

1 BEFORE THE
2 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
3
4 CALIFORNIA WATERFIX WATER)
5 RIGHT CHANGE PETITION HEARING)

6 JOE SERNA, JR. BUILDING
7 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
8 COASTAL HEARING ROOM
9 1001 I STREET
10 SECOND FLOOR
11 SACRAMENTO, CALIFORNIA

12
13 PART 2

14
15 Friday, April 20, 2018

16 9:30 a.m.

17
18 Volume 31

19 Pages 1 - 161

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21
22
23 Reported By: Candace Yount, CSR No. 2737

24 Computerized Transcription

25

1 APPEARANCES

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present:

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

8 Staff Present:

9 Andrew Deeringer, Senior Staff Attorney
10 Jean McCue, Water Resource Control Engineer

11 PART 2

12 For Petitioners:

13 California Department of Water Resources:

14 James (Tripp) Mizell
15 Jolie-Anne Ansley

16 INTERESTED PARTIES:

17 For County of San Joaquin, San Joaquin County Flood
18 Control and Water Conservation District, and Mokelumne
19 River Water and Power Authority:

20 Thomas H. Keeling

21 For California Water Research:

22 Deirdre Des Jardins

23 For Save the California Delta Alliance; Janet & Michael
24 McCleary; Frank Morgan; and Captain Morgan's Delta
25 Adventures, LLC:

26 Michael Brodsky

27 For Planetary Solutions:

28 Patrick Porgans

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APPEARANCES (Continued)

INTERESTED PARTIES (Continued):

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

Michael Jackson

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

Dean Ruiz, Esq.

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1 Friday, April 20, 2018 9:30 a.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: It is 9:30.

5 Welcome back to this Water Right Change
6 Petition hearing for the California WaterFix Project.

7 I am Tam Doduc, presiding over a somewhat
8 empty hearing room today. To my right is Board Chair
9 and Co-Hearing Officer Felicia Marcus. To my left,
10 Andrew Deeringer and Jean McCue.

11 We're being assisted today by Miss Gaylon.

12 Congratulations, Miss Gaylon, on selecting the
13 law school. And they'll be fortunate enough to have
14 you amongst their ranks.

15 MR. KEELING: And which law school would that
16 be?

17 CO-HEARING OFFICER DODUC: Miss Gaylon, would
18 you like to share?

19 MS. GAYLON: Vermont Law School.

20 MR. KEELING: Very good. A beautiful state.

21 CO-HEARING OFFICER DODUC: Usual three
22 announcements:

23 In the event of an emergency, please note the
24 nearest exit to you because we will be taking it to go
25 down the stairs to the first floor and meet up in the

1 park across the street.

2 If you're not able to use the stairs, please
3 flag down one of the safety people and you will be
4 directed into a protective area.

5 We've also been enjoying the drill that has
6 been happening at least once a day, I think, every day
7 that we've been in hearing these past few weeks.

8 So, in that event -- Actually, we have not had
9 to evacuate yet, which means it could be our time any
10 day now.

11 But an alarm will sound and we will -- Unless
12 the lights are flashing and it's really apparent that
13 it's the alarm for this floor and this room, in which
14 case we will evacuate immediately. Otherwise, if you
15 just hear an alarm going off in the background, we'll
16 sit here and wait for the announcement.

17 That was the first announcement.

18 Second announcement: This hearing is being
19 recorded and Webcasted, so please provide your
20 commentaries into the microphone after making sure that
21 it is on, that the green light is lit, and begin by
22 stating your name and affiliation for the record.

23 We have our court reporter back with us.

24 Thank you.

25 If you would like a copy of the transcript

1 prior to the completion of Part 2, please make your
2 arrangements directly with her.

3 And, finally and most importantly, please take
4 a moment and put all your noise-making devices to
5 silent, vibrate, do not disturb, or even airplane mode.

6 All right. With that, are there any
7 housekeeping matters we need to address?

8 Miss Des Jardins.

9 MS. DES JARDINS: Yes. I wanted to ask:

10 The Board has made two transcripts available
11 early, but I wanted to request that since there is
12 extensive testimony by the Petitioners on terrestrial
13 impacts and engineering, I think primarily by John
14 Bednarski and Christopher Erle, and the Project has
15 changed, that the -- the Board consider making the
16 transcripts for that testimony available.

17 It's a significant expense for Protestants to
18 purchase the transcripts. I think it's about \$700 a
19 day.

20 But if -- The testimony would -- The witnesses
21 who testified on terrestrial and engineering impacts
22 and the cross-examination was available, it would help
23 considerably with rebuttal.

24 CO-HEARING OFFICER DODUC: And are those the
25 only two witnesses from which you are seeking the

1 transcript of their testimony and cross-examination?

2 MS. DES JARDINS: It does . . .

3 I believe also Rischbieter.

4 But, no, I think Rischbieter was aquatic. In
5 fact, he was one of the water quality. But Rischbieter
6 might have had some, too. He was the Department's
7 witness.

8 CO-HEARING OFFICER DODUC: Why don't you
9 submit a request to the e-mail list so that everyone
10 knows what you're requesting and, that way, we know
11 specifically what witnesses you're interested in.

12 MS. DES JARDINS: Thank you very much.

13 CO-HEARING OFFICER DODUC: Okay. And we will
14 look into that.

15 Mr. Brodsky.

16 MR. BRODSKY: Good morning. Michael
17 Brodsky --

18 Is this on?

19 Good morning. Michael Brodsky --

20 CO-HEARING OFFICER DODUC: You can use the
21 taller one. I hurt your -- I feel your back for you.

22 MR. BRODSKY: Okay.

23 CO-HEARING OFFICER DODUC: The button you turn
24 on is actually on top of the microphone. There's a
25 slider there.

1 MR. BRODSKY: Hello. Is this on? Yeah.

2 CO-HEARING OFFICER MARCUS: You can even move
3 it up.

4 MR. BRODSKY: Good morning. Michael Brodsky
5 on behalf of Save the California Delta Alliance.

6 As you can tell, I haven't been here in
7 awhile. It's good to see you again.

8 I just want to let you know we're here today
9 with our witnesses. We're ready to go.

10 It's my understanding Mr. Porgans will go
11 first and -- and then we'll follow.

12 CO-HEARING OFFICER DODUC: Yes.

13 MR. BRODSKY: I apologize for failing to tell
14 my witnesses that it's Casual Friday.

15 But I did wear a matching t-shirt and shoes
16 (indicating).

17 (Laughter.)

18 CO-HEARING OFFICER DODUC: Yes. Very rare. I
19 don't know about that, Mr. Brodsky.

20 MR. BRODSKY: So I did my best.

21 Thank you.

22 THE COURT: You did. Thank you very much.

23 And thank you for remembering Casual Friday.

24 We are attending a memorial service later
25 today, so we are violating our own Casual Friday rules.

1 But I'm glad to see Mr. Brodsky on top of it.

2 All right. If there are no other housekeeping
3 matter, at this time, I'll turn to Mr. Porgans and
4 thank him for returning today.

5 MR. PORGANS: Thank you.

6 CO-HEARING OFFICER DODUC: And ask you to
7 please stand and raise your right hand.

8

9 Patrick Porgans,

10 called as a witness by Patrick Porgans,
11 having been duly sworn, was examined and
12 testified as follows:

13 WITNESS PORGANS: To my knowledge, it is, yes.
14 I'll be reading from government documents.

15 CO-HEARING OFFICER DODUC: Thank you.

16 WITNESS PORGANS: You're welcome.

17 CO-HEARING OFFICER DODUC: Be seated. And
18 let's make sure your microphone is on, that the green
19 light is lit, so that we can hear you.

20 WITNESS PORGANS: (Testing microphone.)

21 Where's the --

22 CO-HEARING OFFICER DODUC: There should be a
23 button.

24 Miss Gaylon.

25 WITNESS PORGANS: Thank you.

1 CO-HEARING OFFICER DODUC: Perfect. Thank
2 you.

3 All right, Mr. Porgans.

4 DIRECT EXAMINATION BY

5 WITNESS PORGANS: Yes.

6 My name is Patrick Porgans. That's
7 P-as-in-Patrick-O-R-G-A-N-S.

8 And I'm a Government Regulatory Specialist and
9 a de facto public trustee, and my client is Planetary
10 Solutionaries.

11 And, today, I'm here to address some of the
12 issues and concerns that I raised during -- during
13 these proceedings.

14 If they would put Exhibit -- Porgans
15 Exhibit 326 up.

16 And I'll briefly review some of the issues I'm
17 going to be discussing.

18 (Exhibit displayed on screen.)

19 WITNESS PORGANS: And if I'm out of order at
20 any time, I know that the Chairs will let me know.

21 And I'm not going to try to read things
22 verbatim, but there will be a few quotes I do have to
23 emphasize, because I realize that reading things is not
24 the best thing to do.

25 At any rate, there's five issues that I'm

1 going to be discussing today: And one would be the
2 environmental --

3 Can you pull that down just a tad, please so
4 everyone can see the five issues.

5 (Exhibit displayed on screen.)

6 WITNESS PORGANS: So I'll be talking about the
7 environmental degradation and the endangered species,
8 and compliance with the Delta-dependent listed species
9 decline.

10 I'll be talking about the -- the litany of
11 broken promises over the last 45 years, because as
12 everybody knows, I've been involved in this process for
13 roughly 45 years.

14 And then the other thing I'll be talking
15 about: The levee failure or potential levee failures,
16 and the dual path. But that's just in case we need to
17 back up. In the event that the levees go while this
18 process is going on, protect all of the water users and
19 uses in the Delta.

20 And I'll be talking about this disturbing
21 pattern of non-compliance and Project operations during
22 the drought.

23 And, lastly, I'll be talking about briefly the
24 Public Records Act request for ex-parte communications.

25 So, with that said, I want to mention that

1 we -- we recognize the significant decline in our
2 anadromous fisheries over the last 40 years. And a lot
3 of this is happening because -- I looked at the data,
4 and, again, my -- my information is -- is based on the
5 government records.

6 So it appears to me that, pre-Project, we were
7 still having problems. But post-Project, it appears
8 that the problems have been exacerbating.

9 And a part of that has to do this increasing
10 demand during certain types of years, water years.
11 It's not a constant. It just appears to be magnified.

12 When we have low flows, we don't have storage
13 at the upstream reservoirs, and then we have problems
14 with having to come back to this Board and request
15 TUCPs, which, you know, under the circumstances, at
16 times, it's very necessary because we want to make sure
17 everybody's got enough water for their basic needs.

18 The problem, though, is that -- I'm looking at
19 all the data, and we've had a lot of experts here.
20 And -- and the problem with experts is that everybody
21 has their limited perception of that part of what
22 they're an expert about.

23 There's very few people that have a
24 comprehensive understanding of all these variables that
25 are involved in this very complex issue.

1 So what's happened is -- And as you know, in
2 the past, I attended everything I could as an
3 individual to try to -- And I don't eat fish. I don't
4 fish; okay? So this is not about me.

5 As a matter of fact, it's not about anybody in
6 this room. This is about the people. This is about
7 the future. This is about ensuring that we have a
8 Delta that's viable and at the same time be able to
9 provide water.

10 My record shows that I don't oppose Projects.
11 What I do is, I provide information, and if a Project
12 has a value and it can pay for itself, I've always
13 stood back.

14 I'm saying we don't need this Project and I'll
15 explain that to you why in a few minutes.

16 So looking at the precipitous decline in the
17 species, the information shows that if we looked at the
18 data, for example, just the State Water Project from
19 1984 to 2006, we were killing 1 million fish a year
20 just at the State Water Project pumps, and that doesn't
21 count predation.

22 So it works down to about two fish a minute
23 for -- And these are anadromous fish I'm talking about.
24 I'm not talking pelagic fish. I'm just talking about
25 anadromous fish.

1 I don't know if you've heard any of this
2 before, but if you have, forgive me for repeating
3 myself. And also I have to be excused because of my
4 condition.

5 So, anyway, the other problem I'm having is --
6 I'm going to read a quote now. If we can go down to
7 Page -- Page 2, down to the bottom of that.

8 (Exhibit displayed on screen.)

9 WITNESS PORGANS: See, that's -- And keep
10 going down.

11 (Exhibit displayed on screen.)

12 WITNESS PORGANS: That's the rate of decline.
13 Would you go down.

14 (Exhibit displayed on screen.)

15 WITNESS PORGANS: Down to the bottom of that
16 page, I believe.

17 (Exhibit displayed on screen.)

18 WITNESS PORGANS: Let's see. Would you go up
19 to -- I hope I didn't pass it.

20 Okay. Okay. Go back up just a little bit.
21 See where Line 21 is?

22 (Exhibit displayed on screen.)

23 WITNESS PORGANS: Yeah. So what we're looking
24 at here, this is a quotation, and all my references are
25 right there at the bottom of that page.

1 It says (reading):

2 "Over the past 150 years,
3 California's native fisheries (sic) - a
4 broad indicator of aquatic health in the
5 ecosystem - have lost almost every
6 conflict with economic development.
7 Among the State's 129 native fish, 7
8 became extinct, 31 are listed or
9 endangered under the Federal and State
10 ESAs and another 69 are in decline and
11 will likely qualify for listing" sometime
12 "in the" near "future." Only two native
13 fish species are reasonably secure."

14 And then on Line 22 (reading):

15 "California will lose more than half
16 (52 percent) of its native anadromous
17 (migratory) Salmonids, and over a quarter
18 (27 percent) of its inland Salmonids in
19 the next 50 years if present trends
20 continue . . .

21 "The 2009 Biological Opinion for
22 Salmonids reported high pre-screen losses
23 in Clifton Court Forebay. . . .
24 Endangered Species Act-listed Salmonids,
25 with 75 to 80 percent loss due to

1 predation."

2 So what it is, is the concentration status of
3 the California Salmonids, both individually and in the
4 aggregate, was looking -- and I'm at Line 34 -- Coho
5 Salmon numbering in the hundreds of thousands over 50
6 years ago, and now today the numbers are in the
7 hundreds. That's a very significant decline.

8 We can move to the next page.

9 (Exhibit displayed on screen.)

10 WITNESS PORGANS: Top of the page.

11 So I'm on Line 4 now (reading):

12 "Likewise, the combined abundance of
13 Chinook Salmon and ESUs in the Central
14 Valley once averaged around 2 million
15 fish annually; today three of the runs
16 (spring, winter and latefall) average
17 only a few thousand fish . . . The
18 fall-run has recently been experiencing
19 extreme annual fluctuations in abundance,
20 reaching an all-time low of 66,000 in
21 2008 . . ."

22 Now, we have to be mindful of the fact that
23 we're spending significant sums of money here -- we're
24 in the billions now -- to try to bring these fish back.

25 And we know that by looking at the data. And

1 I think it's -- If we can bring up CalSPA's, I think
2 it's 239.

3 We take a look at the Anadromous Fish
4 Restoration Program. And in that graph, it's going to
5 show us, you know, what's happened since the CVPIA
6 became operable, including what happened with the
7 \$5 million from the California Water Fund, you know,
8 that -- the EWA, Environmental Water Account.

9 And I looked at all of the data, and I
10 couldn't find any information that Group 2a or 2c, that
11 that information was, in effect, you know, proof that
12 there was any increase in the populations.

13 And then I found that to be very disconcerting
14 because, you know, you spend that kind of money, you
15 want to see some results.

16 And then I started looking at the W2 water,
17 you know, 800,000 acre-feet. And there were several
18 reports that came out, and one was Listen to the River,
19 that was by the Independent Science Panel, the CVPIA.
20 And I've been trying to track that water for almost a
21 decade.

22 And what I found out is, and I do have this
23 all confirmed in writing. It's not in my exhibits but
24 it is, you know, referred to in this testimony.

25 That that 800,000 acre-feet, I wanted to know

1 how much of the water was being recaptured, which I
2 think is very important.

3 I get two different conflicting stories on
4 that one. The Bureau of Reclamation contends they
5 cannot tell me -- it's impossible to discern how much
6 of that water, that 800,000, is going out every year
7 depending on the type of water year, is actually being
8 picked back up.

9 Now, the Independent Science Review on Listen
10 to the River, it is their contention that almost all of
11 it's being picked up.

12 So I -- I brought this issue to the
13 Watermaster, the Delta Watermaster's attention because
14 I think we need to know a little bit more about that.

15 If, in fact, that water is being recaptured,
16 and if, in fact, we need some water to move these fish
17 out at certain periods of time, then I'm starting to
18 look at, it may be advantageous for this Board to
19 consider looking at ways to create a Salmon or
20 anadromous fish water bank so we can come back later on
21 and say if we've got 600,000 one year, maybe we can put
22 200,000 aside for fish or other purposes, to meet
23 D-1641 or whatever purpose that may -- that may apply.

24 Now, I'm going into -- If we go down here to
25 Line 25 and just below that.

1 (Exhibit displayed on screen.)

2 WITNESS PORGANS: Okay. So (reading):

3 "After . . . 50 years of monitoring
4 - fish loss guesstimates face a high
5 degree of uncertainty: Experts asset
6 high degree of uncertainty as to loss
7 estimates."

8 So if we look at Line 32, it tells us there
9 (reading):

10 ". . . DWR and Reclamation quantified
11 incidental take for the listed species to
12 the nearest whole fish . . ."

13 But the current methods of ascertaining those
14 numbers are up in the air. The experts are debating,
15 you know, still how many fish are actually being taken.
16 So we don't know that.

17 And these numbers that I'm providing you with,
18 these numbers, they're in dispute, they're low, and,
19 quite frankly, I don't have any confidence in those
20 numbers.

21 So -- And, again, did we ever get to that --
22 to that CalSPA, I think it was 239.

23 I just wanted to show you what we're talking
24 about --

25 (Exhibit displayed on screen.)

1 WITNESS PORGANS: -- and maybe you've seen
2 this before.

3 Now, this is not the latest one. I did have
4 the latest one but I didn't get to submit it.

5 But the fish populations are still below 2014,
6 '15, and '16. So, I mean, there's a lot of money, a
7 lot of time, a lot of effort, and this is what we have
8 after -- And don't forget that this was supposed to be
9 completed by 2002.

10 And there -- I don't see where there's any way
11 we can hold anybody accountable for this. I mean, we
12 come up with RPAs, and they implement the RPAs, and
13 then we come back and they passed a decline on the
14 RPAs, and it's almost like it's put back on the back
15 shelf, which is a problem, because if this Board is
16 trying to get to provide that level of protection, and
17 those changes aren't showing as benefits, then what we
18 have here is a situation where we need to come back and
19 do QA on this one, see what's happening.

20 Thank you for putting that up there.

21 And if we can go back to Porgans 326.

22 (Exhibit displayed on screen.)

23 WITNESS PORGANS: And I want to go down to
24 Page -- looks like Page 3.

25 It starts off on Page 3, Line 22, at the top

1 of the . . .

2 (Exhibit displayed on screen.)

3 WITNESS PORGANS: Could you -- Is that the
4 first -- Let's see where we are here.

5 CO-HEARING OFFICER MARCUS: That's Page 3.

6 WITNESS PORGANS: That's Page 3. Go back up.

7 (Exhibit displayed on screen.)

8 WITNESS PORGANS: Okay. So a little more,
9 please.

10 (Exhibit displayed on screen.)

11 WITNESS PORGANS: Okay. Hold on right there.

12 (Exhibit displayed on screen.)

13 WITNESS PORGANS: Come back.

14 (Exhibit displayed on screen.)

15 WITNESS PORGANS: Come back.

16 (Exhibit displayed on screen.)

17 WITNESS PORGANS: Thank you.

18 Okay. Now go back down again. I'm sorry
19 about that.

20 (Exhibit displayed on screen.)

21 WITNESS PORGANS: The next page.

22 (Exhibit displayed on screen.)

23 WITNESS PORGANS: Okay. Maybe we can look at
24 here.

25 So if I'm looking at -- That's on Line 2 --

1 Line 3, you know, the 2013/14 DOSS Report tells us
2 there's a high degree of uncertainty using current
3 methods, so for the incidental take.

4 Now, the problem with this incidental take is
5 that -- and when we set these objectives for whatever
6 they may be, at the time that the agreement's made, it
7 seems to me what's happening is that they come back and
8 they reinstitute the take limits, or they'll make some
9 simple modifications. But in the end, it doesn't
10 really get us any more fish, so there's a problem
11 there.

12 So moving along there, and the Cross Delta
13 Channel.

14 Now, we know that when those reservoirs are
15 low during the dry periods, it's because most of -- a
16 lot of water's being delivered in the early years of
17 the drought, you know, the pre-drought years. And then
18 what we're doing is, we're coming back here, the
19 Department and the Bureau, and then that's when they're
20 asking for the TUCPs.

21 So then what happens is, we may have to open
22 up the gates on the Delta Cross Channel, you know, and
23 then when we have those outmigrating Salmon and other
24 anadromous fisheries, we're increasing our loss rates.
25 So, those kinds of issues there, we need to look at.

1 Because I've been involved in every drought
2 since '77, '76, '87 to '92 and subsequent to that time.
3 And each time, that's exactly what's happened. They
4 come back -- And it's not, you know, the Board's fault
5 because you're only dealing with what you have to deal
6 with.

7 So, at any rate, if we can move that down a
8 little bit more so we can see what's underneath there.

9 (Exhibit displayed on screen.)

10 WITNESS PORGANS: Okay. Hold on there. Thank
11 you.

12 So it says here on Line 22 (reading):

13 "The proportion of the juvenile
14 winter-run population lost at Delta
15 facilities each year is correlated to
16 the . . . Sacramento River flow diverted
17 into the interior Delta . . . during the
18 time juvenile winter-run are emigrating
19 through the . . . Sacramento River in the
20 vicinity of the Delta Cross
21 Channel . . ."

22 So what I'm looking at here is that, you know,
23 we can take these precautions. We can implement all of
24 the regulation -- all -- everything we have.

25 But when we have to come back and open those

1 gates during those critical periods, all we're doing is
2 creating more problems.

3 Now, it's my contention that there's -- And
4 this -- And this is going to be a shocker. There is no
5 water shortage in California. I'm sorry. I -- I have
6 79 fact-finding volumes somewhere.

7 What I really have here is a . . . a
8 distribution issue. I mean, as I mentioned to you
9 before during these proceedings when we had to come in
10 and implement the drought regulations, we were putting
11 in 60,000 acres of almonds a year for 10 years
12 straight.

13 Almonds now use 3.7 million acre-feet of
14 water. And if you put that in perspective and look at,
15 say, for example, the Metropolitan Water District,
16 their entire water commands on average is only
17 2.1 million acre-feet.

18 And we do have to remember that the Met
19 provides water to San Diego Water & Power and to the
20 Los Angeles Water Authority -- excuse me -- Water &
21 Power.

22 So, what we need to do here -- And, again,
23 it's not just about fish. This is -- And it's not --
24 This is -- This is -- We're talking here about the last
25 remaining Delta on the West Coast of the -- of the

1 Americas. So when we make a decision now, this
2 decision is going to be -- This is the ultimate fate of
3 something that we all are very familiar with and near
4 to. And it's not ours.

5 So I'm trying to emphasize to you -- And I'm
6 getting on now in years. I don't know how many more
7 times I can come back here; okay? I'm sorry.

8 And I realize that, you know, sometimes I'm a
9 little harsh, sometimes I'm direct, and I don't mean to
10 be offensive. But you understand, you know, it's like
11 trying to teach my child not to run out in front of the
12 car so we're both killed. That's not good.

13 So, anyway, moving along here.

14 I'll go down to the next page.

15 (Exhibit displayed on screen.)

16 WITNESS PORGANS: Let's see.

17 Actually, Title 34.

18 So, again, I'm on Line 12 and I'm looking at
19 my 15 years, looking at what's happening there with the
20 DWR and the Bureau.

21 And on Line 16, I'm talking about Title 34 of
22 the CVPIA. And I'm looking, again, back at, you know,
23 what we said we were going to do and what we haven't
24 done.

25 I'm looking back at 27, and I'm looking at the

1 amount of money that's been spent on the CVPIA. And
2 these numbers are very fresh, 1.7 billion. About
3 63 percent of that's gone towards fisheries and money
4 for purchasing water for fish.

5 And I always thought fish lived in water. I
6 didn't know we had to buy water for them, but -- and
7 that's another issue.

8 Because what's happening here is, they're not
9 only getting to pay us -- pay them for the water that
10 we are providing to them, they're getting that water
11 back again, and then whatever they do with that water,
12 they market the water or whatever, and they're making
13 money.

14 So what I'm saying is that we have to look at
15 a better way to utilize that resource in a manner in
16 which we can reduce the cost, apply whatever the
17 benefits are across the board.

18 So this way --

19 (Timer rings.)

20 WITNESS PORGANS: Is my 20 minutes up?

21 CO-HEARING OFFICER DODUC: It is.

22 WITNESS PORGANS: Could I -- May I ask for a
23 few more minutes here because I -- I didn't apply for
24 my Opening Statement, and I should have done that, and
25 I found that out later, so I'm sorry.

1 CO-HEARING OFFICER DODUC: You have a few more
2 key issues, I believe, in your testimony. Which ones
3 do you -- would you like to focus on?

4 WITNESS PORGANS: Well, I think we should
5 focus -- Let me go back to my . . .

6 Okay. I want to talk about the broken
7 promises, and I want to talk about the -- the issues
8 regarding why we don't have the level of protection in
9 the river -- you know, in the Delta.

10 Now, you know, we're here with the California
11 WaterFix today. And the WaterFix itself, you know, it
12 may be necessary to some degree. It's just how we're
13 going to go about doing it.

14 We know now, and the data indicate, and it's
15 in the Water Code Section 12934(d), that we were
16 supposed to have master levees in the Delta back in
17 1960. They never were built; okay?

18 Then we went into the Peripheral Canal. We
19 know where that went. It went down.

20 And now we're here talking about tunnels.

21 Now, if you look at the amount of water that
22 it takes to irrigate 1 acre of land on Sherman Island,
23 for example, it's a 40-to-1 ratio. 40-to-1.

24 So, if you take a year like 1928, we would
25 have had to push out 289,000 acre-feet of water in

1 order to meet the Emmaton standard under the provisions
2 of the North Delta Water Agency contract. So the
3 Delta -- That island is now purchased by the Department
4 of Water Resources.

5 So, in some years now, if we're not growing
6 something there, there could be the possibility of
7 increasing the yield from that particular acquisition,
8 because we're not using it for that purposes.

9 They had moved that standard up to Three-Mile
10 Island, which did save some water.

11 Now, if they would have went along with the
12 BDCP and purchased another 100,000 acres of land in the
13 Delta out on the southwestern fringe, we also could
14 have reduced the amount of water we need to meet those
15 standards.

16 So what I'm saying is that, to get 250,000
17 acre-feet of water which you don't have to push out of
18 reservoirs, that's like for a meal, to get that same
19 amount of water, you'd have to build a reservoir about
20 a million acre-feet.

21 So there is water in the system. It's a
22 matter of how you -- you apply the water, under
23 whatever conditions that are appropriate under -- under
24 the circumstances that exist.

25 So what I'm saying is that, for all those

1 years, we never did get that protection. So we're now
2 in a situation where -- We all know that USGS and
3 others, authoritative people, show us that they're --
4 we can have levee failures in the -- in the summertime,
5 not just the winter.

6 So my concern is, is that we need to have some
7 assurances that, in the event we're, you know,
8 constructing out there for 13 years and something did
9 happen where, you know, we had a major levee failure,
10 we need to be in a situation where we can provide
11 assurances that we're going to be able to provide the
12 quality of water that's necessary to meet the standards
13 that this Board has set.

14 And we're going to have to be in a position
15 that someone's going to have to be held responsible for
16 this in the event that something does happen.

17 So those -- those responsibilities have to be
18 borne by the real beneficiaries of the Projects,
19 because that's -- the Projects are putting the impacts
20 on us.

21 Now, I have to say -- and this is very
22 important -- that if you go back to Bulletin 132-63 and
23 you look at -- It's about '90, '95. In that
24 document -- And I did submit that as part of my
25 evidence. And I don't want to be pulling all my

1 exhibits up here.

2 But it shows us that, in a situation with the
3 Department of Water Resources, they were depending on
4 surplus flows in the Delta up until about 1990. That
5 didn't happen. We -- We don't have those surplus flows
6 now.

7 So now we're going after the abandoned water,
8 and we're going after the water that's being
9 recaptured, you know.

10 So, that's putting additional stressors on all
11 the -- both the pelagic and also the anadromous
12 fisheries.

13 Okay. I'm almost done. And, again, forgive
14 me for having to go through all this stuff, but it's
15 one of those situations where we've got to get to -- to
16 the root of the problem here.

17 Now, one thing I would like to make clear: I
18 have nothing personal against anyone in this room;
19 okay? This is not about my personality or yours. This
20 is about something that's a trust resource. It's
21 something that we have an obligation not just to, you
22 know, as -- as regulators, but as human beings to take
23 in this -- into account so that this way, when we know
24 future generations are here, that they're going to have
25 something that we didn't lose.

1 And I'm saying to you, we're exporting a lot
2 of our water in these commodities, and we need to start
3 asking ourself what's -- you know, if we're looking at
4 agriculture, which, you know, provides less than
5 2 percent, hmm? 2 percent of the \$1 trillion -- the --
6 the 1 trillion plus dollars for this economy here in
7 California -- two, \$2 trillion -- we have to start
8 asking ourselves: How much investment do we want to
9 make?

10 And this was a choice we had to make about how
11 we're going to apply this water.

12 We're going to have to ask ours ourselves: Is
13 it beneficial for us to take half of our crops and
14 export them, and we're exporting our water and our
15 energy at the same time. And then we're creating the
16 degradation of these species that have been here for
17 thousands of years. That's something we have to ask
18 ourself.

19 So, I'm going to surmise it. And thank you
20 for giving me an opportunity to -- And I'm not going to
21 be able to get through everything.

22 But I have confidence in -- in you Board
23 Members, because I know -- I know some of you for
24 years, you know, and I have a deep respect for you.
25 Because I realize that this decision that you have to

1 make is a very difficult one, because no matter what
2 decision you make, you're going to be damned one way or
3 the other.

4 But I have to say: We have to look at the
5 track record of the Operators. That's a very important
6 issue here.

7 I'd like to believe that the Department and
8 the Bureau is going to be compliant, you know, with,
9 you know, the regulations. But that's not what it
10 tells us.

11 When times get tough, you know, people get
12 tougher.

13 So we have to say to ourselves: Yeah, that's
14 true. You are in trouble. But did we create that
15 problem? That's what we have to ask ourself.

16 And we have to say: What did you do to avoid
17 that problem so that this way you don't have to come
18 back in and put us in a position because we didn't
19 create it. That's -- That's another key issue we have
20 to consider.

21 So, anyway, on that note, I believe I'm going
22 to conclude only because, you know, I don't want to
23 take any more of your time up.

24 And I do appreciate everything you've done
25 and, you know, we may not have, you know, always agree,

1 but we can disagree and still, you know, get along.

2 But that's -- that's about all I have to say
3 to you guys -- you women and Board Members today.

4 CO-HEARING OFFICER DODUC: Thank you,
5 Mr. Porgans. That appreciation goes both ways.

6 WITNESS PORGANS: I appreciate that.

7 CO-HEARING OFFICER DODUC: Cross-examination.

8 MS. ANSLEY: Jolie-Anne Ansley for the
9 Department of Water Resources.

10 At this time, we have no questions.

11 CO-HEARING OFFICER DODUC: Are there any
12 cross-examination?

13 MS. DES JARDINS: Yes.

14 CO-HEARING OFFICER DODUC: Miss Des Jardins.
15 Why don't you go ahead and take a seat there
16 and conduct your cross-examination from there.

17 MS. DES JARDINS: It would help me a little if
18 I could switch with Mr. Porgans, because, otherwise, I
19 have to switch between my glasses to see what's up on
20 the screen.

21 WITNESS PORGANS: You want to sit right here
22 next to me? Can you do that?

23 CO-HEARING OFFICER DODUC: Why don't you do
24 that, Miss Des Jardins.

25 MS. DES JARDINS: Okay.

1 WITNESS PORGANS: Maybe she can read my notes
2 for me.

3 (Laughter.)

4 CO-HEARING OFFICER DODUC: No slipping notes
5 allowed.

6 MS. DES JARDINS: Okay. No peeking.

7 CO-HEARING OFFICER DODUC: And what is your
8 time estimate, Miss Des Jardins?

9 MS. DES JARDINS: Oh, I estimated 40 minutes.
10 It may be shorter.

11 CO-HEARING OFFICER DODUC: All right. Let's
12 start you off with 30 minutes.

13 MS. DES JARDINS: Okay.

14 CO-HEARING OFFICER DODUC: And your topics?

15 MS. DES JARDINS: The . . . The (b)(2) water
16 and the CVPIA; and the assumptions in various work
17 processes about the CVPIA; and salvage losses;
18 and . . . the Four Pumps Agreement; and the -- also
19 what he referenced about Salmon declining, declining
20 Salmon populations.

21 CO-HEARING OFFICER DODUC: All right. Please
22 begin.

23 CROSS-EXAMINATION BY

24 MS. DES JARDINS: Okay. So, first, I'd like
25 to bring up exhibit Porgans 326 Corrected.

1 (Exhibit displayed on screen.)

2 MS. DES JARDINS: Page 6.

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: And at Line 16.

5 And, Mr. Porgans, you discuss here Title 34 of
6 the Central Valley Project Improvement Act, and that it
7 mandated 800,000 acre-feet of water dedicated to fish
8 and wildlife annually?

9 WITNESS PORGANS: That's correct.

10 MS. DES JARDINS: Were -- Were you -- Were you
11 active in California water issues when the CVPIA was
12 passed?

13 WITNESS PORGANS: I most certainly was.

14 MS. DES JARDINS: Was there a significant
15 amount of hope that that would help restore Salmon
16 populations?

17 WITNESS PORGANS: That was the general
18 concept, yes.

19 MS. DES JARDINS: And . . . Were you also
20 around for the 1995 Water Quality Control Plan?

21 WITNESS PORGANS: Yes, I was. And I had input
22 into that process.

23 MS. DES JARDINS: I wanted to bring up Exhibit
24 SWRCB-30, which references the CVPIA.

25 (Exhibit displayed on screen.)

1 MS. DES JARDINS: And let's go to Page 28,
2 which I believe is .pdf Page 38.

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: And scroll down, I believe,
5 at the bottom.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: Oh, no. Page 29.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: There it is (reading):

10 "Narrative objectives for Salmon
11 protection."

12 So are you familiar -- Do you remember the
13 narrative objective for Salmon protection being adopted
14 in '95?

15 WITNESS PORGANS: Yes, I do.

16 MS. DES JARDINS: And so this specifically
17 references it being a CVPIA goal?

18 WITNESS PORGANS: Yes.

19 MS. DES JARDINS: And let's scroll down to
20 Page 29 at the top.

21 (Exhibit displayed on screen.)

22 MS. DES JARDINS: So it says (reading):

23 "Monitoring results will be
24 considered in the ongoing review to
25 evaluate achievement of this

1 objective . . ."

2 WITNESS PORGANS: (Nodding head.)

3 Yes. I -- As a matter of fact, I was before
4 this Board raising my concern about that because I
5 didn't believe that that would provide a sufficient
6 protection for the fisheries.

7 And I was under the impression that we were
8 going to come back and look at that at some later time.

9 MS. DES JARDINS: All right.

10 CO-HEARING OFFICER DODUC: All right. Let's
11 hold on.

12 Miss Ansley.

13 MS. ANSLEY: Yes. I have an objection:

14 There was no question pending unless she was
15 asking him -- unless there was a question mark at the
16 end of that statement asking what the document says.

17 And at this time, I'm going to lodge an
18 objection If we're going to walk through and ask and
19 confirm what documents already in the record state.

20 So far, I haven't heard a question there that
21 asks for anything other than what that document states.

22 CO-HEARING OFFICER DODUC: Miss Ansley, as
23 much as I do not like the inefficiency of that method,
24 you and others have done the same.

25 So to a certain extent, Miss Des Jardins, as

1 long as you move quickly through and you be sure to ask
2 him for his opinion rather than just reiterating what
3 he is reading, that would be more helpful.

4 MS. DES JARDINS: And I was specifically
5 asking Mr. Porgans, as someone who was participating
6 in, you know, and I was using this as a basis for the
7 questions.

8 CO-HEARING OFFICER DODUC: All right. So
9 let's proceed to your questioning.

10 Hold on to whatever you want to add for now.

11 MS. DES JARDINS: Mr. Porgans, this also
12 discusses development of numeric objectives to replace
13 the Salmon doubling requirement?

14 WITNESS PORGANS: Yes.

15 Are you asking me, did I --

16 MS. DES JARDINS: Did -- Do you remember a
17 discussion about numeric Salmon doubling objectives in
18 the '95 water quality hearing?

19 WITNESS PORGANS: Yes, I do remember something
20 to that effect. My mind is not clear -- totally clear
21 on that but, yes, I do remember it being discussed.

22 MS. DES JARDINS: Was there concern that
23 numeric objectives were going to be developed in the
24 future?

25 WITNESS PORGANS: I would -- I raised that

1 concern.

2 MS. DES JARDINS: Have -- Has the Board ever
3 revisited numeric objectives?

4 WITNESS PORGANS: Well, I think, when we were
5 in D-1641, we were looking at it. And I -- It was my
6 understanding that we were going to see what the
7 results were when we implemented D-1641 to see whether,
8 in fact, what we had in place, would it be effective
9 enough to provide that protection.

10 MS. DES JARDINS: Well --

11 WITNESS PORGANS: That's what my understanding
12 was.

13 MS. DES JARDINS: So I would like to bring up
14 Exhibit DDJ-116, which is the CALFED Record of
15 Decision.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: And, Mr. Porgans, are you
18 familiar -- You -- You participated in the CALFED
19 process; did you not?

20 WITNESS PORGANS: I did, yes.

21 MS. DES JARDINS: And this is the Programmatic
22 Record of Decision.

23 Are you familiar with this document?

24 WITNESS PORGANS: Yeah, I've read it.

25 MS. DES JARDINS: I would like to go to .pdf

1 Page 58 --

2 (Exhibit displayed on screen.)

3 MS. DES JARDINS: -- which is Page 55.

4 So this discusses the baseline level of
5 protection in what was assumed there. And I wanted to
6 just -- One of the. . .

7 Let's -- Let's go ahead and scroll down to the
8 next page.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: And it's -- One of the
11 assumptions was full use of 800,000.

12 Do you see where it says one of the
13 assumptions was full use of 800 TAF supply of water
14 pursuant to Section 3406(b)(2) of the CVPIA in
15 accordance with Interior's October 5th, 1999, decision?

16 WITNESS PORGANS: What part of that is --

17 MS. DES JARDINS: There's a dot and it's in
18 bold.

19 WITNESS PORGANS: Oh, I see.

20 (Examining document.)

21 Yeah, I'm familiar with that.

22 MS. DES JARDINS: So -- So -- So, at the time
23 of CALFED, they assumed full use of the CVPIA 800,000
24 acre-feet?

25 WITNESS PORGANS: I did.

1 MS. DES JARDINS: Yeah.

2 WITNESS PORGANS: I did.

3 MS. DES JARDINS: Yeah. And in Decision 1641,
4 wasn't that also an assumption?

5 WITNESS PORGANS: I believe it was.

6 MS. DES JARDINS: Yeah.

7 WITNESS PORGANS: And if I may add to that
8 without -- If that's okay, if I can add to it. I don't
9 know that --

10 MS. DES JARDINS: Yes, please --

11 WITNESS PORGANS: I don't --

12 MS. DES JARDINS: Please --

13 WITNESS PORGANS: -- want to be, you know --

14 MS. DES JARDINS: Do you have any other
15 observations related to that?

16 WITNESS PORGANS: Yeah, I do have.

17 Because, see, it took me at least three years
18 to find out what was going on with that water. And
19 I -- I was upset about it because I -- I couldn't find
20 out just exactly how the water was being applied, and I
21 couldn't get answers out of the Bureau of Reclamation,
22 and I felt that something was wrong. And now I've
23 confirmed that.

24 MS. DES JARDINS: So . . . I'd like to bring
25 up Exhibit DDJ-289, please.

1 It's on the stick. It's under "Porgans
2 cross."

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: So, Mr. Porgans, this is a
5 memo from the United States Department of the Interior
6 to . . . Fish and Wildlife and the Bureau of
7 Reclamation in 2003.

8 Do you recognize this doc -- letter?

9 WITNESS PORGANS: I have copies.

10 MS. DES JARDINS: Is -- And it says CVPIA
11 (b)(2) at the top?

12 WITNESS PORGANS: Yes.

13 MS. DES JARDINS: And it's regarding guidance
14 for implementation of Section 3406(b)(2) of the CVPIA?

15 WITNESS PORGANS: Yes, I see that.

16 MS. DES JARDINS: I'd like to scroll down to
17 Page 2, please --

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: -- and -- At the top.

20 So, on the third sentence, I'm going to ask --
21 I'd like to ask you about this sentence.

22 It says (reading):

23 "Consistent with the June 3rd, 2003,
24 Ninth Circuit decision, much of the
25 (b)(2) water that is dedicated and

1 managed annually to help meet fishery
2 beneficiary use and protection objectives
3 of the 1995 Water Quality Control Plan
4 serves Section 3406(b)(2)'s 'primary
5 purpose' of fish, wildlife and habitat
6 restoration."

7 Are -- Are you familiar with this part of the
8 decision?

9 WITNESS PORGANS: Yes, I've read it.

10 MS. DES JARDINS: And --

11 WITNESS PORGANS: As a matter of fact, I
12 probably -- To my recollection, I commented on that.

13 MS. DES JARDINS: Didn't this sort of change
14 how the (b)(2) accounting was done?

15 WITNESS PORGANS: Well, it appears that there
16 were changes.

17 But, again, you know, what I'm saying, so we
18 make ourself clear here: I'm not trying to read into
19 people's stuff. What they say they were doing and what
20 happened are two different things.

21 MS. DES JARDINS: And you referenced . . .

22 You referenced Listen to the River, and Bill
23 Kier always referred to this.

24 Let's pull up Exhibit DDJ-290, please.

25 (Exhibit displayed on screen.)

1 MS. DES JARDINS: So, Mr. Porgans, this is
2 (reading):

3 "Listen to the River: An
4 independent review of the CVPIA Fisheries
5 Program."

6 WITNESS PORGANS: Um-hmm.

7 MS. DES JARDINS: Are you familiar with this
8 document?

9 WITNESS PORGANS: Yes. I have a copy with me.

10 MS. DES JARDINS: So let's -- Can we scroll
11 down a little and see -- to the next page.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: Further.

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: So this is (reading):

16 "An independent review of the CVPIA
17 Fisheries Program."

18 And let's scroll down a little further.

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: And was prepared under
21 contract with Circlepoint for the U.S. Bureau of
22 Reclamation and the Fish and Wildlife Service in
23 December 2008?

24 WITNESS PORGANS: Yes.

25 MS. DES JARDINS: Okay. So I'd like to go to

1 Page 51 of this document.

2 (Exhibit displayed on screen.)

3 MS. DES JARDINS: And let's scroll down,
4 please.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: Please read the -- the
7 highlighted section in yellow.

8 WITNESS PORGANS: (Reading):

9 ". . . The panel expected to find
10 that" --

11 CO-HEARING OFFICER DODUC: No. Just read it
12 to yourself, Mr. Porgans.

13 WITNESS PORGANS: I'm sorry?

14 CO-HEARING OFFICER DODUC: Just read it to
15 yourself.

16 WITNESS PORGANS: Oh, forgive me. I'm sorry.

17 (Exhibit displayed on screen.)

18 CO-HEARING OFFICER DODUC: And let us know
19 when you're done.

20 WITNESS PORGANS: Okay.

21 MS. DES JARDINS: Okay. And, again, this is
22 on document Page 41 of Listen to the River, Exhibit
23 DDJ-290, the last paragraph.

24 So, Mr. Porgans, the -- So this discusses that
25 the panel expected to find that the agencies would

1 identify a water budget and then release the stored
2 water and protect that flow through the rivers, through
3 the Delta, and into the Bay; correct?

4 WITNESS PORGANS: Yeah. That's -- That's what
5 I read, and that's what they intend it was for.

6 MS. DES JARDINS: Well, would that be
7 consistent with how you had argued that the Board
8 should -- should meet the Salmon doubling --

9 WITNESS PORGANS: That's what the --

10 MS. DES JARDINS: -- requirement?

11 WITNESS PORGANS: That's what the intent of
12 the purpose of the CVPIA was for.

13 And I believe that, had they used it and
14 applied it accordingly, I think that it would have made
15 a difference, yeah.

16 MS. DES JARDINS: Well, let's scroll down to
17 the next page.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: This is Page 42 at the top.

20 Do you see where the panel says that they

21 (reading):

22 ". . . Were flabbergasted to learn that
23 this is not how the agencies implement
24 this provision."

25 WITNESS PORGANS: Yes, I did.

1 And, if I may, you know, expand on that one.

2 This is the reason why I made an effort to
3 contact the Bureau of Reclamation and get to the bottom
4 of where that 800,000 acre-feet of water has gone to.

5 And -- And I do have that document.

6 So, I didn't -- That only reassured me that
7 there was a problem with whether, in fact, the water
8 was being applied in accordance with the 1992 CVPIA.

9 It confirmed to me that it wasn't.

10 MS. DES JARDINS: Let me ask you specifically
11 a little more about the panel's findings.

12 So this says that (reading):

13 ". . . Reclamation releases approximately
14 400,000 acre-feet from CVP storage each
15 year, aimed at supporting the needs of
16 particular life stages at particular
17 locations."

18 But then these augmented amounts are then
19 diverted out of the system at a later point.

20 WITNESS PORGANS: That's the issue which we
21 raised for the Bureau. That's the recapture --

22 CO-HEARING OFFICER DODUC: Hold on. Hold on.
23 Miss Ansley.

24 MS. ANSLEY: I am continually unclear of
25 whether there's a question --

1 CO-HEARING OFFICER DODUC: Question.

2 MS. ANSLEY: -- pending.

3 So I would really appreciate it if there would
4 be a question.

5 I also object to as to -- I'm completely
6 unclear as to whether she's asking him to confirm what
7 this article says about what the panel said, and
8 whether she's following it up with what his
9 understanding is. And if it's basically what his
10 understanding is, that's a different issue.

11 So I would really appreciate a question at the
12 end of reading something off the screen.

13 MS. DES JARDINS: There's two --

14 CO-HEARING OFFICER DODUC: Sustained.

15 Miss Des Jardins, just ask --

16 MS. DES JARDINS: Ask the question.

17 So, is it -- You know, are you concerned at
18 this point that the (b)(2) water is continuing to be
19 diverted out of the system?

20 WITNESS PORGANS: Yes.

21 MS. DES JARDINS: And -- And were you able to
22 get any kind of answers about the Bureau of Reclamation
23 about whether that has happened?

24 WITNESS PORGANS: The response from the Bureau
25 of Reclamation was that it's impossible to discern

1 which water is being recaptured and for what purposes.

2 Now, it's my understanding -- Am I allowed to
3 continue? Because she asked me a question. Or do I
4 stop right there.

5 CO-HEARING OFFICER DODUC: If you're answering
6 the question.

7 WITNESS PORGANS: Yeah.

8 So it's my understanding that if the water's
9 designated for D-1641 purposes, and it's required to go
10 out the Bay, then that's not water they can recapture.

11 But my concern was that they can't tell you
12 or, for that matter anyone, saying it's impossible to
13 discern how much water is being recaptured. I think
14 that's -- that's -- that should be something that this
15 Board and everyone else should be interested in
16 obtaining.

17 MS. DES JARDINS: So, Mr. Porgans, in 2008,
18 the panel found that approximately 400,000 acre-feet of
19 the panel was -- of the water was just accounted for as
20 pumping restrictions in the Delta.

21 And I wanted to ask you if you were able to
22 ascertain whether the Bureau is still accounting for
23 about half the (b)(2) water simply as export
24 restrictions?

25 WITNESS PORGANS: As I said, they can't answer

1 the question, so I can't answer that question.

2 MS. DES JARDINS: And are you aware of any
3 proposal for how the (b)(2) water would be used in the
4 WaterFix?

5 WITNESS PORGANS: No.

6 MS. DES JARDINS: Would you be concerned that
7 they would export (b)(2) water from the North Delta
8 diversions?

9 WITNESS PORGANS: Yes.

10 MS. DES JARDINS: And would that be further
11 north in the Delta?

12 WITNESS PORGANS: Yes.

13 MS. DES JARDINS: And provide even less flow
14 for Salmon?

15 WITNESS PORGANS: Yes, I would.

16 MS. DES JARDINS: So I'd like to pull up
17 Exhibit DDJ-287, please.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: And I believe you referenced
20 this, and that your concern -- that there's sort of a
21 general concern in California that nearly half native
22 Salmon could go extinct in the next 50 years?

23 WITNESS PORGANS: Yeah. That's what --

24 CO-HEARING OFFICER DODUC: Hold on.

25 What was the question?

1 MS. DES JARDINS: So -- So he discussed this
2 in his paper, and I said, so -- so you discuss this in
3 your paper that there are concerns that nearly half the
4 Salmon could go extinct in the next 50 years.

5 WITNESS PORGANS: Yes. That's a recent report
6 that was published, and the people that published that
7 report are people that have been involved in this issue
8 for decades. So if they're saying that there's an
9 issue and we're looking at the B -- at that CSPA 239, I
10 think that there is a concern.

11 MS. DES JARDINS: Let me pull up the exact
12 quote. I'll . . .

13 So I'd like to go to Exhibit Porgans 326
14 Corrected, Page 3.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: And so your testimony states
17 that seven -- Of the State's 129 native fish, seven
18 have become extinct, 31 are listed as threatened or
19 endangered under the Federal and State Endangered
20 Species Act, and another 69 are in decline and will
21 likely qualify for listing in the future.

22 CO-HEARING OFFICER DODUC: And your question
23 is?

24 MS. DES JARDINS: Is -- You know, I -- Is it
25 your understanding that a large percentage -- So -- So

1 you refer to these statements.

2 Is it your understanding that a large
3 percentage of California's native fish are threatened
4 or endangered?

5 CO-HEARING OFFICER DODUC: That's what it
6 says, Miss Des Jardins.

7 MS. DES JARDINS: And -- And is it your
8 understanding that a large percentage are in decline --
9 you know, are likely to qualify for listing?

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

12 MS. DES JARDINS: And --

13 CO-HEARING OFFICER DODUC: So I'm still
14 waiting for your --

15 WITNESS PORGANS: May I answer?

16 CO-HEARING OFFICER DODUC: No. I'm waiting
17 for her to ask a question beyond what's -- you know,
18 reading what's in your testimony.

19 MS. DES JARDINS: Well, I wanted to ask him:

20 So doesn't this -- doesn't this quote show
21 that there is major concerns about California's native
22 fishes?

23 WITNESS PORGANS: That's what it indicates to
24 me.

25 MS. DES JARDINS: And, you know -- And that

1 this Board needs to take -- Would it be your -- your
2 concern based on this that the Board needs to take more
3 aggressive action to preserve these fish?

4 WITNESS PORGANS: Well, the Board has the
5 authority to do that. And I do believe that the Board
6 has done everything they could to try to ameli -- is
7 that the word? -- ameli -- you know, to try to calm it
8 down, to try to work it out. You've gone overboard.
9 You've done anything. I don't think you can do
10 anything else other than, you know, apply the
11 jurisdiction you have in order to develop specific
12 flows that the Project Operators have to comply with.

13 And I do believe that that's one way we can
14 start changing this and maybe reverse this process.

15 MS. DES JARDINS: So I -- You also discuss the
16 Four Pumps Agreement and DFG's mitigation.

17 And I'd like to bring up Exhibit DDJ-288,
18 please.

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: And let's -- Mr. Porgans, I
21 believe -- Are you familiar with this document? It's a
22 memorandum from Miss Barbara McConnell (sic), to
23 Department of Fish & Game.

24 WITNESS PORGANS: Yes, I am.

25 MS. DES JARDINS: And . . . let's scroll down.

1 (Exhibit displayed on screen.)

2 MS. DES JARDINS: So this lists the loss --
3 the five-year mean values for losses of fish --

4 WITNESS PORGANS: Yes.

5 MS. DES JARDINS: -- correct?

6 WITNESS PORGANS: Correct.

7 MS. DES JARDINS: And there's, you
8 know . . . like, hundreds -- over a hundred thousand
9 Striped Bass in a five-year loss.

10 CO-HEARING OFFICER DODUC: And your question
11 is?

12 MS. DES JARDINS: And 100,000 Salmon; is that
13 correct?

14 CO-HEARING OFFICER DODUC: And your question
15 is?

16 MS. DES JARDINS: If they're -- So, given that
17 there are 100,000 Chinook Salmon listed as being a
18 direct take, are you concerned about the level of take
19 of the Projects?

20 WITNESS PORGANS: Yes. And even probably, if
21 I may -- And if I'm out of order, tell my.

22 I think, if you could go to the next page or
23 the following.

24 MS. DES JARDINS: Yeah. Let's go to the next
25 page.

1 (Exhibit displayed on screen.)

2 WITNESS PORGANS: These are annual numbers.

3 MS. DES JARDINS: And -- And doesn't it say
4 that the sampling program was eliminated on the
5 footnote here?

6 WITNESS PORGANS: Yes, it does.

7 MS. DES JARDINS: Would -- Would you be
8 concerned about that as well?

9 WITNESS PORGANS: Totally.

10 MS. DES JARDINS: Would you be concerned about
11 estimates of direct take at the North Delta diversions?

12 WITNESS PORGANS: If we have concerns about
13 what's going on with the existing take and the numbers?

14 MS. DES JARDINS: Yes.

15 WITNESS PORGANS: I'd be very concerned.

16 MS. DES JARDINS: Do you -- And you also
17 mentioned that . . . that there are concerns that
18 salvage calculations aren't accurate enough?

19 WITNESS PORGANS: Well, yeah. It's in my
20 testimony. And that's not my concern. It's the
21 Department of Fish & Game's concern.

22 MS. DES JARDINS: Department of Fish & Game.

23 Would you like to see this Board mandate that
24 salvage estimates be improved?

25 WITNESS PORGANS: I think it would be helpful.

1 MS. DES JARDINS: And that raw salvage numbers
2 continue to be reported?

3 WITNESS PORGANS: Absolutely.

4 MS. DES JARDINS: And would -- Are you aware
5 of how the Bureau's salvage counts, what the staffing
6 is for that?

7 WITNESS PORGANS: Well, according to the
8 information I received from the Bureau, the maintenance
9 people at Tracy are involved for the most part in
10 making the observations every two hours for?

11 A. Minutes.

12 And then those numbers are provided to the
13 Department of Fish & Game, and that the Department of
14 Fish & Game sometimes are available, you know, at the
15 facility.

16 But, for the most part, those numbers are
17 being counted by -- And we now know that the Mendota
18 Water Authority is operating those facilities with some
19 guidance from the Bureau.

20 So I -- I -- I am concerned about that.

21 MS. DES JARDINS: So let me get this straight.

22 So, maintenance people supervised by the
23 San Luis and Delta-Mendota Water Authority are doing
24 the salvage counts?

25 WITNESS PORGANS: They're doing the 15-minute

1 inspections for the two-hour period that's required.

2 Now, that's information that came from the
3 Bureau so, you know, I'm not there. I haven't seen the
4 maintenance people, and so I can't attest to the fact
5 that it's the maintenance people. I only know that's
6 the information I received.

7 MS. DES JARDINS: Would you like to see some
8 kind of quality assurance -- the Board require some
9 kind of quality assurance process on the salvage count?

10 WITNESS PORGANS: I believe if we had somebody
11 that was, you know, more independent, you know, and
12 that didn't have an agenda, that was an objective, it
13 would give us better information.

14 MS. DES JARDINS: And --

15 CO-HEARING OFFICER DODUC: Miss Des Jardins,
16 you have about four minutes left. I encourage you to
17 wrap up your cross-examination.

18 MS. DES JARDINS: Yeah.

19 And, Mr. Porgans, the -- the Project is
20 proposing that the bypass criteria be determined by the
21 presence of fish -- of Salmon at a particular location.

22 Would you be concerned if water agencies -- if
23 that was based on water agencies staff?

24 CO-HEARING OFFICER DODUC: Miss Ansley.

25 MS. ANSLEY: I'm going to say objection:

1 Vague and ambiguous.

2 I believe she means bypass criteria at the
3 North Delta diversions, but I think she should make
4 clear -- more clear the facts in her question about
5 what we're talking about.

6 MS. DES JARDINS: Mr. Porgans, the bypass
7 criteria for the North Delta diversions are supposed to
8 be triggered by the presence of winter-run and
9 spring-run at -- at a specific location in the
10 Sacramento River.

11 Would you be concerned if Water Agency staff
12 were the ones monitoring those locations and
13 determining the trigger?

14 CO-HEARING OFFICER DODUC: Miss Ansley.

15 MS. ANSLEY: I also have a vague and ambiguous
16 objection to the "Water Agency staff."

17 I think I'm a little unclear if she means --
18 what -- what agencies she's meaning, and by which, I
19 mean, does she mean the California Department of Fish
20 and Wildlife or the Water Resources or Water Agency --

21 CO-HEARING OFFICER DODUC: I think she's
22 saying a non-regulatory agency.

23 MS. DES JARDINS: Yes.

24 Would you be concerned if, for example,
25 San Luis and Delta-Mendota staff were -- were doing the

1 monitoring?

2 WITNESS PORGANS: It would be a conflict of
3 interest.

4 MS. DES JARDINS: And if MWD paid staff were
5 doing that monitoring?

6 WITNESS PORGANS: Totally.

7 MS. DES JARDINS: And if DWR staff were doing
8 that monitoring?

9 WITNESS PORGANS: I would have an objection to
10 that.

11 MS. DES JARDINS: And . . . do you -- do you
12 think that . . . that DFG has more independence?

13 WITNESS PORGANS: Okay. Now, I'm going to
14 answer this question in the way where anybody who wants
15 to object, they can. I don't care.

16 If you look at the historical record -- and I
17 have done comprehensive reviews of every agency that's
18 involved that we discussed here so far. I'm referring
19 to the count of the public records.

20 So what I'm saying is that I don't have a lot
21 of confidence in the Department of Fish and Game.

22 And I don't -- I do believe that we need
23 something -- somebody, like, from the Board here. We
24 need a fisheries person that could at least oversee and
25 spot-check them at least at times to see What's going

1 on to make -- to give us some level of assurance that
2 the information we're being provided is accurate.

3 MS. DES JARDINS: Do you think, for example,
4 the Board should mandate periodic independent
5 reviews -- completely independent reviews, on the
6 salvage monitoring, and any monitoring at the North
7 Delta diversions? Or for the purpose of determining
8 bypass criteria.

9 WITNESS PORGANS: Well, in light of the fact
10 that the experts are telling us that we're grossly
11 underestimating loss now with -- you know, that's in
12 place, that tells me we do need something else to give
13 us better information.

14 So I would suggest that you would have to have
15 someone else come in here and look at it.

16 And I'm not available.

17 MS. DES JARDINS: Thank you, Mr. Porgans.

18 That concludes my cross-examination.

19 CO-HEARING OFFICER DODUC: Thank you.

20 Does that conclude your case in chief,
21 Mr. Porgans?

22 WITNESS PORGANS: I would like to make one
23 more comment, if I may, if that's okay.

24 CO-HEARING OFFICER DODUC: It might be subject
25 to cross-examination, but go ahead.

1 WITNESS PORGANS: That's fine. They can
2 cross-examine me. I'm not a -- I'm just telling you
3 what I - these are not my opinions, believe me.

4 CO-HEARING OFFICER DODUC: So is your
5 additional comment that you're making in response to
6 the cross-examination Miss Des Jardins just
7 conducted --

8 WITNESS PORGANS: Yes.

9 CO-HEARING OFFICER DODUC: -- then?

10 WITNESS PORGANS: It has to do, you know,
11 with --

12 CO-HEARING OFFICER DODUC: Go ahead.

13 WITNESS PORGANS: And, again, you know, you
14 can stop me.

15 REDIRECT EXAMINATION BY

16 MR. PORGANS: When we did the 2014 TUCP, it
17 was under the understanding that we were going to
18 provide cold water to fish up there, you know, below
19 the Shasta and Red Bluff area.

20 And at that time, you know, I did come here.
21 I did testify. I didn't object. I said, "I don't see
22 how it's going to happen." And we lost 95 percent of
23 those fish. No one has been held accountable for one
24 of those dead fish.

25 And I'm -- I'm in the process -- And they

1 better hope I don't hit the lottery; okay? Yeah.
2 Why's that important? I'd have all the money I need to
3 go after them because I'm -- I'm concerned.

4 If I'm -- If you have a law, when the Highway
5 Patrol pulls you over for going over the speed limit,
6 that person, man or woman, is doing their job.
7 That's -- I'm wrong, so I have to take that ticket.

8 If I have no disincentive and I'm going to
9 drive like a maniac, then I -- I have to face the
10 consequences.

11 CO-HEARING OFFICER DODUC: All right.

12 MR. PORGANS: Thank you.

13 CO-HEARING OFFICER DODUC: Thank you.

14 MR. PORGANS: Thank you for everything you
15 people have done. I stand before my God. I could not
16 do your job, and I mean it. I'm serious.

17 CO-HEARING OFFICER DODUC: Mr. Porgans, would
18 you like to move your exhibits into the record?

19 MR. EMRICK: Yes, I would. And I do
20 appreciate you asking that question.

21 CO-HEARING OFFICER DODUC: Are there any
22 objections?

23 Not -- No?

24 MS. ANSLEY: I don't have any objections.

25 I am looking at the Water Board's website and

1 so I assume that, obviously, the ones that were struck
2 that we're talking about, the five or four exhibits
3 that I listed then that are not struck; right?

4 CO-HEARING OFFICER DODUC: Correct.

5 All right. Accepted into the record.

6 (Patrick Porgans' Exhibits Porgans-320, Porgans-321,
7 Porgans-324, Porgans-326, & Porgans-326-Corrected
8 received in evidence)

9 CO-HEARING OFFICER DODUC: Thank you,
10 Mr. Porgans, but personally I -- I will hope that you
11 win the lottery.

12 (Laughter.)

13 MR. PORGANS: Thank you very much. Appreciate
14 that.

15 (Witness excused.)

16 CO-HEARING OFFICER DODUC: We need to take a
17 break.

18 And I need to let folks know that apparently
19 there's some trouble with the Webcasting and so the AV
20 folks are going to try to fix it during the break.

21 If you're able to review this, you will be
22 likely be kicked off and will need to reopen and
23 reinitiate the Webcast but we're trying to get that
24 fixed.

25 So why don't we take a break until 10:55.

1 I'll ask Mr. Brodsky to have his panel all set
2 up and, when we resume, we will get to you.

3 Thank you.

4 (Recess taken at 10:41 a.m.)

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

6 CO-HEARING OFFICER DODUC: All right. It's
7 10:55.

8 We are resuming with Mr. Brodsky's Save the
9 California Delta Alliance Panel Number 1.

10 I believe Mr. Brodsky has an Opening Statement
11 to make of roughly 20 minutes. And then your direct of
12 all your witnesses you said would be about 40 minutes?

13 MR. BRODSKY: 40 to 60 minutes.

14 CO-HEARING OFFICER DODUC: Okay. So we're
15 talking roughly an hour to an hour and 20 minutes.

16 Miss Ansley, your cross?

17 MS. ANSLEY: I have very limited cross.
18 Mainly only making sure that I know the data that went
19 into a couple figures. So I think it cannot be more
20 than 10 to 15 minutes, depending on how witnesses
21 answer.

22 CO-HEARING OFFICER DODUC: And would that be
23 for all witnesses?

24 MS. ANSLEY: It would.

25 Well, I'll look at my notes again, but at

1 least . . .

2 (Examining document.)

3 MS. ANSLEY: Yes, I can ask the questions of
4 all witnesses. I can look right now, make sure that
5 all witnesses cite the same figures --

6 CO-HEARING OFFICER DODUC: All right.

7 MS. ANSLEY: -- but I can ask generally for
8 the information.

9 CO-HEARING OFFICER DODUC: So we're at an hour
10 and 30 minutes roughly.

11 Who else needs to cross?

12 MR. KEELING: Tom Keeling for the San Joaquin
13 County Protestants.

14 At most, 10 minutes, probably less.

15 And Mr. Ruiz has 15 minutes, perhaps less.

16 CO-HEARING OFFICER DODUC: Okay. And then
17 Mr. Jackson.

18 MR. JACKSON: I'm going to suggest 30 minutes.
19 I think I'll be shorter than that.

20 CO-HEARING OFFICER DODUC: All right. We are
21 breaking at 1 o'clock today, so if we do not get
22 through cross-examination and/or redirect, recross by
23 1 o'clock, then your witnesses will have to come back
24 on Monday.

25 MR. BRODSKY: (Nodding head.)

1 MR. JACKSON: If -- If I'm the last
2 cross-examiner --

3 CO-HEARING OFFICER DODUC: You apparently are
4 not, because Miss Des Jardins is lining up behind you.

5 MR. JACKSON: I'm sorry.

6 I will make whatever accommodation I need to
7 make to get people out of here if that's the desire.

8 MR. BRODSKY: (Nodding head.)

9 MS. DES JARDINS: This is Dierdre Des Jardins.

10 And, again, I'll make whatever accommodation
11 is required to get people out of here, but I'd like to
12 reserve 20 minutes.

13 CO-HEARING OFFICER DODUC: Well, the
14 accommodation is not for people but for the Hearing
15 Officers. We are adjourning at 1 p.m.

16 With that, Mr. Brodsky, please provide your
17 Opening Statement.

18 MR. BRODSKY: Thank you.

19 Michael Brodsky on behalf of Save the
20 California Delta Alliance.

21 OPENING STATEMENT

22 MR. BRODSKY: And I would like to give the
23 Hearing Officers a basic overview roadmap of the
24 testimony of our witnesses, and then each witness
25 will -- witness' testimony drills down and gives the

1 detail.

2 If we could have Exhibit SCDA-72 on the
3 screen.

4 (Exhibit displayed on screen.)

5 MR. BRODSKY: Can you minimize it a little bit
6 so we can see the whole thing?

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: There you go.

9 And it -- Okay. So this is an overview map of
10 the Delta and the construction activities in the Delta
11 that will result from WaterFix.

12 The information on this map was drawn from the
13 Environmental Impact Report, from the NMFS Biological
14 Opinion, and from the Biological Assessment.

15 The take-away point is that this is going to
16 be a massive construction zone for 11 years that will
17 deal a death blow to recreation in the Delta.

18 We believe that the drop in recreational
19 boating in the Delta as -- as a reaction to all the
20 unpleasant construction activity will result in the
21 closure of 20 percent or more of the 100 or so Delta
22 marinas.

23 And I'd like to explain a little bit what's on
24 the map.

25 I have a laser pointer here, and perhaps if

1 the projectionist could move the mouse to these areas
2 where I'm pointing, that might make it easy for people
3 who are following on the screen.

4 This is the route of the tunnels (indicating).
5 And along that route of the tunnels, every so often,
6 there's an access shaft, every few miles.

7 And those access shafts will be used to haul
8 the concrete tunnel liner segments in to be lowered
9 down to the tunnel area/work area, and then the tunnel
10 muck that is excavated in the -- in the boring of the
11 tunnels will be hauled up out of those shafts.

12 The tunnel liner segments will originate in --
13 from three ports, the Port of Stockton, the Port of
14 Antioch, and the Port of San Francisco, and they'll be
15 transported on barges into the Delta.

16 These red dashed lines here (indicating)
17 represent the routes that these barges will take. And
18 so you can see that the barge routes are pretty much
19 just all over the Delta.

20 If we could scroll down to the bottom of the
21 page.

22 (Exhibit displayed on screen.)

23 MR. BRODSKY: The amount of tunnel muck that
24 will be excavated is 30 million cubic yards, which is
25 in the EIR. And that's roughly equivalent to two and a

1 half million dump truck loads.

2 Much of the muck will be transported on barges
3 like this (indicating), which are described in the
4 Biological Opinion as being 50 feet by 250 feet.

5 And the muck that is taken up out of these
6 shafts will be hauled to muck dump sites. The two
7 major dump sites are this one here on Bouldin Island
8 (indicating), and this one here at Clifton Court
9 Forebay (indicating). Some will be hauled on trucks;
10 some will be hauled on barges.

11 One of the important things that the
12 Environmental Impact Report missed entirely is that, as
13 these barges are traveling on these waterways, for
14 example, where I'm pointing to right here (indicating),
15 barges will travel on the Sacramento River to reach an
16 unloading facility at Intake Number 2. That will cross
17 under this Rio Vista Bridge here (indicating).

18 The EIR stated explicitly that they're
19 assuming there'll be no additional openings of
20 drawbridges. That's just false.

21 This Rio Vista Bridge (indicating) will have
22 to be opened every time a barge crosses underneath.

23 This bridge on the Mokelumne River
24 (indicating) will have to be opened every time a barge
25 crosses underneath.

1 There's a bridge here on Highway 4
2 (indicating) that will have to be opened every time a
3 barge crosses underneath.

4 We have four round-trips a day of barges going
5 to this staging area (indicating). So that bridge
6 right there (indicating) will have to be opened eight
7 times a day. That's going to cause massive backups on
8 Highway 4 here (indicating) and on Highway 12 here
9 (indicating).

10 In addition, there are eight new barge
11 landings. I'm showing them on the map here: One at
12 North Delta Intake Number 2 (indicating) and then
13 scattered throughout the Delta.

14 Each one of those barge landings will have a
15 five-mile-per-hour zone added. Also, there will be
16 dozens of barges operating in the Delta, and in many
17 places, they'll be anchored. There'll be a
18 five-mile-per-hour zone there.

19 Also, in the upper right-hand corner, this map
20 is from the DHCCP. And each one of these dots
21 (indicating) is a geotechnical exploration point where
22 they're going to drill. Many of those are over water.
23 Where that line crosses over a river or slough, they're
24 going to drill a geotechnical exploration over water.
25 There'll be a barge anchored there.

1 So those multiple five-mile-an-hour zones are
2 anathema to water-skiers and wakeboarders. Those
3 sports require long stretches of water where you can go
4 fast. And if wakeboarders and waterskiers get the
5 picture that, quote-unquote, the Delta's closed for
6 construction, and there are multiple five-mile-per-hour
7 zones, and they can't practice their sport
8 continuously, they'll just choose to go somewhere else
9 for their day or their weekend or their week of
10 water-skiing.

11 If we could -- Another thing that will happen
12 throughout the Delta, the Biological Assessment
13 contains pile-driving assumptions in one of the index
14 that indicates there will be 23,000 piles driven, about
15 10,000 of them at the intakes, a bunch of them at
16 Clifton Court Forebay, and then at the various barge
17 landing sites, with over 10 million pile strikes, which
18 is going to be very, very loud, so there's going to be
19 unpleasant noise throughout the Delta.

20 If we could go to SDCA-85, please.

21 (Exhibit displayed on screen.)

22 MR. BRODSKY: And here we see the three
23 intakes where the Construction Schedule and the impacts
24 appendix to the BA says the pile driving will take
25 place one summer at this end of the intake, the next

1 summer at this intake, the next summer at this intake.

2 Our Acoustical Engineer Charles Salter will
3 testify that noise levels on the river will be
4 91 decibels in front of these intakes from that pile
5 driving, which is as loud as standing right next to an
6 ambulance.

7 This will all be a five-mile-an-hour zone. So
8 boaters are simply just not going to go by here.
9 They're not going to go 5 miles an hour for this four-
10 or five-mile-long stretch listening to 91 dBA pile
11 driving. That is essentially going to close the river
12 to navigation there.

13 Our expert Rune Storesund on Monday will
14 testify that impact pile driving is not necessary, that
15 there are alternative methods, augur cast piles or
16 drill piles, that can be used here that are actually
17 better, faster and cheaper. We've actually provided a
18 bid for DWR from Mountain Drilling Company to do that
19 work for them at a reasonable cost.

20 So we're asking as a Condition of Approval --
21 We don't think the Project should be improved at all.
22 We don't like WaterFix. I think you know that.

23 But if you are going to approve it, a
24 condition should be no impact pile driving here. Use
25 the augur cast method or some other method.

1 If we could see SCDA-70, please.

2 (Exhibit displayed on screen.)

3 MR. BRODSKY: And let's minimize that a little
4 bit.

5 (Exhibit displayed on screen.)

6 MR. BRODSKY: A little bit smaller.

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: A little bit smaller.

9 (Exhibit displayed on screen.)

10 MR. BRODSKY: Thank you.

11 So, this is a blowup of Intake 3 and Intake 5.

12 This is the town of Hood here (indicating).

13 This is a giant construction yard (indicating). The

14 pile-driving noise will be here (indicating),

15 pile-driving noise will be here (indicating). There'll

16 be land-based pile driving here (indicating),

17 land-based pile driving here (indicating), construction

18 equipment coming out of this yard (indicating) that the

19 EIR estimates at over 90 decibels, and this

20 (indicating) is just a little tiny -- And it's

21 designated as a Legacy community, by the way, by the --

22 by the legislature.

23 Then, for good measure, they decided to put a

24 geotechnical exploration zone right through the middle

25 of town (indicating).

1 This community is not going to survive. This
2 is going to become a ghost town if we do this.

3 And if we could go to SCDA-73.

4 (Exhibit displayed on screen.)

5 MR. BRODSKY: These are two pictures of Upper
6 Snodgrass Slough and the Meadows Slough Anchorage that
7 Captain Morgan took last summer. He'll testify about
8 this.

9 This is considered the most beautiful and
10 picturesque and sought-after anchorage area in the
11 Delta.

12 And if we could scroll down to the bottom of
13 the page there.

14 (Exhibit displayed on screen.)

15 MR. BRODSKY: Where these photographs are
16 taken is right in this area right here (indicating) and
17 they're proposing a barge landing here (indicating), a
18 muck dump here (indicating), a concrete batch plant
19 here (indicating), a fuel station (indicating), a
20 conveyer belt to carry muck over to another muck dump
21 here (indicating). And this is just simply going to
22 ruin this area. So there's no reason why these
23 facilities have to be right here.

24 Again, we're against WaterFix, but if you're
25 going to do it, don't put this here (indicating). Put

1 this somewhere over by Highway 5, or here (indicating),
2 or somewhere away from the Meadows Slough.

3 Then, finally, if we could see SCDA-104.

4 (Exhibit displayed on screen.)

5 MR. BRODSKY: And minimize that a little bit.

6 (Exhibit displayed on screen.)

7 MR. BRODSKY: This is a muck dump on Bouldin
8 Island. I -- We estimate that at about
9 10 million cubic yards of muck there.

10 This is Highway 12 (indicating), and they're
11 building a new cloverleaf here (indicating) and then a
12 new road to reach the muck dump and the concrete batch
13 plant. There's a barge landing here (indicating).

14 Again, this is one of the two major staging
15 areas. They say they'll have four round-trip barge
16 trips a day here to deliver the tunnel liners.

17 This Highway 12 is already very heavily
18 impacted. It's a major gateway to reach the Delta.
19 And you're going to have a lot of additional
20 construction trucks on this road here (indicating), and
21 then you're going to additionally have the barges going
22 up the Mokelumne River to reach the Meadows, so this
23 drawbridge (indicating) is going to be opening, backing
24 up traffic.

25 And then if we could go back to SCDA-72.

1 (Exhibit displayed on screen.)

2 MR. BRODSKY: This is that road here
3 (indicating) we just looked at. Here's the muck dump
4 (indicating).

5 You also have the barges going under the Rio
6 Vista bridge (indicating), so that bridge is going to
7 be opening, this bridge is going to be opening
8 (indicating). You're going to have massive additional
9 truck traffic and worker traffic on it. This
10 Highway 12 is going to become gridlocked.

11 And so if you're a person that has a choice
12 where to take your trailer boat for the day or for the
13 week and you come here and you get backed up for a
14 couple hours on sometime you're going to, next time
15 you're going to go to Clearlake, or you're going to go
16 to the Bay or you're going to go to Lake Tahoe. You're
17 not going to come to the Delta.

18 And so just the overall cumulative effect of
19 this is that a lot of people who recreate in the Delta
20 are just going to abandon it. They're going to go
21 somewhere else.

22 And so we need this muck dump taken away from
23 here and put over on the other side of Highway 5.

24 We need these facilities at Meadows Slough
25 taken and put somewhere else.

1 We need a condition that says no impact pile
2 driving. We've given you an alternative method.

3 We need to set a condition that says that.
4 And we need to at least think about -- If we're going
5 to do this, we need to think about what impacts of
6 recreation is going to be. And DWR has not done that
7 at all.

8 Our preference is -- and Doug Obegi
9 testified -- recycling, conservation, toilet to tap,
10 storm water capture. The public interest says that
11 these recreational impacts are so severe on the Delta,
12 this thing should not be built. If Met needs water,
13 let them get it from these other sources.

14 Thank you very much.

15 CO-HEARING OFFICER DODUC: Thank you,
16 Mr. Brodsky.

17 I'd like your witnesses to come up and to
18 remain standing with their right hands up, and I will
19 administer the oath.

20 Raise your right hands, please.

21 (Mr. Brodsky changes nameplates.)

22 CO-HEARING OFFICER DODUC: Other duties of the
23 attorney.

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Bill Wells,
Chris Kinzel,
Frank Morgan
and
Russel Ooms,

called as witnesses by the Save the
California Delta Alliance, et al., having
been duly sworn, were examined and
testified as follows:

CO-HEARING OFFICER DODUC: Thank you. Please
be seated.

And, Mr. Brodsky, please begin with your
direct.

And if you could -- I'm sorry. If you could
move the name tags so that the court reporter can see
them.

THE REPORTER: Thank you.

MR. BRODSKY: Good?

THE REPORTER: Um-hmm.

DIRECT EXAMINATION BY

MR. BRODSKY: Mr. Wells, could you give us a
one- or two-minute summary of your qualifications and
experience in the Delta.

WITNESS WELLS: Yes, sir. Yes, sir,

1 Mr. Brodsky.

2 I'm Bill Wells. I moved to California with my
3 parents in 1947, and I've spent most of my life in
4 Sacramento except for a few years in the Navy and
5 living in Hawaii.

6 I grew up with water issues. My father was a
7 Civil Engineer, a water consultant. We've discussed
8 water situations at breakfast and dinner every day.

9 I worked for IBM for 25 years and, after that,
10 I became a yacht broker in the California Delta for
11 several years. I'm retired from that.

12 Currently, I'm the Executive Director of the
13 California Delta Chambers and Visitor's Bureau, and we
14 support small businesses and tourism in the area; a
15 past Commodore and current Delta Port Captain of the
16 Northern California Fleet of the Classic Yacht
17 Association; I'm also an honorable member of the Marina
18 West and Sacramento Yacht Clubs and Stockton Yacht Club
19 just made me an honorary member, too.

20 My wife and I cruise our 1937 model Stephens
21 cabin cruiser around the Delta to various adventures.
22 And I write about this in my Delta -- monthly Delta Rat
23 Scrapbook column in Bay & Delta Yachtsman magazine.

24 I've been active in the fight to preserve the
25 California Delta. I served for two-plus years on the

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1 Bay-Delta Conservation Plan public meeting panel. I
2 served for two years on the Delta Protection Commission
3 Advisory Committee, and I'm a frequent contributor to
4 area publications. I'm a guest speaker at events
5 regarding Delta recreation and water issues.

6 MR. BRODSKY: Okay. Thank you, Mr. Wells.

7 And could we have SCDA-72 again.

8 (Exhibit displayed on screen.)

9 MR. BRODSKY: And, Mr. Wells, have you
10 reviewed the Environmental Impact Report Biological
11 Opinion and Biological Assessment?

12 WITNESS WELLS: Yes, I have.

13 MR. BRODSKY: And have you collaborated on the
14 production of this document and verified that the
15 information here is an accurate representation of
16 what's in the EIR BiOp and BA?

17 WITNESS WELLS: Yes. I agree it's not very
18 accurate.

19 MR. BRODSKY: Okay. And could you give us
20 your opinion on what the impacts of the construction
21 measures shown on this map are going to be on Delta
22 recreation.

23 WITNESS WELLS: Yes.

24 The Delta cannot survive the California
25 WaterFix. The Department of Water Resources showed no

1 concern or --

2 MR. BRODSKY: Mr. Wells, you don't need to
3 rush. You can slow down.

4 WITNESS WELLS: Okay.

5 -- awareness of the Delta as a recreational
6 resource and place where people live and work.

7 Much of the Project is shaped by requirements
8 imposed by the Federal fish agencies, such as the
9 location of the facilities and a concentration of
10 in-water work during the summer and fall months.

11 This may protect the fish but who will protect
12 the people?

13 The fish agencies fixed the construction
14 season from June 1 to October 31st, shifting all of the
15 heavy construction to the summer months. It puts it in
16 direct conflict with the boating season in the Delta.

17 For those of us in the recreation industry,
18 90 percent of the business is done in the summer season
19 between May and October, just when the barges will be
20 clogging our sloughs and the pile drivers will be
21 ham -- hammering away our sanity.

22 To us here in the Delta, the California
23 WaterFix is massive amounts of barge traffic, massive
24 amounts of pile driving from giant pile-driving rigs,
25 massive amounts of traffic on two-lane Delta roadways,

1 increases in car trips on formerly lonely roads,
2 massive influx of construction workers, massive amounts
3 of tunnel muck dumped on Delta islands, and a massive
4 negative impact on Delta recreation and those who make
5 our living in the recreation industry in the Delta.

6 These massive impacts are not disputed.

7 It's a quote from the EIR (reading):

8 "The multiyear schedule and
9 geographic scale of the Project-related
10 construction activities and . . .
11 anticipated incremental decline in
12 recreational spending would be
13 cumulatively considerable."

14 Nor is it disputed that many of us here in the
15 Delta will not survive the WaterFix economically.

16 Another quote from the EIR (reading):

17 "Recreation-dependent businesses,
18 including marinas and recreational supply
19 retailers, may not be able to
20 economically weather the effects of the
21 multiyear construction activities and may
22 be forced to close as a result."

23 In my opinion, 20 percent of the Delta marinas
24 will be forced out of business by WaterFix. I do not
25 think the DWR will disagree with the assessment.

1 The DWR has done nothing to protect Delta
2 recreation. They've insisted on locating massive
3 tunnel muck dumps on Delta Islands. These dumps could
4 be relocated outside the Delta to suitable dumping
5 grounds.

6 They've insisted on locating three massive
7 intake structures right next to the small Legacy
8 communities of Clarksburg and Hood, and also the little
9 down of Locke.

10 There's no hydrological rationale or
11 engineering necessity for picking this location. It
12 happened to be convenient for DWR, and our Legacy
13 communities dwarfed by the adjacent massive
14 construction works must be destroyed as a result.

15 They insisted on locating their largest
16 staging facility and muck dump on Bouldin Island off
17 Highway 12 near two drawbridges that will be pulled
18 open by constant construction barge traffic creating
19 the worst traffic nightmare imaginable on the main
20 recreational gateway to the Delta.

21 There's no reason why this facility has to be
22 located here. The dumps should be outside the Delta.
23 This is a \$17 billion Project. If DWR has to put a
24 major construction staging area along the tunnel route,
25 they can pick a spot where the tunnels pass closer to

1 Highway 5 and build a dedicated access road to the
2 site. We should not suffer a million or more dump
3 truck runs on our already overworked two-lane
4 Highway 12.

5 Doug Obegi has made the case that alternative
6 water supply methods are available.

7 The Delta Reform Act instructs all of us,
8 including the State Water Resources --

9 MR. BRODSKY: Hold on.

10 WITNESS WELLS: Sure.

11 CO-HEARING OFFICER DODUC: Miss Ansley.

12 MS. ANSLEY: Yeah. I don't believe that
13 Mr. Obegi's testimony was referred to in Mr. Wells'
14 testimony, so I believe this is getting off track of
15 his direct testimony.

16 MR. BRODSKY: That is correct. The original
17 reference was to Professor Brent Haddad who we withdrew
18 as a witness. Professor Haddad's testimony is very
19 similar to Mr. Obegi's testimony. That's one of the
20 robes we withdrew it because it was duplicate. He also
21 had to be in Europe at this time.

22 And so I think Mr. Wells has reviewed
23 Mr. Obegi's testimony, and his reference to it is just
24 generally that there are desalination recycling
25 conservation available. It's a passing reference.

1 CO-HEARING OFFICER DODUC: And he's not going
2 into further detail.

3 MR. BRODSKY: No further detail.

4 MS. ANSLEY: Then I would move to strike any
5 reference to Mr. Obegi's testimony. That's proper on
6 rebuttal if you address people's cases in chief, but
7 it's not proper to provide support to another
8 Protestants' testimony in the same -- in Phase 2.

9 So this is not testimony that's in his direct.
10 Certainly his witness, they are able to bring a
11 rebuttal to Mr. Obegi's case in chief, or NRDC's case
12 in chief. But it is not proper to substitute now
13 Mr. Haddad's -- a reference to Mr. Haddad's
14 testimony -- excuse me -- that has been withdrawn.
15 With a reference now to Mr. Obegi's testimony is
16 surprise testimony, then.

17 So I would move to strike that.

18 MR. BRODSKY: Mr. Wells' testimony is
19 essentially that water recycling conservation, et
20 cetera, are available.

21 CO-HEARING OFFICER DODUC: Hold on. Is it
22 actually in his written testimony?

23 MR. BRODSKY: That he speaks of conservation?
24 I believe so. Other measures.

25 CO-HEARING OFFICER DODUC: All right. Then --

1 In that case, then, I don't see what relevance is the
2 reference to Mr. Obegi's testimony if it is already in
3 Mr. Wells' testimony.

4 MR. BRODSKY: What page is that?

5 WITNESS WELLS: Page 2.

6 MS. ANSLEY: The reference to Mr. Haddad's
7 testimony is --

8 WITNESS WELLS: It says right here. Let --
9 Let me read it.

10 CO-HEARING OFFICER DODUC: Hold on. Hold on.
11 The reference to Mr. Obegi's testimony is not
12 needed because the substance of it is already in
13 Mr. Wells' testimony.

14 Is that my understanding? Is that correct?

15 MS. ANSLEY: It is my understanding that he
16 does not talk about these topics.

17 MR. BRODSKY: Well, what his testimony says
18 is, "The policy of this" -- not quoting Haddad.

19 (Reading):

20 "The policy of the State of
21 California is to reduce reliance on the
22 Delta in meeting California's future
23 water supply needs through a statewide
24 strategy of investing in improved
25 regional supplies conservation and water

1 use efficiency."

2 And so --

3 CO-HEARING OFFICER DODUC: So let's stick with
4 that testimony.

5 MR. BRODSKY: Okay. Let's do that.

6 CO-HEARING OFFICER DODUC: All right.

7 Mr. -- Miss Ansley, your objection is
8 sustained.

9 WITNESS WELLS: Okay. The Delta Reform Act
10 instructs us all, including the State Water Resources
11 Control Board, that (reading):

12 "The policy of the State of
13 California is to reduce reliance on the
14 Delta in meeting California's future
15 water supply needs through a statewide
16 strategy of investing in improved
17 regional supplies, conservation and water
18 use efficiency."

19 That's really the end of the matter.

20 WaterFix is highly destructive to the Delta
21 and there's several alternatives that have a better
22 plan and lower cost and preserve the Delta for future
23 generations.

24 Thank you very much.

25 MR. BRODSKY: May I ask a question on direct?

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

2 MR. BRODSKY: Mr. Wells, is it your opinion
3 that, instead of exporting water for -- from the Delta,
4 that Southern California water supply needs can be met
5 through conservation, recycling, and other alternative
6 supply measures?

7 WITNESS WELLS: Right. I agree with that.

8 For one, desalination, there's breakthroughs
9 every year in desalination technologies.

10 So you can't keep taking water out of the
11 Delta forever, so they need to come up with a plan to
12 supply Southern California.

13 CO-HEARING OFFICER DODUC: Miss Ansley.

14 MS. ANSLEY: I don't believe he discusses
15 Southern California. I think it's improper to cross
16 your own witness.

17 I think that we've -- we've heard Mr. wells'
18 testimony. We have it here in front of us. There's no
19 need to ask a further question on -- in essentially a
20 cross of your own witness.

21 So I'm happy to point it out where he talks
22 about Southern California and conservation Projects.

23 CO-HEARING OFFICER DODUC: Is that mentioned
24 in your written testimony, Mr. Wells?

25 WITNESS WELLS: Yes, I believe it is.

1 MR. BRODSKY: Let me -- Let me rephrase the
2 question.

3 Bill.

4 WITNESS WELLS: Yes.

5 MR. BRODSKY: Let me just rephrase the
6 question.

7 Is it your opinion that the future water
8 supply needs of the State of California can be met by
9 reducing reliance on the Delta through implementing
10 desalination, water conservation, and other alternative
11 water supply measures?

12 WITNESS WELLS: Yes.

13 MR. BRODSKY: Thank you.

14 MS. ANSLEY: And is he withdrawing the earlier
15 question and testimony?

16 CO-HEARING OFFICER DODUC: That is my
17 understanding.

18 MR. BRODSKY: Yes.

19 MS. ANSLEY: Okay.

20 CO-HEARING OFFICER DODUC: I believe that
21 Mr. Wells is done and --

22 WITNESS WELLS: Yes.

23 CO-HEARING OFFICER DODUC: -- you can now move
24 on to your next witness.

25 MR. BRODSKY: So our next witness is going to

1 be Mr. Kinzel.

2 And could -- Mr. Kinzel, could you give us a
3 brief overview of your qualifications.

4 WITNESS KINZEL: Good morning.

5 I'm Chris Kinzel. I'm a Professional Traffic
6 Engineer. I am a graduate of the University of
7 California and Fresno State University. I've been
8 practicing traffic engineering for more than 50 years.

9 I'm a Registered Civil Engineer and a
10 registered Traffic Engineer in the State of California.
11 I've been involved with numerous traffic studies,
12 Environmental Impact Reports, and other documents.

13 MR. BRODSKY: And would you like to have any
14 exhibits on the screen while you talk?

15 WITNESS KINZEL: 72 -- SCDA-72, please, to
16 start with.

17 (Exhibit displayed on screen.)

18 MR. BRODSKY: And have you had the opportunity
19 to review the traffic analysis in the California
20 WaterFix EIR?

21 WITNESS KINZEL: Yes, I have.

22 MR. BRODSKY: And have you collaborated in
23 the -- in the production of this exhibit by reviewing
24 the California WaterFix traffic section in the EIR?

25 WITNESS KINZEL: Yes, I have.

1 MR. BRODSKY: And also the section of the
2 Biological Opinion from NMFS that describes the barge
3 routes?

4 WITNESS KINZEL: Yes.

5 MR. BRODSKY: And of your own personal
6 knowledge, is the information represented on this map
7 accurate?

8 WITNESS KINZEL: Yes, it is.

9 MR. BRODSKY: And could you give us your
10 opinion, if any, about the impacts on traffic of the
11 California WaterFix Project.

12 WITNESS KINZEL: Yes, I'm happy to do that.

13 The -- As -- As was noted earlier, the map
14 shows the -- all the details which Mr. Brodsky went
15 through, the -- the location of the Project itself,
16 the -- the routes where the -- where the barges will
17 take, the dumping sites and that sort of thing.

18 So, the first thing that struck me about this
19 Project as a Traffic Engineer was how massive it is,
20 how big it is.

21 From a traffic standpoint, there are two
22 separate main parts to the Project. First is -- is
23 boring the tunnels and hauling away the excavated
24 tunnel material, in this case muck. And there are --
25 With 40 miles of tunnels and each 40 feet in diameter,

1 there's just a lot of muck.

2 Muck will be dumped permanently and left in
3 place at two main sites, the Bouldin Island location
4 and down at Clifton Forebay, and a few other locations
5 to the -- to the north.

6 The muck is going to be carried on large
7 barges, each one about -- almost as big -- as long as a
8 football field.

9 MR. BRODSKY: Could we scroll down to the
10 bottom to see a picture of a barge?

11 (Exhibit displayed on screen.)

12 MR. BRODSKY: Thank you.

13 WITNESS KINZEL: Those are the barges. And
14 they are -- As you can see, they're pushed by a
15 tugboat, and then the other conveyance are the dump
16 trucks shown on the left.

17 The documents indicate that there would be
18 about 9400 barge loads during the life of the Project.
19 A lot of barges.

20 The barges load or unload at the barge
21 landings that will be constructed along the river.
22 There's about seven of them. So they're about, on
23 average, 6 miles apart. And so there's a lot of dump
24 truck activity and barges moving up and down carrying
25 muck to the muck dumps.

1 The second part of the Project from a traffic
2 significance standpoint is hauling the tunnel liners to
3 the various sections of the tunnels from where they're
4 manufactured in -- in San Francisco, Antioch or
5 Stockton.

6 The tunnel liners will be barged initially to
7 those two main sites, which are also the muck dumps at
8 Clifton Court Forebay and Bouldin Island. And they're
9 going to be -- From that point, they'll be distributed
10 two other locations. About 5500 barge trips.

11 So, this is -- that combination is where the
12 traffic problems appear.

13 The Bouldin Island location is in a central
14 location and is one of the two largest. So there's
15 thousands of barge and truck dumps are going to be
16 focused at that location.

17 And also, that's where the -- the large tunnel
18 liners are going to be sent to for future distribution
19 up and down the tunnel.

20 Barges coming from San Francisco will need to
21 go -- that are delivering tunnel liners, for example,
22 up to the intake area -- will have to use the Rio Vista
23 Bridge of the Sacramento River.

24 The Rio Vista Bridge is -- carries Highway 12,
25 State Route 12. That highway has more than 20,000 cars

1 a day. It's over capacity. It's defined as being over
2 capacity.

3 Of those 20,000 vehicles a day, about 3,000 of
4 those are trucks, and most of those trucks are
5 five-axle big rigs. That's an important cross
6 connector highway.

7 So there's heavy amounts of existing volumes,
8 and the EIR says no problem at the Rio Vista Bridge
9 because it's a high-level bridge.

10 But it's not. It's a drawbridge, and it opens
11 a lot during the -- every time it opens, traffic backs
12 up for some distance and the town -- City of Rio Vista
13 is inundated with traffic from existing conditions.

14 When -- When that road opens -- When that
15 bridge opens, it takes about 25 minutes for a barge to
16 get through it.

17 So the highway congestion created by this
18 bridge is already a problem without the increased barge
19 traffic.

20 If I could have the -- 104.

21 (Exhibit displayed on screen.)

22 WITNESS KINZEL: Thank you.

23 This shows the Bouldin Island location, and
24 here is Highway 12 (indicating), and here's the --
25 here's the muck dump (indicating) and the location

1 where the supplies and so on will come up, including
2 all the tunnel liners.

3 So they have to come to this point. And,
4 again, the Rio Vista Bridge is off to the left here
5 (indicating), about 5 miles away, and the Mokelumne
6 River Bridge is at this point (indicating).

7 All the traffic, then, going in and out of
8 this location from the east uses the Mokelumne Bridge
9 as well as the Rio Vista Bridge.

10 That bridge is frequently opened, and when it
11 opens, traffic backs up for at least half a mile under
12 normal road conditions and longer under -- during peak
13 periods.

14 The traffic hauling in the tunnel liners,
15 which will come in through the -- through this location
16 (indicating), and then from there, they'll be hauled
17 out by trucks to the various locations.

18 So that means that that bridge will be opened
19 frequently to handle the barges, and handling these
20 many hundreds, if not thousands, of additional vehicles
21 over time, trucks, handling these large tunnel liners.

22 So the EIR states not only about the Rio Vista
23 Bridge but by the other bridges, Mokelumne and down on
24 Highway 4, that none of these drawbridges need to be
25 opened. And they didn't even look at the issues

1 associated with that, either current and especially in
2 the future. This is a major flaw.

3 So, from a traffic engineering standpoint, a
4 lot of people that are using the Delta are people that
5 live in the Bay Area and live in the Sacramento area,
6 live throughout, and they're dealing with congestion
7 all the time now.

8 Why would they come to a super congested
9 roadway corridors in the Delta voluntarily to -- to
10 recreate? I think this will -- this will be a major
11 impetus to cause people to find other locations.

12 I'd like to also mention the traffic in the --
13 along Highway 160 in the Hood, Clarksburg and Locke --
14 Locke area.

15 MR. BRODSKY: If we could see SCDA-85.

16 (Exhibit displayed on screen.)

17 WITNESS KINZEL: These are relatively quiet
18 and historic towns. And we've heard about the
19 desirability of these areas as recreational facilities.

20 This area's going to be simply overrun
21 continuously as thousands -- literally thousands of
22 workers in this area that will be driving up and down
23 the roads, along with the trucks, along with the
24 area . . . handling all these workers.

25 So, again, from a -- from a traffic

1 standpoint, this is totally unacceptable as a --
2 somebody who's coming to the Delta to -- to recreate.

3 So EIRs that talk about impacts always talk
4 about Mitigation Measures. And I think you can tell
5 that this EIR really overlooked and downplays the major
6 traffic impacts that I've just talked about just by
7 listening to the titles of the Mitigation Measures.

8 The first one was (reading):

9 "Implement site-specific
10 Construction Traffic Management Plan."

11 As though that would make a difference.

12 The second one is (reading):

13 "Limit hours or amount of
14 construction activity on congested
15 roadway segments."

16 The hours would have to be limited to
17 practically zero to solve these problems.

18 And then (reading):

19 "Make good-faith efforts to enter
20 into mitigation agreements to enhance
21 capacity of congested roadway segments."

22 So these -- these measures, I believe, would
23 have little effect on the traffic congestion produced
24 by this Project as it now stands.

25 I'll be happy to respond to your questions.

1 MR. BRODSKY: A couple of questions.

2 Mr. Kinzel, this SCDA-100 is your written
3 testimony; is that correct?

4 WITNESS KINZEL: Yes.

5 MR. BRODSKY: And this is a true and accurate
6 representation of your written testimony?

7 WITNESS KINZEL: Yes.

8 MR. BRODSKY: And this -- In here, there are a
9 number of footnotes where you say that various exhibits
10 are true and correct copies.

11 And is that correct, that you verified that
12 all those exhibits listed in the footnotes are true and
13 correct copies?

14 WITNESS KINZEL: Yes, I have.

15 MR. BRODSKY: And to the extent those exhibits
16 represent information in the EIR, Biological Opinion,
17 Biological Assessment, they do so accurately?

18 WITNESS KINZEL: Yes.

19 MR. BRODSKY: Thank you.

20 Okay. And then, next, I'd like to ask
21 Mr. Frank Morgan to give a brief statement of his
22 qualifications.

23 WITNESS MORGAN: Good morning.

24 My name is Frank Morgan. I've lived in a
25 waterfront home in Discovery Bay for the last 18 years.

1 I've been boating consistently in the Delta for 40
2 years.

3 In 2012, my wife and I started a cruise
4 business, a chartered cruise business called Captain
5 Morgan's Delta Adventures out of Discovery Bay.

6 I'm a U.S. Coast Guard certified or
7 credentialed Captain with a 100-ton Captain's license.

8 Our business has grown from about 12 cruises
9 in 2012 to 135 cruises in 2015.

10 As a result of that success, in 2017, we were
11 honored with Small Business of the Year by Assemblyman
12 Jim Frazier's office representing the State's 11th
13 District.

14 On our tours, guests enjoy vistas and scenic
15 tours of the Delta, along with land excursions
16 throughout the Delta Region.

17 Examples of those excursions are, we take
18 people on the water up the river and stop at a -- at a
19 port or a marina, and we take them into Suisun City to
20 the Electric Train Museum, to visit that.

21 We also go to the only operational original
22 Japanese bathhouse, which is located in Walnut Grove.

23 And, of course, we stop at Locke and the many
24 museums there to explore and learn about the history of
25 the Japanese and how they built the levee system we all

1 enjoy today.

2 Through my years of cruising on the Delta, I
3 gained a deep and thorough understanding of the Delta
4 and Delta recreation.

5 I fully understand and have observed firsthand
6 the negative effects disruptive events have on the
7 Delta, like the blue-green algae, or the Water
8 Hyacinth, or drought conditions.

9 So, with that, that kind of summarizes my
10 qualifications, and I'll be happy to summarize my
11 testimony.

12 MR. BRODSKY: Maybe I'll just ask a couple of
13 question first.

14 So, Mr. Morgan, SCDA-86 is your written
15 testimony?

16 WITNESS MORGAN: Yes.

17 MR. BRODSKY: And that's an accurate and
18 correct copy of your testimony?

19 WITNESS MORGAN: Yes, it is.

20 MR. BRODSKY: And you cite several exhibits in
21 the footnotes that you say are true and correct copies.

22 And that is correct, those are true and
23 correct copies?

24 WITNESS MORGAN: Yes.

25 MR. BRODSKY: And to the extent those exhibits

1 represent materials in the Biological Opinion,
2 Biological Assessment and EIR, they do so accurately?

3 WITNESS MORGAN: Yes.

4 MR. BRODSKY: Thank you.

5 And could you give us your opinion, if any, on
6 the effects of the WaterFix Project.

7 WITNESS MORGAN: Sure.

8 If we could have SCDA-72 back up, please.

9 (Exhibit displayed on screen.)

10 WITNESS MORGAN: You know, as Mr. Brodsky
11 already stated, but I will reiterate, that, you know,
12 there we have multiple new bridge landings all the way
13 through the heart of the Delta.

14 With all of those new barge landings -- I
15 should say all of those barge landings come with
16 five-mile-an-hour zones for boaters.

17 There will be at least 9,400 barge trips
18 hauling tunnel liner segments in and muck out. Dozens
19 of barges all over the Delta, whether they're running
20 and moving up and down the Delta, or whether they're
21 anchored, they're going to represent a
22 five-mile-an-hour zone around those anchored barges as
23 well.

24 In addition to the 9,400 barge trips, you have
25 other on-water geological drilling activities going on

1 throughout the Delta, which will also be
2 five-mile-an-hour zones.

3 The in-water construction activity is
4 concentrated in the summer months, which is the prime
5 boating season. About 90 percent of all the boating on
6 the Delta is done during the summer months and during
7 this construction period.

8 CO-HEARING OFFICER DODUC: Hold on. Hold on,
9 please, Mr. Morgan.

10 Miss Ansley.

11 MS. ANSLEY: Yeah. My objection is that none
12 of this is in his testimony.

13 I do see that Mr. Morgan does reference
14 SCDA-72, so I can understand how he might repeat the
15 facts here on SCDA-72, but we're already going far
16 afield then from what is written on his testimony,
17 which is all of basically a page long.

18 So I would really prefer not to go beyond --
19 I -- I -- I understand from his testimony earlier that
20 he may have verified the accuracy of this figure
21 himself, but -- and I will have questions on that.

22 But I do think that he's now gone well beyond
23 what is written in his testimony.

24 CO-HEARING OFFICER DODUC: I believe it was
25 Mr. Wells who confirmed that earlier.

1 MR. BRODSKY: Both -- Both have confirmed.

2 CO-HEARING OFFICER DODUC: Oh, okay.

3 MR. BRODSKY: So, Mr. Morgan, on Page 1 says
4 (reading):

5 "SCDA-72 is a true and correct copy
6 and accurate overview depiction of
7 construction activity."

8 And so he is summarizing that overview.

9 He also says that he has -- he agrees with his
10 colleague Bill Wells' conclusions in his written
11 testimony. And so he is explaining, summarizing, his
12 agreement with Mr. Wells' conclusions and summarizing
13 and explaining how this is an accurate overview of the
14 construction activity. And there's nothing else --
15 He's not saying outside of that. And --

16 CO-HEARING OFFICER DODUC: He's adding facts
17 and details outside of that, which is her objection.

18 MS. ANSLEY: It is my objection. That would
19 be additional -- I am fully capable, obviously, of
20 reading Mr. Wells' testimony, and I'm aware of the
21 content of that.

22 What I'm objecting to is Mr. Morgan now adding
23 testimony that's either duplicative but really is
24 surprise testimony that I was not aware he was going
25 start presenting.

1 CO-HEARING OFFICER DODUC: Sustained.

2 MR. BRODSKY: Okay. Mr. Morgan, you say that,
3 in your testimony, you think Bill's estimate of
4 20 percent failure rate for Delta marinas is due to
5 WaterFix impacts is a low figure; is that correct?

6 WITNESS MORGAN: Yes.

7 MR. BRODSKY: Okay. And you say that you run
8 your (reading):

9 ". . . Charter boat up to the
10 Clarksburg/Hood/Locke/Meadows area."

11 And (reading):

12 "This is one of the most scenic and
13 peaceful areas of the Delta."

14 Is that correct?

15 WITNESS MORGAN: Yes.

16 MR. BRODSKY: And then on Page 1 of your
17 testimony, at Line 17, you quote from Mr. Hal Schell's
18 book about the Delta and have a conclusion.

19 Could you read that portion of your testimony
20 from Line 17 that starts "Hal Schell" to the end of
21 that paragraph.

22 THE WITNESS: Yes (reading):

23 "Hal Schell described the meadows in
24 his famous book: 'You feel a man could
25 go in there and never be found. The

1 Meadows is the most popular Delta -- The
2 Meadows is the most popular Delta
3 anchorage: 'If popularity awards were
4 given for Delta anchorages, the Meadows
5 would win hands down."

6 MR. BRODSKY: And . . .

7 WITNESS MORGAN: (Reading):

8 "Yet DWR chose to this location as a
9 major barge route, muck dump, and
10 construction staging area complete with
11 concrete batch plant and fuel station.

12 "The construction impacts will occur
13 and be severe all over the Delta. The
14 impacts on the small towns of Hood,
15 Clarksburg and Locke will devastate these
16 communities. Recreation on the river
17 will come to a halt at the location of
18 the intakes, for miles above the intakes
19 and for miles below the intakes . . . It
20 is obvious to me that these communities
21 and recreat -- It is obvious to me that
22 these communities and recreation on the
23 river cannot survive the construction of
24 these intakes at that location."

25 MR. BRODSKY: Okay. Thank you, Mr. Morgan.

1 At this time, I'd like to turn to Mr. Russel
2 Ooms.

3 WITNESS OOMS: Does this work?

4 MR. BRODSKY: And, Mr. Ooms, could you give us
5 a brief statement of your qualifications.

6 WITNESS OOMS: Sure.

7 Can you hear me?

8 MR. BRODSKY: I don't think it's on.

9 WITNESS OOMS: Can you hear me?

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

11 WITNESS OOMS: Wonderful.

12 Thank you for providing a forum in our shared
13 participatory democracy.

14 My name is Russel Ooms. I live in the town of
15 Locke, and I've lived there for about 25 years. I
16 bought a building there in 1975 and I've been
17 associated with the town and the area ever since.

18 I am the current Chairman of the Locke
19 Management Association. And what that does is, it runs
20 the town but, most importantly, we're concerned with
21 the historic part of the town and -- and keeping it as
22 it was. We also manage the town and take care of the
23 roads, things like that.

24 And in my role as a Locke Management Director,
25 I've become very familiar with the Locke National

1 Historic District. So we're on the National Register
2 of Historic Places, like the State Capitol is on that
3 list. There's 100 of them in Sacramento County.

4 And we -- The town is the largest intact,
5 complete example of a rural agricultural
6 Chinese-American community in the United States. It's
7 the only one. It doesn't exist anywhere else.

8 Most Chinatowns were part of a city, so
9 San Francisco Chinatown. But this was a -- an amazing
10 independent little town.

11 So I really understand the unique sense of
12 place and historical identity of the community. It's
13 just a very fragile community.

14 And I'm hoping today to -- to communicate what
15 that town is about, and to understand that the impacts
16 this Project will have on the town, in my opinion.

17 I'm witnessing that I've entered into kind of
18 a legal cage fight.

19 MR. BRODSKY: Now, let's stop.

20 WITNESS OOMS: Let me finish that.

21 MR. BRODSKY: And thank you for your
22 qualifications.

23 And let's go next to your -- Let me ask you:

24 Is SCDA-130 an accurate copy of your written
25 testimony?

1 WITNESS OOMS: Yes.

2 MR. BRODSKY: And could you just give us a
3 summary of what you're saying is SCDA-130.

4 And if you'd like to have any exhibits on the
5 screens while you're doing that, let us know what they
6 are.

7 WITNESS OOMS: Would you like to put up 85,
8 Number 85.

9 (Exhibit displayed on screen.)

10 WITNESS OOMS: It's the whole area from
11 Clarksburg on down to Locke and --

12 MR. BRODSKY: Perhaps if we can just -- I'm
13 sorry to interrupt -- minimize that a little bit so we
14 could see the whole thing. It's a long exhibit.

15 (Exhibit displayed on screen.)

16 MR. BRODSKY: There we go. Thank you very
17 much.

18 Sorry to interrupt.

19 WITNESS OOMS: And along with my familiarity
20 with the area is that I used to be a member of the
21 Community Development Block Grants and so I've worked
22 closely with the towns of Hood, Courtland and Walnut
23 Grove. And that's -- And also, I was on the DECMAC,
24 Delta Citizens Municipal Advisory Committee, and that
25 was for Walnut Grove.

1 So I know these people. I'm in the community.
2 I'm part of Rotary. So I live there, let's just say,
3 so I talk.

4 This Project will devastate Locke. It'll
5 devastate all the small communities along the
6 Sacramento River, starting with Hood up top.

7 Is that Number 70?

8 Michael would you put -- Is that 70?

9 MR. BRODSKY: Let's have Exhibit 70, please,
10 SCDA-70.

11 (Exhibit displayed on screen.)

12 MR. BRODSKY: Thank you.

13 WITNESS OOMS: There you can see how small the
14 community actually is. You see the middle of Hood,
15 that's the size of the town. And you can see the
16 construction around it is huge.

17 It's -- I don't think there's two, 300 people
18 in Hood. And if you can see the size of the
19 construction around it, it'll be totally destroyed.
20 There's no way that that town will survive.

21 But I can mostly speak for Locke. And I don't
22 know how to communicate the quality of living in Locke.
23 It's just been a -- It's an amazing place to be.

24 And when people come from outside -- Because
25 people come from all over the world to come to Locke

1 and they come to see the history of Locke. And they're
2 guided there by history books and things like that.

3 And we're a close community. We have
4 community gardens in the back. It's a -- We have
5 raised chickens. We raise bees. We eat together. We
6 talk together. We fix the roads together. All that
7 will be destroyed by the construction of this tunnel.
8 The Main Street on River Road, the houses are 40 feet
9 from the road.

10 Even now we cannot leave the town because some
11 driving app put the commuter traffic from Highway 12
12 through Locke. They're coming up Highway 160. And we
13 have, I think, 7,000 cars a day come through now. When
14 I first moved there, you could fall asleep on the
15 street at night. No one went by. It was that quiet.

16 So there's no question --

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

18 Miss Ansley.

19 MS. ANSLEY: Yes.

20 I mean, I understand that we're a little bit
21 off our testimony.

22 I don't have a huge problem. I did have a
23 problem when he strayed to the number of cars going
24 through Locke. I don't believe that's in his
25 testimony --

1 WITNESS OOMS: It's not.

2 MS. ANSLEY: -- the 7,000.

3 I do believe I have a problem with -- with
4 facts. I'm trying to be judicious in my --

5 WITNESS OOMS: Sure.

6 MS. ANSLEY: -- objections.

7 For the record, standing here, I'll also note
8 that Mr. -- And I will not move to strike his testimony
9 on the qualifications, but I will note that the link to
10 his qualifications on the Board's website is actually a
11 duplicate copy of his testimony.

12 MR. BRODSKY: Yes, that is correct. And I did
13 submit -- And that was my error.

14 I did submit yesterday a Notice of Errata that
15 I discovered yesterday that, when I uploaded these
16 documents back in November, instead of uploading his
17 qualifications and his testimony, I accidentally
18 uploaded two copies of his testimony.

19 I stated in my e-mail to the Board yesterday
20 that his qualifications were prepared and were ready in
21 November, but that I simply made a mistake -- me
22 personally made a mistake and didn't upload them.

23 I did upload the qualifications yesterday as a
24 Notice of Errata and requested that the Board excuse my
25 error.

1 MS. ANSLEY: And I don't believe I saw those
2 on the Service List but I'm happy to go check that.

3 CO-HEARING OFFICER DODUC: All right. We did
4 have some server issues yesterday.

5 All right. Please continue.

6 WITNESS OOMS: I don't know what to say.

7 MR. BRODSKY: You can -- I agree that --

8 WITNESS OOMS: Tell me what to say.

9 MR. BRODSKY: -- can't cite facts and figures.
10 You can simply state your experience of Locke,
11 as you say in your written testimony, as a quiet,
12 historic place, and what effects this will have in
13 general terms on the quiet, historic nature of your
14 community.

15 WITNESS OOMS: Well, it will take away any
16 enjoyment of the town. The noise will be horrific.

17 I can't make a quote.

18 There will be trucks going by -- I won't give
19 you a number I read -- and it'll be noisy, and -- Right
20 now, I can feel the pear trucks when they go by during
21 the season. I'm 300 feet from the road, and it shakes
22 my house. As I say, I cannot leave the town now.

23 I don't know what -- how we will survive. The
24 buildings are fragile. It's 100-year-old wooden
25 structures. I don't know how we will survive --

1 MR. BRODSKY: Okay.

2 WITNESS OOMS: -- if this is approved.

3 MR. BRODSKY: Let me ask you if you could turn
4 to Page 1 of your testimony, and just read the third
5 paragraph down that starts, "Clarksburg, Hood, Walnut
6 Grove."

7 WITNESS OOMS: (Reading):

8 "Clarksburg, Hood" --

9 MR. BRODSKY: And in a good strong reading
10 voice so we don't fall asleep.

11 WITNESS OOMS: I will try.

12 (Reading):

13 "Clarksburg, Hood, Walnut Grove, and
14 Locke are all set in the historic
15 landscape that is pretty much as it was
16 when Locke was built in the early 20th
17 Century. Our cultural institutions and
18 gathering places haven't changed much
19 since then. The EIR (sic) discloses that
20 'construction activities associated with
21 water conveyance facilities would be
22 anticipated as a result in changes to the
23 rural qualities of these communities
24 [Legacy communities of Clarksburg, Hood,
25 Walnut Grove] during the construction

1 period' and could 'also result in changes
2 to community cohesion if they were to
3 restrict mobility, reduce opportunities
4 for maintaining face-to-face
5 relationships, or disrupt the functions
6 of community organizations or community
7 gathering places Under
8 Alternative 4A, several gathering places
9 that lie in the vicinity of construction
10 areas could be indirectly affected by
11 noise and traffic associated with
12 construction activities." EIRIS (sic)
13 16-279. The area of the construction
14 site for Intakes 2, 3, and 5, as well as
15 the Intermediate Forebay and the muck
16 piles (where the tunnel muck will be
17 dumped) are much larger than the area of
18 our communities. The construction
19 activities will be ongoing for a decade
20 or more and thousands of construction
21 workers will flood the area.

22 "In my opinion, the entire" --

23 MR. BRODSKY: Okay. Mr. Ooms, if you could
24 turn now to Page 2 at Line 20.

25 (Exhibit displayed on screen.)

1 WITNESS OOMS: Okay.

2 (Reading):

3 "The historic district exists?"

4 MR. BRODSKY: Start with that sentence, "the
5 historic district," and read to the end of that
6 paragraph.

7 WITNESS OOMS: (Reading):

8 "The historic district exists in the
9 context of the largely unaltered late
10 19th Century landscape surrounding it.

11 It is -- It is now, for the most part, as
12 it was when the immigrants first settled
13 here. The industrial forebay, as well as
14 the tunnel muck" --

15 (Timer rings.)

16 WITNESS OOMS: (Reading further):

17 -- ": Dumping sites, are in very close proximity
18 to the town of Locke. There are historic homes on
19 the banks of the Sacramento River close to the
20 intakes. Perhaps the only remaining example of a
21 levee-side historic farmhouse is near one of the
22 intakes. The nearby town of Hood is an iconic
23 sample of the Delta-as place. The intake
24 facilities change the character of the entire area
25 and present an unavoidable adverse effect on the

1 historic values of the area."

2 MR. BRODSKY: And then can I ask you,

3 Mr. Ooms:

4 In your opinion, from your experience living
5 in this area for a while, for many years of being
6 familiar with it, do you believe that these -- this
7 intakes and all this major construction activity simply
8 need to be located someplace else if Locke is to
9 survive?

10 WITNESS OOMS: I believe that, yes.

11 MR. BRODSKY: Okay. Thank you very much.

12 CO-HEARING OFFICER DODUC: All right.

13 MR. BRODSKY: With this -- Let me just ask you
14 if SCDA-130 is a true and correct copy of your written
15 testimony.

16 WITNESS OOMS: Yes.

17 MR. BRODSKY: Okay. Thank you.

18 I think that concludes our direct
19 presentation.

20 CO-HEARING OFFICER DODUC: All right. We
21 will --

22 MR. BRODSKY: Oh, I'm sorry. Let me just go
23 back to Mr. Wells. I forgot to ask Mr. Wells the same
24 question.

25 WITNESS WELLS: Yes.

1 MR. BRODSKY: SCDA-150 is a true and correct
2 copy of your written testimony?

3 WITNESS WELLS: Yes, it is.

4 MR. BRODSKY: And there are a number of
5 exhibits that you reference in footnotes that you say
6 are true and correct copies of those exhibits.

7 Is that true, those are true and correct
8 copies?

9 WITNESS WELLS: Yes, that is true.

10 MR. BRODSKY: And to the extent those exhibits
11 represent information in the EIR, Biological Opinion
12 and Biological Assessment, it's of your own personal
13 knowledge that they do so accurately?

14 WITNESS WELLS: Yes.

15 MR. BRODSKY: Thank you very much.

16 CO-HEARING OFFICER DODUC: All right.

17 Candace, are you doing okay?

18 THE REPORTER: Um-hmm.

19 CO-HEARING OFFICER DODUC: Do you need a few
20 minutes to get up and to stretch?

21 THE REPORTER: No, I'm good.

22 CO-HEARING OFFICER DODUC: You're good? Okay.

23 MR. BRODSKY: Thank you.

24 CO-HEARING OFFICER DODUC: Then we will --

25 Before Miss Ansley --

1 MS. ANSLEY: Mr. Jackson and I have a
2 housekeeping matter just in case we get pressed up to
3 the 1 o'clock time period.

4 Mr. Jackson.

5 MR. JACKSON: Yes.

6 I have -- My witnesses are on on Tuesday --

7 CO-HEARING OFFICER DODUC: Yes.

8 MR. JACKSON: -- including Dr. Ed Whitelaw.

9 DWR has graciously offered to allow his
10 testimony to go into evidence without the need for him
11 to fly from Portland, if that's acceptable with the --
12 with the Hearing Officers.

13 CO-HEARING OFFICER DODUC: It is indeed. We
14 do wish Dr. Whitelaw well.

15 MR. JACKSON: Thank you very much.

16 MS. ANSLEY: And we're doing so on the
17 understanding that we will be foregoing our cross of
18 Dr. Whitelaw. And we understand that Mr. Jackson has
19 polled the attorneys in the audience and that they do
20 not themselves also have cross-examination for
21 Dr. Whitelaw.

22 So, yes, we -- we are agreeing to stipulate to
23 his testimony coming in on the understanding that there
24 is no cross-examination for Mr. -- for Dr. Whitelaw.

25 CO-HEARING OFFICER DODUC: All right.

1 MS. ANSLEY: Thank you.

2 MR. JACKSON: Okay. Thank you.

3 CROSS-EXAMINATION BY

4 MS. ANSLEY: Good morning. My name is
5 Jolie-Ann Ansley. I'm with the Department of Water
6 Resources.

7 I can't quite see all of your names. I know
8 you turned it them for the -- but I will do my best.
9 She needs to see them as well, so . . .

10 MR. BRODSKY: How about straight ahead?

11 MS. ANSLEY: Yeah. I think I got it.

12 And most of my questions -- I have a couple
13 questions regarding missing cites that are in people's
14 testimony, and then regarding the figures that you all
15 used in your presentations.

16 So if we could call up SC -- Well, let me
17 first ask.

18 I believe, Mr. Wells, you and maybe Mr. Morgan
19 refer to SCDA-67 through 69, which are, I believe,
20 labeled as intake noise maps on the Save the California
21 Delta Alliance.

22 WITNESS WELLS: Yes.

23 MS. ANSLEY: Do you know which three exhibits
24 I'm referencing?

25 WITNESS WELLS: Yes.

1 MS. ANSLEY: And this is just a general
2 question to save time. We can break it down.

3 Is it your understanding: Were those maps
4 created by Mr. Salter, who is another witness, or were
5 they created by anyone sitting here today?

6 WITNESS WELLS: Well, it was a collaborative
7 record among all of us. Mr. Salter, I believe, gives
8 the noise figures.

9 MS. ANSLEY: Can we look at SCDA-67 real fast
10 just to make sure.

11 (Exhibit displayed on screen.)

12 WITNESS WELLS: Yes.

13 MS. ANSLEY: And this was a collaborative
14 effort between whom?

15 WITNESS WELLS: Mr. Brodsky, myself,
16 Mr. Morgan and Mr. Salter. Mr. Salter provided all the
17 information on the noise data.

18 MS. ANSLEY: And what part did you provide?

19 WITNESS WELLS: Well, just the map area.

20 MS. ANSLEY: You provided the base map that
21 was used?

22 WITNESS WELLS: I didn't provide it but I
23 agreed that it was accurate.

24 MS. ANSLEY: And how did you verify its
25 accuracy?

1 WITNESS WELLS: Comparing it with the WaterFix
2 documents.

3 MS. ANSLEY: And who placed the locations on
4 this map of Intake 2, or the Foundation Structure? Who
5 placed the labels on this map?

6 WITNESS WELLS: Mr. Brodsky, I believe.

7 MS. ANSLEY: And did you verify the accuracy
8 of those locations?

9 WITNESS WELLS: Yes.

10 MS. ANSLEY: Can we look at the next map.

11 (Exhibit displayed on screen.)

12 MS. ANSLEY: I'm sorry, which would be
13 SCDA-68.

14 (Exhibit displayed on screen.)

15 MS. ANSLEY: Is your answer the same for this
16 figure?

17 WITNESS WELLS: Yes.

18 MS. ANSLEY: And is it your testimony that the
19 locations were provided by Mr. Brodsky but verified by
20 you?

21 WITNESS WELLS: Yes.

22 MS. ANSLEY: And the noise data was provided
23 by Mr. Salter for whom I can ask questions on Monday;
24 is that correct?

25 That Mr. -- The noise numbers are provided

1 by -- Or any testimony regarding noise would have been
2 provided by Mr. Salter.

3 WITNESS WELLS: Yes.

4 MS. ANSLEY: Okay. And can we look at the
5 last one, which is SCDA-69.

6 (Exhibit displayed on screen.)

7 MS. ANSLEY: And, again, this was a
8 collaborative effort between you, Mr. Brodsky and
9 Mr. Salter.

10 WITNESS WELLS: Yes.

11 MS. ANSLEY: And the base map was provided by
12 Mr. Brodsky.

13 WITNESS WELLS: Yeah, using, again, WaterFix
14 documents.

15 MS. ANSLEY: Do you know which WaterFix
16 documents these base maps come from?

17 WITNESS WELLS: I believe . . .

18 Yeah, from Figure M15-4 (reading):

19 "Preparation facility modified
20 pipeline tunnel alignment,
21 Alternative 4."

22 MS. ANSLEY: And is that correct -- Am I
23 correct in thinking is that SCDA-104?

24 Can we look at SCDA-104, please, just to make
25 sure.

1 (Exhibit displayed on screen.)

2 MS. ANSLEY: And can we scroll down to the
3 bottom.

4 (Exhibit displayed on screen.)

5 MS. ANSLEY: Is this -- M15-4, is this the map
6 you were referencing?

7 WITNESS WELLS: Yes.

8 MS. ANSLEY: And it's your understanding that
9 the locations on SCDA-69 were taken from this Figure
10 M15-4?

11 WITNESS WELLS: Not that page. There's
12 several pages -- or six pages.

13 WITNESS MORGAN: If I may.

14 MS. ANSLEY: Sure.

15 WITNESS MORGAN: M15-4 is the DWR general map,
16 and it has multiple sheets. It's MS -- should be M15-4
17 Index, and its sheet that we're looking at is 1 of 8.

18 What you have up there on the screen there is
19 Sheet 4 of 8.

20 MS. ANSLEY: Okay.

21 WITNESS MORGAN: So I think you were correct
22 in --

23 MS. ANSLEY: So, Mr. Wells, let me do a final
24 clarifying question, then.

25 So it's your understanding that the locations

1 and facilities that were placed on SCDA -- and I'll put
2 it all together, but we can break it down if you
3 like -- 67 through 69 came from Figures M15-4, Sheets 1
4 through 8 --

5 WITNESS WELLS: Yes.

6 MS. ANSLEY: -- Alternative 4.

7 WITNESS WELLS: Yes.

8 MS. ANSLEY: Okay. And they were created,
9 just to make -- Not to do an extension, but to make
10 sure that I just can move on.

11 These were created collaboratively with you,
12 Mr. Morgan, Mr. Brodsky and Mr. Salter.

13 WITNESS WELLS: Yes.

14 MS. ANSLEY: Okay. Thank you.

15 Can we call up SCDA-70, please.

16 (Exhibit displayed on screen.)

17 MS. ANSLEY: And I will -- I will be again
18 asking Mr. Wells, but it's only because I know these
19 were referenced in his testimony. I'm not trying to
20 preclude Mr. Morgan or anyone else from answering these
21 questions.

22 This looks to me like it was created on --
23 These do not look like colors from the DWR maps. This
24 looks to me like it was created by another system,
25 another GIS system, possibly.

1 Is that correct?

2 WITNESS WELLS: Yeah, quite possible.

3 MS. ANSLEY: Do you know who placed the
4 footprints of the intakes here on SCDA-70?

5 WITNESS WELLS: Well, I think from -- Not
6 particularly. They came from the document we just
7 referenced.

8 MS. ANSLEY: Okay. And so it's your
9 understanding that SCDA-70 also came from F -- the
10 mapbook for M15-4, Sheets 1 through 8?

11 WITNESS WELLS: Yes.

12 MS. ANSLEY: And . . . And is it your
13 understanding that the information came from map sheets
14 M15-4 potentially but that somebody created this figure
15 anew?

16 WITNESS WELLS: Well, this is, I believe, from
17 a Google Map actually, probably copied off of that.

18 MS. ANSLEY: Okay. And -- And how was the
19 information pulled from Sheets M15-4?

20 WITNESS MORGAN: Let me try, and hopefully I
21 can clarify it.

22 What we did is used DWR's map, this M15-4,
23 Alternative 4, and Sheets 1 through 8 as the basis to
24 create the other exhibits that you are referring to,
25 like SCDA-67 through this SCDA-70.

1 They were created by Mr. Brodsky, as the
2 drawing there shows, and collaborated, some of it --
3 for example, there's pictures in here on one of our
4 exhibits that I provided and so forth -- and Mr. Wells
5 contributed as well.

6 But these are direct representations of what
7 is in the DWR M15 Index 4.

8 MS. ANSLEY: I guess my clarifying question
9 for you, Mr. Morgan is:

10 Were these -- Did you have electronic versions
11 of M15-4 or were these placements of these intake
12 footprints approximated by hand based on the
13 information you saw in the mapbook figures?

14 WITNESS MORGAN: That, I didn't -- I wasn't a
15 part of doing. I didn't actually place that, so I
16 couldn't answer that question for you.

17 MS. ANSLEY: Okay. And so those facilities
18 were placed by Mr. Brodsky?

19 WITNESS MORGAN: Yes.

20 MS. ANSLEY: Okay. Can we look at SCDA-70.

21 Did you -- I guess -- Before I move on. I'm
22 sorry.

23 Mr. Wells, Mr. Morgan, what -- what -- what
24 part of these maps did you participate in creating?

25 WITNESS WELLS: Well, initially, Mr. Brodsky

1 created the maps. We reviewed it and gave our input so
2 to make sure they're accurate.

3 MS. ANSLEY: And you did that by comparing
4 with the map sheets --

5 WITNESS WELLS: Yes.

6 MS. ANSLEY: -- that you discussed?

7 Mr. Morgan, same answer?

8 WITNESS MORGAN: Yes.

9 MS. ANSLEY: Can we look at SCDA-71, please,
10 real fast?

11 (Exhibit displayed on screen.)

12 MS. ANSLEY: Is your answer, Mr. Morgan and
13 Mr. Wells -- and I'm not meaning to exclude Mr. Kinzel
14 and Mr. Ooms -- is your answer the same?

15 WITNESS WELLS: Yes.

16 WITNESS MORGAN: Yes.

17 MS. ANSLEY: That you were provided these
18 figures and you verified yourself the accuracy of the
19 information portrayed on here.

20 WITNESS WELLS: Well, Mr. Salter provided the
21 noise figures.

22 MS. ANSLEY: Thank you for the clarification.

23 And what -- This figure, though, does not show
24 any noise? These are distances, I believe.

25 WITNESS MORGAN: Correct.

1 WITNESS WELLS: Right.

2 MS. ANSLEY: Okay. And do you know who
3 measured the distances?

4 WITNESS MORGAN: No. I did not.

5 MS. ANSLEY: Did you verify the accuracy of
6 those distances?

7 WITNESS MORGAN: No. We were verifying the
8 accuracy of -- of where the intakes were on the river
9 at -- at that point in relation to Clarksburg and --
10 and other geographical locations.

11 We did not -- Or I did not participate in the
12 actual measurement of -- of the distances.

13 MS. ANSLEY: But you rely on these figures, is
14 that correct, Mr. Wells, Mr. Morgan?

15 WITNESS MORGAN: That is correct.

16 MS. ANSLEY: Mr. Wells?

17 WITNESS WELLS: What's the question again?

18 MS. ANSLEY: You rely on the figure in your
19 testimony?

20 WITNESS WELLS: Yes. And I -- I still believe
21 those figures are accurate.

22 MS. ANSLEY: Okay. Can we move to SCDA-72.

23 (Exhibit displayed on screen.)

24 WITNESS WELLS: Yes.

25 MS. ANSLEY: And you might have to zoom out

1 because I understand what they're saying, that there's
2 a number of stuff on the bottom.

3 (Exhibit displayed on screen.)

4 MS. ANSLEY: And I believe that many of you
5 refer to this figure in your testimony. Certainly, I
6 believe, almost all of you pulled it up in your oral
7 testimony; is that correct? Today?

8 WITNESS WELLS: What figure are you talking
9 about?

10 MS. ANSLEY: This is SCDA-72.

11 WITNESS WELLS: Right, but what part of it?

12 MS. ANSLEY: Oh. Is there only a certain part
13 you relied on, Mr. Wells?

14 WITNESS WELLS: No, the whole thing. I
15 thought you were referring to those -- the spot on
16 there.

17 MS. ANSLEY: And is your answer the same,
18 Mr. Wells, that this figure was provided to you and you
19 verified the accuracy of this? Or did you participate
20 in some form of the creation of this exhibit?

21 WITNESS WELLS: Yes, I verified the accuracy.

22 MS. ANSLEY: And was it the same map sheets
23 that you used to verify the accuracy of this exhibit?

24 WITNESS WELLS: Yes.

25 MS. ANSLEY: Okay. Mr. Morgan, the same

1 answer?

2 WITNESS MORGAN: Well, there's -- You're
3 asking to verify a figure, and then you're asking about
4 verifying a map.

5 So, when I looked at SCDA-72, I verified the
6 barge routes and so forth by the written data in the
7 Biological Opinion.

8 And I also looked at what was stated about the
9 number of barge trips per day, and then you calculate
10 those out. So that's how they come out to that figure.

11 So if you're talking about the 9400 barge
12 trips, that's in written form that you're able to
13 calculate.

14 Basically, they're saying there are four barge
15 trips one way to Clifton Court each day and there's
16 four barge trips to Bouldin Island one way. So when
17 you do both ways, it's basically eight trips a day to
18 each of those.

19 And so you can calculate out how many barge
20 trips for the tunnel liners and the muck based on the
21 written information in the -- in the . . . Biological
22 Assessment and using the EIR.

23 MS. ANSLEY: Do you know the base map used to
24 create this -- the map and the -- I guess most of the
25 top left-hand side, the figure?

1 WITNESS MORGAN: Well, that's a -- a base
2 map -- I mean, that's -- You could get that on Google
3 Maps, you can get that on Navionics, you can get it
4 anywhere so . . .

5 MS. ANSLEY: I'm not asking where you could
6 get a map like that. I'm asking: Do you know where
7 this map came from?

8 WITNESS MORGAN: I do not. I didn't create
9 the map. I verified the information on the map.

10 MS. ANSLEY: And is it the same information
11 for you, Mr. Wells?

12 WITNESS WELLS: Yes.

13 MS. ANSLEY: And, Mr. Kinzel, I don't believe
14 you cite to SCDA-72 in your testimony; do you?

15 WITNESS KINZEL: I used it today as a
16 reference point.

17 MS. ANSLEY: I did notice that. But I don't
18 believe it's cited to in your testimony; is that
19 correct?

20 WITNESS KINZEL: (Examining document.)

21 I believe that's . . . correct.

22 MS. ANSLEY: I did hear you say that you had
23 collaborated in the creation of this figure as well; is
24 that correct?

25 WITNESS KINZEL: No. I verified it after it

1 was prepared.

2 MS. ANSLEY: Okay. Can we move to the last
3 figure here, SCDA-73.

4 (Exhibit displayed on screen.)

5 MS. ANSLEY: Mr. Wells and then Mr. Morgan, is
6 this the same answer?

7 You were provided with this figure. You did
8 not participate in the creation knowledge figure but,
9 in relying on it in your testimony, you verified the
10 accuracy of these facilities?

11 WITNESS WELLS: Yes. By "figure," I'm
12 assuming image of the --

13 MS. ANSLEY: Actually, you're right. Thank
14 you for the clarification.

15 I'm talking about the figure on the left side
16 of the screen, not the photos.

17 WITNESS WELLS: Right. Yes.

18 MS. ANSLEY: And the same for you, Mr. Morgan?

19 WITNESS MORGAN: Yes. I verified the
20 information on the left side. I provided the photos on
21 the right side.

22 MS. ANSLEY: And I apologize. One more.

23 SCDA-85.

24 (Exhibit displayed on screen.)

25 MS. ANSLEY: And is your answer the same for

1 this one, Mr. Wells?

2 WITNESS WELLS: Yes.

3 MS. ANSLEY: Mr. Morgan?

4 WITNESS MORGAN: Yes.

5 MS. ANSLEY: And then I just need a moment to
6 look at their testimony. There were a couple places
7 where there were -- there were cites missing, and I
8 just want to make sure I ask what the correct was for
9 those sentences.

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

11 (Timer rings.)

12 MS. ANSLEY: Mr. Kinzel, if you look at Page 3
13 of your testimony, Line 18.

14 WITNESS KINZEL: Yes.

15 MS. ANSLEY: And do you see there where it
16 says "cite" in brackets?

17 WITNESS KINZEL: Yes, I do.

18 MS. ANSLEY: Do you know the correct cite that
19 was supposed to be inserted there?

20 WITNESS KINZEL: I believe it was the EIR
21 documents themselves or their -- or their appendices,
22 but I'm actually not positive of that.

23 MS. ANSLEY: So what you're saying is, as you
24 sit here today, you can't off the top of your head
25 recall that.

1 WITNESS KINZEL: I can't.

2 MS. ANSLEY: Mr. Ooms, looking at your
3 testimony, Page 2, Line 9 if you have a copy in front
4 of you.

5 WITNESS OOMS: Yes. On the first page?

6 MS. ANSLEY: Page 2, sir.

7 WITNESS OOMS: Yes. There's a cite reference
8 in that.

9 MS. ANSLEY: Yes, I see that.

10 But I do see that the sentence references the
11 SDEIS.

12 What is your understanding of what is the
13 SDEIS?

14 WITNESS OOMS: It's like an EIR.

15 MS. ANSLEY: And -- I'm sorry -- I'll ask more
16 clarifying questions.

17 If you look at Page 1, Line 26, you reference
18 the FEIRIS.

19 Do you see that?

20 WITNESS OOMS: Yes.

21 MS. ANSLEY: Is it your understanding --

22 THE WITNESS: That's my guess.

23 MS. ANSLEY: Why is that your guess?

24 WITNESS OOMS: Well, I was -- If the FEIRs is
25 like an EIR.

1 MS. ANSLEY: Are you referring to the Adopted
2 FEIR for the California WaterFix for July of 2017?

3 And you don't have to verify the date.

4 What I'm asking for: Are you referring to the
5 Adopted FEIR for the California WaterFix?

6 WITNESS OOMS: I assume I am, yes.

7 MS. ANSLEY: Did you draft this testimony and
8 insert the cites yourself.

9 WITNESS OOMS: I cannot. He -- I had help
10 doing this.

11 MS. ANSLEY: And who helped you doing it?

12 WITNESS OOMS: Michael.

13 MS. ANSLEY: Did you read Chapter 16 of the
14 FEIR?

15 WITNESS OOMS: No, I did not.

16 MS. ANSLEY: Turning to Page 2, do you see
17 here where you reference the SDEIS?

18 WITNESS OOMS: What line?

19 MS. ANSLEY: At Line 6 through 9, you have two
20 references to the SDEIS.

21 WITNESS OOMS: Yes.

22 MS. ANSLEY: And is it your understanding
23 that's meant to be the Recirculated Draft EIR/SEIS -- I
24 apologize -- for the California WaterFix?

25 WITNESS OOMS: I assume.

1 MS. ANSLEY: Again, did you not put in the
2 references to the SDEIS in your testimony?

3 WITNESS OOMS: I did not.

4 MS. ANSLEY: Did you review the --

5 WITNESS OOMS: I did not, no.

6 MS. ANSLEY: -- recirculated --

7 WITNESS OOMS: I do not know.

8 MS. ANSLEY: You do not know.

9 I do have three more clarifying questions now.

10 Mr. Kinzel, I understand that you're a Traffic
11 Engineer.

12 Am I correct in understanding that you
13 reviewed Chapter 19 and Appendix -- the appendices that
14 were attached to Chapter 19 for the FEIR?

15 WITNESS KINZEL: That's correct.

16 MS. ANSLEY: And you understand that the
17 appendix to Chapter 19 was the actual Traffic Impact
18 Analysis done by the Department of Water Resources?

19 WITNESS KINZEL: Yes.

20 MS. ANSLEY: Okay. Mr. Morgan and Mr. Wells,
21 the same -- the question is to both of you, but I'd
22 like an individual answer.

23 Did you both draft your own testimony?

24 WITNESS MORGAN: Yes, I did.

25 MS. ANSLEY: Mr. Wells.

1 WITNESS WELLS: Yes.

2 MS. ANSLEY: And did you both review the
3 chapter from the FEIR on recreational impacts?

4 WITNESS WELLS: Yes.

5 WITNESS MORGAN: Yes, I did.

6 MS. ANSLEY: Thank you.

7 I have no further questions.

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

10 MR. BRODSKY: I have some redirect.

11 CO-HEARING OFFICER DODUC: There are other
12 cross.

13 Miss Ansley, though, however, before you
14 leave.

15 Why don't I ask Mr. Deeringer to ask the
16 question that staff has of you, not related to the
17 cross-examination.

18 MS. ANSLEY: Oh, okay.

19 MR. DEERINGER: So Division staff have gotten
20 some indication that DWR has released an Administrative
21 Draft of the EIR supplement that's been forthcoming but
22 Division staff haven't received a copy so we want to
23 inquire of DWR whether one was going to be sent to the
24 State Water Board, or if it had already been sent and
25 we somehow lost it.

1 MS. ANSLEY: I will do my best to get you an
2 answer while the cross is being conducted. And what
3 I'll be doing is pretty much texting back to DWR to see
4 if I can get something certain on that for you.

5 CO-HEARING OFFICER DODUC: Great. Thank you.

6 MR. DEERINGER: Thank you.

7 CO-HEARING OFFICER DODUC: Mr. Ruiz, you're
8 up.

9 MR. RUIZ: Good afternoon. Dean Ruiz for the
10 South Delta Water Agency parties.

11 And I just have a few questions -- I think
12 it's 10 to 15 minutes, a few couple questions for
13 Mr. Kinzel -- Mr. Kinzel, Mr. Wells and Mr. Morgan.

14 CROSS-EXAMINATION BY

15 MR. RUIZ: Mr. Kinzel, in your testimony, you
16 speak about the Highway 12 extensively.

17 Highway 12's a two-lane highway; correct?

18 WITNESS KINZEL: That's correct.

19 MR. RUIZ: And you testified about DWR's error
20 in stating that the Rio Vista Bridge has 144 feet of
21 vertical clearance; correct?

22 WITNESS KINZEL: Right.

23 MR. RUIZ: And how much clearance actually is
24 that? How much vertical clearance is at that bridge?

25 WITNESS KINZEL: I believe it's -- Depending

1 upon the tidal, I think it's 18 feet.

2 MR. RUIZ: Is there anything significant about
3 the 144-foot figure relative to -- Was there any
4 significant of having 144 feet of vertical clearance?

5 WITNESS KINZEL: I think they were -- I assume
6 they're thinking of another bridge at another location,
7 and that's the -- But I don't -- There's nothing
8 magical about that number, I mean, in my opinion.

9 MR. RUIZ: We're talking about barge -- barges
10 that are going to be having to access the rivers and
11 it's going to result in the opening of -- of these
12 bridges.

13 You've testified about that; correct?

14 WITNESS KINZEL: Yes.

15 MR. RUIZ: In addition to barges, I mean --
16 And you've seen a picture. Somebody put up a picture
17 of the barges.

18 How much clearance is necessary for barges
19 to -- to pass without the need to open a bridge
20 generally?

21 WITNESS KINZEL: Well, most barges would clear
22 all the bridges. But if there's a tugboat involved,
23 then they wouldn't.

24 The tugboat are -- are tall. They have to be
25 tall because they're pushing and the operator of the

1 tugboat needs to be able to see over the -- whatever's
2 on the barge, whether it's a pile of muck or tunnel
3 liners, that sort of thing.

4 So it's -- It depends upon what's being
5 carried in the -- in the barge. But I would think it's
6 got to be 30 or 40 feet, something of that range,
7 before -- And the other gentlemen up here can respond
8 to that, I think, probably more accurately as to what
9 will fit.

10 MR. RUIZ: Please do if you know.

11 WITNESS MORGAN: I would say that I can only
12 think of two bridges offhand, one being the Antioch
13 Bridge, the other one being the Highway 12 Tower Park
14 Bridge, that a barge would fit under without having to
15 open it.

16 Every other bridge that I'm aware of on the
17 Delta would be required to be opened for a barge to
18 pass.

19 MR. RUIZ: Thank you.

20 Referring you, Mr. Kinzel, to Page 2 of your
21 testimony at -- which is at SCDA-100, at Line 19.

22 You talk about or you write about --

23 (Exhibit displayed on screen.)

24 MR. RUIZ: -- that there will be a 41 percent
25 increase in traffic crossing the Rio Vista Bridge due

1 to increased truck and car trips by vehicles,
2 et cetera.

3 Is that relative to -- And that is a result
4 of -- of WaterFix; is that right?

5 WITNESS KINZEL: That's correct.

6 MR. RUIZ: And that is relative to what --
7 what timeframe? I mean, is that 41 percent over the
8 life of the Project, or is that on some other
9 timeframe?

10 WITNESS KINZEL: We usually think of expressed
11 traffic as either per peak hour or for an average day.

12 And so this, I believe, references peak
13 periods of the day. This is -- This is taken from
14 the -- originally taken from the appendix of the -- or
15 the traffic section appendix.

16 And if I'm not -- I can look at that reference
17 right now and answer that more accurately.

18 (Examining document.)

19 WITNESS KINZEL: So these are -- these are
20 hourly volumes. So the hourly volumes would increase
21 by 41 percent as a result of Project traffic.

22 Hourly volumes are important because that's --
23 When highways are designed or evaluated, you're using
24 the peak hour for that purpose.

25 MR. RUIZ: Okay. And that's relative to

1 existing conditions today or some other specific period
2 of time, if you know?

3 WITNESS KINZEL: Well, existing LOSF, which is
4 the worst condition, and it's 41 percent worse than
5 that, yes.

6 MR. RUIZ: Relative to Level of Service F is
7 what you're saying?

8 WITNESS KINZEL: Yes.

9 MR. RUIZ: And what does that mean? What
10 is -- Just from a layman's standpoint, what is Level of
11 Service F? What's the significance of that? Or what
12 does that stand for, if you will?

13 WITNESS KINZEL: When we evaluate the quality
14 of flow of traffic, with Level of Service A resulting
15 in no delays to motorists. Or lower than desired
16 speeds. Level of Service F essentially means
17 stop-and-go traffic.

18 MR. RUIZ: Okay. Thank you.

19 WITNESS KINZEL: With long delays.

20 MR. RUIZ: Referring you quickly to Page 3 of
21 your testimony at Line 24, you say that (reading):

22 "The existing Rio Vista Bridge is
23 recognized as a significant capacity
24 constraint for both river and highway
25 traffic."

1 What is meant by "significant capacity
2 constraint"? And is that related directly to Level of
3 Service F or are those two different -- they have two
4 different meanings?

5 WITNESS KINZEL: It's -- It's essentially the
6 Level of Service F condition, and the fact that, from
7 the water standpoint, when the bridge is opened to
8 serve the water traffic, the -- the Level of Service
9 essentially goes to zero. It stops, and the traffic is
10 waiting.

11 So it's Level of Service F on average there in
12 the busy period if there are no bridge openings.

13 MR. RUIZ: Thank you.

14 Referring you to Page -- same page, line --
15 Page 4, Line 14, you -- beginning in there, you begin
16 to testify about the Mokelumne River Bridge.

17 WITNESS KINZEL: Yes.

18 MR. RUIZ: Is it true that this bridge, the
19 Mokelumne River Bridge, just has 8 feet of vertical
20 clearance?

21 WITNESS KINZEL: That's correct.

22 MR. RUIZ: And that bridge is located directly
23 in front of a major marina in the Del -- North Delta,
24 that being B & W Marina; is that correct?

25 WITNESS KINZEL: That's what I understand.

1 MR. RUIZ: And maybe, Mr. Wells or Mr. Morgan,
2 are you aware that -- the proximity of marinas to --
3 nearby marinas to the B & W Bridge?

4 WITNESS WELLS: Yes, very well.

5 The B & W Resort's very close to the
6 Highway 12 Bridge.

7 MR. RUIZ: Thank you.

8 And there are other marinas nearby?

9 WITNESS WELLS: Yes, many.

10 Perry's -- B & W's just upstream, Perry's is
11 just downstream. There's numerous other marinas along
12 the Mokelumne there.

13 MR. RUIZ: Thank you.

14 Mr. Kinzel, Page 5 of your testimony, Line 6,
15 you begin to -- you talk about -- You say (reading):

16 "In reality . . . Caltrans volumes
17 already (sic) show . . . 2400 vehicles
18 per hour vehicles per hour . . ."
19 . . . using the Mokelumne River Bridge.

20 That equates to a Level of Service F as well?

21 WITNESS KINZEL: Yes, it does.

22 MR. RUIZ: And that will be further negatively
23 impacted by WaterFix, as you understand the Project;
24 correct?

25 WITNESS KINZEL: Yes.

1 MR. RUIZ: Page 6, Line 7 of your -- beginning
2 about Line 7 of your testimony, you talk about -- and I
3 won't go into all of it.

4 But you talk about significant increases up to
5 3, 4, 500 percent increases on certain key roads in the
6 North Delta, including Walnut Grove Road, which you
7 expect to have a -- I believe, an increase of 400 to
8 500 percent.

9 What specifically are you referring to there?
10 Are you talking about the number of trip ins?

11 WITNESS KINZEL: Well, if you -- if you just
12 take a point on the road and measure the traffic as to
13 what goes by there in a day's time, that's -- so that's
14 number of vehicles crossing a specific point.

15 And according to the EIR Appendix itself,
16 those are -- those are those -- where those numbers are
17 sourced.

18 MR. RUIZ: Okay. You also refer -- On Page 7
19 of your testimony, you list -- you discuss several
20 Mitigation Measures or the Mitigation Measures proposed
21 are ineffective.

22 The third bullet there you reference is,
23 Mitigation Measure TRANS; i.e.

24 (Reading):

25 "Make good-faith efforts to enter

1 into mitigation agreements . . ."

2 Based on your professional experience, are --
3 is a Mitigation Measure that's based on good-faith
4 efforts appropriate or something that you can
5 reasonably rely on?

6 WITNESS KINZEL: Well, if it's a small little
7 development of some sort, yes.

8 But for a massive Project like this, with
9 documented problems several times beyond what the
10 street system can hold, I don't know what good-faith
11 efforts could possibly result in.

12 MR. RUIZ: Thank you.

13 A couple of questions that are directed for --
14 directed at Mr. Wells.

15 WITNESS WELLS: Yes.

16 MR. RUIZ: At Page 6 of your testimony,
17 beginning at -- well, at Line 12 to 14, you -- you
18 indicate that, in your opinion, a large number of water
19 sport people, for lack of a better term, will stop
20 coming into the Delta because of the CWF.

21 That's your opinion; correct?

22 WITNESS WELLS: Yes, my opinion.

23 MR. RUIZ: And there were some . . . testimony
24 or references early -- earlier in this -- in the case
25 in chief to other locations or other waterways that the

1 folks might choose to go to reasonably because there
2 would be lack of delays and wouldn't suffer the same
3 impacts or irritations that WaterFix would cause.

4 Tahoe was mentioned, and the Bay.

5 There are other very nearby reservoirs that
6 folks could choose to go to for boating experiences
7 that wouldn't be impacted by the delays caused by
8 WaterFix; aren't there?

9 WITNESS WELLS: Yes. The Folsom Reservoir,
10 several reservoirs within, say, 50 miles of the Delta.

11 MR. RUIZ: Does that include Camanche?

12 WITNESS WELLS: I believe so. Not too
13 familiar with Camanche.

14 MR. RUIZ: New Hogan.

15 WITNESS WELLS: Yeah, probably.

16 MR. RUIZ: McCullough.

17 WITNESS WELLS: Yes.

18 MR. RUIZ: New Don Pedro.

19 WITNESS WELLS: Yes.

20 MR. RUIZ: Even Lake Berryessa over to the
21 west.

22 WITNESS WELLS: That's within approximately,
23 yes.

24 MR. RUIZ: And these are all very -- very
25 viable options within, as you say, 50 minutes to an

1 hour from the Delta.

2 WITNESS WELLS: Yes.

3 MR. RUIZ: And one of the features of the
4 Delta -- Would you agree that one of the features of
5 the Delta, or why people choose to boat there, is
6 because of the tranquility, the large vast stretches of
7 waters that aren't subject to five-mile-per-hour zones.

8 WITNESS WELLS: Yes, I totally agree. It's --
9 That's part of the Delta is the -- being way out of
10 civilization.

11 MR. RUIZ: But, in fairness, there are also
12 limitations in the Delta relative to certain
13 reservoirs, and reservoirs have wide open water,
14 et cetera, that the Delta doesn't have; correct?

15 WITNESS WELLS: Well, there's wide open water
16 throughout a lot of the Delta. San Joaquin River for
17 one. There's plenty of water-ski places.

18 MR. RUIZ: But there are sloughs in the Delta
19 that are narrow that don't exist in reservoirs.

20 WITNESS WELLS: True, yes.

21 MR. RUIZ: But folks still choose the Delta
22 because of the uniqueness of it, the location of
23 marinas, and restaurants, et cetera; right?

24 WITNESS WELLS: Yes. I think it's the overall
25 experience.

1 MR. RUIZ: And it's your view that if -- Well,
2 your view is that there's going to be up to a certain
3 percentage, I think you said 20 percent, of marinas, in
4 your view, that will close as a result of WaterFix.

5 WITNESS WELLS: Yes.

6 MR. RUIZ: And you think that would impact
7 people's choices in terms of using the Delta as a
8 recreational location.

9 WITNESS WELLS: Yes.

10 MR. RUIZ: I have no further questions.

11 CO-HEARING OFFICER DODUC: Thank you,
12 Mr. Ruiz.

13 Mr. Keeling is up next.

14 MR. KEELING: Tom Keeling for the San Joaquin
15 County Protestants.

16 This is a pretty confined panel, but I'm happy
17 if you want, to list my subject areas.

18 CO-HEARING OFFICER DODUC: Nope.

19 MR. KEELING: Thank you.

20 CO-HEARING OFFICER DODUC: Go for it.

21 CROSS-EXAMINATION BY

22 MR. KEELING: My first questions will be for
23 Mr. Kinzel.

24 You testified earlier that you earned your
25 degree at the University of California.

1 Could you tell me what campus?

2 CO-HEARING OFFICER DODUC: This is a Stanford
3 guy asking, because we know that University of
4 California, there's only one.

5 (Laughter.)

6 MR. KEELING: Could you tell me which campus?

7 WITNESS KINZEL: If I said Richmond, would you
8 be disappointed?

9 I went to the Richmond field station when it
10 was part of the University of Cal, Berkeley, Institute
11 of Transportation Studies, back in 1965.

12 MR. KEELING: And did you say Berkeley?

13 WITNESS KINZEL: Berkeley, yes.

14 MR. KEELING: Thank you.

15 (Laughter.)

16 MR. KEELING: Miss Gaylon, could you call
17 up --

18 MR. BRODSKY: There's an inside joke here I'm
19 missing somewhere. It's too bad I haven't been coming
20 in years.

21 CO-HEARING OFFICER MARCUS: Mr. Brodsky, if
22 you knew, you wouldn't be wearing red.

23 MR. KEELING: Could you call up the -- what
24 would be SWRCB-102, which is the FEIR.

25 And I would like you to go to the mapbook,

1 which is found at Chapter 15, Recreation.

2 (Exhibit displayed on screen.)

3 MR. KEELING: And when you get to the mapbook
4 figures and that opens, there's a set of mapbook
5 figures for each alternative, Alternative 1, 2,
6 et cetera.

7 And they are labeled M15-1, et cetera,
8 et cetera.

9 I need you to go to M15-4.

10 (Exhibit displayed on screen.)

11 MR. KEELING: Oh, you have it. By golly.

12 Thank you very much.

13 Mr. Kinzel, taking a look at this page from
14 the EIR mapbook --

15 MR. BRODSKY: Could I just ask if we could
16 make it a little bigger. My eyes are not that great.
17 I'm having --

18 (Exhibit displayed on screen.)

19 MR. BRODSKY: There we go. Thank you.

20 Oh, I'm sorry, maybe a little smaller.

21 (Exhibit displayed on screen.)

22 MR. BRODSKY: There you go.

23 WITNESS KINZEL: Perfect.

24 MR. KEELING: Mr. Kinzel, I'd like to direct
25 your attention to the site just above the -- and to

1 the -- just to the right of the green section, the
2 Clifton Court Forebay.

3 Do you see the label "Barge Unloading
4 Facility" there?

5 WITNESS KINZEL: Yes.

6 MR. KEELING: My question of you is: What, if
7 any, impact will barge traffic accessing the Clifton
8 Court Forebay Barge Unloading Facility shown on this
9 sheet have on recreational road traffic on Highway 4?

10 WITNESS KINZEL: Dramatic. The -- Since it's
11 here, here's the area you're talking about
12 (indicating).

13 And what we -- what we've learned from the
14 study, that there's going to be eight trips per day of
15 tunnel liners (indicating) -- excuse me -- on the Old
16 River, which will necessitate -- And that's just barges
17 carrying the tunnel liners, not -- just ignoring for a
18 second the barges carrying muck to the -- to the muck
19 dumps (indicating) which are located where I'm
20 pointing.

21 So this is the Highway 4 Bridge (indicating),
22 and you can barely make out that there's a really sharp
23 turn here (indicating). They made the bridge to be
24 short so it was perpendicular to the bridge. Weren't
25 thinking too much about the highway traffic when they

1 did that.

2 But there's sharp curves at either end
3 (indicating), and there's a low-level bridge there that
4 needs to be open to let those barges pass through.

5 This is Discovery Bay (indicating). There's
6 about 13,000 people that live there. It's a very, very
7 busy commute route, and it's the only --

8 MR. BRODSKY: Could we scroll down just a
9 little bit.

10 (Exhibit displayed on screen.)

11 MR. BRODSKY: Other way. I'm sorry. So we
12 can see Discovery Bay.

13 Can we flip -- There's this -- Okay. Thank
14 you. Sorry.

15 WITNESS KINZEL: Discovery Bay is here
16 (indicating). And the way in and out of Discovery Bay,
17 the main entrances are located right here (indicating),
18 just a little distance from this bridge.

19 The bridge right now, since there's nothing
20 down here, there's no reason to open that bridge. I
21 have an employee in my office who commutes on that
22 daily. He says he's never seen it opened. And I've
23 heard testimony from people that live in that area.
24 They haven't seen it opened, either.

25 So now we're saying it's going to be opened

1 for the tunnel liners alone eight times a day, and I
2 suspect that's going to be 20 to 30 minutes each time
3 if it's like the others, plus whatever muck barges are
4 needed.

5 So, it's going to be very busy.

6 If you look further, the tunnel liners are
7 going to be brought here (indicating) and stored for --
8 for future distribution.

9 When they're distributed, most of them would
10 be distributed by truck. And -- And the road that's
11 available is over here on the left side (indicating),
12 Byron Highway, which comes up here (indicating) and it
13 makes this turn (indicating) and then goes wherever you
14 want to go. You can go up to various towns.

15 But, for our case, the tunnel liners would be
16 delivered to the nearest shafts. Here's one here
17 (indicating), and there's a road that leads to that.

18 MR. BRODSKY: Wait.

19 Can I just point out to the Hearing Officer
20 that Mr. Kinzel has his pointer on the screen there if
21 they are interested in seeing what he's pointing out.

22 WITNESS KINZEL: So this is the road
23 (indicating) that would be built to -- for the trucks
24 that are taking the tunnel liners from somewhere in
25 this area (indicating) up Byron Highway (indicating),

1 cross on Highway 4 (indicating), open the bridge.

2 I'm sorry. The trucks don't have to open the
3 bridge. That's the barges.

4 Over the bridge, and then down to this point
5 (indicating) and from -- at that point, the tunnel
6 liners would be lowered into the tunnel.

7 The next location to the north --

8 If we could scroll down a little bit.

9 (Exhibit displayed on screen.)

10 WITNESS KINZEL: The other direction.

11 (Exhibit displayed on screen.)

12 WITNESS KINZEL: -- would be -- There's --

13 There's another shift up here (indicating). I guess
14 it's on the next picture. Excuse me. And -- And
15 there's a road here (indicating) that goes up to that
16 point.

17 So those trucks, again, distributing tunnel
18 liners would go from this area (indicating) up here
19 (indicating) through this highway, Highway 4
20 (indicating) -- very congested by the way -- and then
21 up -- up to this point (indicating) so --

22 MR. KEELING: I believe you said -- When you
23 said "from here," you were pointing to the Lazy M
24 Marina?

25 Remember, your description in the transcript,

1 but nobody's going to be seeing this map.

2 WITNESS KINZEL: I'm sorry.

3 So it's not the -- it's not the marina.

4 MR. KEELING: Okay.

5 WITNESS KINZEL: It's from Byron Highway
6 (indicating) northwesterly up to Highway 4 (indicating)
7 and then easterly over the bridge (indicating) to
8 either the shaft that leads to the south on a new road
9 that will be built (indicating), or the new road that
10 will be built to go to the next shaft to the north
11 (indicating).

12 And, of course, this would repeat itself all
13 the way beyond there. And since this is one of two
14 landing points for the -- for the shafts -- tunnel
15 liners, excuse me, there will be other locations that
16 these will need to be trucked to.

17 One or two of them are close to barge landings
18 and they -- and could be reloaded on to the barge. But
19 either way, they create an issue related to
20 transportation.

21 MR. KEELING: My question was with respect to
22 the effect on recreational road traffic on Highway 4.

23 You answered with the word "dramatic."

24 WITNESS KINZEL: Yes.

25 MR. KEELING: Do I correctly infer that if I

1 asked you the same question with respect to commuter
2 traffic on Highway 4, your answer would be the same?

3 WITNESS KINZEL: Yes. Yes. Dramatically bad
4 in this case, if you go further.

5 MR. KEELING: You referred earlier in your
6 testimony to site-specific Traffic Mitigation Plans
7 proposed by DWR.

8 Are you aware that any of those plans actually
9 exist at this time?

10 WITNESS KINZEL: No, I'm not aware of any.

11 MR. KEELING: Mr. Morgan.

12 WITNESS MORGAN: Yes.

13 MR. KEELING: What's the main season for
14 boating in the Delta?

15 WITNESS MORGAN: Summer, certainly, and early
16 fall.

17 MR. KEELING: Okay. Can you explain to me
18 succinctly what you think the effect of proposed
19 California WaterFix barge landing sites would be on
20 boating in the Delta.

21 WITNESS MORGAN: Well, as I stated in my
22 testimony, I'm out on the water all the time, many,
23 many cruises, and I'm very familiar with the different
24 types of recreational activities on the Delta for sure.

25 A lot of it is wake boarding and water-skiing.

1 When you're wake boarding and water-skiing that's not a
2 stop --

3 (Timer rings.)

4 WITNESS MORGAN: -- sport.

5 You don't go a couple hundred yards and then
6 the boater -- the driver stops and then drags the skier
7 past a five-mile-an-hour zone and then takes off again.

8 When people come in contact with that kind of
9 environment, they choose to go somewhere else. And
10 that's what will happen on the Delta when you're
11 talking all of these different five-mile-an-hour zones.
12 It doesn't sound like much. It doesn't sound like a
13 big inconvenience.

14 But I can tell you, just by the plans we've
15 seen on the maps, especially in the Northern Delta by
16 the tunnel intakes, you're effectively closing the
17 river to recreational boaters.

18 Nobody is going to go by 4 miles or 5 miles of
19 pounding pile drivers to get to the other side. They
20 just -- They'll do it once because they made a mistake,
21 and then the next time, they'll be somewhere else.

22 MR. KEELING: Thank you.

23 I have -- if you can bear with me -- two very
24 short questions about outreach.

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

1 MR. KEELING: Mr. Ooms, as I recall, you're
2 the Director of the Locke Management Association?

3 WITNESS OOMS: Yeah. I'm the current
4 Chairman, yes.

5 MR. KEELING: Current Chair.

6 At any time, has the Department of Water
7 Resources reached out to you to discuss the potential
8 impacts of California WaterFix on the town of Locke?

9 WITNESS OOMS: Not to my knowledge.

10 MR. KEELING: Mr. Wells.

11 WITNESS WELLS: Yes, sir.

12 MR. KEELING: I believe you've been involved
13 in this process for a while. I have a similar question
14 for you:

15 Has DWR discussed with you the possibility of
16 relocating muck disposal sites -- I say relocating --
17 locating them other than as proposed in the plan now?

18 WITNESS WELLS: No. In fact, I'd add that in
19 my however many years of dealing with this, DWR has
20 never, ever returned a phonecall that I've called in
21 inquiring about anything. I'll say the same for many
22 other people.

23 MR. KEELING: Thank you very much.

24 WITNESS WELLS: You're welcome.

25 MR. KEELING: That's it.

1 CO-HEARING OFFICER DODUC: Mr. Jackson just
2 left the room.

3 MR. KEELING: I think he may have deferred to
4 Miss Des Jardins.

5 CO-HEARING OFFICER DODUC: Miss Des Jardins.

6 Mr. Brodsky, do you still intend to have
7 redirect?

8 MR. BRODSKY: I do.

9 CO-HEARING OFFICER DODUC: Okay. How much
10 time do you anticipate needing for redirect?

11 MR. BRODSKY: No more than 15 minutes.

12 CO-HEARING OFFICER DODUC: That means that
13 you're coming back on Monday for redirect.

14 MS. DES JARDINS: I just have one question but
15 I can forego it.

16 MR. BRODSKY: Go ahead.

17 MS. DES JARDINS: I could forego the question.

18 CO-HEARING OFFICER DODUC: Keeping in mind
19 that, depending on Mr. Brodsky's redirect, there might
20 be recross.

21 MS. DES JARDINS: Oh.

22 CO-HEARING OFFICER DODUC: I leave it up to
23 you guys, but --

24 MR. BRODSKY: Go ahead.

25 CO-HEARING OFFICER DODUC: -- time is kicking.

1 MS. DES JARDINS: Okay. Then let me go.

2 CROSS-EXAMINATION BY

3 MS. DES JARDINS: Then let's -- I wanted to
4 ask you a question about the Construction Schedule, and
5 I'd like to pull up exhibit DWR-212, please.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: And I'd like to go to
8 Exhibit --

9 MR. BRODSKY: Actually, if it's possible, I'd
10 like to try the redirect and get it done, if you're
11 willing to forego.

12 MS. DES JARDINS: Let me just --

13 MR. BRODSKY: All right.

14 MS. DES JARDINS: -- go to this page for just
15 a minute. 135.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: Zoom out, please.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: And this is just -- I don't
20 know if any of you are aware of this, but they're
21 talking about doing tunneling simultaneously.

22 CO-HEARING OFFICER DODUC: And what is this
23 document? You need to set some foundation.

24 MS. DES JARDINS: This is -- Excuse me.

25 This is the Exhibit DWR-212. This is the

1 tunneling. This is -- It's the tunnel engineering.

2 I was wondering any of you were aware that DWR
3 is talking about doing simultaneous tunneling along all
4 these different Reaches.

5 WITNESS WELLS: You mean those straight lines
6 are all --

7 MS. DES JARDINS: Yeah. Each of those is
8 potentially -- is a potentially different contract all
9 being done simultaneously.

10 WITNESS WELLS: I am not aware of anything
11 like that.

12 MS. DES JARDINS: Would it affect the impacts
13 you're discussing about traffic and barge traffic?

14 WITNESS WELLS: Yes. Any of those would be --

15 CO-HEARING OFFICER DODUC: Hold on.

16 Miss Ansley.

17 MS. ANSLEY: Assumes facts not in evidence.

18 He's not aware of this document, I would
19 imagine, or this analysis.

20 She asked a very simple question. She didn't
21 get his understanding. But now she's asking would it
22 have impact on the testimony he's given? And I don't
23 believe he has enough familiarity. There's been no
24 foundation laid for that.

25 CO-HEARING OFFICER DODUC: Sustained.

1 MS. DES JARDINS: Okay. Thank you.

2 That concludes my questions.

3 CO-HEARING OFFICER DODUC: Mr. Brodsky, are
4 you still going to attempt to redirect, keeping in mind
5 that other parties have the opportunity to recross.

6 MR. BRODSKY: I think, rather than to rush it
7 we'll just -- we'll come back Monday.

8 CO-HEARING OFFICER DODUC: And do you have
9 redirect for all your witnesses?

10 MR. BRODSKY: I have redirect for -- Yes.

11 CO-HEARING OFFICER DODUC: Then, gentlemen,
12 have a good weekend.

13 We will see you Monday at 9:30 here in this
14 room.

15 WITNESS WELLS: Thank you.

16 (Proceedings adjourned at 12:50 p.m.)

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1 State of California)
2 County of Sacramento)

3

4 I, Candace L. Yount, Certified Shorthand Reporter
5 for the State of California, County of Sacramento, do
6 hereby certify:

7 That I was present at the time of the above
8 proceedings;

9 That I took down in machine shorthand notes all
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and
14 correct transcription of said shorthand notes, and a
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 26, 2018

23

24

25

Candace L. Yount, CSR No. 2737