLEY: You have SOS-9 on the screen.

8 And you were pointing out, when asked by your counsel
9 just now, different areas that would be appropriate for
10 mitigation.

11 Did you create this figure?

12 WITNESS WIRTH: Did I actually physically make
13 the map?

14 MS. ANSLEY: Yeah.

15 WITNESS WIRTH: No. I -- I directed its
16 creation.

17 MS. ANSLEY: By whom?

18 WITNESS BURNES: I had a friend who was an
19 expert in GIS do it.

20 Actually, more than a friend. I had a
21 relative who's an expert in GIS do it.

22 MS. ANSLEY: And what was used as a base map
23 to show different areas on this map?

24 WITNESS WIRTH: The infrastructure came from
25 the BSK map, and the roost sites came from Gary Ivey's

1 data.

2 And Gary Ivey's data was not in a GIS layer,
3 so it needed to be georectified.

4 So the projection of the map makes it look a
5 little bit different depending upon how it was done.

6 So, the -- the roost sites are, I would say,
7 visually approximal even though they're based exactly
8 on his data.

9 So if I look a little -- a little teeny bit
10 closer to the -- the actual infrastructure for the
11 tunnel -- But the map wasn't created to show some sort
12 of new idea of how close it was to the infrastructure.
13 It was more to show how constrained that area was.

14 So it's very close to the infrastructure.
15 It's also very close to urbanization.

16 If you look at the two-mile radius, you'll see
17 that a lot of that land is already not usable.

18 MS. ANSLEY: Have you compared this map to
19 maps created for the BDCP that also incorporate Gary
20 Ivey's data?

21 WITNESS WIRTH: I have not, no.

22 MS. ANSLEY: And then my final question is:

23 You were asked about mitigation west of the
24 river by your counsel.

25 Is it your understanding that the CWF proposes

1 to do mitigation mostly through easements, not fee
2 purchases?

3 WITNESS WIRTH: That was my understanding.

4 MS. ANSLEY: I have no other questions.

5 CO-HEARING OFFICER DODUC: Thank you.

6 Thank you to all witnesses.

7 You're excused while we do some housekeeping
8 with Miss Meserve.

9 Miss Meserve, at this time, does this conclude
10 your case in chief for ECOS, FSL and SOSC?

11 MS. MESERVE: Yes, it does.

12 And I can go ahead and read off the exhibits
13 for submission into evidence.

14 CO-HEARING OFFICER DODUC: Please do.

15 MS. MESERVE: Okay.

16 CO-HEARING OFFICER DODUC: And we'll get to
17 you, Miss Ansley.

18 MS. MESERVE: Okay. So -- And I will follow
19 up with a -- with a writing in case there's any errors
20 in this.

21 But we have: ECOS-1-Errata through ECOS-10;
22 ECOS-11-Errata through ECOS-21; ECOS-27-Errata through
23 ECOS-32; FSL-2; FSL-3; FSL-6; FSL-7; FSL-21-Errata
24 through FSL-23; FSL-28 through FSL-38; FSL-40; FSL-41;
25 FSL-43; FSL-47; and FSL-48.

1 And then we have: SOSC-1 through SOSC-6;
2 SOSC-8 through SOSC-19; SOSC-21-Errata through SOSC-25;
3 SOSC-25 -- I'm sorry -- SOSC-27; SOSC-28; SOSC-30
4 through SOSC-35, SOSC-39; and -40; and -41-Revised
5 through SOSC-45; SOSC-47 through SOSC-60; SOSC-70
6 and -- I'm sorry, strike that -- SOSC-72; SOSC-73;
7 SOSC-75 through SOSC-77.

8 Then we have: LAND-120; LAND-121; LAND-125;
9 and LAND-207.

10 CO-HEARING OFFICER DODUC: Miss Ansley.

11 MS. ANSLEY: Yes.

12 The only objection I'd like to lodge at this
13 point -- although I'd like to see the full list,
14 compare it against the online list -- but is to the
15 testimony of Miss Lamare, which is -- I'm sorry -- or
16 Dr. Lamare, which is ECOS-11-Errata.

17 We would like to just, for the record, lodge a
18 hearsay objection to Page 1, Lines 23 through 26, which
19 involve representations by the USEPA and the Cal Air
20 Resources Board.

21 So just a hearsay objection to Lines 23
22 through 26 on Page 1.

23 CO-HEARING OFFICER DODUC: So noted the
24 hearsay objection.

25 And pending the submission by Miss Meserve of

1 the entirety of her exhibits and any reviews from DWR,
2 unless we hear otherwise, we will consider that all the
3 exhibits have been moved into the record.

4 (Environmental Council of Sacramento's Exhibits
5 ECOS-1-Errata through ECOS-10, ECOS-11-Errata through
6 ECOS-21, ECOS-27-Errata through ECOS-32 received in
7 evidence)

8 (Friends of Stone Lakes National Wildlife Refuge's
9 Exhibits FSL-2, FSL-3, FSL-6, FSL-7, FSL-21-Errata
10 through FSL-23, FSL-28 through FSL-30, FSL-40, FSL-41,
11 FSL-43, FLS-47, FSL-48 received in evidence)

12 (Save Our Sanhill Cranes's Exhibits SOSC-1 through
13 SOSC-6, SOSC-8 through SOSC-19, SOSC-21-Errata through
14 SOSC-25, SOSC-27, SOSC-28, SOSC-30 through SOSC-35,
15 SOSC-39, SOSC-40, SOSC-41-Revised through SOSC-45,
16 SOSC-47 through SOSC-60, SOSC-72, SOSC-73, SOSC-75
17 through SOSC-77 received in evidence)

18 (Local Agencies of the North Delta's Exhibits LAND-120,
19 LAND-121, LAND-125 & LAND-207 received in evidence)

20 MS. MESERVE: I would just note with respect
21 to the hearsay objection:

22 I mean, we've been through quite a bit with
23 that and experts are allowed to rely on hearsay.

24 CO-HEARING OFFICER DODUC: Yes. And our usual
25 procedure is just to take it under advisement --

1 MS. MESERVE: Thank you.

2 CO-HEARING OFFICER DODUC: -- and review the
3 evidence and not place the entirety of the weight just
4 on the hearsay.

5 MR. DEERINGER: And just to clarify for the
6 record, although there's sparse attendance in the room,
7 that they do have to lodge the objection in order to
8 preserve the objection.

9 CO-HEARING OFFICER DODUC: Yeah.

10 Let's talk scheduling.

11 Recognizing that not many of the parties are
12 here, so -- but -- in most -- in which case, though, I
13 would expect that Petitioners would be most likely to
14 conduct cross-examination of the remaining witnesses.

15 Let's discuss PCFFA, because they'll be coming
16 forward on Monday. I will assume that they will take
17 about 20 minutes per person as typical.

18 What is your estimated cross for the first
19 panel?

20 MS. ANSLEY: Oh, my gosh. I'm sorry. I have
21 to call up the new -- the new panels.

22 I have -- I mean, I have estimating cross --

23 MR. BAKER: Here.

24 MS. ANSLEY: Oh, thanks. That helps.

25 For the first panel, I don't believe -- I

1 don't believe we have more than 20 minutes.

2 CO-HEARING OFFICER DODUC: Second panel?

3 MS. ANSLEY: 30 minutes.

4 CO-HEARING OFFICER DODUC: And third panel.

5 MS. ANSLEY: No more than 20 minutes.

6 CO-HEARING OFFICER DODUC: Okay. So it looks

7 like we'll, in all likelihood, get through PCFA --

8 PCFFA on Monday, even if other parties have cross.

9 So there are 12 misses. What's 12 times 20?

10 That's 240 minutes, divided by 60 is four hours. Four

11 hours plus, roughly, one and a half, so that's five and

12 a half, lunch, six and a half, and then potentially

13 other . . .

14 Okay. So let's say we will make a

15 determination right now that we will not get to North

16 Delta C.A.R.E.S until Thursday.

17 MS. MESERVE: That's the 19th, then?

18 CO-HEARING OFFICER DODUC: Yes.

19 So, on Thursday, North Delta C.A.R.E.S.

20 Estimated cross?

21 MR. MIZELL: At this time, I'm going to

22 estimate 20 minutes.

23 CO-HEARING OFFICER DODUC: So then what about

24 Mr. Porgans?

25 MR. MIZELL: 20 minutes, but I expect to be

1 able to reduce that after the weekend.

2 CO-HEARING OFFICER DODUC: Snug Harbor?

3 MS. ANSLEY: I anticipate that we'll have a
4 lot of objections to Snug Harbor so it's a little
5 difficult to gauge, but I don't think it's any more
6 than 20 minutes.

7 CO-HEARING OFFICER DODUC: And Clifton Court.

8 MR. MIZELL: At this time, it's pretty hard to
9 tell, so I'll go ahead and reserve 20 minutes, but we
10 may reduce that substantially.

11 CO-HEARING OFFICER DODUC: So let's plan on
12 spending Thursday with North Delta C.A.R.E.S, Patrick
13 Porgans, Snug Harbor and Clifton Court.

14 MS. ANSLEY: I think that's reasonable.

15 CO-HEARING OFFICER DODUC: So after that will
16 come Save the California Delta Alliance.

17 And Mr. Brodsky said that one of his
18 witnesses, Mr. Salter will not be available until
19 April 23rd.

20 So assuming that -- Oh, Mr. Jackson.

21 MR. JACKSON: Yes. I have four witnesses that
22 are at the end.

23 CO-HEARING OFFICER DODUC: Yes.

24 MR. JACKSON: If --

25 CO-HEARING OFFICER DODUC: I'm trying to make

1 my way towards the end for you.

2 MR. JACKSON: If -- If nobody objects, for
3 medical reasons, I would like to have Dr. Whitelaw here
4 maybe in exchange for Mr. Brodsky's witness?

5 CO-HEARING OFFICER DODUC: Actually, that
6 would work as well.

7 How about this: Since Friday, the 20th, will
8 be a short day, anyway -- we have to adjourn no later
9 than 1 o'clock -- were you suggesting bringing only
10 Dr. Whitelaw?

11 MR. JACKSON: Yes.

12 And then the others. For instance, the . . .

13 For Mark Del Piero, the weekend would be very
14 good for his healing process since they're not going to
15 let him go until -- I might be able to get him here on
16 the 20th but I would rather have the 23rd.

17 CO-HEARING OFFICER DODUC: Hold on. Hold on a
18 second.

19 MR. JACKSON: Or 4th.

20 CO-HEARING OFFICER DODUC: Hold on.

21 MR. JACKSON: Or 5th.

22 CO-HEARING OFFICER DODUC: Hold on.

23 Let me get an estimate of cross-examination of
24 Save the California Delta Alliance without Mr. Salter,
25 first of all.

1 MS. ANSLEY: Yeah. That is difficult since I
2 know we do have questions for Mr. Salter.

3 I cannot see that we would have more than 20
4 to 25 minutes for the entire panel --

5 CO-HEARING OFFICER DODUC: Okay.

6 MS. ANSLEY: -- but that's difficult.

7 CO-HEARING OFFICER DODUC: Without Mr. Salter.

8 MS. ANSLEY: Well, and then it -- It may
9 actually be shorter without Mr. Salter. I have to sit
10 down and cross his questions out.

11 CO-HEARING OFFICER DODUC: All right. So
12 let's -- Given, hopefully, there won't be any other
13 cross-exam, let's see if we can accommodate both Save
14 the California Delta Alliance and Mr. -- Actually,
15 what's your cross for Dr. Whitelaw?

16 MS. ANSLEY: I believe it's extraordinarily
17 limited. It would only be a couple questions at most.

18 CO-HEARING OFFICER DODUC: Okay.

19 MS. ANSLEY: We were discussing it the other
20 day.

21 So I cannot see that we would have more than
22 10 to 15 minutes at the most for Dr. Whitelaw.

23 CO-HEARING OFFICER DODUC: All right. So
24 let's, then, try to do Save the California Delta
25 Alliance, with the exception of Mr. Salter, and

1 Dr. Whitelaw on Friday. And I think we can do it in
2 half a day.

3 Then on Monday --

4 Right? We'll be convening again on Monday.

5 -- we will have Mr. Salter, Dr. Rosenfield,
6 and the remainder of Mr. Jackson's witnesses to the
7 extent that we can fit them in.

8 I think we --

9 MR. JACKSON: And they're all able to stay
10 over till Tuesday if that's necessary.

11 CO-HEARING OFFICER DODUC: Okay. Your
12 anticipated cross for Dr. Rosenfield.

13 MS. ANSLEY: I do believe we have fairly
14 extensive cross for Dr. Rosenfield. It would be on the
15 order of an hour to hour and a half for a safe
16 estimate.

17 MR. JACKSON: And I do believe there will be
18 extensive cross-examination.

19 CO-HEARING OFFICER DODUC: So let's do this,
20 Mr. Jackson:

21 Let's not have Mr. Del Piero and your other
22 witness come on Monday, that Monday.

23 MR. JACKSON: Okay. On Tuesday, then.

24 CO-HEARING OFFICER DODUC: On Tuesday at the
25 earliest.

1 MR. JACKSON: Thank you.

2 MS. ANSLEY: So Monday would be Mr. Salter --

3 CO-HEARING OFFICER DODUC: Yes.

4 MS. ANSLEY: -- for Save the California Delta
5 Alliance and Mr. -- Dr. Rosenfield --

6 CO-HEARING OFFICER DODUC: Yes.

7 MS. ANSLEY: -- would be Monday.

8 Okay. And then . . .

9 CO-HEARING OFFICER DODUC: The remainder on
10 Tuesday.

11 MS. ANSLEY: Yup. And would that include --
12 Excuse me for the clarification, but would that include
13 Mr. -- I know that Mr. Sjovold has passed away.

14 MR. JACKSON: Yes.

15 MS. ANSLEY: Would that include the alternate
16 witness --

17 MR. JACKSON: Yes, it would.

18 MS. ANSLEY: -- for Mr. Sjovold? Okay.

19 MR. JACKSON: And he would be up for -- from
20 Sacra -- from Santa Barbara, so . . .

21 MS. ANSLEY: Okay. Thank you.

22 CO-HEARING OFFICER DODUC: So that would be
23 Mr. Del Piero, Mr. Smith and one other witness?

24 MR. JACKSON: The gentleman's name is Aaron
25 Budgor, B-U-D-G-O-R. He's the closest I could come to.

1 There is a -- I'll talk to DWR about this, but
2 there was a -- there is a Santa Barbara report, and
3 then Mr. Sjovold had done some modeling work on the
4 San Joaquin.

5 We cannot replace that, so we're going to have
6 to dismiss that part of his testimony.

7 MS. ANSLEY: That would be the Santa Barbara
8 Report or just the San Joaquin.

9 MR. JACKSON: No. This would be the -- the
10 San Joaquin River modeling problems.

11 CO-HEARING OFFICER DODUC: Mr. Jackson, please
12 express our condolences to his family.

13 It's always --

14 MR. JACKSON: Thank you.

15 CO-HEARING OFFICER DODUC: -- hard for
16 colleagues and friends.

17 All right. With that, everyone, thank you.

18 We will -- oh -- see you tomorrow, what will be
19 likelihood be a long day.

20 I will try to take frequent short breaks for
21 the court reporter as well as everyone else's comfort.
22 We might even take a shorter lunch than usual so please
23 prepare for that.

24 All right. Thank you.

25 (Proceedings adjourned at 3:15 p.m.)

1 State of California)
2 County of Sacramento)

3

4 I, Candace L. Yount, Certified Shorthand Reporter
5 for the State of California, County of Sacramento, do
6 hereby certify:

7 That I was present at the time of the above
8 proceedings;

9 That I took down in machine shorthand notes all
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and
14 correct transcription of said shorthand notes, and a
15 full, true and correct transcript of all proceedings
16 had and testimony taken;

17 That I am not a party to the action or related to
18 a party or counsel;

19 That I have no financial or other interest in the
20 outcome of the action.

21

22 Dated: April 14, 2018

23

24 Candace L. Yount, CSR No. 2737?

25

