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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION)
HEARING)

JOE SERNA, JR. BUILDING

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

COASTAL MEETING ROOM

1001 I STREET

SECOND FLOOR

SACRAMENTO CALIFORNIA

PART 2 SURREBUTTAL

Wednesday, September 26, 2018
9:30 A.M.

VOLUME 51
Pages 1 - 228

Reported By: Deborah Fuqua, CSR No. 12948
(a.m. session)
Candace Yount, CSR No. 2737
(p.m. session)

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6 Felicia Marcus, Chair and Co-Hearing Officer:
7 Dorene D'Adamo, Board Member
8 Staff Present
9 Andrew Derringer, Senior Staff Attorney
10 Conny Mitterhofer, Senior Water Resources Control Engr.
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26 State Water Contractors
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31 (continued)

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3 Central Delta Water Agency, South Delta Water Agency
(Delta Agencies)

4 Dean Ruiz

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6 San Joaquin County
Thomas Keeling

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8 City of Antioch
Matthew Emrick

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10 Local Agencies of the North Delta
Osha Meserve

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21 County of Contra Costa, Contra Costa Water Agency, and
County of Solano

22 Daniel Wolk

23

24

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E X H I B I T S

THE ENVIRONMENTAL JUSTICE COALITION FOR
WATER; ISLANDS, INC.; LOCAL AGENCIES OF
THE NORTH DELTA; BOGLE VINEYARDS/DELTA
WATERSHED LANDOWNER COALITION; DIABLO
VINEYARDS AND BRAD LANGE/DELTA WATERSHED
COALITION; STILLWATER ORCHARDS/DELTA
WATERSHED LANDOWNER COALITION; BRETT G.
BAKER AND DANIEL WILSON:

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CONTRA COSTA COUNTY, CONTRA COSTA COUNTY
WATER AGENCY, AND SOLANO COUNTY:

NUMBER	ADMITTED PAGE
70 through 76150	

CALIFORNIA WATER RESEARCH:

NUMBER	ADMITTED PAGE
(all exhibits)	225

PACIFIC COAST FEDERATION OF FISHERMEN'S
ASSOCIATIONS, et al., and INSTITUTE FOR
FISHERIES RESOURCES:

NUMBER	ADMITTED PAGE
(all exhibits)	225

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1 Thursday, August 2, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: All right. Good
5 morning, everyone. Please take a seat. Welcome back.

6 I'm Tam Doduc. To my right is Board Chair and
7 Co-Hearing Officer Felicia Marcus. We will be joined
8 shortly and will be sitting to the Chair's right is
9 Board Member DeeDee D'Adamo.

10 To my left are Andrew Deeringer,
11 Conny Mitterhofer, and Hwaseong Jin. We are also
12 assisted today by Mr. Hunt and Ms. Rasisis.

13 You all know where you are, so I won't repeat
14 that. You all know why we're here; I won't repeat that
15 either.

16 Three important announcements, since I do see
17 a few from -- well, at least one new face. Please take
18 a look around, identify the exits closest to you. In
19 the event of an emergency, an alarm will sound. We
20 will evacuate, taking the stairs, not the elevators,
21 down to the first floor and meet up in the park across
22 the street. If you're not able to use the stairs,
23 please flag down one of the security safety people, and
24 they will direct you to a protective area.

25 Secondly, this is being recorded and

1 Webcasted, so please speak into the microphone when I
2 authorize you to do so. And please begin by stating
3 your name and affiliation for our wonderful, marvelous
4 court reporter, who is back with us today.

5 Third, and most importantly, since you have
6 been away from me for a while, please take a moment and
7 make sure all your noise-making devices are on silent,
8 vibrate, "do not disturb."

9 All right. There's been a flux of emails, so
10 I assume that we will have to begin today with some
11 housekeeping matters.

12 Mr. Mizell and Mr. Emrick on behalf --
13 oh, Ms. Womack is here as well. The flux of e-mails
14 that I read at 5:30 this morning -- what a great way to
15 begin the day -- was from the two of you regarding the
16 proposed change in order with respect to DWR's
17 witnesses.

18 Do you have anything new to add? Because I
19 did read all of your emails starting at 5:30 this
20 morning. Is there anything new you wish to add?

21 MR. EMRICK: No.

22 CO-HEARING OFFICER DODUC: All right. In that
23 case, our ruling stands. DWR's two witnesses, thank
24 you both for coming today. But we will get to you at a
25 later time.

1 So let's take a moment now and discuss what
2 that later time might be. And that will be based on
3 cross-examination anticipated for surrebuttal
4 testimony. We will begin today with the County of San
5 Joaquin and CSPA presentation, Mr. Kier.

6 What is the estimated cross-examination for
7 Mr. Kier?

8 MS. MORRIS: The Department and the State
9 Water Contractors probably have a ten-minute,
10 potentially. But we also have -- it's going to depend
11 on some rulings and some clarification as to the scope
12 of surrebuttal. So I would caveat that with that.

13 CO-HEARING OFFICER DODUC: So in other words,
14 the ten minutes might be longer?

15 MS. MORRIS: Correct.

16 CO-HEARING OFFICER DODUC: Any estimate on
17 what that longer time frame might be?

18 MS. MORRIS: It depends on the ruling on the
19 scope.

20 CO-HEARING OFFICER DODUC: And that is not a
21 bribe to the Hearing Officer, right?

22 MS. MORRIS: What's that? No, no. I would
23 never do that.

24 CO-HEARING OFFICER DODUC: Any other cross for
25 Mr. Weir [sic]? Kier, sorry. Kier. That's what

1 happens when you start reading legal arguments at 5:30
2 in the morning.

3 MS. MESERVE: Good morning, Osha Meserve for
4 LAND, and I have 15 minutes of cross.

5 CO-HEARING OFFICER DODUC: All right. We will
6 then move on to LAND, Mr. Russel Van Loben Sels.

7 Estimates of cross?

8 MS. MORRIS: Again, on behalf of a joint
9 cross-examination by DWR and the State Water
10 Contractors, we are anticipating no cross, again,
11 depending on the ruling.

12 CO-HEARING OFFICER DODUC: Mr. Keeling.

13 MR. KEELING: Tom Keeling on behalf of San
14 Joaquin County protestants. I anticipate no more than
15 ten minutes, quite possibly less.

16 CO-HEARING OFFICER DODUC: Ms. Womack.

17 MS. WOMACK: Yes, CCLP, probably about ten
18 minutes, thank you.

19 CO-HEARING OFFICER DODUC: All right. Next up
20 then will be Dr. Denton. Estimated cross for
21 Dr. Denton?

22 MS. MORRIS: This would, again, be a joint
23 cross-examination by DWR and the State Water
24 Contractors. We estimate approximately 30 minutes.

25 CO-HEARING OFFICER DODUC: Anyone else for

1 Dr. Denton?

2 MS. MESERVE: Osha Meserve for LAND, 15
3 minutes.

4 MR. JACKSON: Michael Jackson for CSPA, CWIN
5 and AquAlliance. No more than 20, likely shorter.

6 MR. RUIZ: Good morning. Dean Ruiz for South
7 Delta Water Agency parties. I'll reserve 10 to 15, but
8 it could be less depending on the earlier cross.

9 CO-HEARING OFFICER DODUC: All right. Next
10 would be Ms. Des Jardins. Since we did not notify her
11 yesterday that we expected her to be here today, I
12 don't know if she will. But in the event that her
13 witnesses are here today, what is the anticipated cross
14 for Dr. Jahn, I believe it was, and Dr. Williams?
15 We'll get to them either today or tomorrow. I just
16 want an estimate of all the cross up front.

17 MS. MORRIS: Okay. Approximately an hour for
18 both witnesses.

19 MS. MESERVE: Just to clarify, yes,
20 Ms. Des Jardins is intending to get her witnesses here
21 by noon today. I don't know if that's necessary. I
22 guess if it's not, someone could let her know because I
23 know they're traveling.

24 CO-HEARING OFFICER DODUC: At the rate that
25 we're going, I would love to get to her if they are

1 here.

2 MS. MESERVE: Yeah. Okay. So they should
3 keep coming?

4 CO-HEARING OFFICER DODUC: Yes.

5 MS. MESERVE: Then I would like to reserve 15
6 minutes for LAND. Thank you.

7 MR. KEELING: San Joaquin County protestants
8 reserve 10 minutes. Thank you.

9 MR. JACKSON: CSPA, et al. reserves 20 minutes
10 and might not use it all.

11 MR. RUIZ: SCWA parties, 10 minutes.

12 CO-HEARING OFFICER DODUC: All right.

13 Estimate for -- let me -- actually, Clifton
14 Court in terms of cross, any cross?

15 MS. MORRIS: Ten minutes, please.

16 MS. MESERVE: Ten minutes for LAND, please.

17 CO-HEARING OFFICER DODUC: Save Our Sandhill
18 Cranes, estimate of cross for the wonderful
19 photographer Mr. Wirth?

20 MS. MORRIS: We don't anticipate any
21 cross-examination at this time.

22 CO-HEARING OFFICER DODUC: Anyone else?

23 (No response)

24 CO-HEARING OFFICER DODUC: All right.

25 Mr. Burke, cross-examination of Mr. Burke?

1 MS. MORRIS: We estimate about one hour.

2 CO-HEARING OFFICER DODUC: Anyone else for
3 Mr. Burke?

4 MS. MESERVE: Ten minutes for LAND.

5 MR. JACKSON: Ten minutes for CSPA, et al.

6 CO-HEARING OFFICER DODUC: And finally,
7 Dr. Paulsen, estimate of cross for Dr. Paulsen?

8 MS. MORRIS: At this time, we don't estimate
9 any cross-examination.

10 MS. MESERVE: I will update if it changes, but
11 10 minutes for LAND.

12 CO-HEARING OFFICER DODUC: Okay.

13 All right. Based on that, what I am thinking
14 is we'll hopefully -- well, unless something goes awry,
15 we will get through with Mr. Kier and then LAND's
16 witnesses and Dr. Denton, and we'll get also to
17 Ms. Des Jardins, which -- and what I would suggest,
18 then, is on Thursday, we take up Sandhill -- Save Our
19 Sandhill Cranes, Clifton Court.

20 And at this time let me ask, I would like to
21 have DWR present their witnesses either on Thursday or
22 on Friday. Any thoughts on that?

23 MR. MIZELL: I have to check.

24 After checking with my witnesses, they can be
25 here on Thursday.

1 CO-HEARING OFFICER DODUC: Ms. Meserve, if we
2 can get them here on Thursday, then you may all have
3 Friday off, and we will return next week with Mr. Burke
4 and Dr. Paulsen.

5 MS. MESERVE: Well, I do love having the idea
6 of the day off. However, I would say that, due to the
7 late filing or the scheduled late filing of the DWR
8 testimony that we're discussing, I think that I had
9 requested in my e-mail of yesterday that it be delayed
10 at least until Monday so that we have at least a week
11 to review it. So I think that that does short the
12 protestants', including Ms. Womack, of time to analyze
13 what's in there.

14 And I think this falls within a larger concern
15 that I have. Since I'm up here right now, I'll just
16 state it quickly -- is that the hearing is really
17 straying away from what I think would be due process
18 for all the participants due to the crunched timing of
19 all these witnesses.

20 We only -- we were constrained in our
21 surrebuttal from the full range of surrebuttal that we
22 should have been allowed, given the potential impacts
23 of this huge water diversion in the Delta. And then we
24 were given only 11 days ultimately, which, you know,
25 was a slight extension from the original, which we

1 appreciate but still was not enough time to work with
2 experts to respond.

3 And then now we've been given only a couple of
4 days to review each other's testimony. So it really
5 does not allow normal people or even professionals
6 adequate time to participate meaningfully in the
7 process.

8 So I'm very concerned about that as a whole
9 with respect to the hearing, but specifically I'm
10 speaking to the surrebuttal phase. Thank you.

11 CO-HEARING OFFICER DODUC: Since you stated on
12 the record, let me respond on the record. Let it be
13 very clear that, one, surrebuttal and the topic and the
14 issues and the scope of surrebuttal is at the
15 discretion of the Hearing Officer based on the request
16 that was made to us and also based on the scope of
17 rebuttal itself.

18 And additionally, in the normal case of a
19 water rights hearing, we would be going straight from
20 direct to rebuttal to surrebuttal without an 11-day gap
21 or the submission of testimony in advance for people to
22 review.

23 So we actually have made quite a bit of
24 accommodation during this hearing for those people who
25 are not familiar with our water rights processes and do

1 not have experience participating in water rights
2 processes. In my opinion, we have gone way above and
3 beyond providing due process to everybody involved.

4 And on that note, thank you for your comment,
5 Ms. Meserve, but that is not going to change our
6 current ruling.

7 Ms. Womack, do you have anything new to add?

8 MS. WOMACK: Just that I would appreciate more
9 time because my entire -- my entire what I'm testifying
10 about changed completely on the rebuttal phase. And
11 I've -- you know, on Monday, I was given a huge amount
12 of information to process that I have not processed
13 before because I was not -- my --

14 CO-HEARING OFFICER DODUC: Ms. Womack, we
15 understand all of that. That, again, is nothing new,
16 and we have recognized that. We have allowed for
17 additional time.

18 I would ask, again, is there anything new you
19 wish to add?

20 MS. WOMACK: I guess when will I get this
21 additional time?

22 CO-HEARING OFFICER DODUC: You have been given
23 additional time. We have another request by
24 Ms. Meserve that we will take into account. We will
25 let you know later on today.

1 MS. WOMACK: Okay. So tomorrow I will be --
2 we will have to cross-examine on what was provided?

3 CO-HEARING OFFICER DODUC: I have not said
4 that --

5 MS. WOMACK: Oh, okay.

6 CO-HEARING OFFICER DODUC: -- because
7 Mr. Mizell needs to check with his witnesses regarding
8 their availability. But we have done our best to try
9 to accommodate you, Ms. Womack, in many ways. So,
10 please, sit down.

11 MS. WOMACK: Thank you.

12 CO-HEARING OFFICER DODUC: Mr. Mizell.

13 MR. MIZELL: Yes, just to clarify, I had
14 checked with the witnesses. They're both sitting right
15 here. And they indicated they can be here Thursday.

16 CO-HEARING OFFICER DODUC: And what about
17 Friday?

18 MR. MIZELL: They can also be here Friday.

19 CO-HEARING OFFICER DODUC: All right. We will
20 take that into account. Are there any other
21 housekeeping matters?

22 Mr. Jackson. I miss your Friday shirt.

23 MR. JACKSON: Yes. I had to borrow this shirt
24 because I -- I lost the ability to pack in our break.

25 But I do have a question about the fact that

1 we're no longer relying on -- or there is no longer a
2 need to rely on an administrative draft environmental
3 document since the environmental document is out. And
4 I was wondering whether or not we were going to
5 continue to rely on the administrative draft or whether
6 we're going to use a new draft and how that would come
7 into the record.

8 CO-HEARING OFFICER DODUC: Actually,
9 Mr. Jackson we addressed that in a ruling.

10 MR. JACKSON: Oh, you did?

11 CO-HEARING OFFICER DODUC: Yes, and the
12 ruling --

13 And you might jump in and help me out here.

14 But that because the administrative draft is
15 what is in the record, what was the focus of rebuttal,
16 surrebuttal will necessarily have to be responsive to
17 the administrative draft. I believe the ruling also,
18 as I recall it, directed DWR to submit the final when
19 it is done.

20 And at that time, we will hear from parties as
21 to what steps, if necessary, we need to take in order
22 to accept that final document -- which would include
23 this draft -- into our record for proper consideration.

24 Did I miss anything?

25 (No response)

1 CO-HEARING OFFICER DODUC: All right.

2 Ms. Taber.

3 MS. TABER: Good morning, Kelley Taber on
4 behalf of the City of Stockton.

5 This is not a housekeeping matter. It is an
6 objection, so I don't know if you'd want to hear that.

7 CO-HEARING OFFICER DODUC: Is it an objection
8 on an exhibit or a case in chief --

9 MS. TABER: It is an objection to an exhibit,
10 but the --

11 CO-HEARING OFFICER DODUC: Exhibits?

12 MS. TABER: It's not offered with any witness
13 testimony, so there --

14 CO-HEARING OFFICER DODUC: Could you wait
15 until that party comes up before making your objection?
16 Is it going to negate the party's entire testimony?

17 MS. TABER: No. In fact, it's unrelated to
18 any testimony that was submitted, that's why --

19 CO-HEARING OFFICER DODUC: Let's hear it now.

20 MS. TABER: Thank you. I am objecting to the
21 Department of Water Resources' submittal on Friday, the
22 21st, of data that we produced in response to their
23 request on cross-examination of Dr. Susan Paulsen.

24 That information was submitted on Friday and
25 marked with an exhibit number DWR-1415, but the data is

1 not responsive to any of the topics identified in the
2 scope of surrebuttal. So it's outside the scope of
3 surrebuttal as identified in your September 10th
4 ruling.

5 And in any event, it would be untimely even if
6 it were within the scope of surrebuttal.

7 CO-HEARING OFFICER DODUC: Well, let's hear
8 from petitioner. But my understanding was that that
9 exhibit was not submitted for the purposes of
10 surrebuttal.

11 But correct me, please, Mr. Mizell or
12 Ms. Morris.

13 MR. MIZELL: That's right. We submitted the
14 exhibit based upon your ruling that Ms. Taber and her
15 client produce the information based upon the rebuttal
16 testimony.

17 CO-HEARING OFFICER DODUC: And
18 cross-examination.

19 MR. MIZELL: Cross-examination, exactly. So
20 this is very parallel to the exact same circumstance we
21 went through with Mr. Bezerra and the information that
22 was produced by DWR with the cover letter, et cetera.

23 So we went through this exercise once before
24 that, when information is ordered to be produced by the
25 Hearing Officers, it is informative to the record and

1 should be submitted with the cover letter so that it
2 indicates what it is and is not.

3 CO-HEARING OFFICER DODUC: Thank you,
4 Mr. Mizell.

5 That was my understanding of that submission,
6 Ms. Taber.

7 MS. TABER: Well, there's -- the DWR has not
8 requested surrebuttal or asked to bring Dr. Paulsen in
9 for cross-examination upon this evidence. So we would
10 be willing to stipulate to what this evidence
11 represents.

12 Certainly it shows that, had Stockton used
13 DWR's chloride conversion factors, it's chloride
14 conversion would have been lower. It was a very
15 conservative analysis.

16 But it's entirely improper to just allow them
17 to submit it without any sponsoring testimony
18 whatsoever or the opportunity for any of the parties in
19 the proceeding to cross-examine Dr. Paulsen on this
20 testimony. It's very different than the information
21 that was requested by Mr. Bezerra that was -- there was
22 an opportunity for cross-examination or witnesses
23 available to testify to that.

24 But, again, the Department could have
25 requested surrebuttal to address those issues that came

1 up on cross-examination, and it chose not to.

2 CO-HEARING OFFICER DODUC: All right. We'll
3 take that under consideration, Ms. Taber.

4 Ms. Des Jardins.

5 MS. DES JARDINS: Yes. I've been reading the
6 continuing education of the Bar material, and it
7 indicates that parties should bring to the attention --
8 if there is an error in the statement and the hearing
9 rulings, they should bring it to the attention of the
10 judge or, in this case, the Hearing Officers as soon as
11 possible.

12 There was -- the hearing ruling on the scope
13 of surrebuttal, it contained a misstatement of fact.
14 It said that there was no testimony on the public Draft
15 EIR. And, in fact, there was testimony on the float
16 analysis that was in the public Draft EIR but was not
17 in the admin Draft EIR.

18 So I wanted to request that that be corrected
19 and that -- I had requested surrebuttal on that, but it
20 was excluded because of this error. And I'm hoping
21 that this can be addressed, perhaps, when the Final
22 EIR/EIS is submitted. Thank you.

23 CO-HEARING OFFICER DODUC: All right. We'll
24 note your --

25 Is there a response?

1 MS. MORRIS: No.

2 CO-HEARING OFFICER DODUC: All right. We'll
3 note that as well, Ms. Des Jardins.

4 Ms. Morris.

5 MS. MORRIS: I hope this is efficient. I
6 wanted to ask for clarification regarding scope of
7 surrebuttal as it relates to the surrebuttal topics
8 outlined as No. 1 in the September 10th ruling, and
9 that is with information related to the Supplemental
10 EIR/EIS and, in particular, on the footnote Item 1.

11 So my -- my understanding when I read this
12 ruling in conjunction with the June 18th, 2018 ruling,
13 which says that parties may submit evidence that is
14 responsive to DWR's EIR Supplement even if that
15 evidence touches on matters not directly raised during
16 the case in chief of Part 2 -- so rebuttal testimony
17 was allowed. And in fact, in that same ruling, the
18 Board recognizes that Part 2 of the rebuttal hearing
19 was deferred. And this, again, is on June 18th, which
20 is just a few days after the Draft Supplemental EIR
21 came out.

22 So when I read that ruling and then I read the
23 September 10th ruling, it says that we've --
24 ". . .limited surrebuttal that is responsive to
25 significant new information that was first presented

1 during the rebuttal Part" -- "phase of Part 2." But
2 then the footnote seems to conflict.

3 So the way I read this is people already had
4 the opportunity to put on rebuttal evidence as to the
5 Draft EIR, even though that wasn't raised directly in
6 Part 2. But the footnote says that new information is
7 either information contained in SWRCB-113 or Part 2
8 rebuttal testimony concerning the content.

9 So, to me, there is a conflict here because
10 there has already been an opportunity to present
11 rebuttal information on the Draft EIR/EIS. And so the
12 surrebuttal should be properly limited to the scope
13 outlined in the September ruling which said it's
14 responsive to information that was put on in rebuttal
15 or the cross during rebuttal.

16 So that will impact how we make motions and
17 what we move to strike or not strike.

18 CO-HEARING OFFICER DODUC: I think I need more
19 coffee to answer that.

20 CO-HEARING OFFICER MARCUS: I'll take a look
21 at it. I think I understand.

22 CO-HEARING OFFICER DODUC: Okay.

23 MS. MORRIS: If you have questions, I'm happy
24 to answer. It's really a clarification item.

25 CO-HEARING OFFICER DODUC: Hold on,

1 Ms. Des Jardins. Not yet.

2 Do we need to --

3 CO-HEARING OFFICER MARCUS: Probably need to
4 look at it.

5 CO-HEARING OFFICER DODUC: All right.

6 Ms. Morris, we will also take that into
7 account. We will, after we hear from Ms. Des Jardins,
8 take a short break to consider that before we give you
9 a response. I recognize that's important for you in
10 order to proceed with cross-examination.

11 Ms. Des Jardins.

12 MS. DES JARDINS: Yes. I would note that
13 there was a very compressed schedule --

14 CO-HEARING OFFICER DODUC: It has already been
15 noted.

16 MS. DES JARDINS: -- for looking at the
17 information in the Admin Draft Supplemental EIR/EIS.
18 And I appreciated the hearing ruling which allowed
19 rebuttal on it.

20 And particularly, looking at the Supplemental
21 Draft EIR/EIS in connection with the Conceptual
22 Engineering Report, which was not available, one
23 couldn't go back and forth and look between those
24 because that wasn't provided before Part 2 Rebuttal.

25 So one of my witnesses is testifying about --

1 largely about the Conceptual Engineering Report but
2 also about issues which -- relating between the
3 Conceptual Engineering Report and the Supplemental EIR.
4 And it simply was not possible to do that kind of cross
5 comparison before. Thank you.

6 CO-HEARING OFFICER DODUC: All right. Thank
7 you so much for the warm welcome back to this hearing.

8 Ms. Meserve.

9 MS. MESERVE: Yes, Osha Meserve for LAND. I
10 guess I'm not quite sure what counsel for State Water
11 Contractors is asking, but if I understand it
12 correctly, she is saying that -- only things that were
13 new and we should have figured out what those things
14 were in the time span between June 21st and when
15 surrebuttal schedule began.

16 So I just think, back to the importance of
17 citizens and professionals and all the participants of
18 this hearing being able to participate, I think taking
19 a reasonable view of what information was provided in
20 the Admin Draft SEIR and the CER that were just
21 provided over late this summer, it's essential, and
22 that to put the burden on the public to try to figure
23 out what might be different between all these different
24 documents that DWR keeps throwing at us during the
25 course of this hearing and claiming that we should be

1 able to figure out those differences without ever being
2 provided a red-lined or any kind of analysis is too
3 much of a burden.

4 So to the extent that State Water Contractors
5 are asking for the scope of surrebuttal to be limited
6 even further, I would strenuously object.

7 CO-HEARING OFFICER DODUC: My understanding,
8 Ms. Morris --

9 And I'm not taking any more comments, just
10 clarification from Ms. Morris if necessary.

11 -- is you're asking whether the scope of
12 surrebuttal with respect to Issue No. 1 is limited to
13 new information presented during rebuttal.

14 MS. MORRIS: That's correct. And just to
15 further clarify, the CER was submitted as an exhibit.
16 So I'm not making any of those comments related to the
17 CER; that would be testimony that was submitted in
18 rebuttal and would be able to be responded to.

19 But my -- my clarification is limited to the
20 Draft EIR/EIS.

21 CO-HEARING OFFICER DODUC: All right. Thank
22 you.

23 With that, we will take a short break to
24 discuss.

25 (Recess taken at 9:57 a.m., returning

1 at 10:09 a.m.)

2 CO-HEARING OFFICER DODUC: All right. We are
3 back. I have four rulings to issue.

4 So we'll start first with Ms. Morris's request
5 or at least questions for clarification. I will point
6 everyone to the September 10th, 2018 ruling. Rebuttal
7 was the first opportunity for parties to hear from
8 petitioners regarding the contents of the
9 Administrative Draft and put that into the context of
10 this petition.

11 Therefore, as ruled in the September 10, 2018
12 ruling, surrebuttal, the scope of surrebuttal includes
13 the Administrative Draft. And when we say "new
14 information submitted," we meant new information
15 submitted since the original Draft -- Final EIR, I
16 guess, was submitted and not new information since the
17 rebuttal phase.

18 And I probably butchered that. So I will look
19 to Mr. Deeringer to clarify.

20 MR. DEERINGER: Just to reiterate that, the
21 reference to "new information" meant changes to the
22 project reflected in the Administrative Draft EIR, not
23 new information since Part 2 Rebuttal.

24 CO-HEARING OFFICER DODUC: Any questions on
25 that? Hopefully you guys understood it better than I

1 did. "New information" pertains to new information
2 since the --

3 MS. MORRIS: I think I understand because I
4 think it's similar to the rules regarding
5 cross-examination on the rebuttal testimony, that it's
6 to changes that occurred from the Final EIR to the
7 Supplement.

8 So not everything in the Supplemental is fair
9 game, but for example, let's use a concrete example
10 just to explain. If the Final EIR contains a control
11 gate structure somewhere and the Supplemental also has
12 that control gate structure, it doesn't change anything
13 in the operation, then that is not a change from the
14 Final EIR to the Supplement.

15 But if, for example, the footprint changed in
16 the Final to the Supplement, even if that was not
17 raised on the rebuttal, that is a change that would be
18 allowed for surrebuttal.

19 CO-HEARING OFFICER DODUC: Because it was a
20 change from the Final EIR.

21 MS. MORRIS: Correct.

22 MR. DEERINGER: So just to caveat, there may
23 be project elements, such as mitigation, that was in
24 the Final. But if there are new conclusions expressed
25 in the EIR Supplement, such as there is a new impact

1 but that impact will be mitigated because of this
2 preexisting mitigation requirement, that also is fair
3 game.

4 So if there are new conclusions about elements
5 of the project that were discussed in the FEIR, those
6 new conclusions also are fair game. That's what we
7 mean by "new information."

8 MS. MORRIS: Okay. Then, sorry, one more
9 clarification question.

10 MR. DEERINGER: Sure.

11 MS. MORRIS: For example, even if it changed,
12 if the complaint in the testimony is that a particular
13 mitigation isn't appropriate or accurate or doesn't
14 cover it, if the thrust of the testimony is that the
15 mitigation measure is inadequate, that would not be
16 new.

17 However, the ability to talk about the changes
18 from -- a change in the environment from the Final to
19 the Supplemental would be fair game.

20 CO-HEARING OFFICER MARCUS: I'm worried we're
21 trying to parse this way too finely from what's fair.
22 And maybe because I -- it's all not direct, so stop me
23 if I go too far afield because I don't want to be
24 intuiting what's said what's wrong, which is so there's
25 what's new, but there's also what's new to -- so you're

1 saying -- you're talking about the control gate.

2 And if the argument is that somehow Ms. Womack
3 should have raised everything about the control gate at
4 a time when she thought her whole farm was being taken,
5 then maybe we're parsing a little fine for fairness.

6 So I'm worried -- I want to understand the
7 context of what the question is. Or maybe we should
8 just be making the decision based on your specific
9 motions to exclude or on scope rather than having this
10 hypothetical where everybody -- I'm looking at their
11 faces -- everybody in the room is trying to figure out
12 what you're saying; maybe that's not what you're
13 saying.

14 MS. MORRIS: Well, it was the hypothetical. I
15 wasn't saying -- I wasn't referring to Ms. Womack's
16 property.

17 CO-HEARING OFFICER MARCUS: I don't want us to
18 make an abstract ruling. I want to do it on the scope.

19 MR. DEERINGER: It might be best to wait for
20 the concrete objections.

21 CO-HEARING OFFICER DODUC: All right. Let's
22 do that.

23 CO-HEARING OFFICER MARCUS: There is too much
24 gaming in this. It's not a contest. It's a search for
25 what's the right answer, making sure people's legal

1 uses --

2 CO-HEARING OFFICER DODUC: No, nope, nope,
3 nope.

4 CO-HEARING OFFICER MARCUS: I think we're
5 wasting time on it.

6 CO-HEARING OFFICER DODUC: All right. Let's
7 move on. That was Item 1, which I thought was taken
8 care of which is now not taken care of.

9 Item 2, with respect to Ms. Taber's objection
10 to the submission of DWR-1415, I believe it was --

11 Correct, Ms. Taber?

12 That objection is overruled. Proper
13 foundation for that exhibit was laid during
14 cross-examination of your witness, Dr. Paulsen. And
15 therefore, we will allow that. So at least we will --
16 actually, I don't think they moved it yet, right?

17 So anyway, your objection is overruled.

18 Ms. Des Jardins, your request is also denied,
19 objection overruled, however the appropriate phrase is,
20 with respect to being allowed to conduct surrebuttal on
21 the floating concept, which was in the draft that was
22 released.

23 As we noticed earlier, the opportunity to make
24 suggestions with respect to how to address the Final
25 EIR when it is done and when it is submitted by

1 petitioners to this process will be made at a later
2 time. At that time, you may voice your request for
3 further examination of that concept. You may also do
4 so in your closing briefs. So there will be
5 opportunity for you to weigh in on that. But for now,
6 the scope of surrebuttal remains as it was outlined in
7 our September 10th ruling.

8 And then the final issue was with respect to
9 DWR's witnesses. What we will do is schedule you to
10 come back on Friday, meaning this Friday, this coming
11 Friday. What I would like to do is -- I think we can
12 cover a lot of ground today. So if that goes well,
13 what we will do is cancel the hearing day for tomorrow
14 to allow Ms. Womack additional time to prepare.

15 And when we resume on Friday, we will hear
16 from DWR's witnesses, and we will get to
17 cross-examination by Ms. Womack. All right.

18 I think we're finally to you now, Mr. Kier --
19 nope, not yet.

20 Ms. Meserve.

21 MS. MESERVE: Excuse me. I just have a
22 clarification question with respect to DWR-1415. It
23 was my understanding that cross-exam exhibits were due
24 at the conclusion of Part 2 Rebuttal. So I don't
25 understand why DWR would be submitting cross-exam

1 exhibits on the 21st of September.

2 CO-HEARING OFFICER DODUC: This was not their
3 cross-examination exhibit. This was an exhibit
4 provided by Dr. Paulsen as a result of their
5 cross-examination.

6 MS. MESERVE: Anyhow, the timing does not seem
7 appropriate. And I think the parties would want the
8 right to cross-examine Dr. Paulsen about that exhibit.
9 We can raise that later, I guess, if we can come up
10 with a proposal.

11 CO-HEARING OFFICER DODUC: You don't have the
12 right to cross-examine a witness based on someone
13 else's cross-examination.

14 Again, this document was produced -- directed
15 by us, I believe -- as a result of cross-examination
16 conducted of Dr. Paulsen.

17 Anything else?

18 (No response)

19 CO-HEARING OFFICER DODUC: All right.

20 Mr. Berliner?

21 I promise we will get to you, Mr. Kier.

22 MR. BERLINER: If we were in fact at Mr. Kier,
23 then I have a motion. If we're not, I'll hold off.

24 CO-HEARING OFFICER DODUC: We are at Mr. Kier.
25 Could you hold on while I administer the oath to

1 Mr. Kier so that he's official.

2 Mr. Kier, if you could please stand and raise
3 your right hand.

4 (Witness sworn)

5 WILLIAM M. KIER,

6 called as a Part 2 Surrebuttal witness

7 by Protestants County of San Joaquin,

8 California Sportfishing Protection

9 Alliance, California Water Impact

10 Network, and AquAlliance, having been

11 first duly sworn, was examined and

12 testified as hereinafter set forth:

13 CO-HEARING OFFICER DODUC: Thank you.

14 Now, Mr. Berliner.

15 MR. BERLINER: Yes, thank you very much.

16 My motion is to exclude the testimony of

17 Mr. Kier on the basis that it is actually just

18 argument. There is no new evidence. It is ostensibly

19 a rebuttal to certain DWR witnesses, but it's not

20 actual rebuttal to those witnesses. It's argument over

21 the, let's say, accuracy, if you will, or

22 substantiation of their testimony. But it's the same

23 kind of argument that you might put in a closing

24 argument or in a closing brief. It is not actually any

25 new evidence.

1 In fact, the most recent thing cited in the
2 entire testimony is the 2010 Flow Criteria Report. All
3 of the gentlemen that Mr. Kier is seeking to rebut
4 primarily spoke about activities post 2010, which was
5 really kind of the point of -- that they were trying to
6 make. But Mr. Kier spends no time on anything after
7 2010.

8 So this is really just argument. It's not
9 testimony. I mean, if the nature of testimony is to
10 present evidence, there's no evidence. He's just
11 arguing about whether they should be -- whether their
12 testimony should withstand scrutiny. And that's the
13 kind of thing that you typically see in a closing
14 brief. Thank you.

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

17 Mr. Keeling, Mr. Jackson, your response?

18 MR. KEELING: Well, Mr. Kier is responding to
19 the testimony of Drs. Hanson, Hutton, and Acuna, who
20 basically address the 2010 Flow Report, although they
21 said they were rebutting other witnesses. But, as the
22 Hearing Officers know, their characterization of all of
23 that testimony was just basically a straw man. They
24 just wanted to talk about the 2010 Flow Report.

25 We have a full --

1 CO-HEARING OFFICER DODUC: Let's talk about
2 what your witness is doing rather than revisiting all
3 that.

4 MR. KEELING: Well, because they were allowed
5 to testify, basically, on a free-ranging attack on that
6 report as not representing the best science, we brought
7 in an expert to talk about what that report is and
8 about the sources underlying that report. That's why
9 there are about 100- -- I want to say 175 exhibits, all
10 of which were referenced at Pages 137 through 151 of
11 that report as being the basis that this Board relied
12 on which, interestingly enough, were not in evidence
13 even though the report itself was.

14 So we ended up with a situation where, well,
15 the report's in evidence; that's enough for anybody to
16 talk about it; that's why they were allowed to talk.
17 But none of the basis for the report was in evidence,
18 which was cited by the Board itself in the report --

19 CO-HEARING OFFICER DODUC: Are you arguing,
20 Mr. Keeling, then, that is the new evidence which
21 Mr. Kier is bringing into this record?

22 MR. KEELING: It's new to this proceeding;
23 it's not new to the 2010 proceeding.

24 CO-HEARING OFFICER DODUC: Understand.

25 Mr. Jackson, anything to add?

1 MR. JACKSON: Well, in terms of fundamental
2 fairness, which we've been talking about, the
3 testimonies of Dr. Hanson and Dr. Hutton in particular
4 on cross was that they hadn't reviewed the -- the
5 environmental document, they hadn't -- they had not
6 directed their attention in their testimony to the
7 WaterFix in any way but that what they were doing was
8 pointing out that there was new information after the
9 2010 report.

10 Our position is -- and as outlined in the
11 testimony is it -- it's new only in time. All of those
12 subjects were dealt with extensively in the 2010
13 hearing, but the evidence of that had to be submitted.

14 So we brought forward a witness who had
15 testified in that hearing and, actually, every hearing
16 from the time the State Board was established to
17 indicate that it was just new studies on the same
18 issues. And if that was the only thing in the record,
19 it was going to be a major problem.

20 So when we were overruled to keep that
21 testimony out -- remember there were motions made to
22 keep that testimony out on precisely the same grounds.

23 CO-HEARING OFFICER DODUC: How can I forget,
24 Mr. Jackson.

25 MR. JACKSON: That they're now arguing that we

1 can't respond to it by putting in the evidence from the
2 2010 report and by having someone testify to the fact
3 that these issues are not new, the uncertainty is not
4 enough to stop. We need to make a decision. And if
5 other boards had done it in the past, it would have
6 been -- we might not have been in such a situation.

7 CO-HEARING OFFICER DODUC: Thank you,
8 Mr. Jackson.

9 Mr. Keeling, any additions?

10 Mr. Berliner.

11 MR. BERLINER: Yes. I was not going to raise
12 this issue at this time, but because both Mr. Keeling
13 Mr. Jackson have raised it, now I feel compelled to
14 raise it.

15 It appears to me, at least, that the primary
16 reason for Mr. Kier testifying today is to get these
17 over 100 documents that they're trying to get into
18 evidence into evidence. In the vernacular that lawyers
19 use, this is a data dump. They could have gotten these
20 documents in with appropriate witnesses a long time
21 ago.

22 Now they come at the very last minute with
23 well over a hundred documents that they're trying to
24 get in that Mr. Kier doesn't even refer to. His
25 testimony does not rely on these documents. He doesn't

1 cite them; he doesn't discuss them; he doesn't compare
2 how studies done, let's say, in 19- -- or let's say
3 2008 would rebut something that some other witness has.

4 Basically, the point he makes is, well, we
5 knew everything we needed to know by the 2010 Flow
6 Report and anything that's happened since then just
7 furthers the same concepts that were already accepted
8 in the 2010 Flow Report. But that's as far as he goes.

9 And there -- we don't need testimony for that
10 from Mr. Kier. We've had testimony from witness who
11 are trying to present proper rebuttal testimony
12 regarding the various issues that have been raised.

13 So to come in and try to dump well over a
14 hundred documents -- we have no idea why those
15 documents are being submitted. They are thousands and
16 thousands of pages without any reference; we have no
17 opportunity to cross-examine the folks that prepared
18 those documents. And these are not all necessarily --
19 let's call them official studies, if you will. A lot
20 of these are comment letters and a variety of other
21 things that are coming in.

22 This would be thrown out and should be thrown
23 out here. I mean, I can't imagine why you would allow
24 someone to come in with literally hundreds of documents
25 without any reference to them.

1 CO-HEARING OFFICER DODUC: All right. Did you
2 wish to add something Ms. Sheehan?

3 MS. SHEEHAN: I just would like to join the
4 objection and particularly on the point of that the
5 witness did not explain how any of the studies he's
6 trying to get in support his arguments.

7 And so there's thousands of pages, and we just
8 have no way of knowing what's in those pages he's
9 relying on. So it's impossible to know even what we
10 should ask him as a part of cross because -- no way of
11 knowing what he thought was important in those
12 thousands of pages and that's actually a part of his
13 testimony.

14 CO-HEARING OFFICER DODUC: All right.

15 Ms. Meserve -- if you don't mind pulling the
16 microphone up, thank you. It pains my back to watch
17 other people bending over it.

18 MS. MESERVE: I'm not that tall, but, yes.

19 So, yeah. I mean, I believe this testimony is
20 directly responsive to testimony that the Hearing
21 Officers allowed in over strenuous objections of a DWR
22 late hit on the flow report, which was always relevant
23 in this proceeding, which was always at issue and that
24 it's only because of -- I mean, at this juncture, in
25 fairness, we needed -- or these parties have, you know,

1 put forward a response to that.

2 And the documentation supporting the 2010 Flow
3 Report is not unknown to any of us; it just wasn't part
4 of this record. And they're not surprise exhibits, and
5 they're not picked out of nowhere.

6 Those were the exhibits that this Board relied
7 on in creating that 2010 Flow Report, which was
8 identified at the beginning of this hearing process as
9 being relevant to the hearing issues.

10 So -- and we've also been over the ground
11 before of that test- -- exhibits don't even need
12 supporting testimony. They don't need to be
13 referenced. Here, those exhibits are -- you know,
14 clearly the reason for their submittal with the Kier
15 testimony, I think, has been articulated in the
16 testimony itself and by counsel for San Joaquin and
17 CSPA.

18 So this is part of completing the record.
19 It's in response to what DWR submitted, and it should
20 be allowed.

21 CO-HEARING OFFICER DODUC: Please note,
22 Mr. Keeling, that was a very good response.

23 Do you wish to add to it?

24 MS. DES JARDINS: I would just like to note
25 that --

1 CO-HEARING OFFICER DODUC: Oh, apparently not.

2 MS. DES JARDINS: This is Deirdre Des Jardins,
3 California Water Research.

4 I would just like to note that I did object to
5 some of the testimony and exhibits of Mr. Acuna as not
6 being responsive to rebuttal. And there were a very
7 large number of studies, some of which only had, like,
8 the most glancing reference in Mr. Acuna's testimony.

9 And to allow such a broad ranging submission
10 of new studies -- and, again, Mr. Acuna didn't --
11 didn't point out specific things in these new studies
12 he was referencing.

13 I think there should be a similar breadth
14 given to surrebuttal, since that was the scope of
15 rebuttal and it did allow a very large amount of new
16 information in about current conditions in the Delta.

17 CO-HEARING OFFICER DODUC: Thank you all.

18 For the reasons articulated by Ms. Meserve,
19 the objection is overruled.

20 Mr. Kier. Mr. Keeling or Mr. Jackson, would
21 one of you like to start?

22 MR. KEELING: Thank you.

23 DIRECT EXAMINATION BY MR. KEELING

24 MR. KEELING: Mr. Kier, is Exhibit SJC-363 a
25 true and correct copy of your statement of

1 qualifications?

2 WITNESS KIER: Yes.

3 MR. KEELING: And is Exhibit SJC-364 a true
4 and correct copy of your written testimony?

5 WITNESS KIER: Yes.

6 MR. KEELING: Could you please summarize the
7 high points of your testimony before the Hearing
8 Officers.

9 WITNESS KIER: Right. The main points of my
10 written testimony are --

11 CO-HEARING OFFICER DODUC: Mr. Kier, if you
12 could pull the microphone closer to you.

13 WITNESS KIER: Okay. Is this good?

14 CO-HEARING OFFICER DODUC: Yes.

15 WITNESS KIER: Okay. Main points of my
16 written testimony are simply this. I participated in
17 your Board's 2010 Delta Flow Criteria proceedings.
18 They were, in my view, the most comprehensive and
19 deliberate discussion of the protection of in-stream
20 public trust resources of the San Francisco Bay-Delta
21 Estuary that I have ever witnessed in my 60 years of
22 studying Bay-Delta conservation matters.

23 The expert panel that the Board retained --
24 Dr. Bennett, Dr. Herbold, Dr. Lund, Dr. Kimmerer,
25 Dr. Moyle and the others -- are all top-flight Delta

1 ecosystem experts.

2 I've submitted as exhibits in this proceeding
3 many of the key exhibits from the 2010 proceedings upon
4 which your Board relied for its finding.

5 I have testified in several San Francisco
6 Bay-Delta Estuary water quality and water rights
7 proceedings in the past. I explain in my testimony
8 how, in such proceedings, the Water Project proponents
9 inevitably come in at the end of the proceedings with
10 what they say is new evidence that overrides the
11 substantive testimonies concerning Delta freshwater
12 through-flow and protection of public trust resources,
13 like salmon -- which is my particular concern --
14 presented by the responsible fishery agencies and
15 others.

16 I've read the Water Project experts' rebuttal
17 testimonies. They look pretty much like the late and
18 the preceding testimonies that I've seen brought in by
19 the Water Projects and the Contractors for more than 30
20 years.

21 They say, in effect, "Disregard the science
22 that has been presented to you because we have new
23 science that negates what you have been presented
24 with."

25 The Hanson testimony argues that -- argues

1 that the 2010 Delta Flow Criteria Report, Phase 2
2 Technical Basis Report, which was based on substantial
3 Bay-Delta Estuary science, should be accorded less
4 weight because some post-2010 findings, based on much
5 sketchier data, challenges the Delta freshwater
6 through-flow needs identified in those 2010
7 proceedings.

8 Dr. Hanson made the same arguments at the 2010
9 proceedings. And the Board found his arguments
10 unconvincing then, and they strike me as unconvincing
11 now.

12 The Hutton testimony argues that drawing
13 conclusions about Delta freshwater through-flow and
14 ecosystem relationships in the estuary is questionable
15 because we don't have enough pre-1960 information and
16 that things have changed since then. But he's right;
17 things have changed since the '60s when the State Water
18 Project came online.

19 But that doesn't mean that we throw up our
20 hands and say there's no way that this Board can
21 establish flow standards for protecting the estuary's
22 public trust resources. The Board is mandated to
23 protect the estuary's public trust resources, and the
24 2010 Delta Flow Criteria provided a solid information
25 base for doing just that.

1 The Acuna testimony says our simplistic
2 understanding of Delta smelt is more nuanced than what
3 was presented in the 2008 conceptual models. Well, the
4 Department of Fish and Wildlife's 1970s midwater trawl
5 index for Delta smelt averaged a thousand, a thousand.
6 This index is now single digits, a decline of three
7 orders of magnitude. There's not a lot of nuance
8 there. It's difficult to adjust models with a sample
9 size close to zero.

10 I would recommend that you apply your 2010
11 Delta Flow Criteria to the development of appropriate
12 flow crit- -- I'm sorry, yeah, to appropriate flow
13 criteria as directed by the legislature to any order
14 including a change in the point of diversion of the
15 State Water Project or the Central Valley Project.

16 The new freshwater flow criteria should extend
17 from the North Delta -- Freeport, say -- through the
18 Bay-Delta Estuary. Thank you.

19 CO-HEARING OFFICER DODUC: Thank you,
20 Mr. Kier.

21 Does that conclude your direct, Mr. Keeling,
22 Mr. Jackson?

23 MR. KEELING: Yes.

24 CO-HEARING OFFICER DODUC: All right.
25 Mr. Mizell, Ms. Morris?

1 Mr. Berliner, the name I didn't call.

2 MR. BERLINER: We're just trying to keep
3 things mixed up a little bit.

4 CO-HEARING OFFICER DODUC: So does the
5 ten-minute estimate still hold, or has your cross now
6 expanded?

7 MR. BERLINER: Ten minutes will hold.

8 CO-HEARING OFFICER DODUC: All right.

9 CROSS-EXAMINATION BY MR. BERLINER

10 MR. BERLINER: Good morning, Mr. Kier, my name
11 is Tom Berliner, and I'm an attorney for the Department
12 of Water Resources.

13 Mr. Kier, your testimony, if I understand it,
14 is devoid of any discussion of fishery studies
15 post-2010, correct?

16 WITNESS KIER: Void of any -- no, it's not --
17 it addresses Mr. -- Dr. Hanson's testimony, which had
18 to do with flow studies post-2010, if I understood your
19 question correctly.

20 MR. BERLINER: You are challenging
21 Dr. Hanson's testimony, correct?

22 WITNESS KIER: Correct. Pardon me. I'm
23 challenging his main point, which is that science
24 conducted since 2010 somehow negates the science
25 that's -- was captured in the 2010 flow proceedings and

1 report.

2 MR. BERLINER: I take it that's what you
3 understand the point of Dr. Hanson's testimony is, to
4 say that what happened prior to 2010 has all been
5 negated?

6 WITNESS KIER: Basically. He argues that more
7 science is needed. And as a person who's been involved
8 with Bay-Delta science for 60 years, I couldn't argue
9 with the need for additional science.

10 But there is a huge body of science that was
11 captured in the 2010 proceedings. And I am addressing
12 in my testimony Dr. Hanson's effort to negate the value
13 of the 20108 flow report.

14 MR. BERLINER: Didn't Dr. Hanson's testimony
15 say that the science is more nuanced today than it was
16 in 2010?

17 WITNESS KIER: Each of the Water Project
18 rebuttal people said that -- made that point, that
19 science more nuanced.

20 MR. BERLINER: Are you aware of anybody else
21 that's made that point?

22 WITNESS KIER: No, I was primarily concerned
23 with these three testimonies.

24 MR. BERLINER: Are you familiar with
25 Andrew Jahn?

1 WITNESS KIER: Yes, I am.

2 MR. BERLINER: Did you have a chance to review
3 his testimony in this proceeding?

4 WITNESS KIER: I have. I kind of fanned
5 through it, but I didn't really absorb it.

6 MR. BERLINER: You're not capable then, as you
7 sit here today, of observing that Mr. Jahn also makes a
8 point that our knowledge of science is more nuanced
9 today than it was in 2010?

10 WITNESS KIER: I'm sorry. Your question is?

11 MR. BERLINER: As you sit here today, you're
12 not sufficiently familiar with Mr. Jahn's testimony to
13 appreciate that he was making the comment similar to
14 Mr. Hanson, that science is more nuanced today than it
15 was in 2010?

16 WITNESS KIER: I think you should put that
17 question to Dr. Jahn.

18 MR. BERLINER: Well, I was just trying to get
19 your understanding, sir.

20 WITNESS KIER: I think I -- I thought I
21 explained myself, that I have looked hurriedly. I
22 mean, these documents just arrived, and there was only
23 so much time.

24 CO-HEARING OFFICER DODUC: Understood.

25 MR. BERLINER: Okay. Thank you. That's fine.

1 MS. DES JARDINS: And I would like to lodge an
2 objection that Mr. Berliner's statement
3 mischaracterizes Dr. Jahn's testimony.

4 CO-HEARING OFFICER DODUC: So noted.

5 MR. BERLINER: Thank you.

6 Mr. Kier, you relied heavily on the work of
7 Dr. Marty Kjelson, correct?

8 WITNESS KIER: Right. I still think that's
9 solid work.

10 MR. BERLINER: And Dr. Kjelson's work was done
11 pre-1989, correct, the studies that he relied on?

12 WITNESS KIER: Work was done and the work was
13 reported into the Board's 1987 proceedings, Bay-Delta
14 Water Quality proceedings.

15 MR. BERLINER: And do you recall that
16 Dr. Kjelson was relying on data from the late 1960s
17 into about the mid 1980s? Does that sound about right?

18 WITNESS KIER: Sounds about right. There were
19 a lot of years of work.

20 And I might add, Mr. Berliner, that I think
21 it's -- that that was clearly the most substantive
22 assessment of the relationship between Bay-Delta
23 freshwater through-flow and salmon survival.

24 MR. BERLINER: And are you aware that
25 Dr. Kjelson's work had been the subject of some

1 criticism?

2 WITNESS KIER: Well, everybody's work is the
3 subject of some criticism.

4 MR. BERLINER: Well, are you familiar with the
5 criticism that is in the record related to the current
6 Water Quality Control Plan Substantive Environmental
7 Phase 1 proceeding?

8 MR. JACKSON: Objection, that's -- if we get
9 into the Phase 1 proceeding, we are well beyond the
10 scope of any surrebuttal testimony.

11 CO-HEARING OFFICER DODUC: Mr. Berliner?

12 MR. BERLINER: I'm not getting into the Phase
13 1 proceeding. I'm directing myself to a study that was
14 requested by the Water Board that was submitted into
15 the Phase 1 record and is directly critical of some
16 work by Dr. Kjelson that I'm referring to.

17 CO-HEARING OFFICER DODUC: And is that same
18 work cited by Mr. Kier in his testimony, the work that
19 is being criticized?

20 MR. BERLINER: Yes. Dr. Kjelson's work is
21 being criticized by Mr. Thomas Quinn or Dr. Thomas
22 Quinn in the Board's own document. And I intend to put
23 that up as an exhibit.

24 CO-HEARING OFFICER DODUC: All right.

25 Overruled for now.

1 You may bring it up again, Mr. Jackson, should
2 this stray far off course.

3 MR. BERLINER: We have that document on a
4 thumb drive.

5 CO-HEARING OFFICER DODUC: And, Mr. Kier, when
6 you see this document, please let us know whether or
7 not you are familiar with it and are able to answer
8 questions about it.

9 MR. BERLINER: Mr. Hunt, when you open the
10 document, if you could please go to pdf Page 250.

11 CO-HEARING OFFICER DODUC: And hold on.
12 Before you do that, let's identify the document and ask
13 Mr. Kier if he's familiar with it.

14 MR. BERLINER: Yes, this has been marked as
15 DWR-1425, Appendix C, Technical Report for the
16 Scientific Basis for Alternative San Joaquin River Flow
17 and Southern Delta Salinity Objectives.

18 And the part that I am referring to
19 specifically are comments submitted by Thomas Quinn
20 that start on approximately PDF Page 238. And I'm
21 referring to Page 12 of his review, which is on PDF
22 Page 250.

23 CO-HEARING OFFICER DODUC: Mr. Kier, what is
24 familiarity with this document?

25 WITNESS KIER: I'm sorry. What's your

1 question?

2 CO-HEARING OFFICER DODUC: How familiar are
3 you with this?

4 WITNESS KIER: No, I'm not familiar with the
5 paper. And, you know, I'm trying to figure out what
6 the question -- what the issue is here.

7 MR. BERLINER: Well, what I was going to ask
8 you --

9 If we could pull that page up, Mr. Hunt.
10 -- is to take a look at the top of the page,
11 which --

12 We're getting some shadow on the screen on the
13 left which is closest to the witness. I'm wondering if
14 there might be something that's blocking --

15 Mr. Kier, I'm going to suggest that you try to
16 take a look at the right-hand screen or I could hand
17 you my iPad and you could read it right where you are.
18 I think the left screen is a little too difficult.
19 Maybe you can make it out.

20 WITNESS KIER: Why don't you just read it to
21 me.

22 MR. BERLINER: Well, I'd rather not read that
23 much into the text. It's not been our practice --

24 CO-HEARING OFFICER DODUC: Hold on.

25 MR. BERLINER: -- but with the Hearing

1 Officer's indulgence --

2 CO-HEARING OFFICER DODUC: No.

3 Mr. Kier, that monitor should have -- if you
4 would mind taking a look at it from that monitor.

5 MR. KEELING: Now they've fixed it.

6 CO-HEARING OFFICER DODUC: It might be easier
7 from the monitor anyway. Oh.

8 MR. JACKSON: I have an objection that's
9 different than was entered before.

10 Now that I've looked at this, this is a
11 paragraph that talks essentially about Vernalis flows.
12 And as I understand it, the question of the Vernalis
13 flows has been pretty much ruled out of this hearing.

14 CO-HEARING OFFICER DODUC: That is a point.

15 Mr. Berliner, your response.

16 MR. BERLINER: This talks about salmon
17 survival at out-migration in the April-through-June
18 period through the Delta of the -- and the correlation
19 of flows at Vernalis. This is not a discussion of San
20 Joaquin River flows in that context. This has to do
21 with salmon survival through the Delta.

22 CO-HEARING OFFICER DODUC: Ms. Sheehan.

23 MS. SHEEHAN: This is -- so this is the
24 discussion of the paper that the witness is relying
25 heavily on in his testimony. And this paper deals with

1 flows at Vernalis. This is talking about the analysis
2 that is in the paper he's relying on.

3 If it's not relevant to these proceedings,
4 well, then, that's something to be weighing later. But
5 this is relating to the study that he's specifically
6 citing and discussing and relying on.

7 CO-HEARING OFFICER DODUC: Okay.

8 Ms. Des Jardins.

9 MS. DES JARDINS: The scope of Chuck Hanson's
10 testimony was limited to Sacramento River flows and
11 Sacramento River migration, migration of salmon from
12 the Sacramento River through the Delta.

13 Mr. Hanson also -- to the extent that it's
14 expanded now on surrebuttal to questioning to address
15 migration of San Joaquin River salmon past the Delta
16 pumps, all parties should be allowed to explore that.
17 It was -- Hanson specifically rebutted the parts of the
18 2010 Delta Flow Criteria Report having to do with San
19 Joaquin River -- with Sacramento River salmon and --
20 and the 2010 Delta Flow Criteria Report recommendations
21 for Sacramento River flows and limits on the export
22 pumps to protect Sacramento River salmon.

23 So this would be a considerable expansion of
24 previous scope.

25 CO-HEARING OFFICER DODUC: And hold on. I

1 have a question now for Mr. Berliner.

2 Mr. Berliner, this cites a study in 1984 --
3 I'm sorry, 1989, but Mr. Kier's testimony refers to the
4 earlier study.

5 MR. BERLINER: He refers to the 1989 study.

6 CO-HEARING OFFICER DODUC: No, he refers to
7 the 1987 Bay-Delta hearing; therefore, it could not
8 include a 1989 study.

9 MR. JACKSON: In any event, Mr. Kier's not
10 familiar with this paper. And the fact that it's a
11 different study than the one that he quotes and that it
12 is dealing with a subject that -- the heading of this
13 paper is about the San Joaquin River flows, and it's
14 about the San Joaquin River fish, which is not the same
15 report that he's cited.

16 CO-HEARING OFFICER DODUC: Mr. Berliner, I
17 would to have agree, unless you can point me to where
18 in Mr. Kier's testimony this is specific to. All I'm
19 seeing is Sacramento River and references to a 1987
20 Bay-Delta hearing.

21 MR. BERLINER: We're just pulling up an
22 exhibit.

23 Sorry, we're having a little computer
24 difficulty here.

25 We're trying to pull up a PCFFA exhibit from

1 earlier in the proceeding.

2 CO-HEARING OFFICER DODUC: And would that be
3 PCFFA-149?

4 MR. BERLINER: Yes, it would.

5 CO-HEARING OFFICER DODUC: Could we pull that
6 up, please, Mr. Hunt, because Mr. Kier did reference
7 that in his testimony.

8 PCFFA-149.

9 MR. BERLINER: All right. In the interests of
10 moving on, I don't have any further questions for
11 Mr. Kier.

12 CO-HEARING OFFICER DODUC: All right. Thank
13 you, Mr. Berliner.

14 Ms. Meserve, do you still wish to cross?

15 CROSS-EXAMINATION BY MS. MESERVE

16 MS. MESERVE: One moment while I get my papers
17 in order. I think I'm going to need the SWRCB-25
18 exhibit, which is the 2010 Flow Report, if we could get
19 that up on the screen, please.

20 And I just have a few questions following up
21 on your --

22 Osha Meserve for Local Agencies of the North
23 Delta. And I just have a few questions regarding your
24 endorsement of the flow recommendations from the 2010
25 report for consideration by this Board in processing

1 this petition.

2 And I'm specifically looking at Page 15 of
3 your testimony -- and I think elsewhere, but on Page
4 15, on Lines 13 and 14, you ask this Board to apply the
5 work of the 2010 Flow Report including the
6 recommendations. And so if we could look at those
7 recommendations, which are on Page 5 of SWRCB-25.

8 And in looking at those recommendations, are
9 you aware, Mr. Kier -- try to get everyone in there,
10 right.

11 Are you aware of what fish those flow
12 recommendations were developed around?

13 WITNESS KIER: In part, my testimony and the
14 testimony of others and the work of the expert
15 technical panel that the Board retained.

16 MS. MESERVE: Could we scroll to Page 8 of the
17 same document, which is the Flow Criteria Report.

18 CO-HEARING OFFICER DODUC: Ms. Meserve, did he
19 answer your question? Were you asking about a fish
20 species?

21 MS. MESERVE: Yes, yes. Sorry. That's why I
22 should have got the exhibit up correctly.

23 If you see here, Mr. Kier, there's a bulleted
24 list of fish that were considered in developing those
25 criteria.

1 And my question is do you believe there are
2 other fish in the Delta that ought to be also protected
3 with flows other than these fish that are listed in the
4 report?

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

6 Mr. Mizell.

7 MR. MIZELL: Yeah, we object as going beyond
8 the scope of his surrebuttal. In his surrebuttal, he
9 indicates that you should apply the 2010 Delta Criteria
10 Report. He does not elaborate further upon that to
11 explain what additional species should also be
12 protected. So I believe it's beyond the scope.

13 CO-HEARING OFFICER DODUC: Answer, Ms.
14 Meserve?

15 MS. MESERVE: I believe I'm just trying to
16 understand what his recommendations are and how far
17 they go and whether he, himself, considered other fish
18 in making the recommendation that the flow report be
19 considered and incorporated into the decision here.

20 CO-HEARING OFFICER DODUC: Let's ask the
21 question this way, Mr. Kier.

22 In your testimony during the 2010 Flow
23 Criteria hearing, to which you've mentioned in your
24 testimony, did you have the chance to consider other
25 fish other than what is listed here?

1 WITNESS KIER: My testimony concerned
2 Sacramento River fall-run Chinook salmon, which is the
3 backbone of the fishery, as you know. And so I was
4 salmon-centric in my testimony in 2010.

5 MS. MESERVE: And so that would include the
6 fall-run salmon is not listed today as endangered or
7 threatened, correct?

8 WITNESS KIER: Right.

9 MS. MESERVE: But do you believe that that
10 species should also be protected by flows in this
11 proceeding?

12 WITNESS KIER: I'm sorry. Would you put the
13 question again?

14 CO-HEARING OFFICER DODUC: Ms. Sheehan.

15 MS. SHEEHAN: I would object to this being
16 outside of scope. He didn't discuss whether other fish
17 should be included or the scope of what the State Board
18 should have been considering in 2010. This isn't in
19 his testimony.

20 MS. MESERVE: He's recommending that the
21 criteria be applied, so I'm trying to understand, when
22 he says "the criteria." And then following up on the
23 Hearing Officer's questions, he identified the salmon,
24 and so I was just following up on that.

25 CO-HEARING OFFICER DODUC: I'm sustaining

1 Ms. Sheehan's objection.

2 MS. MESERVE: Okay. If we could -- so I'm not
3 allowed to ask about the fish on this list; is that
4 what you're saying?

5 CO-HEARING OFFICER DODUC: No. Ask about the
6 fish on the list.

7 MS. MESERVE: Oh, because you said you were
8 sustaining the objection.

9 CO-HEARING OFFICER DODUC: Because you were
10 asking beyond what's on the list.

11 MS. MESERVE: Okay. So with respect to the
12 salmon --

13 MR. JACKSON: For point of clarification,
14 Chinook salmon were considered, and it says "various
15 runs." And as somebody who was there, I know that they
16 talked about the commercial fish as well.

17 CO-HEARING OFFICER DODUC: I understood that.
18 I thought Ms. Meserve was asking Mr. Kier -- and I
19 think this is what Ms. Sheehan was objecting to --
20 about other fisheries -- other species that's not
21 covered on this list that he thought should be
22 protected.

23 If I misunderstood the question, then that's a
24 different matter.

25 MS. MESERVE: Okay. Well, yeah, I was trying

1 to follow what was the guidance. So, yes, what I want
2 to ask about is fall-run Chinook salmon.

3 CO-HEARING OFFICER DODUC: Which is on the
4 list.

5 MS. MESERVE: Yeah, okay. So back to the
6 fall-run Chinook salmon that's not a listed fish,
7 Mr. Kier, but that -- in your opinion, should that fish
8 also be protected with flow?

9 WITNESS KIER: If I understand your question
10 correctly, that was the whole point and purpose of my
11 testimony to the Board in 2010 was that freshwater
12 through-flow from the Sacramento River to the Bay was
13 essential for the survival and health of fall-run
14 Chinook salmon.

15 CO-HEARING OFFICER DODUC: Ms. Sheehan.

16 MS. SHEEHAN: I'm sorry, but I'd like to
17 object again. He generally said that he supports the
18 flow policy report, and that's fine. But now he's
19 talking about what he testified to back in 2010, which
20 is not in his testimony.

21 CO-HEARING OFFICER DODUC: He actually said he
22 testified.

23 MS. SHEEHAN: I understand he testified, but
24 does that mean that he now gets to talk about, for the
25 first time, everything that he recalls that he

1 testified about? It's not actually in his testimony
2 that he submitted.

3 What he testified to exactly is not in the
4 testimony that he provided as a part of these
5 proceedings.

6 CO-HEARING OFFICER DODUC: Ms. Meserve, your
7 response.

8 MS. MESERVE: I actually didn't ask him what
9 he testified to. I'm asking him what his opinion is
10 today. And in his answer, he referred to his
11 testimony, which I think remains his opinion today.

12 CO-HEARING OFFICER DODUC: All right.
13 Overruled.

14 MS. MESERVE: And so with respect to the
15 application of the 2010 Flow Criteria that you
16 recommend in your testimony, is it fair to say that's
17 not based upon whether the fish happens to be listed or
18 not?

19 WITNESS KIER: Could you ask that again,
20 please?

21 MS. MESERVE: Keeping with the example of the
22 Chinook salmon that we're -- been discussing, is it
23 fair to say that your recommendation to -- of the
24 importance of flows and the reference to the flow
25 report is not tied to whether the particular fish is a

1 listed species or not?

2 WITNESS KIER: That's correct.

3 MS. MESERVE: And why is that?

4 WITNESS KIER: The charge from the legislature
5 to this Board in 2009 was to develop flow criteria to
6 protect public trust resources in the Bay-Delta. And
7 public trust resources is a broad array of animals and
8 plants and other things.

9 So whether a fish is listed under Endangered
10 Species Act or not, it may still well be within the
11 term "public trust resource," I believe.

12 MS. MESERVE: And then if we could scroll up
13 to Page 4 of the flow report, please.

14 Under the "Flow Criteria and Conclusions," are
15 you familiar with the context in those bullet points,
16 Mr. Kier?

17 WITNESS KIER: Sure, yes.

18 MS. MESERVE: And thinking of that first
19 bullet there, is it possible that consideration of
20 public trust resource protection to which you've just
21 referred could include increased flows in the Sac
22 River, the San Joaquin River or increased outflows
23 beyond what was considered in the 2010 Flow Report?

24 CO-HEARING OFFICER DODUC: Ms. Morris.

25 MS. MORRIS: Objection, I think going beyond

1 -- at least going beyond the 2010 Flow Criteria Report
2 is outside the scope.

3 CO-HEARING OFFICER DODUC: What do you mean by
4 "beyond," Ms. Meserve?

5 MS. MESERVE: What I'm doing is testing his --
6 he's put forth an endorsement of some of the -- of the
7 recommendations of the flow report, and then he's
8 familiar with that report and helped develop it. And
9 then I'm questioning him about the issue of -- which is
10 follow-up to the -- what he just explained was the
11 broader array of public trust resources.

12 So I'm just trying to understand his opinion
13 that he's expressed in his testimony and how far that
14 goes.

15 CO-HEARING OFFICER DODUC: But just to be
16 clear on the record, Ms. Meserve, Mr. Kier did not help
17 develop the Flow Criteria Report. Board staff did,
18 although Mr. Kier and many others contributed by
19 providing expertise which then the staff utilized to
20 develop the report.

21 MS. MESERVE: Yes, thank you.

22 CO-HEARING OFFICER DODUC: Ms. Morris.

23 MS. MORRIS: I'd also like to object that
24 asking this witness for opinions that go beyond "he
25 recommended this" -- asking as to the basis of why he

1 recommended that allows him the opportunity to put in
2 new testimony that we have not had in writing and we
3 have not had the opportunity to cross-examine on.

4 So if he wanted to or if his attorneys wanted
5 him to provide evidence as to why he's recommending
6 this, it should have been submitted in writing. And
7 allowing this expansive scope on surrebuttal
8 cross-examination, which is really of a friendly
9 nature, is inappropriate and outside the scope and
10 unfair to petitioners because it's new evidence that
11 we've never seen and are not able to question the
12 witness on.

13 CO-HEARING OFFICER DODUC: Overruled. She's
14 allowed to explore the basis for his testimony.

15 Ms. Meserve.

16 MS. MESERVE: Let me go back.

17 So I -- I'm trying to think of what my
18 question was.

19 I believe the question was, with reference to
20 that first bullet point, is it possible, Mr. Kier, that
21 protection of public trust resources, consideration of
22 that broader context might lead to additional flow
23 requirements beyond what was in the 2010 Flow Report?

24 WITNESS KIER: I think that's conceivable.

25 CO-HEARING OFFICER DODUC: And Ms. Morris, the

1 reason why I think this is -- to be fair, yes, Board
2 staff did prepare the Flow Criteria Report. But the
3 expert opinion that was provided included a broad range
4 of flow recommendations, including those that went
5 beyond what was in this report.

6 So I think her question is within the scope of
7 the 2010 Flow Criteria proceedings to which Mr. Kier
8 has testified and included in his testimony.

9 But you're on a thin edge here, Ms. Meserve.

10 MS. MESERVE: Okay. So if we could scroll to
11 Page 5 of this same report and look at Item 3, which is
12 the outflow and inflow recommendations from the flow
13 report.

14 Are you familiar with those, Mr. Kier?

15 WITNESS KIER: Generally, I'm aware.

16 MS. MESERVE: So following up on your prior
17 response, is it possible that outflow requirements that
18 were protective of all public trust resources and
19 beneficial uses might be necessary for, for instance,
20 the July-through-December time period?

21 MR. BERLINER: Objection.

22 CO-HEARING OFFICER DODUC: Mr. Berliner.

23 MR. BERLINER: This question lacks foundation.
24 There's been no showing that this witness has made
25 study on his own or reviewed studies that would support

1 the basis for an opinion on this question.

2 CO-HEARING OFFICER DODUC: Ms. Meserve.

3 MS. MESERVE: Mr. Kier summarized his
4 testimony and didn't go over his qualifications in
5 detail just now, but I believe that Mr. Kier has, I
6 believe he said, six decades of experience in fisheries
7 in the Delta. So it would be based on that experience
8 that I would be asking this question.

9 MR. BERLINER: I'm not --

10 CO-HEARING OFFICER DODUC: Mr. Keeling looks
11 like he's about to say something.

12 MR. KEELING: I'm not sure I understand the
13 question. I understand the question to be Mr. Kier,
14 who has -- to use somebody else's term -- endorsed the
15 recommendations of the 2010 report, is being asked if
16 his endorsement is limited to those flow
17 recommendations.

18 I understood that to be the gist of the
19 question, but I may have missed it myself.

20 CO-HEARING OFFICER DODUC: Hold on a second.

21 If you're asking for opinion beyond --

22 MR. KEELING: No.

23 CO-HEARING OFFICER DODUC: -- his testimony.

24 MR. KEELING: No, no. I think the question --
25 I interpret the question to be, "Mr. Kier, is your

1 recommendation limited to the flow recommendations of
2 the report?" In other words, "You've endorsed the
3 report. Now are you saying it should be limited to
4 that?" I understood that as the question.

5 CO-HEARING OFFICER DODUC: But that his
6 testimony is limited to that report.

7 MR. KEELING: That would be different from
8 saying, "And I -- then I recommend nothing more," or,
9 "I recommend that your flow be limited to" -- I --
10 maybe I'm misinterpreting Ms. Meserve's question.

11 CO-HEARING OFFICER DODUC: Hold on. That was
12 not the crux of Mr. Berliner's objection.

13 MR. KEELING: Okay.

14 CO-HEARING OFFICER DODUC: Mr. Berliner's
15 objection, as I understand it, is Mr. Kier's expertise
16 and familiarity on this matter in order to opine on the
17 specific flows and the basis for those flow
18 recommendations.

19 Is that correct, Mr. Berliner?

20 MR. BERLINER: I'm not challenging Mr. Kier's
21 credentials. I am challenging the question that was
22 asked concerning increases in flow during a particular
23 time period different from anything that's up there
24 under No. 3 and whether flows would go higher than the
25 2010 Flow Criteria Report for which, if you're going to

1 opine that, yes, they should, that needs to be based on
2 sound scientific evidence, which is not before us and
3 was not reviewed in questioning Mr. Kier.

4 CO-HEARING OFFICER DODUC: And which was not
5 submitted by Mr. Kier.

6 MR. BERLINER: Correct -- well, he didn't
7 discuss it in his testimony.

8 CO-HEARING OFFICER DODUC: He didn't discuss
9 it.

10 Your response, Ms. Meserve.

11 MS. MESERVE: Again, now, I'm just trying to
12 understand the nature of his recommendation and if it
13 is intending to be exclusive or not. So I believe I
14 could ask the question more in the manner that
15 Mr. Keeling expressed it maybe and get through the
16 question in a way that is, I think, allowable
17 cross-exam on this particular surrebuttal.

18 CO-HEARING OFFICER DODUC: So let's see if I
19 can understand this. Mr. Kier, your testimony, as I
20 recall viewing it, focused on the 2010 Flow Criteria
21 Report because it was in response to petitioners'
22 witnesses, the three doctors, and their critique of the
23 2010 Flow Criteria Report, correct?

24 WITNESS KIER: I'm sorry. Could you restate
25 the question?

1 CO-HEARING OFFICER DODUC: Your testimony was
2 focused on the 2010 Flow Criteria Report?

3 WITNESS KIER: Yes. I mean, I was -- I was
4 explaining --

5 CO-HEARING OFFICER DODUC: Did you --

6 WITNESS KIER: I was explaining my role in it
7 and the value that I saw in the work of the Board.

8 CO-HEARING OFFICER DODUC: Did you offer any
9 opinion or testimony beyond the 2010 Flow Criteria
10 Report?

11 WITNESS KIER: I think not.

12 CO-HEARING OFFICER DODUC: Okay.

13 Then, Ms. Meserve, your cross should be
14 limited to the 2010 Flow Criteria Report that is the
15 scope of Mr. Kier's rebuttal testimony.

16 MS. MESERVE: Just to clarify, does that mean
17 that you wouldn't be allowing me to ask the question in
18 the manner that Mr. Keeling had phrased it?

19 CO-HEARING OFFICER DODUC: I don't even
20 remember how Mr. Keeling phrased it now.

21 MS. MESERVE: Yeah. So let me try and then
22 see if it follows what your trying to convey.

23 So just looking at the first bullet, Mr. Kier,
24 which refers to the unimpaired Delta outflow, January
25 through June, is there anything in your testimony, in

1 your recommendation which would preclude the
2 consideration of outflow in other time periods?

3 CO-HEARING OFFICER DODUC: I don't know I
4 understand the question. Is there anything in his
5 testimony --

6 MS. MESERVE: In his recommendations in his
7 testimony.

8 CO-HEARING OFFICER DODUC: Let's try it this
9 way.

10 Mr. Kier, does your testimony include any
11 recommendations beyond what's contained the first
12 bullet?

13 WITNESS KIER: My 2010 testimony was limited
14 to the flow requirements of fall-run Chinook salmon
15 from the Sacramento River.

16 CO-HEARING OFFICER DODUC: Okay. What about
17 your rebuttal testimony before us today -- I'm sorry,
18 surrebuttal?

19 WITNESS KIER: My surrebuttal testimony simply
20 points out that the Flow Criteria Report, in my view,
21 was the best piece of work that I had seen in all my
22 years of working and that the efforts by the rebuttal
23 witnesses to reduce the value of that, I was addressing
24 that. I was saying --

25 CO-HEARING OFFICER DODUC: But your

1 surrebuttal testimony does not make any recommendations
2 or mention of any other recommendations beyond the Flow
3 Criteria Report?

4 WITNESS KIER: That is correct.

5 CO-HEARING OFFICER DODUC: Okay.

6 So, Ms. Meserve, that will be outside the
7 scope.

8 MS. MESERVE: Following up on Mr. Kier's
9 answer regarding fall-run Chinook salmon, is it true,
10 Mr. Kier, that there is no outflow requirement in the
11 2010 Flow Criteria for fall, for July through December?

12 WITNESS KIER: I believe that the -- I believe
13 that the criteria restricted to the spring
14 out-migration for Sacramento River fall-run Chinook
15 salmon.

16 MS. MESERVE: And with respect to the second
17 bullet of unimpaired Sacramento River inflow, are you
18 aware, Mr. Kier, that the project proponents for the
19 tunnels are proposing to measure inflow downstream of
20 the three diversions?

21 CO-HEARING OFFICER DODUC: Mr. Berliner.

22 MR. BERLINER: Objection, beyond the scope of
23 his testimony. As he has said many times, his
24 testimony bookends with the 2010 Flow Criteria and
25 takes on the testimony of three DWR witnesses. This is

1 well beyond the scope of what he discussed in his
2 testimony.

3 CO-HEARING OFFICER DODUC: Mr. Weir -- I'm
4 sorry; why do I want to call you "Mr. Weir"?

5 MR. JACKSON: Because we've had another
6 witness that I believe is very close to "Weir." And I
7 think you're going to see him on rebuttal again having
8 to do with pictures.

9 CO-HEARING OFFICER DODUC: Yes.

10 MR. JACKSON: Which you love.

11 CO-HEARING OFFICER DODUC: Yes. All right.

12 MS. MESERVE: Mr. Wirth.

13 CO-HEARING OFFICER DODUC: What is your
14 understanding, Mr. Kier, of the inflow that is
15 reflected in this bullet which is in the report to
16 which he has referenced?

17 WITNESS KIER: You're talking about other than
18 the January-to-June period?

19 CO-HEARING OFFICER DODUC: Yes, the Sacramento
20 River inflow, what is your understanding of what
21 comprises Sacramento River inflow?

22 MS. MESERVE: Not the temporal element, I
23 haven't asked about that yet, but the location.

24 WITNESS KIER: In my testimony, I urge you to
25 use the flow criteria in establishing standards for

1 the -- for the request for change of point of diversion
2 from upstream of the diversion point through the --
3 through the Delta. I think I make that clear in my
4 testimony, that I'm -- and I don't know why flow
5 criteria would be established only downstream of the
6 project.

7 I mean, I think we know how much water it
8 takes to get fall-run Chinook salmon from the
9 Sacramento River safely through the Delta and Estuary
10 and that that amount should be provided the entire
11 course from, say, Sacramento through the Delta.

12 That was the way I made my recommendation to
13 your Board in 2010, and I think that's the way it was
14 incorporated in the Flow Criteria Report.

15 CO-HEARING OFFICER DODUC: Thank you.

16 Ms. Sheehan.

17 MS. SHEEHAN: I just wanted to object to the
18 question because Ms. Meserve appears to be asking him
19 now about criteria as it relates to Cal WaterFix and
20 he's specifically only rebutting witnesses who said
21 they were only talking about existing conditions and
22 specifically were not talking about Cal WaterFix.

23 So his surrebuttal can only be in regard to
24 the report and existing conditions. He did not testify
25 to Cal WaterFix, and the people he's rebutting did not

1 testify to Cal WaterFix.

2 CO-HEARING OFFICER DODUC: Wasn't the
3 implication, Ms. Sheehan, that the witnesses --
4 petitioners' witnesses testifying on the 2010 Flow
5 Criteria Report were doing so in its application to our
6 decision with respect to the petition?

7 MS. SHEEHAN: They were testifying in regard
8 to there's a lot of information that should be included
9 in State Board decision making, whatever form that is,
10 but in general that there's a lot of information that
11 is great stuff the Board should also consider, and that
12 was their testimony.

13 CO-HEARING OFFICER DODUC: All right,
14 sustained.

15 Although I think the way I asked your question
16 got the answer you wanted, so let's move on
17 Ms. Meserve.

18 MS. MESERVE: So just respect to the -- going
19 to the temporal elements of the Sacramento River inflow
20 recommendation, that could include inflows as you
21 defined them just now in your answer in other months
22 for other beneficial uses, couldn't it?

23 CO-HEARING OFFICER DODUC: Which would go
24 beyond the scope of the 2010 Flow Criteria Report.

25 MR. JACKSON: Actually, if you looked at

1 No. 4 and everybody -- we're looking at just the
2 bullets on one page, it talks about fall pulse flows on
3 the Sacramento and San Joaquin rivers; it talks about
4 other criteria. The Board simply didn't throw out the
5 rest of the year, and so I don't understand the
6 question.

7 MS. MESERVE: I guess, yeah, I was just asking
8 Mr. Kier to clarify that his endorsement of the flow
9 report wouldn't exclude unimpaired Sacramento River
10 inflows as he defined them in other months.

11 MR. JACKSON: And I would object on the
12 grounds that it misstates that -- his testimony. It's
13 my understanding his testimony in regard to the 2010
14 report is that it's a great place to start and what's
15 in it is a place to start.

16 And I'm looking at No. 4 talking about --

17 CO-HEARING OFFICER DODUC: All right,
18 Mr. Jackson, you're now testifying yourself. But that
19 was helpful. Thank you.

20 Ms. Meserve, either rephrase or move on,
21 please.

22 MS. MESERVE: I think I'll leave it at that.
23 Thank you.

24 CO-HEARING OFFICER DODUC: Thank you.

25 Any redirect?

1 MS. DES JARDINS: Excuse me.

2 MS. MESERVE: I'm sorry. Ms. Des Jardins has
3 a cross-exam question. She arrived a little bit late,
4 and I wasn't able to get her request in. Is that --

5 MS. DES JARDINS: Yes, I apologize for
6 arriving late. I had to drive back very -- drive up
7 very late from Santa Cruz because of a continually
8 changing schedule.

9 CO-HEARING OFFICER DODUC: How much time do
10 you request?

11 MS. DES JARDINS: I'd like 25 minutes, please.
12 It may take less.

13 CO-HEARING OFFICER DODUC: Let's see what you
14 have.

15 CROSS-EXAMINATION BY MS. DES JARDINS

16 MS. DES JARDINS: Since we're on Exhibit
17 SWRCB-25, I'd like to go to PDF Page 56 and 57 of that
18 document, please. And can we scroll down.

19 And, Mr. Kier, I just wanted to ask you your
20 understanding of the biological goals for the Delta
21 Flow Criteria Report. This is the first page.

22 With respect to salmon, was one of the goals
23 to provide floodplain inundation of appropriate timing
24 and sufficient duration to enhance spawning and
25 rearing.

1 CO-HEARING OFFICER DODUC: Mr. Jackson.

2 MR. JACKSON: I'm going to object to that
3 question as outside the scope of surrebuttal. We were
4 rebutting Mr. Hanson, Mr. Hutton, and Mr. Acuna. And I
5 do not remember "floodplain."

6 MS. DES JARDINS: Mr. Hanson actually talked
7 about floodplain inundation.

8 CO-HEARING OFFICER DODUC: Did, Mr. Kier,
9 specifically --

10 Did you discuss floodplain inundation in your
11 testimony, Mr. Kier?

12 WITNESS KIER: I did not.

13 MS. DES JARDINS: Okay. Then let's go to the
14 next page, please.

15 CO-HEARING OFFICER DODUC: I'm sorry. Hold
16 on. Let's make sure the court reporter captured
17 Mr. Kier's response.

18 THE REPORTER: I did.

19 CO-HEARING OFFICER DODUC: Okay.

20 MS. DES JARDINS: Thank you.

21 So was one of the other goals to provide
22 sufficient flows in the Sac River to transport salmon
23 smolts through the Delta in the spring?

24 CO-HEARING OFFICER DODUC: Ms. Des Jardins,
25 since we can all see that bullet, what is your

1 question?

2 MS. DES JARDINS: I -- I believe, Mr. Kier,
3 that was one of the biological goals of the report and
4 what you testified on in the proceeding.

5 CO-HEARING OFFICER DODUC: That's what it
6 says. What is your question?

7 MS. DES JARDINS: Well, I'd also like,
8 following up on that, to say -- was -- another goal was
9 specifically maintaining water temperatures and
10 dissolved oxygen to -- is another goal to transport --
11 to support adult Chinook salmon migration through
12 maintaining water temperatures in the main stem rivers?

13 CO-HEARING OFFICER DODUC: And that's what it
14 says.

15 Mr. Jackson.

16 MR. JACKSON: Yes, I'm going to object to this
17 line of questioning on the grounds that the document's
18 in evidence and it speaks for itself.

19 MS. DES JARDINS: Well --

20 CO-HEARING OFFICER DODUC: Ms. Des Jardins --

21 MS. DES JARDINS: I --

22 CO-HEARING OFFICER DODUC: Ms. Des Jardins --

23 MS. DES JARDINS: I just --

24 CO-HEARING OFFICER DODUC: Ms. Des Jardins.

25 MS. DES JARDINS: Yes?

1 CO-HEARING OFFICER DODUC: Your role in
2 conducting cross-examination is to solicit additional
3 evidence for the record, not to simply restate and
4 repeat what is already in the document that we can all
5 see.

6 MS. DES JARDINS: Well --

7 CO-HEARING OFFICER DODUC: So please ask your
8 specific question to Mr. Kier.

9 MS. DES JARDINS: Thank you.

10 Mr. Kier, don't -- don't -- aren't the
11 temperature conditions on the main stem rivers, don't
12 those apply in the fall? Isn't [sic] adult migration
13 of salmon occur in the fall?

14 WITNESS KIER: It begins in the fall.

15 MS. DES JARDINS: Yes. And so --

16 WITNESS KIER: For fall-run Chinook salmon.

17 MS. DES JARDINS: Yeah. And wouldn't
18 requirements to maintain water temperatures to protect
19 adult migration -- to support adult Chinook salmon
20 migration apply in the fall as well?

21 WITNESS KIER: Yes.

22 MS. DES JARDINS: Okay. Thank you. That was
23 what I wanted to get to.

24 And then I'd like to go to -- your testimony
25 refers to Dr. Kjeslon's testimony, 1987 testimony. And

1 I'd like to go to Exhibit PCFFA-149, Page 51, about
2 some of the bases of your opinions.

3 PDF Page 51, thank you. And let's scroll out
4 a little.

5 So it's -- is this graph part of the basis of
6 CalSim's conclusion, the -- for -- the minimum flows of
7 20,000 to 30,000 cfs in -- this -- is this a graph of
8 survival of salmon smolts versus Rio Vista flow?

9 MR. KEELING: I'm going to object. This -- I
10 think I understand the question, but this seems to go a
11 bridge too far beyond the scope of Mr. Kier's
12 surrebuttal. And if he's --

13 CO-HEARING OFFICER DODUC: All right.

14 MR. KEELING: If he has some working
15 familiarity, that's another thing. But this is not
16 within his surrebuttal.

17 CO-HEARING OFFICER DODUC: Sustained.

18 MS. DES JARDINS: Okay. I'd like to go to the
19 summary on Page 77.

20 Mr. Kier, can you read the section on summary?

21 WITNESS KIER: Yes.

22 MS. DES JARDINS: Is this section -- is this
23 summary by Mr. Kjelson consistent -- the ba- -- partly
24 the basis of your own recommendations in the 2010 Flow
25 Criteria?

1 WITNESS KIER: I believe I incorporated
2 Dr. Kjelson's work in my presentation to the Board in
3 2010.

4 MS. DES JARDINS: And it's not -- so it's not
5 just maximum survival with flows at or above 20,000 to
6 30,000 cfs, correct? There's other recommendations as
7 well?

8 WITNESS KIER: That is correct.

9 MS. DES JARDINS: One of them is the
10 temperatures of below 66 degrees?

11 WITNESS KIER: You're asking what?

12 MS. DES JARDINS: Yeah. Isn't that one of the
13 recommendations?

14 WITNESS KIER: I'm sorry. I can't hear you.

15 MS. DES JARDINS: Is one of the
16 recommendations that temperatures be below 66 degrees?

17 WITNESS KIER: There it is on the screen.

18 MS. DES JARDINS: And in your own
19 understanding, that's very important for salmon; isn't
20 that correct?

21 WITNESS KIER: I included a temperature
22 recommendation in the testimony that I provided the
23 Board in 2010.

24 MS. DES JARDINS: And another recommendation
25 of CalSim was that flow is seaward in the lower San

1 Joaquin River at Jersey Point; is that correct, that
2 there's a recommendation on no -- of no reverse flows
3 as well?

4 WITNESS KIER: What's your question?

5 MS. DES JARDINS: So are -- is the elimination
6 of reverse flows, in your understanding, also very
7 important for salmon survival?

8 MR. BERLINER: Objection.

9 CO-HEARING OFFICER DODUC: Mr. Berliner.

10 MR. BERLINER: This goes beyond the scope of
11 his testimony. He doesn't discuss reverse flows.

12 MR. KEELING: On top of that, it's asked and
13 answered. I think the answer is encompassed in his
14 previous response.

15 CO-HEARING OFFICER DODUC: Sustained.

16 MS. DES JARDINS: Okay. The 2010 Delta Flow
17 Criteria Report recommendations do discuss limits on
18 reverse flows, so I was just -- that was the basis of
19 my question.

20 I'd like to go to Page 9 of SJC-364, please,
21 and Page 1.

22 CO-HEARING OFFICER DODUC: Sorry. Page 1 or
23 Page 9?

24 MS. DES JARDINS: Page 9, at Line 1, sorry.

25 And, Mr. Kier, you discussed -- you mentioned

1 the exhibits of the State and Federal Water Contractors
2 here. I want to ask you about the witnesses who
3 appeared for the State and Federal Water Contractors.
4 And to refresh your memory, I'd like to pull up Exhibit
5 DDJ-349.

6 If we could scroll down, please.

7 Mr. Kier, based on this witness list and your
8 own recollection, was Chuck Hanson the witness for the
9 State and Federal Water Contractors in the 2010 Delta
10 Flow Criteria proceeding?

11 MR. BERLINER: Objection, relevance.

12 CO-HEARING OFFICER DODUC: Ms. Des Jardins.

13 MS. DES JARDINS: I think it's relevant in the
14 extent that these are experts who appeared for the
15 State and Federal Water Contractors and who were paid
16 for that testimony. The witness's testimony maybe
17 influenced
18 by -- to the extent that it wasn't the Department of
19 Water Resources.

20 CO-HEARING OFFICER DODUC: I don't understand
21 the justification.

22 MS. DES JARDINS: The Board itself has cited
23 a decision which states that weight of an expert
24 testimony should be partly considering who paid for the
25 testimony. And to the extent these were witness for

1 the State and Federal Contractors --

2 CO-HEARING OFFICER DODUC: You may make that
3 argument in your closing briefs.

4 MS. DES JARDINS: I can't if it's not in
5 evidence and I can't ask the question.

6 MR. JACKSON: It is in evidence in
7 cross-examination. And a list showing these same
8 panels is in evidence already and was responded to by
9 Mr. Hanson in which he said he didn't remember being on
10 that many panels but he had been on the panels. So I
11 think it's asked and answered.

12 CO-HEARING OFFICER DODUC: In any case, it's
13 outside the scope of Mr. Kier's testimony.

14 MS. DES JARDINS: Okay. Thank you. That
15 concludes my questions.

16 CO-HEARING OFFICER DODUC: All right.

17 Redirect request?

18 MR. KEELING: We have no redirect. And I
19 believe this is the last surrebuttal panel for
20 San Joaquin County protestants.

21 So at this time, I would move into evidence
22 all of Mr. Kier's testimony, which is SJC-364, as well
23 as his statement of qualifications, which is 363, and
24 the many exhibits that I won't take the time to list
25 that were submitted in conjunction with those exhibits

1 on the surrebuttal.

2 CO-HEARING OFFICER DODUC: Thank you.

3 Mr. Jackson, did CSPA have any exhibits?

4 MR. JACKSON: The exhibits are joint exhibits,
5 and we did that as a matter of time on surrebuttal.

6 And that is, this is the end of our surrebuttal case as
7 well, and so I would join in the motion.

8 CO-HEARING OFFICER DODUC: All right.

9 Objections?

10 MR. BERLINER: Yes.

11 CO-HEARING OFFICER DODUC: Mr. Berliner.

12 MR. BERLINER: Tom Berliner on behalf of DWR.

13 We object to several of the submittals being
14 proposed by San Joaquin County and CSPA.

15 CO-HEARING OFFICER DODUC: If you could move
16 to microphone closer.

17 MR. BERLINER: Sorry. We object to several of
18 the exhibits that are being proposed for -- as evidence
19 by San Joaquin County and CSPA that are -- waver from
20 our standard practice. I objected earlier to all of
21 them as not being supported by the testimony and was
22 overruled.

23 However, there are a number of items that are
24 on this list that I won't go through one by one but are
25 not self-authenticating. Yes, they are exhibits from

1 the 2010 Flow proceeding. We're not disputing that.
2 But there have been a number of exhibits that are --
3 let's call it "casual," if that's a fair description,
4 and that were not relied on; their veracity has not
5 been demonstrated.

6 CO-HEARING OFFICER DODUC: Mr. Berliner, let
7 me interrupt. It sounds like you have a long list of
8 exhibits as well as a long list of objections that you
9 wish to voice. Let us give you until noon tomorrow to
10 file that in writing.

11 And Mr. Keeling, Mr. Jackson, you may have
12 until noon on Monday to respond.

13 MR. BERLINER: Thank you very much.

14 MR. KEELING: Thank you very much.

15 CO-HEARING OFFICER DODUC: Mr. Kier, with
16 that, thank you.

17 Mr. Jackson, anything to add?

18 MR. JACKSON: Yes. Just since I don't know
19 which exhibits we're talking about yet and I don't
20 particularly want to know until -- I think that's a
21 fine procedure to do it.

22 But I take it that, if they're not
23 specifically objected to in writing, they go into
24 evidence?

25 CO-HEARING OFFICER DODUC: Correct.

1 MR. JACKSON: Thank you.

2 CO-HEARING OFFICER DODUC: All right. With
3 that, I think we deserve an earlier break. Why don't
4 we take our lunch break now so that we can go to the
5 Farmers Market. Oh, Mr. Bezerra's not here to prevent
6 us from doing that.

7 In any case, we will return at 12:45.

8 (Whereupon, the luncheon recess was taken
9 at 11:45 a.m.)

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1 Tuesday, September 26, 2018 12:45 p.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: All right. It is
5 12:45. We're back in session.

6 Miss Meserve.

7 MS. MESERVE: Good afternoon.

8 We have our one witness for LAND this
9 afternoon, Russell van Loben Sels.

10 CO-HEARING OFFICER DODUC: All right. Welcome
11 back.

12 And before we get to you, I believe,
13 Miss Morris, do you have an objection?

14 MS. MORRIS: (Nodding head.)

15 CO-HEARING OFFICER DODUC: Please state your
16 objection.

17 MS. MORRIS: Thank you.

18 I have several objections that I'll walk
19 through.

20 The first is -- And this is on the testimony
21 of Russell van Loben Sels, LAND-305, beginning on
22 Page 2, Line 7 through Page 3, Line 16.

23 This section is outside the scope of
24 surrebuttal as it does not cite to or respond to
25 SWRCB-1113, the Supplemental, and there are no document

1 changes from the final to the Supplemental in terms of
2 water quality.

3 All the cites in this section are to SWRCB-110
4 and -111, which are not the Supplemental document,
5 environmental document.

6 CO-HEARING OFFICER DODUC: Miss Morris -- I'm
7 sorry -- before you continue, please give me that
8 specific section again in 305.

9 MS. MORRIS: Sure. It's Page 2, Line 17.

10 CO-HEARING OFFICER DODUC: Page 2, Line 17.
11 Okay.

12 MS. MORRIS: Through Page 3, Line 16.

13 They're all scope, so do you want me to go
14 through them all, or do you want to tackle them one at
15 a time?

16 CO-HEARING OFFICER DODUC: Let's hear a
17 response from Miss Meserve one at a time and then we'll
18 take them all into consideration.

19 Miss Meserve, her objection is Page 2, Line 17
20 through Page 3, Line 16.

21 MS. MORRIS: Line 7. To Line 7.

22 CO-HEARING OFFICER DODUC: To Line 7. Sorry.

23 MS. MESERVE: The way Mr. van Loben Sels and I
24 have reviewed the Admin Draft Supplemental EIR, and it
25 includes some new analysis regarding certain impacts,

1 and then it relies on the same Mitigation Measures,
2 which is SWRCB-111, as the Final EIR did.

3 So, what Mr. van Loben Sel's testimony is
4 explaining is that he continues to be concerned about
5 those impacts even in light of the new information put
6 forth in the Admin Draft EIR.

7 So, I believe, especially based on the
8 clarifications issued earlier this morning with respect
9 to the proper scope of surrebuttal being responsive to
10 the Admin Draft SEIR, that this would fall within that.

11 CO-HEARING OFFICER DODUC: I'm not sure I
12 understand how that is responsive to the Administrative
13 Draft.

14 MS. MESERVE: The Admin Draft SEIR relies on
15 the materials that are cited in here to address
16 salinity and Microcystis are the water quality concerns
17 mentioned by Mr. van Loben Sels.

18 So, to the extent that the Admin Draft
19 continues to rely on those, that's what he's responding
20 to.

21 MS. MORRIS: And to be clear, what it does
22 cite to is MMRPs which have been part of this record
23 for quite some time, as well as the Statement of
24 Overriding Considerations for the Final EIR.

25 There's no citation in this section or

1 reference to the Supplemental.

2 CO-HEARING OFFICER DODUC: There is no
3 citation to the Administrative Draft, Miss Meserve.

4 MS. MESERVE: It's cited earlier on in the
5 testimony.

6 CO-HEARING OFFICER DODUC: But not in this
7 section.

8 MS. MESERVE: I don't think . . .

9 CO-HEARING OFFICER DODUC: And in what way is
10 it responsive to the four issues that is the scope of
11 surrebuttal?

12 MS. MESERVE: Item 1 says (reading):

13 "New information concerning changes
14 described in the Admin Draft SEIR."

15 And then you clarified this morning that it's
16 not the burden on Petitioners to figure out what was
17 different since the Final EIR -- or that we're talking
18 about everything that's happened since the Final EIR,
19 so . . .

20 The other thing that I think didn't get
21 brought up this morning but is relevant is that the
22 scope of the analysis in the Admin Draft EIR (sic),
23 many of us believe it's not expansive enough to include
24 all the things that may change from the changes in
25 operations or other things, right. So, I think it's

1 within the realm of what surrebuttal was defined to be.

2 And if the Admin Draft SEIR didn't rely on
3 that set of Mitigation Measures, I think Miss Morris
4 might have a point. But since it does rely on those
5 same Mitigation Measures to supposedly address the
6 impacts that Mr. van Loben Sels is concerned about, I
7 believe he's within -- he's within the proper scope to
8 be responding to that.

9 And if there's additional detail, you know,
10 it's the kind of thing that I think could be addressed
11 in briefing if -- if you're inclined to hear more about
12 it.

13 CO-HEARING OFFICER DODUC: Miss Morris, next
14 objection, please.

15 MS. MORRIS: Thank you.

16 Beginning on LAND-305, Page 3, Lines 17
17 through Page 4, Lines 25.

18 There is -- This is outside the scope of the
19 testimony of rebuttal on the Supplemental. It tries to
20 connect the ADSR. It says that the claim (reading):

21 ". . . Changes the Project footprint of
22 the tunnels will 'avoid crossing under
23 the community and to avoid affecting
24 municipal water wells.'"

25 But yet, then it goes on throughout the rest

1 of it to talk about and to refer to existing analysis.

2 In fact, the groundwater mitigation hasn't
3 changed, nor were there changes in the groundwater in
4 the Supplemental analysis.

5 So, again, this is outside the scope.

6 And then, furthermore, specifically in that
7 section on Page 4, Lines 5 through the end, they --
8 again, there's no citation to the Supplemental Draft.
9 Rather, it's all to existing testimony that has already
10 been put in by LAND or others.

11 CO-HEARING OFFICER DODUC: Response,
12 Miss Meserve.

13 MS. MESERVE: I think it's the very fact that
14 the SEIR Admin Draft did not include any analysis of
15 the change that Mr. van Loben Sel's testimony is
16 responding to.

17 And if you go to the groundwater chapter of
18 the Admin Draft SEIR, there's, like, two and a half
19 pages there that basically say nothing, and that's what
20 we're responding to.

21 CO-HEARING OFFICER DODUC: Next --

22 MS. MORRIS: There's --

23 CO-HEARING OFFICER DODUC: -- objection.

24 MS. MESERVE: -- no change, so . . .

25 Page 5, Line 18 through Page 6, Lines 9.

1 Again, this is outside the scope. There is no
2 new. It even says that it's "the same flawed
3 mitigation." It doesn't cite to ADAREIS. And it --
4 it's really just citing back to the MMRPs as well as to
5 previous testimony that has been submitted by other
6 people into this record.

7 So it's outside the scope, and it's also
8 duplicative.

9 CO-HEARING OFFICER DODUC: Response,
10 Miss Meserve?

11 MS. MESERVE: This is one of the areas, like
12 the groundwater one before, where there are changes to
13 the Project and the Project footprint.

14 For instance, there's quite a bit of more
15 acreage of agricultural land would be converted. So I
16 think it's within the scope of the testimony to comment
17 on the adequacy of the same old mitigation measures
18 being applied to even more severe impact on agriculture
19 in the Delta.

20 CO-HEARING OFFICER DODUC: Next objection.

21 MS. MORRIS: Same exhibit, LAND-305, Page 6,
22 Lines 12 through 17.

23 This, again, is not talking about the -- or
24 rebutting anything in the Administrative Draft. It's
25 really just previous -- It's just stating and

1 referencing duplicative testimony that's already been
2 put into evidence.

3 CO-HEARING OFFICER DODUC: Let me make sure I
4 get that.

5 Page 7 (sic), Line 12 through 17?

6 MS. MORRIS: Right. Page 6, Line --

7 CO-HEARING OFFICER DODUC: Page 6, I'm sorry.

8 MS. MORRIS: -- 12 through Line 17.

9 There's a whole other part of this section
10 that I'm not moving to strike but it's just that
11 portion that is referring to and incorporating other
12 testimony that is outside the scope and not relevant to
13 the surrebuttal topic on new information.

14 I recognize that the rest of it is responding
15 directly to -- not directly -- but there was testimony
16 by DWR witnesses about traffic impacts. So I'm not
17 moving to strike that.

18 CO-HEARING OFFICER DODUC: Response,
19 Miss Meserve?

20 MS. MESERVE: The way this is written, it's
21 just an introductory paragraph to introduce the topic
22 of transportation. I don't see why it would be
23 objectionable.

24 MS. MORRIS: It incorporates several other
25 testimony. It's not just introductory. It's

1 incorporating other pieces of testimony that may not
2 have relevant information to this topic.

3 MS. MESERVE: Well, I think Mr. van Loben Sels
4 is saying that it is relevant. He's a Yolo County
5 resident. He farms also in Sacramento County. And he
6 was concerned about the exhibits that he saw, and then
7 he goes on to explain what his new concerns would be as
8 part of his testimony.

9 CO-HEARING OFFICER DODUC: Next objection.

10 MS. MORRIS: LAND-305. This is beginning on
11 Page 7, Line 18 all the way through 8, Line 23.

12 This section is outside the scope. This is
13 dealing with cultural resources and specifically with
14 the Rosebud Rancho which has been the subject of
15 testimony in Part 1.

16 Their -- The EIR/EIS, even though it's cited
17 here, it -- there's no evidence in that that it's
18 changing. In fact, the EIR/EI -- the Supplemental
19 EIR/EIS says there's no changes to cultural impacts and
20 it does not reference at all Rosebud Ranchero (sic).

21 So this is outside the scope of the
22 surrebuttal topic.

23 CO-HEARING OFFICER DODUC: Response?

24 MS. MESERVE: Well, in fact, Page 18A-2 as
25 indicated on Page 7, Line 24, those reference Rosebud

1 Rancho. And it continues to misstate the condition of
2 Rosebud Rancho and whether it is, in fact, a
3 significant cultural resource. And Mr. van Loben Sels
4 is disagreeing with that as part of the Admin Draft
5 SEIR.

6 MS. MORRIS: And that, again, is duplicative
7 testimony from Part 1.

8 CO-HEARING OFFICER DODUC: Next objection.

9 MS. MORRIS: Looking at Page 8, Line 24
10 through Page 9, Line 18.

11 The assertion is that more than 9,000 cfs can
12 be diverted, but the testimony itself references that
13 the EIR/EIS says it would remain at 9,000.

14 There's been no change in the capacity of the
15 three tunnel intakes, and those were not referenced in
16 the Supplemental EIR and, therefore, it's outside the
17 scope of the surrebuttal topics.

18 CO-HEARING OFFICER DODUC: Miss Meserve.

19 MS. MESERVE: Mr. van Loben Sels is responding
20 to the assertion in the Admin Draft SEIR that the
21 maximum capacity is 9,000 cfs. And since that time,
22 there has been additional information which indicates
23 that that number is not the maximum capacity.

24 That also responds to rebuttal testimony that
25 was put forth in cross-examination of Mr. Bednarski, I

1 believe.

2 So, to the extent the SEIR is representing
3 something as a maximum capacity, this testimony
4 disagrees with that characterization and response.

5 CO-HEARING OFFICER DODUC: Question,
6 Mr. Deeringer?

7 MR. DEERINGER: Miss Morris, with respect to
8 this motion to strike, it sounded like your argument
9 was limited to the Administrative Draft.

10 Would your motion change or would you withdraw
11 it if that information was present in the Conceptual
12 Engineering Report?

13 MS. MORRIS: I don't believe -- Well, I -- I
14 would argue the same reason, that the Conceptual
15 Engineering Report leaves the tunnel intake capacity at
16 9,000, 3,000 per intake. There's no change in either
17 of those documents.

18 MR. DEERINGER: Thank you.

19 CO-HEARING OFFICER DODUC: Next objection.

20 MS. MORRIS: The last one to the testimony,
21 LAND-305, Page 9.

22 This -- I'm breaking this up because I think
23 there's some relevance here and it's within the scope.

24 So my objection is the Heading C, which is on
25 Lines 19 to 20.

1 And then also, for the same reason, on
2 Page 10, Line 10 through 22, that this testimony is
3 discussing the -- a change to Bureau participation as
4 well as the Coordinated Operations Agreement, and that
5 that is outside the scope of the Supplemental.

6 The Supplemental does not identify any change
7 in the Project in this manner, and -- nor does it
8 reference Coordinated Operations Agreement.

9 In addition --

10 CO-HEARING OFFICER DODUC: Miss Meserve.

11 MS. MORRIS: -- to that -- Sorry.

12 CO-HEARING OFFICER DODUC: Oh, I'm sorry.

13 MS. MORRIS: This -- It also tries to link the
14 relevance in by citing the CER, but the CER is a
15 construction document. This is how you construct the
16 Project, not how you operate the Project.

17 So, to the extent that there's a tie that they
18 struck the CER and tells how it's going to be operated,
19 that's incorrect factually, and so those would be also
20 outside the scope.

21 CO-HEARING OFFICER DODUC: Miss Meserve.

22 MS. MESERVE: As directly quoted from the CER
23 at the top of Page 10, first and second bullets, the
24 CER explains how the operations would change.

25 So that's incorrect to say that the CER is

1 construction and not operation. It goes through, in
2 particular, the changes that are proposed with the
3 Byron Tract Forebay. And that's what this testimony
4 responds to.

5 And that's how the materials objected to lower
6 on Page 10 are responding to that . . . the greater
7 level of coordination between DWR and Reclamation that
8 the CER has identified as being a change from the prior
9 version of the CER.

10 CO-HEARING OFFICER DODUC: Miss Morris.

11 MS. MORRIS: The CER talks about not
12 operations but how it will require coordination. And,
13 again, none of that coordination's changed.

14 The change that it's referencing to at that
15 site is the difference between the Clifton Court
16 Forebay and the Byron Tract Forebay and it's not
17 related to Coordinated Operations Agreement, which has
18 to do much more with sharing of responsibilities as
19 well as sharing in excess times, not how you operate
20 certain facilities.

21 MS. MESERVE: Sounds to me like something that
22 DWR and the State Water Contractors can argue in their
23 closing briefs.

24 MS. MORRIS: I have a couple more objections.

25 Should I go?

1 CO-HEARING OFFICER DODUC: Miss Des Jardins is
2 behind you.

3 MS. MORRIS: Oh.

4 CO-HEARING OFFICER DODUC: I think she wants
5 to chime in on this.

6 MS. DES JARDINS: I just would like to say
7 that there is a whole section of the CER that discusses
8 facility operations, and Miss Morris' objection
9 mischaracterizes that section.

10 CO-HEARING OFFICER DODUC: Miss Morris.

11 MS. MORRIS: I don't think you need me to
12 respond to that; do you?

13 CO-HEARING OFFICER DODUC: No.

14 MS. MORRIS: Okay. The -- The other
15 objections I have is to two citations of exhibits. And
16 that's LAND-309, which is the Supplemental EIR
17 comments.

18 And the reason I'm objecting to this is their
19 reference in this testimony. And they go outside the
20 scope of the Supplemental -- the changes in the
21 Supplemental EIR.

22 For example, they talk about Project
23 Description. They also attach numerous exhibits that
24 go outside the scope of the Supplemental EIR
25 surrebuttal scope that's been identified.

1 For example, they're also duplicative because
2 two of the exhibits happen to be testimony already
3 submitted in this hearing.

4 And then the last one is on LAND-310, which is
5 a COA letter.

6 And, again, I would make the objection that
7 it's outside the scope of the sur -- surrebuttal
8 identified in the hearing -- I'm sorry -- in the
9 September 10th ruling.

10 CO-HEARING OFFICER DODUC: Miss Meserve, your
11 response to the objection to citations of LAND-309 and
12 310.

13 MS. MESERVE: With respect to the 309, which
14 is the LAND comment letter, I don't believe that
15 exhibits are held to the same standard as the testimony
16 with respect to the scope.

17 I believe we have a lot of exhibits that
18 probably touch on a lot of topics that may not be
19 within the scope of rebuttal, as the Hearing Officers
20 have defined it. So I don't think that's the rule.

21 I will say the reason it was attached is
22 because it includes information that Mr. van Loben Sels
23 reviewed.

24 And, in addition, a few of the exhibits are
25 specifically referenced, you know, by Mr. van Loben

1 Sels in his -- in particular, with respect to the
2 cultural resource testimony he provides and his concern
3 about Rosebud Rancho.

4 So it was a matter of expediency to just
5 attach the letter that had the exhibits.

6 So I don't believe there's any -- I believe
7 the current rule that --

8 CO-HEARING OFFICER DODUC: Miss Meserve, did
9 he review the entire comment letter or just sections of
10 it in preparing his testimony?

11 Or I should ask him that. Sorry.

12 WITNESS VAN LOBEN SELS: I reviewed the entire
13 letter.

14 CO-HEARING OFFICER DODUC: Okay.

15 MS. MESERVE: And, then, with respect to the
16 Exhibit 310, the COA letter, again, that related back
17 to the testimony about this greater coordination.

18 And Mr. van Loben Sels in his testimony ties
19 together why that reinitiation of coordination may be
20 relevant and may be concerning if that higher level of
21 coordination is -- is needed under the new design.

22 So I believe the parsing hairs about what
23 exactly is in the COA and what exactly would be
24 renegotiated in trying to pull that away from the
25 greater level of daily operational coordination I think

1 goes -- you know, is way more detailed than the reasons
2 for which it was brought up in his testimony.

3 CO-HEARING OFFICER DODUC: Final arguments?

4 MS. MORRIS: Just on the comment letter.

5 It is referenced in his testimony, so it
6 should be within the scope of the surrebuttal.

7 As well as it contains many legal arguments
8 about the adequacy of CEQA and other things that are
9 not proper evidence and are outside the scope.

10 CO-HEARING OFFICER DODUC: All right. Thank
11 you.

12 With that, we shall take a break to consider
13 this, and we'll return shortly.

14 (Recess taken at 1:06 p.m.)

15 (Proceedings resumed at 1:36 p.m.):

16 CO-HEARING OFFICER DODUC: All right. We are
17 back in session.

18 Let me go through Ms. Morris' objections and
19 issue a ruling on each one of them.

20 We'll begin with Page 2 -- Oh, this is all
21 pertaining to LAND-305.

22 Her first objection to Page 2, Line 7 through
23 Page 3, Line 16 is sustained. It is outside the scope.

24 Her second objection, Page 3, Line 17 through
25 Page 4, Line 25, as well as her third objection,

1 Page 5, Line 18 through Page 6, Line 9, are overruled.
2 The Administrative Draft does contain an analysis on
3 mitigation.

4 Her next object -- objection was to Page 6,
5 Line 12 through 17. That is also overruled since it's
6 an introductory framing-the-issue paragraph.

7 Her next objection is Page 7, Line 18 through
8 Page 8, Line 23. That objection is sustained. The
9 Administrative Draft did not contain new Project
10 information regarding this matter.

11 Her next objection, Page 8, Line 24 through
12 Page 9, Line 18, is also sustained. It is outside the
13 scope. It was not -- Capacity's not an issue discussed
14 in the CER or the Administrative Draft.

15 Her objection, Page 9, Line C through -- and
16 also Page 10, Line 10 through 22, is overruled. The
17 CER was not clear on this matter, so we will -- we will
18 allow it. She also objected to LAND-309. That
19 objection is overruled. The witness did confirm that
20 he considered the entire comment letter in preparing
21 his testimony. And to the extent that it does include
22 any legal arguments, we will give it the appropriate
23 weight.

24 And her final objection is to LAND -- the
25 citation to LAND-310. That is sustained. This does

1 not effect a change in the Project as described in the
2 Administrative Draft or the CER. If there were to be
3 such a change, that matter would have to come back to
4 us for consideration.

5 I believe that covers all of your objections,
6 Miss Morris.

7 MS. MORRIS: (Nodding head.)

8 CO-HEARING OFFICER DODUC: Miss Meserve, do
9 you need a moment to consult with your client regarding
10 the remainder of his testimony?

11 WITNESS VAN LOBEN SELS: What I can still say.

12 CO-HEARING OFFICER DODUC: Yeah. Let's go
13 ahead and take a short break until 1:45 -- I'm sorry --
14 1 -- yeah, 1:45.

15 MS. MESERVE: Thank you.

16 (Recess taken at 1:39 p.m.)

17 (Proceedings resumed at 1:45 p.m.):)

18 CO-HEARING OFFICER DODUC: All right. Do you
19 need more time, Miss Meserve?

20 MS. MESERVE: I think we're okay. We'll -- If
21 we get it wrong, I'm sure someone will let us know.

22 CO-HEARING OFFICER DODUC: I'm sure someone
23 will.

24 All right. Thank you for that quick huddle.

25 Now, please proceed.

1 MS. MESERVE: Okay. And Mr. van Loben Sels
2 has already been sworn in previously, so we don't need
3 to go through that.

4
5 Russel van Loben Sels,
6 called as a witness by the For Local
7 Agencies of the North Delta, Bogle
8 Vineyards/DWLC, Diablo Vineyards/DWLC,
9 Stillwater Orchards, DWLC, Islands, Inc.,
10 San Joaquin County, San Joaquin County
11 Flood Control and Water Conservation
12 District, Mokelumne River Water and Power
13 Authority, and Daniel Wilson:, having
14 previously been duly sworn, was examined
15 and testified further as follows:

16 DIRECT EXAMINATION BY

17 MS. MESERVE: And is LAND-305 a true and
18 correct copy of your written testimony?

19 WITNESS VAN LOBEN SELS: It is, with the
20 exception of: The cite at the end of Page 6 should be
21 changed to SWRCB-102, Page 19A -- or 19A, Page 34.

22 CO-HEARING OFFICER DODUC: And, Mr. van Loben
23 Sels, if you could move the microphone closer to you.
24 Thank you.

25 WITNESS VAN LOBEN SELS: Yeah. The --

1 CO-HEARING OFFICER DODUC: Is it on?

2 WITNESS VAN LOBEN SELS: The cite at the
3 bottom of Page 6 needs to be changed to SWRCB-102,
4 Page -- 19A, Page 34.

5 MS. MESERVE: The page number is correct. It
6 just cited to the wrong document.

7 CO-HEARING OFFICER DODUC: Thank you.

8 MS. MESERVE: And, in preparing for your
9 testimony, did you read portions of the Administrative
10 Draft Supplemental Environmental Impact Report, the
11 2018 CER, and the other materials cited in your
12 testimony?

13 WITNESS VAN LOBEN SELS: I did.

14 MS. MESERVE: If you could go ahead and
15 summarize your testimony as modified by the Hearing
16 Officer's ruling.

17 WITNESS VAN LOBEN SELS: My brother and I are
18 fourth-generation farmers, and we own and operate
19 Amistad Ranches farming 2400 acres of tomatoes, corn,
20 pears, wheat, safflower, alfalfa and grapes.

21 I Chair the Delta Caucus, an informal
22 organization with the five-county -- Delta County Farm
23 Bureaus. I participated as an alternate in the Blue
24 Ribbon Task Force, and recently participated in Delta
25 Dialogues hosted by the Delta Conservancy.

1 And through these processes, and 48, 49 years
2 of farming in the Delta, I'm somewhat aware of the
3 State Water Project and the CVP water diversions that
4 occur in the Delta, and this proposed Petition that's
5 before you today.

6 I previously testimony -- test -- test --
7 provided testimony for LAND-1 -- in Part 1 pertaining
8 to injury to ill -- to legal users of water, as well as
9 Part 2, pertaining to public interest considerations.

10 This testimony focuses on inadequacy of
11 disclosure and mitigation for key effects of the
12 Supplemental EIR, as described in the Administrative
13 Draft Supplemental EIR, that would affect Delta
14 communities.

15 In addition, I'm concerned with the
16 possibility of expanding, but that's not allowed, so I
17 won't go there.

18 I'm concerned with the high level of
19 concentrate -- coordination between the CVP and SWP
20 that the Revised Project would require.

21 Impacts of the Revised Project remain
22 unacceptable. And mitigation fails to protect the
23 public interest in the areas of groundwater,
24 agriculture, transportation.

25 First of all, groundwater mitigation. The

1 ADSEIR changes the Project footprint to avoid affecting
2 goods and municipal water wells. Yet the ADSEIR fails
3 to address whether the newly proposed tunnel alignment
4 and Project changes would result in impacts to
5 different water and groundwater resources.

6 Neither does the ADSEIR include analysis of
7 the hydrologic -- hydrogeological effects of the
8 tunnels on wells in areas surrounding the newly aligned
9 tunnels and facilities.

10 The ADSEIR does not identify existing wells in
11 proximity of the tunnel alignment or any analysis of
12 impacts to wells, even though the information is
13 readily available.

14 Instead, the ADSEIR broadly concludes that the
15 new alignment will have beneficial effects on
16 groundwater resources even though no investigation has
17 been done with respect to wells and other water
18 resources impacted by the new alignment.

19 The Project footprint has significantly
20 changed, yet DWR has failed to consider the impacts of
21 those changes.

22 The ADSEIR also fails to disclose or analyze
23 how the changes in tunnel muck placement would impact
24 groundwater wells. Further, there is no information
25 regarding the location of borrow pits at each intake

1 cite.

2 The ADEIR does not disclose where material
3 will come from or provide maps of their potential
4 locations.

5 Both of these Project features could adversely
6 impact groundwater wells and other resources in the
7 Delta, yet the ADSEIR does not address, let alone
8 analyze them.

9 As explained in previous testimony, I am
10 concerned about Project impacts on local wells and
11 irrigation and drainage systems during construction and
12 operation. Nothing in the ADSEIR relieves those
13 concerns.

14 Moreover, the decisions to move the tunnel
15 alignment away from the Town of Hood indicates that the
16 Petitioners may believe that the tunnels would actually
17 interfere with groundwater wells.

18 The failure to analyze and provide mitigation
19 for these impacts indicates a lack of concern for Delta
20 communities, agriculture, and the public interest.

21 Agricultural impacts would increase. The
22 Revised Project described in the ADSEIR would require
23 the permanent conversion of 684 more acres of important
24 farmland than the Approved -- than the Approved
25 Project.

1 The ADSEIR attributes this increase primarily
2 to changes in the new Byron Forebay and muck storage
3 area.

4 The Revised Project would also interfere with
5 nine additional miles of agricultural water delivery
6 systems and drainage systems.

7 The locations of these new impacts are not
8 disclosed. These agriculture impacts are classified as
9 significant and unavoidable yet not analyzed.

10 The discussion of impact AG-2 in the ADSEIR
11 does not disclose the broad range of potential impacts
12 on agriculture that the Revised Project would have.

13 The ADSEIR notes that the conversion of
14 farmland and construction of Project facilities would
15 create indirect but adverse impacts on agriculture, yet
16 does not disclose any of those impacts in detail.

17 There is a passing reference to effects
18 related to seepage from forebays, as well as changes to
19 groundwater elevation. But, again, neither of these
20 impacts is analyzed nor specific mitigation proposed.

21 No new or improved mitigation is provided for
22 the additional significant and unavoidable impacts
23 agricultural resources, and they continue to rely on
24 the same flawed Mitigation Measures from the Approved
25 Project.

1 Transportation impacts also remains severe.

2 The Revised Project would continue to increase
3 traffic delays and degrade road conditions in the Delta
4 to significant and unavoidable levels with some changes
5 to the location of those impacts.

6 Previous testimony has established that the
7 interference with agriculture and other activities that
8 rely on Delta roadways if traffic levels increase as
9 anticipated during construction of the Project.

10 The ADSEIR fails to offer any comparison
11 between the approved and the Proposed Project with
12 respect to levels of service. As a result, it's
13 difficult to ascertain whether some segments would have
14 increased in traffic under the Proposed Project.

15 The ADSEIR claims that the number of segments
16 with unacceptable Levels of Service would decrease by
17 four roadway segments. And exacerbation of
18 unacceptable pavement surfaces would decrease by five
19 roadway segments.

20 As a Yolo County resident and Delta farmer, I
21 am concerned that some of these conclusions regarding
22 lesser impacts are incorrect.

23 The ADSEIR does not disclose or discuss how
24 increases in traffic would impede emergency responders.
25 The Project traffic increases throughout the Delta

1 would prevent Fire Departments, law enforcement, from
2 effectively responding to emergencies, potentially
3 endangering the public and health and safety.

4 I believe that the Project would interfere
5 with the effectiveness of emergency responders which
6 would not be in the interest of the local communities.

7 The 2018 CER describes a new project design
8 where water from the tunnels would be conveyed to a new
9 forebay located at Byron Tract rather than to an
10 expanded Clifton Court Forebay as previously planned.

11 The 2018 CER describes a complicated, daily
12 schedule for integration of operations. These
13 operations appear to be influenced by a variety of
14 factors, including the Sacramento River flows and
15 stages, tides, water surface elevations at the
16 Intermediate Forebay, the Byron Court Forebay, the old
17 Clifton Court Forebay, pumping schedules in the South
18 Delta by CVP and SWP pumps, as well as power
19 availability and cost, all very complicated, many
20 different moving parts, and I am very concerned about
21 the complexity of operating the system without doing
22 damage to the Delta.

23 In addition, the relationship between CVP and
24 SWP is already somewhat complex with regards to
25 complying with all of the rules and regulations as far

1 as meeting the -- the -- the . . . meeting all of the
2 regulatory requirements with regards to water.

3 And on top of that, we have -- the CVP has
4 notified the SWP that they wish to -- to change the --

5 CO-HEARING OFFICER DODUC: Mr. van Loben Sels,
6 that part was struck.

7 WITNESS VAN LOBEN SELS: Okay. Let me try it
8 from a little different direction.

9 In my experience with the Delta Dialogues and
10 other Delta processors, it's my understanding that the
11 relationship between CVP and the SWP to coordinate
12 Delta exports, including responsibility for meeting
13 regulatory requirements, is already complex. That
14 relationship was formally defined in the 1968
15 Coordinated Operating Agreement.

16 The additional complexity now being proposed
17 associated with the interoperation of the various SWP
18 and CVP components and proposed in the Revised Project
19 described in the 2018 CER, combined with the complex
20 existing background conditions, would appear to make
21 successful operation of the Revised Project even more
22 difficult.

23 In conclusion, I believe that the changes to
24 the Delta Tunnels Project described in the ADSEIR do
25 not improve conditions for Delta communities and may,

1 in fact, worsen the Project impacts.

2 The mitigation and other commitments provided
3 by the Petitioners would not, in my opinion, ensure
4 continuation of healthy and vibrant communities and
5 productive farming in the Delta.

6 As a result, the Revised Project would not be
7 in the public interest.

8 CO-HEARING OFFICER DODUC: Thank you, Mr. van
9 Loben Sels.

10 I believe DWR and the State Water Contractors
11 had said you had no cross. Is that still the case?

12 MS. MORRIS: (Nodding head.)

13 CO-HEARING OFFICER DODUC: All right. I have
14 County of San Joaquin for 10, Clifton Court for 10. I
15 don't see Miss Womack here.

16 Mr. Keeling, do you still wish to cross?

17 MR. KEELING: Most of my cross has been
18 eliminated by virtue of the rulings, but I have a
19 couple of questions and it will be very short.

20 CO-HEARING OFFICER DODUC: All right.

21 So, after we're done, let's do a quick time
22 check and run down what I expect will happen the rest
23 of the day.

24 MR. KEELING: Tom Keeling for the San Joaquin
25 County Protestants.

1 My questions all have to do with
2 communications between the DWR and the tunnel
3 Proponents and organizations with which Mr. van Loben
4 Sels is connected in connection with the development
5 and preparation of the ADSEIR.

6 CO-HEARING OFFICER DODUC: And where is that
7 in his testimony?

8 MR. KEELING: On Page 1, he lists the
9 organizations to which he belongs. The -- His
10 testimony is all about the ADSEIR, at least in large
11 part about it.

12 And I want to know if he's been contacted
13 about these issues, such as transportation and
14 groundwater, in connection with the preparation of the
15 ADSEIR. Has there been any outreach to his
16 organizations?

17 CO-HEARING OFFICER DODUC: I don't see the
18 connection between all the organizations he listed. He
19 doesn't mention them in the context of the ADSEIR.

20 MR. KEELING: Well, the testimony's about the
21 ADSEIR and I'm -- my objective is to find out if
22 there's been any attempt to outreach to the community
23 at all in preparing this ADSEIR.

24 CO-HEARING OFFICER DODUC: I'm sorry,
25 Mr. Keeling. I don't see anything -- unless you can

1 point me to, anything in his testimony regarding
2 outreach to his organization.

3 MR. KEELING: Exactly.

4 CO-HEARING OFFICER DODUC: There is nothing in
5 his testimony regarding outreach to his organization.
6 Therefore, your question to him regarding that would be
7 outside the scope.

8 MR. KEELING: Thank you.

9 CO-HEARING OFFICER DODUC: Then I guess you
10 have no redirect, Miss Meserve.

11 MS. MESERVE: Okay.

12 CO-HEARING OFFICER DODUC: Thank you very
13 much, Mr. van Loben Sels.

14 Do you wish to move your exhibits?

15 MS. MESERVE: Yes. I believe -- So I would be
16 moving LAND-305 and LAND-309 into evidence, and then --
17 That's the two exhibits.

18 CO-HEARING OFFICER DODUC: Yup.

19 Any objections?

20 And that would be 305 as corrected by our
21 ruling issued earlier today.

22 MS. MESERVE: Yes.

23 Do you have any further instruction about how
24 you'd like to reflect that?

25 CO-HEARING OFFICER DODUC: I think we will --

1 Well, I've already done this right now on my computer.

2 Let me look to counsel. How would you like to
3 do this?

4 MR. DEERINGER: The Hearing Team can do the
5 strikeouts, and then if there are any corrections that
6 need to be made, we assume that you or other parties
7 will let us know.

8 MS. MESERVE: Yes, certainly.

9 CO-HEARING OFFICER DODUC: All right.
10 Miss Morris?

11 MS. MORRIS: Yes. I have an objection to the
12 exhibits on 309. In particular, there were two
13 exhibits that I wanted to object to. I can give you
14 the numbers in a second.

15 One has to do with the Rosebud Ranchero (sic)
16 and the other has to do with the pumping capacity
17 which, again, were ruled out as part outside the scope.

18 So I would ask that those portions be
19 excerpted out of that comment letter.

20 And I can give those to you in five minutes.

21 CO-HEARING OFFICER DODUC: All right.

22 MS. MESERVE: Yeah. I would object to
23 chopping up my exhibits. I believe that it is a
24 complete comment letter with attachments. And to the
25 extent there may be portions of it that aren't relevant

1 or were ruled outside of relevancy by the Hearing Team,
2 that would have to be -- that's already reflected in
3 the record.

4 CO-HEARING OFFICER DODUC: That was --
5 Miss Morris is saying that, because we ruled out those
6 portions from Mr. van Loben Sels' testimony, that
7 portion should also be ruled out from LAND-309.

8 MR. DEERINGER: That's how I understood it as
9 well.

10 MS. MESERVE: I'm saying I object to that. I
11 don't think it would be appropriate to chop up my
12 exhibit.

13 CO-HEARING OFFICER DODUC: Well, we are
14 chopping up your exhibits, Miss Meserve, in any case.

15 Miss Morris, do you have those citations?

16 Well, as you're looking up those
17 citations . . .

18 (Pause in proceedings.)

19 MS. MORRIS: It's Exhibit 1 to LAND-309, which
20 is the MWD e-mail on capacity. It's the Exhibit 4 and
21 5, which are the exhibits that discuss the Rosebud
22 National Registry document, and Exhibit 5 is Rosebud
23 California Preservation Foundation award so . . .

24 CO-HEARING OFFICER MARCUS: So they're
25 separate exhibits to the exhibits.

1 CO-HEARING OFFICER DODUC: Okay. We will look
2 at those and make sure they're correct.

3 And with those the corrections, we will accept
4 Miss Meserve's exhibits into the record.

5 (The Environmental Justice Coalition for Water,
6 Islands, Inc., Local Agencies of the North Delta,
7 Bogle Vineyards/Delta Watershed Landowner Coalition,
8 Diablo Vineyards and Brad Lange/Delta Watershed
9 Landowner Coalition, Stillwater Orchards/Delta
10 Watershed Landowner Coalition, Brett G. Baker and
11 Daniel Wilson Exhibits 305 & 309 received in evidence)

12 CO-HEARING OFFICER DODUC: Thank you, Mr. van
13 Loben Sels.

14 WITNESS VAN LOBEN SELS: Thank you.

15 CO-HEARING OFFICER DODUC: All right. Let's
16 do some quick housekeeping/time check.

17 I see Dr. Denton here. Welcome back,
18 Dr. Denton.

19 I have roughly 90 minutes of cross for
20 Dr. Denton, so that should take us up to about the
21 4 o'clock hour.

22 What I'm proposing is: We stay until 6:00
23 today in order to hear from Dr -- is it Jahn and
24 Dr. Williams.

25 I don't know that we'll get through your cross

1 today because there's quite a bit of cross, including
2 60 minutes from the Department and State Water
3 Contractors. If we do not complete cross, then we will
4 ask you to return on Friday.

5 Miss Ansley.

6 MS. ANSLEY: Yes. I believe I can give a more
7 refined estimate of cross for Dr. Jahn and Dr. Williams
8 would be about probably 30 to 40 minutes at most.

9 CO-HEARING OFFICER DODUC: All right.
10 Miss Des Jardins.

11 MS. DES JARDINS: Yeah. Both of my witnesses
12 traveled very long distances.

13 CO-HEARING OFFICER DODUC: Which is why I am
14 accommodating them by making everyone stay until
15 6 o'clock --

16 MS. DES JARDINS: Thank you.

17 CO-HEARING OFFICER DODUC: -- instead of
18 adjourning at 5:00.

19 MS. DES JARDINS: Thank you very much.

20 CO-HEARING OFFICER DODUC: And the Department
21 has revised their cross to 30 to 40 minutes.

22 The remainder cross-examinations are by LAND
23 for 15, the County of San Joaquin for 10, CSPA for 20,
24 and South Delta for 10.

25 Again, to the extent that we cannot complete

1 it today, then these witnesses will have to return on
2 Friday.

3 With that, I will ask Dr. Denton to come up.

4 Welcome back, Dr. Denton. You have already
5 taken the oath.

6

7 Richard Denton,

8 called as a witness by the Contra Costa
9 County and Contra Costa County Water
10 Agency and County of Solano, having
11 previously been duly sworn, was examined
12 and testified further as follows:

13 MR. WOLK: Good afternoon. Daniel Wolk on
14 behalf of Contra Costa County, Contra Costa County
15 Water Agency and Solano County, Group 25 Protestants.

16 So I'm here, of course, with Dr. Richard
17 Denton. I think he's already been sworn in.

18 CO-HEARING OFFICER DODUC: All right. I
19 believe there are objections.

20 Miss Morris.

21 MS. MORRIS: Thank you.

22 I have two objections as --

23 CO-HEARING OFFICER DODUC: Only two?

24 MS. MORRIS: Yes. So I will be brief.

25 My objection is that the testimony on CC-71 --

1 and I'll give you all the lists -- that this testimony
2 is outside the scope of surrebuttal. This testimony
3 looks at a post-1995 analysis -- trend analysis.

4 When asked on cross-examination by --
5 Mr. Hutton was asked on cross-examination if he did
6 such analysis post-1995, and he answered no.

7 The following references are referring to a
8 trend analysis that is post-1995 and that is, again,
9 CCCC-71, Page 6, 25 -- Lines 25 through 28, Page 8,
10 Lines 4 through 8, Page 8, Lines 17 through 19, Page 9,
11 10 through 11, and Page 9 --

12 CO-HEARING OFFICER DODUC: I'm sorry. Page 9,
13 Line 10 through 11.

14 MS. MORRIS: Sorry. I got sloppy. My
15 apologies.

16 So Page 9, Lines 10 through 11, and Page 9,
17 Lines 20 through 22.

18 The second objection is that --

19 CO-HEARING OFFICER DODUC: Okay. Hold on.

20 Let me ask Mr. Wolk to respond before you move
21 on.

22 MR. WOLK: Well, I think what Miss Morris gets
23 is actually the crux of Dr. Hutton's testimony that is
24 part of rebuttal, that is part of this surrebuttal,
25 were contradicting.

1 He -- In fact, it's -- we even quote
2 Dr. Hutton's testimony, his written testimony, on Page
3 4 of CCC-SC-71 in which he states explicitly (reading):

4 "The 2010 Flow Criteria Report and
5 the Phase II Scientific Basis Report
6 suggest that the magnitude and timing of
7 outflow has changed significantly over
8 time, as evidenced by the difference
9 between calculated unimpaired outflows
10 and actual outflows."

11 And the purpose of this surrebuttal is to
12 essentially say Dr. Hutton is incorrect in that
13 and . . .

14 CO-HEARING OFFICER DODUC: So, Miss Morris,
15 again, why do you believe this is outside the scope?

16 MS. MORRIS: Again, specifically on
17 cross-examination -- It's supposed to be rebutting what
18 Dr. Hutton testified to.

19 Dr. Hutton did not do -- and he testified that
20 he did not do -- a post-1995 trend analysis. And all
21 the citations I cite to show a post-1995 trend
22 analysis.

23 If -- If they were alleging that he should
24 have done it, then that's different, but they're
25 actually just doing it and submitting it. So that's

1 the objection.

2 CO-HEARING OFFICER DODUC: But they're doing
3 it and presenting it to rebut his testimony.

4 MR. WOLK: She's actually making our argument
5 for us. That's precisely why we presented it in
6 surrebuttal.

7 CO-HEARING OFFICER DODUC: It is responsive,
8 Miss Morris.

9 MS. MORRIS: I -- If that's the ruling, that's
10 the ruling. I disagree. I don't think I made their
11 argument for them. That's not exactly what they said.
12 They actually did a different analysis so --

13 CO-HEARING OFFICER DODUC: In any case,
14 Miss Morris, the objection is overruled. It is
15 responsive to the testimony in rebuttal.

16 MS. MORRIS: The --

17 CO-HEARING OFFICER DODUC: Next objection.

18 MS. MORRIS: The second objection is to the
19 testimony on Page 10, Line 8 through 22, Page --

20 CO-HEARING OFFICER DODUC: I'm sorry. Line 18
21 to 22.

22 MS. MORRIS: 8 to 22.

23 CO-HEARING OFFICER DODUC: Okay.

24 MS. MORRIS: Page 9, Line 6 through 9;
25 CCC-SC-70, Slide 9; CCC-SC Exhibit 76.

1 And the entirety of these are showing analysis
2 for California WaterFix as well as Boundary 1 and
3 Boundary 2.

4 If you look at the references, again, those
5 are outside the scope of Mr. Hutton's testimony. He
6 did a -- He did not testify at all to WaterFix Project
7 operations but, rather, was looking at outflow trends
8 generally but not specific as to WaterFix.

9 And so these are outside the scope of the
10 rebuttal testimony provided by Mr. Hutton.

11 CO-HEARING OFFICER DODUC: Response, Mr. Wolk.

12 MR. WOLK: Well, Dr. Hutton testified in
13 rebuttal. His testimony essentially contradicts the
14 2008 Biological Opinion. Of course, that has -- is
15 part of the CWF Operations Criteria.

16 So, what this is intended to show is that,
17 well, Dr. Hutton is incorrect in -- in that -- that
18 what he presented for rebuttal and the arguments that
19 he makes for rebuttal are -- are ones that -- that --
20 that -- We would just essentially like to show that the
21 CWF modeling with and without the Fall X2 show similar
22 trends in the Delta outflow during the fall, which
23 he -- You know, he contradicts that as part of his
24 rebuttal testimony, if that makes sense.

25 I can have Dr. Dutton explain.

1 CO-HEARING OFFICER DODUC: Please do.

2 (Laughter.)

3 WITNESS DENTON: Well, another way of looking
4 at this is, the purpose of Dr. Hutton's testimony, from
5 my reading of it, is to suggest that the Biological
6 Opinions which form the basis of the Operating Criteria
7 for WaterFix are wrong and there's no need for Fall X2
8 limits.

9 CO-HEARING OFFICER DODUC: Um-hmm.

10 WITNESS DENTON: So what I'm trying to show is
11 that this then feeds back into this. There have been
12 problems with the Fall X2, that it has gotten worse
13 after 1995.

14 And if the Project -- the WaterFix Project
15 were allowed to operate without a Fall X2, then we
16 would end up with -- as shown in that figure -- or in
17 Exhibit 76, you can see that the Project would be
18 operating to minimal outflows, even in wet years, of
19 4,000 when historically -- and this is what Dr. Hutton
20 was looking at -- historically, the outflows were much
21 higher and would be much higher, for instance, in a
22 WaterFix Project that had a Fall X2.

23 And then the argument is that Dr. Hutton
24 didn't get into that kind of detail about WaterFix.
25 Then why was his testimony there? Because there's no

1 point in having and testimony, unless it's related back
2 to the WaterFix Project. And I'm just trying to limit
3 my testimony back to the WaterFix Project.

4 CO-HEARING OFFICER DODUC: Miss Morris.

5 MS. MORRIS: I think that counsel and the
6 witness were inferring things that were not part of
7 Mr. Hutton's rebuttal testimony, specifically that that
8 testimony was responding to new analysis that had been
9 done on the outflow criter -- on outflow since 2010 in
10 the Flow Criteria Report.

11 Nothing in his testimony talked about
12 Boundary 1. Boundary 1 has been part of this hearing
13 since Part 1. If these -- If this Protestant wanted to
14 make this analysis, they could have easily put it in.
15 But he wasn't looking at this in that context and for a
16 good reason, because it's not the point. The point was
17 that he is responding to new published studies since
18 2010 that have to do with outflow, not WaterFix
19 Project.

20 CO-HEARING OFFICER DODUC: I understand that
21 your witness -- or at least the Department's witness --
22 did not look at those issues, but Dr. Dutton, as I
23 understand it, is looking at that issue in order to
24 respond to the testimony received during rebuttal.

25 So it is responsive. Objection is overruled.

1 All right. Not seeing any other objections,
2 Mr. Wolk --

3 MR. WOLK: Thank you --

4 CO-HEARING OFFICER DODUC: -- you may begin.

5 MR. WOLK: -- Chair Doduc.

6 DIRECT EXAMINATION BY

7 MR. WOLK: So, Dr. Denton, has your Statement
8 of Qualifications been submitted into evidence as
9 CCC-SC-2?

10 WITNESS DENTON: Yes, it has.

11 MR. WOLK: And is Exhibit CCC-SC-70 a true and
12 correct copy of the PowerPoint presentation you will
13 use today to summarize your Part 2 surrebuttal
14 testimony?

15 WITNESS DENTON: Yes, it is.

16 MR. WOLK: Is Exhibit CCC-SC-71 a true and
17 correct copy of your Part 2 surrebuttal testimony?

18 WITNESS DENTON: Yes, it is.

19 MR. WOLK: Lastly, are Exhibits CCC-SC-72
20 through -76 true and correct copies of those exhibits?

21 WITNESS DENTON: Yes.

22 MR. WOLK: Okay. Thank you, Dr. Denton.

23 Please proceed to summarize your Part 2
24 surrebuttal testimony.

25 WITNESS DENTON: Mr. Hunt, would you bring up

1 my PowerPoint, please.

2 (Exhibit displayed on screen.)

3 WITNESS DENTON: Thank you very much.

4 So Co-Chairs Doduc, Marcus, Members of the
5 Board.

6 I'm appearing today -- My name is Richard --
7 Dr. Richard Denton. I'm appearing as a witness for the
8 Contra Costa County and Solano County.

9 And my rebuttal testimony is responding to
10 Dr. Hutton's -- my surrebuttal testimony is responding
11 to Dr. Hutton's rebuttal testimony on historic trends
12 in Delta outflow and Fall X2 that he -- is in his
13 Exhibit DWR-1224.

14 If I can have the next slide, please.

15 (Exhibit displayed on screen.)

16 WITNESS DENTON: So Dr. Hutton criticized the
17 findings in the 2010 Delta Flow Criteria Report and
18 Phase II Scientific Report specifically that there have
19 been changes in the Delta outflow and Fall X2.

20 He opined that, in fact, there were no
21 statistically significant long-term trends in Delta
22 outflow and no long-term increasing trend in Fall X2.
23 So he was contradicting what was in the -- the reports.

24 His analysis for time series didn't really
25 take into account the water year variations within that

1 time series, and in so doing, masks some of the recent
2 trends and fall outflow and Fall X2. And we've already
3 started discussing the idea of 1995.

4 Prior to 1995, there were -- As I recall,
5 there was -- is it five -- Yeah. There was five
6 critical years and two dry years. And then after --
7 From 1995 onwards, there was five wet years and one
8 above-normal year. So there really was a binomial
9 shift in the water -- runoff -- unimpaired runoff.

10 And so something like that, if we just tried
11 to do a long-term time series, you would have that --
12 you'd be masking that particular change.

13 So, what I feel is, it's important to look at
14 the historical data as a function of the water
15 year-type so that you're actually taking into account
16 what is happening in wet years, what is happening in
17 dry years. And can you find an effect that is
18 happening in, say, wet years that may have changed over
19 time?

20 Next slide, please.

21 (Exhibit displayed on screen.)

22 WITNESS DENTON: The first thing I'll look at
23 is the Delta outflow and then, later, I'll look at the
24 corresponding X2 where they are somewhat related.

25 So if you look at the September Delta outflow,

1 what I've done is taken the historical data from
2 Dayflow and I've plotted against the Sacramento
3 40-30-30 Index. That is the indicator of water
4 year-type that is used to -- by the CVP and the State
5 Water Project to determine operations and, in
6 interpreting D-1641, there are different standards
7 depending on what the water year-type is.

8 And what I've also done is broken up the
9 years, so I'm also looking at trends with respect to
10 time but doing it in terms of categorizing into
11 different periods.

12 Dr. Hutton looked at a longer period of
13 record, so he went from 1922 through, I think, 2016 and
14 broke it at 1986 because that was -- 1968 because that
15 was the time when the State Water Project came online.

16 So I'm basically following the same approach
17 as he did, that the yellow triangles are the period
18 1956, which is out of the Dayflow data historical
19 estimates of outflow. That starts in September 1956.

20 And I go through to 1967 is the first period
21 that I've categorized, and that's the yellow triangles.

22 The next period is from 1968 through 1994 and
23 that's the blue circles.

24 And then I considered that there has been a
25 change in Delta operations in 1995 as a result of the

1 agreements made through the Bay-Delta Accord,
2 encapsulated into the 1995 Water Quality Control Plan,
3 and then later implemented through D-1641.

4 And it's not just the Spring X2. That is a
5 key factor that was implemented in the site being
6 voluntarily operated to in Spring X -- sorry -- in
7 1995, but there are also other things like EI ratios,
8 et cetera, that were included.

9 So that, to me, is a break point that you
10 would expect to see some changes at that point.

11 And, then, in 2008-2009, we had new OCAP
12 Biological Opinions, and they brought an -- additional
13 things, including the Fall X2 but also brought in
14 requirements for the ratio of Vernalis inflow to South
15 Delta exports, et cetera. So there were standards or
16 Operating Criteria introduced about that time.

17 So we're trying to look at what has changed in
18 that time.

19 And, so, if you look of this graph here --
20 this plot here, you can see that the red triangles
21 which represent the period after 1995 -- or '95 onwards
22 are much lower. The outflows are much lower in the
23 fall.

24 And this is a little bit curious because the
25 whole idea of the Spring X2 was to increase flows and,

1 therefore, improve X2 in the spring months. But there
2 seems to be an effect as an unintended consequence of
3 moving that effect into the fall.

4 Then we'd like to be able to look at, then --
5 see if the Biological Opinions have done anything. And
6 those are the green squares.

7 As Dr. Hutton pointed out in his testimony,
8 there's -- really the only test of Fall X2 would have
9 been in 2011 and 2017.

10 In 2011, Reclamation wanted to relax the
11 standards but they were met naturally, so they would
12 sort of correspond to what you'd expect to find if
13 Fall X2 was in effect.

14 In 2017, there was a request for relaxation of
15 the standard in October.

16 This -- This is a plot for December -- for
17 September, but it seems like, even there, that the flow
18 is -- Well, actually, that is consistent with Fall X2
19 because to meet Fall X2 in the wet -- in a wet year,
20 you have to get an outflow of about 11,000 so it is
21 consistent.

22 Next slide, please.

23 (Exhibit displayed on screen.)

24 WITNESS DENTON: So I think the October plots
25 are much more dramatic. And it does show that, if

1 you're looking for trends in Delta outflow, then there
2 is an effect that occurred after 1995 in the month of
3 October where you're basically -- in most cases, you
4 start to flatline the outflow.

5 So even in a wet year, admittedly the State
6 Board and D-1641, that's their minimum outflow
7 requirements, so no one's breaking the law here.

8 But prior to that, in the previous trends
9 that -- were that in wet years and above-normal years,
10 you got much higher flows in October than just the bare
11 minimum.

12 Next slide, please.

13 (Exhibit displayed on screen.)

14 WITNESS DENTON: And this is a plot of a
15 spring month. The Spring X2 applies from February
16 through June, and this is just for the month of April.

17 And you can -- if you look at the red
18 triangles, you don't see any actual improvement in
19 outflow as a result of this Spring X2 requirement.

20 And there's a -- Well, I'd better not go
21 there. I was going to do an aside but I won't do an
22 aside.

23 Next slide.

24 (Exhibit displayed on screen.)

25 WITNESS DENTON: And this one, I really just

1 put in there because Dr. Hutton did actually do some
2 normalization of outflows by dividing by the -- in this
3 case the Eight-River Index.

4 In this case, I've divided by the unimpaired
5 flow just so it's a little bit more consistent what
6 the -- what the State Board is considering doing
7 through its update of the Water Quality Control Plan.

8 And there does indeed in this case -- Once the
9 State Water Project comes online and the blue dots
10 start at that point in 1968, there does seem to be a
11 decrease in outflow as a percentage of unimpaired flow
12 but, as in the case of Dr. Hutton's testimony, that's
13 not necessarily a statistically significant trend but,
14 to the eye, it looks significant.

15 Next slide, please.

16 (Exhibit displayed on screen.)

17 WITNESS DENTON: So the next slide -- series
18 of slides are just plotting September X2 instead of
19 outflow.

20 And in my case, the X2 values were calculated
21 from the current monthly outflow -- or the current
22 daily outflows and the previous outflows through the
23 Kimmerer-Monismith equation.

24 In the case of Dr. Hutton's testimony, he
25 calculated X2 from actual salinity measurements in the

1 Delta rather than from that equation.

2 And looking back at some of his papers that
3 are in the exhibits there, there are differences in the
4 X2 calculations, but they're somewhat similar.

5 So this -- This is a plot, then, of the X2
6 from Dayflow calculated from outflow values.

7 And, again, in September, there is this much
8 higher X2 values represented by a reduction in outflow.
9 They're not as significant as --

10 Maybe if we could go to the next slide.

11 (Exhibit displayed on screen.)

12 WITNESS DENTON: This is the slide for
13 October. And you can see very significant changes in
14 Fall X2 -- sorry -- October X2 after 1995.

15 And in my earlier testimony and other
16 testimony, people have likened this to be the wet years
17 are starting to primary like dry years and Dr. Hutton
18 pointed out and was concerned about that statement.

19 But if you look at that there, there is very
20 high Fall X2s in wet years that are well above what
21 they had been previously in previous years prior to
22 1995.

23 And this particular graph has superimposed on
24 it the Fall X2 limits that are in the Biological
25 Opinion, the U.S. Fish and Wildlife 2008 Biological

1 Opinion, and also in the State Board's own Delta Flow
2 Criteria Report.

3 And you can see that, previously, essentially
4 all those data points were actually below the Fall X2
5 in the wet years, on the right-hand side of the graph,
6 except for the ones that are obviously there, 1997,
7 2006 and the others. So there is something that
8 happened after 1995.

9 And then one thing that Dr. Hutton said in his
10 testimony, which was alluded to through the objection,
11 that his breakdown -- If he was breaking up the periods
12 after 1968, he said in his cross-examination by
13 Mr. Wolk that he chose 2000 -- the year 2000 because
14 that's when the pelagic organism decline occurred.

15 But, of course, there are reasons that that
16 pelagic organism decline occurred, and they would have
17 happened prior to 2000.

18 Next slide, please.

19 (Exhibit displayed on screen.)

20 WITNESS DENTON: And so this one is just
21 really just showing you how this all ties in to what's
22 happening with the CWF -- the WaterFix Project itself.

23 You will have options when you're considering
24 permit terms. Will you accept the Project as
25 represented by -- the Project that was presented in

1 Part 2 Rebuttal, in other words, CWF H3+? That was the
2 Adopted Project by DWR coming out of the Final EIR.
3 And those are the green dots.

4 Or will you agree that it would be okay to --
5 for -- through adaptive management to change the
6 Project over time to something closer to Boundary 1
7 which doesn't include Fall X2?

8 Which what you would see there is drops the
9 outflows, instead of being 10,000, about 10,000 in wet
10 years, it'll drop down to 4,000 which will have effects
11 if you follow the logic in the Biological Opinions of
12 impacting the Delta ecosystem and also has effects on
13 Delta water quality, which is a concern to the parties
14 I represent.

15 Next slide, please.

16 (Exhibit displayed on screen.)

17 WITNESS DENTON: So my conclusions are that
18 the plots of Delta outflow, we plot them as a function
19 of Water Year Index. They do show recent trends in --
20 over time in the fall, that the fall Delta outflows
21 reduced substantially after 1995, which coincided with
22 the implementation of the Spring X2.

23 This appears -- It could well be an unintended
24 consequence of setting a standard for the spring but
25 not simultaneously protecting subsequent months after

1 that.

2 Then if you -- The plots -- The plots of X2,
3 as a function of Water Year Index, also show that there
4 are these changes in increase in Fall X2 during the
5 14-year period, the weaker effects in September but
6 very strong effects in the October X2 plot.

7 And as Dr. Hutton pointed out in his
8 testimony, since 2008, even though Fall X2 has
9 theoretically been in effect, it really hasn't been
10 tested. So we really don't know whether that's having
11 effect so far.

12 If we do have -- Well, the idea is to -- that
13 we really need Fall X2 limits so that we do avoid a
14 repeat of what happened in 1995, or post-1995. If that
15 is included as a permit term in the WaterFix Project,
16 then that will help the Delta ecosystem and help
17 improve Delta water quality or maintain good water
18 quality.

19 Thank you very much.

20 CO-HEARING OFFICER DODUC: Thank you,
21 Dr. Denton.

22 The cross I have for you are joint DWR/State
23 Water Contractors for 30, LAND for 13, Mr. Ruiz for 10
24 to 15, and CSPA for 20.

25

1 CROSS-EXAMINATION BY

2 MS. MORRIS: Good afternoon, Dr. Denton.

3 WITNESS DENTON: Yes. Good afternoon.

4 MS. MORRIS: I have a couple questions for
5 you.

6 The Dayflow data goes back to Water Year 1930;
7 correct?

8 WITNESS DENTON: The Dayflow? 1955.

9 MS. MORRIS: So it's your testimony that
10 there's no Dayflow data prior to 1955?

11 WITNESS DENTON: Well, the Dayflow data that I
12 dealt with was in 19 -- started in 1955.

13 MS. MORRIS: But there is Dayflow data back to
14 Water Year 1930; isn't there?

15 WITNESS DENTON: Yeah, I think you're right.
16 There's some data that I think the IDP was not sort
17 of -- they're not sure how accurate it was but it was
18 made available on the wet side.

19 MS. MORRIS: If you were conducting a
20 historical trend analysis, would you include future
21 not-yet-built infrastructure and a historical trend
22 analysis?

23 WITNESS DENTON: Yes. I wouldn't have the
24 data because it's not -- the flow data or the estimates
25 of flow data because it's not yet built.

1 In terms of Dayflow?

2 MS. MORRIS: If you could pull up, Mr. Hunt,
3 DWR-1426.

4 It's on the flash drive.

5 (Exhibit displayed on screen.)

6 MS. MORRIS: And if you could first show the
7 cover page.

8 (Exhibit displayed on screen.)

9 MS. MORRIS: This is the Water Quality Control
10 Plan for salinity for the San Francisco
11 Bay/Sacramento-San Joaquin Delta Estuary from May 1991.

12 Are you familiar with this document?

13 WITNESS DENTON: I used to work with that back
14 when it was essentially the current document but I
15 haven't looked at at for a long time.

16 MS. MORRIS: Okay. Could you turn to Page 3-1
17 of this exhibit, please.

18 CO-HEARING OFFICER DODUC: Do you happen to
19 know the .pdf number?

20 MS. MORRIS: I apologize. I don't. It might
21 be 181 but I would be guessing. We can try it.

22 (Exhibit displayed on screen.)

23 MS. MORRIS: Nope. I'm very wrong.

24 Okay. I want to ask you -- And maybe I --
25 I'll -- We can reference this, if need be, but maybe

1 working back reference this.

2 Isn't it true that the 40-30-30 Index
3 considers water availability from storage facilities as
4 well as seasonal runoff?

5 WITNESS DENTON: Yes. Yes. It's 30 percent.

6 MS. MORRIS: And you developed -- And you used
7 the 40-30-30 Index to develop your opinions for this
8 surrebuttal testimony; correct?

9 WITNESS DENTON: Yes, I did.

10 MS. MORRIS: On Page 6 of your testimony,
11 CCC-SC-71, you state that you selected the time
12 period --

13 (Exhibit displayed on screen.)

14 MS. MORRIS: -- 1995 through 2008 because it
15 was after the Bay-Delta Accord; correct?

16 WITNESS DENTON: Yes.

17 MS. MORRIS: And the Bay-Delta Accord included
18 a Spring X2 standard; correct?

19 WITNESS DENTON: Yes.

20 MS. MORRIS: And meeting that standard may
21 require making releases from storage; correct?

22 WITNESS DENTON: Yes.

23 MS. MORRIS: And the Spring X2 standard is
24 from February to June; correct?

25 WITNESS DENTON: Yes.

1 MS. MORRIS: But you don't show May and June
2 in your graphs; correct?

3 WITNESS DENTON: I -- I showed an April graph
4 just to show that there wasn't a trend. So it wasn't
5 really helpful, at least in showing the changes,
6 because there was no change.

7 MR. WOLK: Right. But you don't have graphs
8 for May or June.

9 WITNESS DENTON: No, I don't. Well, not in my
10 testimony. I have them.

11 MS. MORRIS: Right.

12 In reaching your conclusions in your testimony
13 regarding trends, did you conduct a statistical
14 analysis to determine if the trend was statistically
15 significant.

16 WITNESS DENTON: In terms of my plot, say, of
17 October X2 versus 40-30-30, I'm not even sure actually
18 how I would do that.

19 I mean, if it's just an X-Y plot, you can use
20 linear regression. And I think I did do a -- I did a
21 plot earlier there that I put up about outflow divided
22 by unimpaired flow, and I did do a linear regression of
23 that, and it was .26 or something so it wasn't
24 significant.

25 But it -- With respect to the plot of October

1 X2, it's really just something you see visually. It's
2 a huge change.

3 MS. MORRIS: So that was a "no" as to the
4 October.

5 And I think I heard you testify to that
6 earlier, that it was just something you looked at but
7 it wasn't statistically significant.

8 WITNESS DENTON: That was with respect to the
9 outflow divided by unimpaired flow graph.

10 MS. MORRIS: Okay. Were the State Water
11 Project and the CVP Projects operating in the 1920s?

12 WITNESS DENTON: Oh, yeah. I think the CVP
13 started about 1940, which was the Contra Costa Canal.

14 MS. MORRIS: So "no." Is that your answer?

15 WITNESS DENTON: About the 1930s.

16 MS. MORRIS: Okay. Great. That's -- That was
17 my question. Thank you.

18 So a 1920 level of development is
19 representative of a pre-Project condition; correct?

20 CO-HEARING OFFICER DODUC: The --

21 WITNESS DENTON: Let's do --

22 CO-HEARING OFFICER DODUC: I'm sorry.

23 WITNESS DENTON: That's a different question;
24 isn't it?

25 CO-HEARING OFFICER DODUC: "Pre-Project"

1 meaning?

2 MS. MORRIS: CVP/SWP pre-Project.

3 CO-HEARING OFFICER DODUC: Okay.

4 WITNESS DENTON: But doesn't that also mean
5 demands, the farmers' irrigation demands, and changes
6 in habitat and forestation, things like that?

7 Usually when you're doing level of
8 development, you go back to talking about demands and
9 what other diversions or losses there are.

10 MS. MORRIS: Right.

11 So if we're looking at the 1920s when the
12 State Water Project and CVP Projects are not online --

13 WITNESS DENTON: Right.

14 MS. MORRIS: -- that would be representative
15 of a pre-Project condition; correct?

16 WITNESS DENTON: Or -- Yeah. Non -- Non-CVP,
17 non-SWP, is about as much as you can say.

18 MS. MORRIS: Okay. Great.

19 So looking at DWR-1224-Revised, Page 25, and
20 Figure 15.

21 I'll wait till it gets up on the screen.

22 (Exhibit displayed on screen.)

23 MS. MORRIS: So it's actually Page 25.

24 I -- I apparently need to work on my number
25 enunciation. I'm learning that today.

1 (Exhibit displayed on screen.)

2 MS. MORRIS: Thank you.

3 And then if you could scroll up.

4 (Exhibit displayed on screen.)

5 MS. MORRIS: This is from Dr. Hutton's
6 testimony.

7 And I want to ask you a question: If I could
8 focus your attention on the top right column.

9 And it's really difficult to see on the screen
10 actually. Would you like to come look at this one,
11 because you can actually see the gray on the lines.

12 WITNESS DENTON: I have a printout here but
13 even that's light.

14 MS. MORRIS: It's -- It's much clearer on the
15 screen if you want to come. I'll -- I'll give you this
16 chair.

17 WITNESS DENTON: That's okay. I think I can
18 see it --

19 MS. MORRIS: Okay.

20 WITNESS DENTON: -- especially I can see the
21 gray lines.

22 MS. MORRIS: So the top figure is the
23 historical 2000 to 2009 period; correct?

24 WITNESS DENTON: Correct.

25 MS. MORRIS: And in this figure, the black

1 dots, which are easy to see, represent the actual
2 historic salinity; correct?

3 WITNESS DENTON: It's the X2, yes, calculated
4 Dr. Hutton's way, but it's essentially the same data.

5 MS. MORRIS: So those are the actual observed,
6 not -- correct? The black dots are the historic
7 salinity.

8 And the gray dots are the modeled salinity;
9 correct?

10 They're very difficult to see.

11 WITNESS DENTON: Right, yes.

12 MS. MORRIS: And there's also a gray line
13 which, on these screens, is barely -- barely visible
14 but you can see that on your copy?

15 WITNESS DENTON: Yes.

16 MS. MORRIS: Okay. And the gray dots are
17 modeled salinity for years 2000 to 2009 but at the 1920
18 level of development; correct?

19 WITNESS DENTON: 1920 level data, yes.

20 So I assume that X mode State Water Project
21 both CVP and upstream diversions relative to 1920.

22 MS. MORRIS: Great.

23 And in this figure, do you see that the black
24 historical dots are similar in magnitude to the gray
25 1920 level of development dots?

1 (Pause in proceedings.)

2 WITNESS DENTON: This is my eyesight.

3 But on the right-hand side, the last two,
4 there seems to be 1920 dots are below the actual ones.

5 MS. MORRIS: But, other than that, they're
6 generally similar; correct?

7 WITNESS DENTON: Same location, yes.

8 MS. MORRIS: And in this figure, do you see
9 that the slope of the black and gray lots are similar?

10 It's hard to see the line but --

11 WITNESS DENTON: Sure.

12 MS. MORRIS: You can see the --

13 WITNESS DENTON: Which is similar to the --
14 the way I was plotting it. You get a similar-looking
15 data.

16 MS. MORRIS: Okay. Was that a yes, you agree
17 the slope is similar?

18 WITNESS DENTON: Yes.

19 MS. MORRIS: Doesn't this suggest that the
20 lack of X2 variability in October is due to factors
21 other than the State Water Project and CVP Project
22 operations since the Projects were not online under the
23 1920 level of development?

24 WITNESS DENTON: I didn't go into how
25 Dr. Hutton developed those data so I'm really not sure

1 whether I agree with the gray dots, for instance. So
2 it's hard to tell from that point of view, but . . .

3 And, also, in my testimony, I didn't
4 necessarily say it was the full call of the State Water
5 Project and the CVP. I just said it seemed to occur
6 after 1995.

7 So, yeah, I'm not -- not blaming the State
8 Water Project and the CVP. It could be that rice
9 farmers started doing something at that same time.

10 MS. MORRIS: Okay. And --

11 WITNESS DENTON: But there definitely was a
12 trend is what my point is.

13 MS. MORRIS: Okay. And I just want to
14 be . . .

15 Well, I think that's good.

16 I don't have any further questions. Thank
17 you.

18 CO-HEARING OFFICER DODUC: Thank you,
19 Miss Morris.

20 Miss Meserve.

21 MS. MESERVE: No questions.

22 CO-HEARING OFFICER DODUC: Mr. Ruiz.

23 And then Mr. Shutes. Are you filling in for
24 Mr. Jackson?

25 MR. SHUTES: We won't have any questions.

1 Thank you.

2 CO-HEARING OFFICER DODUC: Oh, okay. Thank
3 you. Then Mr. Ruiz.

4 CROSS-EXAMINATION BY

5 MR. RUIZ: Good afternoon, Dr. Denton. Just a
6 few questions, about probably five minutes.

7 In your conclusion slide, which I think it was
8 CCC-SC-70, just to be clear:

9 It's -- It's -- It's your opinion that there's
10 a clear increase in X2 from your 1995 and 2008 period;
11 correct?

12 WITNESS DENTON: Correct, yeah.

13 MR. RUIZ: You said that the increase -- I
14 believe you said it was less pronounced during
15 September as compared to October during that time
16 period; is that right?

17 WITNESS DENTON: Yes.

18 MR. RUIZ: Do you have an opinion as to why
19 that would be the case?

20 WITNESS DENTON: I haven't really gone into
21 detail, but what I was thinking about when I was
22 working on those graphs is that, in the outflow data,
23 you don't see that distinct change from September to
24 October. But when you look at it in terms of X2, there
25 seems to be a -- October X2 is a big change in X2.

1 And it may just be that cumulative effect of
2 Delta outflow. You've got a reduction in September,
3 then you have another reduction in October. And the
4 combination of those two reductions really kicked up
5 Fall X2, making it larger in October relative to
6 September.

7 MR. RUIZ: Thank you.

8 And if this Board were to approve the -- this
9 Change Petition -- as incomprehensible as that may be
10 to many of us -- it's your position that Fall X2 must
11 be -- should be a condition of that approval; correct?

12 WITNESS DENTON: Yes.

13 MR. RUIZ: Okay. What is -- Same question
14 with regard to Spring X2.

15 WITNESS DENTON: The -- The -- The current
16 Spring X2, or the new spring outflow requirements?

17 MR. RUIZ: Well, either.

18 WITNESS DENTON: Yes. Spring X2 should
19 remain.

20 And then we have an enhancement being
21 suggested or being implied in what is the March, April
22 and May as part of the Project -- new Project criteria.
23 But I'm not sure what effect those will have.

24 MR. RUIZ: Okay. Thank you.

25 No further questions.

1 CO-HEARING OFFICER DODUC: So, Mr. Wolk,
2 should I consider Dr. Denton's response as being
3 proposed criteria from Contra Costa?

4 (Laughter.)

5 WITNESS DENTON: We have a long list.

6 MR. WOLK: Yeah. A little bit.

7 CO-HEARING OFFICER DODUC: Any redirect?

8 MR. WOLK: None from the cross.

9 CO-HEARING OFFICER DODUC: All right. Thank
10 you, Dr. Denton.

11 At this point, do you wish to move your
12 exhibits into the record?

13 MR. WOLK: That's correct, Chair Doduc.

14 We're going to ask that the Exhibits CCC-SC-70
15 through -76 be moved into the record.

16 CO-HEARING OFFICER DODUC: Any objections?

17 Not hearing any, they are accepted.

18 (Contra Costa County and Contra Costa County Water
19 Agency and County of Solano Exhibits 70-76 received in
20 evidence)

21 CO-HEARING OFFICER DODUC: Thank you,
22 Dr. Denton.

23 Thank you, Mr. Wolk.

24 All right. Candace, do you need a short
25 break?

1 THE REPORTER: Not yet.

2 CO-HEARING OFFICER DODUC: Does anyone need a
3 short break?

4 If not, we will follow through and ask
5 Miss Des Jardins to bring her witnesses up.

6 And perhaps Miss Des Jardins could also
7 clarify, because all the files that were uploaded to
8 the FTP site were uploaded into the DDJ folder. I and,
9 I believe, the Hearing Team's staff's interpretation
10 was that this was a DDJ panel, but I'm now to
11 understand that it's a joint DDJ-PCFFA panel.

12 MS. DES JARDINS: PCFFA, I consulted with them
13 because Dr. Jahn's testimony is about Salmon, and I've
14 been working with them. And PCFFA requested to present
15 Dr. Jahn's testimony as well. Dr. Jahn's testimony has
16 both myself and Steve Volker representing --

17 CO-HEARING OFFICER DODUC: Good.

18 MS. DES JARDINS: -- PCFFA.

19 CO-HEARING OFFICER DODUC: That's fine. I'm
20 not -- I'm not objecting -- I guess I can't object.

21 (Laughter.)

22 CO-HEARING OFFICER MARCUS: You want to
23 but . . .

24 CO-HEARING OFFICER DODUC: I just want a
25 clarification --

1 MS. DES JARDINS: Yeah.

2 CO-HEARING OFFICER DODUC: -- so we --

3 MS. DES JARDINS: Yeah. So -- So -- So one of
4 the witnesses is Dr. Andrew Jahn --

5 CO-HEARING OFFICER DODUC: Okay.

6 MS. DES JARDINS: -- who's presenting on
7 Salmon.

8 CO-HEARING OFFICER DODUC: Okay. So this is a
9 surrebuttal by the parties DDJ and PCFFA.

10 Thank you. I just wanted to get that clear.

11 MS. DES JARDINS: Except Dr. Williams is only
12 represented by -- by DDJ.

13 CO-HEARING OFFICER DODUC: Yes.

14 MS. MESERVE: Just to be clear, we never
15 uploaded to two different FTP sites. We were told not
16 to do that, so we always just uploaded to one FTP --

17 CO-HEARING OFFICER DODUC: I'm not saying it's
18 wrong. I just wanted to get it clear who is being
19 represented on this panel.

20 Because if you notice on the chart that the
21 staff sent out on the Order of Presentation, we only
22 had DDJ classified and it should be DDJ and PCFFA.

23 (Pause in proceedings.)

24 CO-HEARING OFFICER DODUC: And I believe
25 someone needs to take the oath?

1 MS. DES JARDINS: Yes. Dr. Jahn does.

2 CO-HEARING OFFICER DODUC: If you could please
3 stand and raise your right hand.

4 You may do it, too, Dr. Williams.

5

6 ANDREW JAHN

7 and

8 CLYDE THOMAS WILLIAMS

9 called as witnesses for the California Water Research
10 and Pacific Coast Federation of Fishermen's
11 Association's and Institute for Fisheries Resources',
12 having been first duly sworn, were examined and
13 testified as follows:

14 CO-HEARING OFFICER DODUC: Thank you very
15 much. Be seated.

16 And before they begin, are there any
17 objections?

18 Wow. Hurry. Begin, quickly.

19 MS. DES JARDINS: Okay.

20 DIRECT EXAMINATION BY

21 MS. DES JARDINS: Dr. Jahn, is --

22 CO-HEARING OFFICER DODUC: I'm sorry. How do
23 we pronounce your last name?

24 WITNESS JAHN: I pronounce it John (phonetic).

25 CO-HEARING OFFICER DODUC: John. Okay.

1 Dr. Jahn.

2 MS. DES JARDINS: Is Exhibit DDJ-330 a true
3 and correct copy of your Statement of Qualifications?

4 WITNESS JAHN: It is true -- Do I have to push
5 a button here?

6 MS. DES JARDINS: Yes.

7 WITNESS JAHN: It is true. There are some
8 corrections to be made, however.

9 MS. DES JARDINS: Okay. Let me -- Is Exhibit
10 DDJ-331 a true -- a copy of your testimony?

11 WITNESS JAHN: It is a copy of my testimony,
12 and it contains some errors.

13 MS. DES JARDINS: Please state the corrections
14 that need to be made.

15 WITNESS JAHN: Yes. On Page 16, there are
16 call-outs to some figures that are -- that appear on
17 Page 17. The call-outs to Figure 4 should say
18 Figure 6, and that occurs on Line 4.

19 And the call-out on Line 15 to Figure 5 should
20 be to Figure 7. And on Figure -- on Line 17, the
21 call-out to Figures 4 and 5 should say Figures 6 and 7.

22 And then on Page 17, the figure labeled
23 Figure 5 should be labeled Figure 7.

24 On Page 18, Line 1, the citation of Michel,
25 et al., should say 2015, not 2018.

1 And there's an error on Page 14 where, on
2 Line 22, where I say that the guidance efficiency value
3 of 0.9 was used by Kimmerer and Zeug and Cavallo, it
4 was not used by Kimmerer 2008. So Kimmerer 2008 should
5 be crossed out on Line 22.

6 And on Line 17 on that same page where I say
7 "Gingras used estimated guidance efficiencies ranging
8 from .29 to .81," the low value really should be .25.

9 Sorry about those.

10 MS. DES JARDINS: Is that all the corrections?

11 WITNESS JAHN: That's all the corrections.

12 MS. DES JARDINS: Please summarize your
13 testimony. And if you can take about 14 minutes.

14 WITNESS JAHN: Okay. My name is Andrew Jahn.
15 I have a Bachelor's degree in Biological Sciences from
16 U.C. Davis, a Ph.D. in Biological Oceanography from the
17 Woods Hole Oceanographic Institution.

18 My original training in biological
19 oceanography opened a vast area of research in physics,
20 chemistry, biology, aquatic habitat.

21 I have worked on marine, estuarine and
22 freshwater projects on problems ranging from oceanic
23 fish and plankton distribution to mercury BCD
24 contamination in estuarian waters.

25 Much of my career focused on entrainment of

1 larval and adult fish in coastal power stations. In
2 that context, I became very familiar with the
3 statistical properties of fish abundance data,
4 including their eggs and larvae.

5 I published my results of that statistical
6 work in the peer-reviewed fisheries literature.

7 This experience, plus my lack of conflicts,
8 qualified me to come out of retirement and work with
9 the Kier Associates on contract with the National
10 Marine Fisheries Service to develop a method to produce
11 confidence limits on estimates of the loss of listed
12 fish species, including Salmon and Steelhead, at the
13 Federal and State water export facilities in the South
14 Delta.

15 In that capacity, I became familiar with the
16 workings of the facilities and with the underpinnings
17 of the calculations then in use.

18 I appear here as an objective scientist
19 un beholden to anyone. I'm not looking for a job. I'm
20 not looking for another contract. I simply want to
21 respond to claims made by Dr. Chuck Hanson's rebuttal
22 testimony, specifically his arguments that, quote,
23 "2010 Flow Criteria Report and the Phase II Technical
24 Basis Report should not be accepted by this Board as
25 the best-available science without further

1 consideration of current science."

2 I will show that Hanson's own analysis of old
3 data are substandard and that the citations of the work
4 of others are in some cases misleading.

5 Based on my own review of the currently used
6 calculations using salvage fish data and poorly
7 documented parameters to estimate loss, I conclude that
8 the estimates are biased low and, therefore, that
9 recent estimates of population-level effects of the
10 exports cited by Hanson are also biased low.

11 The deficits in the research underpinning the
12 calculations include:

13 Poor documentation of guidance system
14 efficiency estimates.

15 Paucity of efficiency estimates based on
16 Chinook Salmon smolt and fry.

17 Very limited data on prescreen loss of Salmon
18 at SWP.

19 No data on prescreen lost data of Salmon at
20 the CVP.

21 And then arbitrary choices of these parameters
22 in the official regulatory documents and in the
23 unpublished literature.

24 Could we show Page 10 of my testimony, please.

25 MS. DES JARDINS: Exhibit DDJ-331.

1 (Exhibit displayed on screen.)

2 WITNESS JAHN: Okay. Thanks.

3 So the top -- The top panel there shows Chuck
4 Hanson's analysis of survival. This is 30-day mean
5 export versus 30-day mean export volume.

6 And it shows a kind of -- a sort of
7 messy-looking scatter plot with this fairly flat slope
8 and very little R-square value, which means there's a
9 lot of uncertainty in the -- in the -- in the request.

10 On the bottom panel, the same page, I've shown
11 my reanalysis of data from the same --

12 CO-HEARING OFFICER DODUC: I'm sorry. Could
13 we scroll down, Mr. Hunt, so we can see the whole
14 graph?

15 (Exhibit displayed on screen.)

16 WITNESS JAHN: Yeah. Down here, you see a
17 re -- reanalysis of the same data, but rather than use
18 the volume of the exports alone, I've used the ratio of
19 the exports to the amount of inflow to the Delta.

20 This is a little more responsive to the -- to
21 the hypothesis stated in my testimony -- restated in my
22 testimony that it's the combination of the two, the
23 inflows and the exports, that is creating the negative
24 flows in -- in the OMR and that's leading to mortality
25 at pumps.

1 On the same -- On the same vein, Hanson's
2 analysis of salvage versus flow are -- are not valid
3 because of the high proportion of zeros in the data,
4 and his approach to that is too simple. My approach
5 here is still too simple, but it's -- it's better than
6 his.

7 Kimmerer in 2008. Some of these data are
8 actually -- Some of Kimmerer's adult are actually more
9 recent than those used by Hanson but his analysis was a
10 lot more refined. He used -- He showed . . .

11 Maybe we can show that on . . .

12 What page would that be?

13 Yes. On Page 11.

14 (Exhibit displayed on screen.)

15 WITNESS JAHN: In Kimmerer's analysis, he took
16 the time to pull out data -- flow data from times when
17 there weren't any fish around.

18 And he also attempted to show that there might
19 be a difference between the hatcheries' -- two releases
20 from two hatcheries up on the Sacramento River. So
21 these are refinements that are -- that are absent from
22 Hanson's analysis.

23 I don't think that Kimmerer actually found a
24 significant difference between the two hatcheries but
25 he thought that there probably would be if more data

1 became available.

2 Let's see. I was going to read a little bit
3 from Page 14, if I may.

4 (Exhibit displayed on screen.)

5 WITNESS JAHN: Okay. This is related to the
6 prescreen loss estimates.

7 The loss calculations are messier than they
8 need to be. But, for historical reasons, they -- they
9 look at the efficiency of the plant as separate from
10 the prescreen loss -- that is, the number of fish that
11 disappear before they even get to the screens, which
12 aren't really screens -- and then -- and then they had
13 those -- they multiplied those two together.

14 The problem -- One problem is that they're not
15 independent to begin with. You cannot estimate
16 prescreen loss without an estimate of efficiency of the
17 fish guidance system.

18 So on Page 14, I point out that these
19 estimates are made . . . by data, but just releasing
20 fish within Clifton Court Forebay.

21 There's plenty of reason to -- not to believe
22 that this increased predation just starts at the gates.
23 It -- The principal predators, Striped Bass and the
24 birds, can move back and forth and there should be some
25 studies done to determine some range of area around

1 both facilities where predation is increased.

2 If we could show Page 17.

3 (Exhibit displayed on screen.)

4 WITNESS JAHN: Okay. In Hanson's testimony,
5 he -- he was -- he showed very weak relationship
6 between group survival and Sacramento flow. And I
7 found this odd because, in the file that we got from
8 DWR, there was a rather strong relationship.

9 Hanson's graph used data that are not in the
10 file. He used a 14-day average for reasons of his own.
11 But it's -- I found that curious because I got twice
12 the R-square value that he got, which means I got half
13 the uncertainty that he got in this relationship
14 between group survival and Sacramento River flow.

15 I should back up and tell you that the group
16 survival in this case means the combined survival
17 estimates from several multiple tagged groups that were
18 released on the same day. So there's fewer data points
19 in this graph than there were in the ones that I showed
20 previously.

21 And, finally, I wanted to note that there is
22 an emphasis on sort of variability and -- and -- and
23 lack of certainty in -- in Hanson's testimony that's
24 even kind of enhanced by some -- some of the way he
25 cites the literature.

1 For example, in his citation of Michel -- the
2 results of Michel, et al., in 2015, he points to
3 their -- their reporting of heightened survival rate in
4 the Delta versus the river.

5 But their definition of the Delta wasn't what
6 we're all talking about. They -- They were defining
7 the Delta Region which includes the -- the main
8 channel, the Sacramento River, over that -- over that
9 length of river.

10 And what they say in their text actually
11 contradicts that. They -- When they scaled their --
12 their survival estimates or -- yeah, survival -- to
13 survival per 10 kilometers, they said this (reading):

14 "Survival rate on a Reach-by-Reach
15 basis was quite variable. During the
16 first four years of the study, the upper
17 river Reaches . . . had some of the
18 lowest survival per 10 kilometers, and
19 the lower Reaches of the river . . . had
20 the highest. The Delta was comparable to
21 the upper river, and the San Francisco
22 and Suisun Bays . . . had the lowest
23 survival rates."

24 So, in other words, survival values for 10
25 kilometers in the Delta Region, even with the

1 Sacramento River included, were the -- were the lowest
2 of any part of the study area other than the bays.

3 And, further, on that Page 19A is a
4 counterargument to the expectation that high river
5 flows should increase survival.

6 Hanson cites a report of Buchanan, et al.
7 (2018), which was done on the San Joaquin system of
8 2 percent survival.

9 And it's really odd because, on the very same
10 page of his testimony, he shows a -- a value of -- in
11 the Sacramento River in 2011 -- in 2011 of greater than
12 15 percent survival in the Sacramento River where, of
13 course, the majority of the out-migrants migrate.

14 So, these kind of things are emphasizing
15 uncertainty over information.

16 And I'd also like to read to you, if I may, a
17 quotation from the Commission -- the U.S. Commission On
18 Ocean Policy. And this is on Page 18 of my testimony.
19 And these are very serious folks that include Admirals,
20 Vice Admirals, ex -- ex Department of Interior leader.

21 They say (reading):

22 "In contrast to the precautionary
23 principle, the Commission recommends
24 adoption of a more balanced precautionary
25 approach that weighs the level of

1 scientific uncertainty and the potential
2 risk of damage as part of every
3 management decision. Such an approach
4 can be explained as follows."

5 And before I get to that, I want to note that
6 Peter Moyle -- who's referenced in virtually
7 everybody's testimony on these topics -- has noted that
8 the winter-run Salmon is critically endangered and
9 immediate risk of extinction.

10 (Reading):

11 "Precautionary approach. To ensure
12 the sustainability of ecosystems for the
13 benefit of future as well as current
14 generations, decision-makers should
15 follow a balanced precautionary approach,
16 applying judicious and responsible
17 management practices based on the
18 best-available science and on proactive,
19 rather than reactive, policies. Where
20 threats of serious or irreversible damage
21 exist, lack of scientific certainty shall
22 not be used as a justification for
23 postponing action . . ."

24 And I just -- That's not a scientific point.
25 That's a -- That's a point for all of us to consider.

1 It's whether these mortalities caused by these
2 diversions are of a significant difference to society
3 is -- is really up to you folks to decide.

4 (Reading):

5 "The 2010 Flow Criteria provide
6 reasonable and prudent measures to
7 protect the viability of the Salmonids,
8 including winter-run, a valuable resource
9 that is considered by experts to be in
10 immediate risk of extinction.

11 "Some estimates of population-level
12 incremental mortality of winter-run
13 Salmon approach estimates of mortality
14 caused by the mixed-stock ocean
15 fisheries. Though these estimates are
16 uncertain, it would be shameful to
17 witness the extinction of this species
18 through inaction while awaiting further
19 study.

20 "A precautionary approach to
21 conservation of winter-run Salmon should
22 entail a balanced program of protective
23 flow criteria, research and management
24 options that give fair weight to the high
25 risk of extinction of winter-run . . .

1 while studies are performed to increase
2 understanding of flow issues and reduce
3 uncertainty of water export . . . direct
4 and indirect mortality.

5 "The West Coast Salmon Fishery has
6 also been in decline and cannot wait for
7 future studies. A precautionary approach
8 would implement protective criteria to
9 rebuild stocks to withstand the impacts
10 of climate change."

11 That ends my testimony.

12 MS. DES JARDINS: Thank you.

13 Dr. Williams, is Exhibit DDJ-340 a true and
14 correct copy of your testimony?

15 WITNESS WILLIAMS: Yes.

16 MS. DES JARDINS: Can you turn on your mic.

17 Could you please summarize your testimony.

18 WITNESS WILLIAMS: Good afternoon. Dr. Tom
19 Williams.

20 I've already submitted my qualifications under
21 DDJ-162, and this is my surbuttal (sic) -- surrebuttall
22 testimony.

23 Okay. The summary. In July 2018 -- Sorry.

24 Seismic activities, engineering and design.

25 The July 2018 Conceptual Engineering Report

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1 documents that the Department of Water Resources is now
2 designing the Delta tunnels to withstand a Maximum
3 Considered Earthquake, as defined by the American
4 Society of Engineering -- Civil Engineers. This is
5 consistent with a recommendation of mine in Part 1.

6 So . . . It's improved.

7 Since the CER states that seismic activity --
8 seismic criteria are still in change, I still recommend
9 that the Board put this requirement in the Permit.

10 New seismic review of the tunnel liner
11 performance.

12 Appendix M, the seismic review of the tunnel
13 linear performance, assumes that tunnels are bored in
14 soils that are very dense to rock.

15 The Delta soils at the tunnel depths, based
16 upon available information that I've seen, is much
17 softer than very dense to rock. So there's a basic
18 assumption that appears to be invalid and may
19 jeopardize the entire section and discussion of rock
20 versus sediment.

21 The geotechnical information is still scant,
22 to say the least. THE CER states that the Delta soils
23 below 60 feet are very stiff to hard. But based upon
24 the borings, there aren't that many borings going below
25 60 feet. So we're quite concerned about that.

1 The geotechnical data referred to in the
2 Administrative Draft Supplemental EIR shows that the
3 soils at the depth of the tunnels is only soft to
4 stiff, not very hard and very dense to rock.

5 So we have some internal complications there.

6 The new liquefaction (sic) in Appendix M
7 concludes that liquefaction risk is low. A previous
8 analysis assumed much higher peak ground accelerations,
9 found that there could be substantial continuous
10 liquefaction down to 100 feet below surface or more.

11 So we're faced with: On one side, we have
12 very stiff to rock; on the other side, we have
13 liquefiable material.

14 Because the soil in the Delta are liquefiable,
15 the clay may be plastic, a Class of F seismic analysis
16 with the site-specific seismic responses is be likely
17 required. We need more information.

18 Seepage. We've gone over seepage before. But
19 given the known geotechnical issues and the seepage
20 problems that are in the vicinity of the new Byron
21 Tract Forebay, the Board should require a peer review
22 and substantial more information of the proposed
23 methods for seepage control, especially in the
24 construction of the forebay.

25 The South Tunnels pass near the Clifton Court

1 Forebay embankments. There's a problem. The tunneling
2 may affect the forebay embankments. It could affect
3 the integrity of the embankments causing uncontrolled
4 release of water due to ground movement caused by the
5 tunneling.

6 The . . . geotechnical data that we do have
7 shows silts and silty clays. Silt's difficult to
8 tunnel in and are known to be subject to running during
9 tunnel boring. Plastic clays can exhibit squeezing
10 movement, expansion, during tunnel boring.

11 Both can be causes of loss of ground; that is,
12 subsidence.

13 I recommend permit terms and conditions be
14 required for the risk of tunneling -- tunnel boring in
15 the vicinity of the Clifton Court Forebay embankments.

16 Okay. The changes. There have been some
17 changes made. Thank you for some, not enough for
18 others.

19 So, I'll -- I'll cover the changes in the
20 Project and Appendix 3 of the Administrative Draft
21 Supplemental EIR/EIS and efficiencies in the analysis
22 of other sections of the Supplemental EIR.

23 Changes to the Project constituting a new
24 regulatory reservoir, Byron Tract Forebay, instead of
25 modifying the Clifton Court.

1 The draft states (reading):

2 "A new forebay located on Byron
3 Tract will be constructed instead of
4 dividing, dredging, and expanding
5 Clifton . . . Forebay. The Byron Tract
6 Forebay would be constructed on an area
7 that was proposed for RTM storage under
8 the Approved Project."

9 Well, the Draft -- The Supplemental EIR does
10 not quantify the amount of borrow fill that is needed
11 for those embankments and others. This is buried in
12 the Conceptual Engineering Report, CER.

13 The failure to quantify is a problem that
14 disguises the fact that there may be a very large of
15 borrow material that needs to be excavated, transported
16 and placed.

17 So we're quite concerned regarding the entire
18 cut and fill operations, especially related to the
19 Byron Tract Forebay.

20 Soil maps are interesting. They would be
21 better if they were based on actual borings in the
22 excavation areas, but we'll go with what we have.

23 Soil maps show a thick organic deposits over
24 much of the Delta, as most of the farmers know. The
25 soil maps in the Supplemental EIR should have been

1 cross-referenced with specifications of what is good
2 borrow material? What are the good sites from the
3 Conceptual Engineering Report? That was the start.

4 In addition, Water Resources has available a
5 lot of borings that have not been circulated. And I
6 would assume that there are existing borings for other
7 engineering projects, including the Conceptual
8 Engineering Report.

9 The Borrow Area Geotechnical Report from
10 In-Delta Storage Program, as well as other sets of
11 borings, could provide this information and provide us
12 with a generalized location of where the Reclamation
13 materials will be sourced and how far they are from the
14 areas where they will be placed.

15 We have one new element also: That reusable
16 tunnel material from the tunnel borings could be used
17 to reclaim the borrow pits. However, that has not been
18 indicated or clarified as to where it's going to come
19 from, which shaft, what treatment it will have, and
20 who's going to transport it and place it, and, I say,
21 manage it, landscape it, modify it so as to provide
22 suitable remediation of the borrow sites.

23 When you start talking about taking material
24 out of the Delta, the first thing is major emissions
25 regarding hazardous materials. There's been a lot of

1 stuff in the Delta for a long time.

2 The Supplemental EIR. While there are tests
3 for the toxic constituents and the tunnel muck, there's
4 been no testing of what could be expected from
5 potential borrow sites.

6 And the tests of the Delta channel soils would
7 indicate . . . document for the Clifton Court borrow,
8 that we could get lots of metals, DDT, DDE and some
9 PCBs.

10 There's been no analysis of emissions of
11 sulfides from the rich organic putrified composted
12 topsoil of the potential borrow sites and how deep it
13 will go.

14 Avoiding any significant impacts from
15 underseepage, as indicated by a previous speaker, are
16 borrow overburden, toxic constituents, would require
17 trucking, barging, of much of the borrow fill for parts
18 of -- from other parts of the Project and the Delta.

19 This would mean barges, traffic analysis, is
20 needed in the Supplemental EIR. And associated air
21 quality emissions from such traffic must be included
22 also.

23 That summarizes a lot of pages.

24 CO-HEARING OFFICER DODUC: All right. Thank
25 you.

1 Does that conclude your direct?

2 MS. DES JARDINS: Yes, it does.

3 CO-HEARING OFFICER DODUC: All right. Let's
4 take a short break for the court reporter while the
5 Department set up for cross-examination.

6 We will return at 3:30.

7 (Recess taken at 3:20 p.m.)

8 (Proceedings resumed at 3:30 p.m.):

9 CO-HEARING OFFICER DODUC: All right. It is
10 3:30. We are back.

11 And, Miss Ansley, you may begin your cross.

12 MS. ANSLEY: Thank you.

13 Good afternoon. My name is Jolie-Anne Ansley.
14 I'm here from the Department of Water Resources.

15 I have questions for both Dr. Jahn and for
16 Dr. Williams. I'd like to start with Dr. Jahn.

17 CROSS-EXAMINATION BY

18 MS. ANSLEY: Am I pronouncing that right, sir?

19 WITNESS JAHN: Sounds about right to me.

20 MS. ANSLEY: Does it? Okay.

21 Dr. John, did you draft your testimony?

22 WITNESS JAHN: Yes, I did.

23 MS. ANSLEY: Did you get any assistance with
24 that?

25 WITNESS JAHN: I got some assistance and some

1 rearrangements, yes.

2 MS. ANSLEY: And by "rearrangements," what do
3 you mean?

4 WITNESS JAHN: To make it flow better. I -- I
5 wasn't familiar with the hearing process and all that,
6 so I just -- My initial cut at it was just as a
7 technical response to Hanson's statements.

8 MS. ANSLEY: And -- And I'm going to jump
9 right in.

10 And your testimony is DDJ-331; is that
11 correct?

12 (Pause in proceedings.)

13 WITNESS JAHN: I don't know.

14 MS. ANSLEY: Well, if it makes you feel
15 better, I asked them as well.

16 Do you have a copy of your testimony in front
17 of you, sir?

18 WITNESS JAHN: Yes, I do.

19 MS. ANSLEY: And can we bring that up,
20 Mr. Hunt?

21 (Exhibit displayed on screen.)

22 MS. ANSLEY: And I only have a few questions
23 but if at any time you need to read more of your
24 testimony or read it in context, just let me know.

25 Are you familiar with the Perry, et al., 2018

1 study?

2 WITNESS JAHN: Yes, I am.

3 MS. ANSLEY: And to make sure that we're on
4 the same page --

5 Can we -- Actually, I apologize. Can we pull
6 up DWR-1368.

7 And while he's doing that, Dr. Jahn, I believe
8 that this is not a study that you cited in your paper;
9 is that correct? Or during your testimony?

10 WITNESS JAHN: Well, if I didn't cite it, then
11 it's one with which I'm not familiar, but it sounds
12 familiar to me.

13 That's the --

14 (Exhibit displayed on screen.)

15 WITNESS JAHN: -- the tag --

16 MS. ANSLEY: Let's do this.

17 WITNESS JAHN: -- late fall-run Salmon.

18 MS. ANSLEY: If you can see that it's on the
19 screen in front of you.

20 Does that refresh your recollection?

21 (Reading):

22 "Flow-mediated effects on travel
23 time, routing, and survival of Juvenile
24 Chinook Salmon in a spatially complex,
25 tidally influenced (sic) . . ."

1 WITNESS JAHN: The answer to your first
2 question is, no, I -- I haven't read that report.

3 MS. ANSLEY: You are not familiar with Perry,
4 et al., 2018.

5 WITNESS JAHN: The Perry, et al. --

6 MS. ANSLEY: The -- I'm sorry, sir.
7 The article on the screen.

8 WITNESS JAHN: No, I'm not familiar with that.

9 MS. ANSLEY: Is it your understanding that
10 this was cited by Dr. Hanson in his testimony?

11 Are you familiar with Dr. Hanson's testimony,
12 which is DWR-1223-Revised?

13 WITNESS JAHN: I am.

14 MS. ANSLEY: And did you read the references
15 cited by Dr. Hanson in this report regarding
16 flow-mediated effects?

17 WITNESS JAHN: I didn't read them all. I read
18 the references that seemed to be the most salient to
19 his arguments.

20 MS. ANSLEY: And so you . . . And so . . .

21 So do you have any understanding of whether
22 there's been recent study looking at the extent to
23 which within-Reach survival contributes to the overall
24 flow survival relationship?

25 WITNESS JAHN: It seemed to me that the Michel

1 paper 2015 and the Perry, et al., paper which I think
2 was 2010 addressed those issues.

3 MS. ANSLEY: But you're not aware of this more
4 recent research; is that correct?

5 WITNESS JAHN: That's correct.

6 MS. ANSLEY: You're not. Okay.

7 (Pause in proceedings.)

8 MS. ANSLEY: And is it your understanding that
9 more recent research has concluded that riverine
10 Reaches exhibit high survival at all levels of inflow?

11 (Pause in proceedings.)

12 WITNESS JAHN: I'm not sure I would say that.

13 MS. ANSLEY: And you're not aware of similar
14 recent research that demonstrates that tidal Reaches
15 have lower but constant survival rates with respect to
16 inflow.

17 (Pause in proceedings.)

18 WITNESS JAHN: No, I'm not familiar with that,
19 either.

20 MS. ANSLEY: And, in fact, that recent
21 research demonstrates that it is only the transitional
22 zones from bidirectional tidal flows to unidirectional
23 flow that demonstrate a positive relationship to
24 inflow.

25 MS. DES JARDINS: I have an objection to this

1 question as vague about what study she's referring to
2 that have these conclusions.

3 CO-HEARING OFFICER DODUC: Miss Ansley.

4 MS. ANSLEY: Dr. Hanson testified extensively
5 about the flow relationship to survival of Salmonids.
6 He cited these studies in his testimony.

7 And what I'm ask --

8 CO-HEARING OFFICER DODUC: I'm sorry. Are
9 you -- When you say "these studies" . . .

10 MS. ANSLEY: He cited Perry, et al., 2018 and
11 studies that sort of build up to that --

12 CO-HEARING OFFICER DODUC: Hold on.

13 MS. ANSLEY: -- as wells as his own research.

14 CO-HEARING OFFICER DODUC: I'm sorry. You
15 said he cited to Perry 2018?

16 MS. ANSLEY: Dr. Hanson cited to studies
17 regarding and supporting his conclusions on flow
18 relationships with survival of Salmonids from the
19 Sacramento, San Joaquin and --

20 CO-HEARING OFFICER DODUC: Dr. Hanson, not
21 Dr. Jahn.

22 MS. ANSLEY: Dr. Hanson did.

23 And so Dr. Jahn just testified that he cited a
24 Michel, et al., 2015 and I believe he said he cited
25 Perry, et al., 2010.

1 And I'm asking whether he's aware of the
2 results of the more recent research on the flow
3 relationships and those findings.

4 He did say that he was unaware of the Perry,
5 et al., 2018 study cited by Dr. Hanson.

6 CO-HEARING OFFICER DODUC: And these would be
7 studies cited by Dr. Hanson in his rebuttal testimony.

8 MS. ANSLEY: These were cited by Dr. Hanson in
9 his DWR-1223-Revised rebuttal testimony.

10 CO-HEARING OFFICER DODUC: To which Dr. Jahn
11 is --

12 MS. ANSLEY: Is here specifically to rebut.

13 CO-HEARING OFFICER DODUC: Okay.

14 MS. ANSLEY: Or surrebut.

15 CO-HEARING OFFICER DODUC: Surrebut, yes.

16 Miss Meserve.

17 MS. MESERVE: I would just add that it's vague
18 when she's reading a conclusion from a specific study
19 and she hasn't even pulled up that study to show
20 Dr. Jahn what it is she's referring to.

21 CO-HEARING OFFICER DODUC: Yes.

22 MS. MESERVE: It's impossible for him to
23 answer.

24 CO-HEARING OFFICER DODUC: I appreciate,
25 Miss Ansley, that you're trying to expedite this, but I

1 think it will be helpful to all of us to make that
2 connection between your question and the citation in
3 Dr. Hanson's rebuttal testimony to which Dr. Jahn is
4 responding.

5 MS. ANSLEY: So, the testimony I'm discussing
6 is Perry, et al., 2018, which is the -- sort of the
7 culminating study. He said that he was not aware of
8 this specific study.

9 I was asking whether he was aware of these
10 recent conclusions more generally, and he was saying
11 that he was not.

12 CO-HEARING OFFICER DODUC: Correct.

13 Miss Ansley, so, because he's not aware of --
14 is not familiar with the studies and the results of
15 that study . . .

16 MS. MESERVE: It's asked and answered.

17 MS. ANSLEY: I'm ready to move on. I just --

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

19 MS. ANSLEY: -- was closing the door on --

20 CO-HEARING OFFICER DODUC: Okay.

21 MS. ANSLEY: -- that topic.

22 And then, Dr. Jahn, I'd like to look at some
23 of the figures in your testimony.

24 Looking at your figure on Page 10 -- This
25 would be Figure 3 of your testimony, which is DDJ-331.

1 Would you go to that page, please.

2 (Exhibit displayed on screen.)

3 MS. ANSLEY: And it's up ahead of us on the
4 screen.

5 (Pause in proceedings.)

6 MS. ANSLEY: Do you have that in front of you?

7 And looking at Figure 3, this is your near
8 reproduction of Dr. Hanson's regression; is that
9 correct?

10 WITNESS JAHN: That's right.

11 MS. ANSLEY: And your testimony was that
12 Dr. Hanson's relationship had a very low R-squared,
13 which is indicative of lots of uncertainty; is that
14 correct?

15 WITNESS JAHN: That's correct.

16 MS. ANSLEY: And, in fact, that was
17 Dr. Hanson's conclusion was that the low R-squared
18 demonstrated a weak relationship; is that correct?

19 WITNESS JAHN: That's correct.

20 MS. ANSLEY: And looking at Figure 3 here with
21 an R-squared of .01, do you see that in your Figure 3?

22 WITNESS JAHN: Yes.

23 MS. ANSLEY: And, indeed, does that not mean
24 that this analysis failed to explain approximately 98
25 percent of the variability in the data?

1 WITNESS JAHN: His does, yes.

2 MS. ANSLEY: And, then, looking below at your
3 Figure 4, if I understand correctly, this is where you
4 added in the export inflow -- the inflow ratio; is that
5 correct?

6 WITNESS JAHN: That's right.

7 MS. ANSLEY: And here, the R-squared is .1197;
8 is that correct?

9 WITNESS JAHN: Yes.

10 MS. ANSLEY: And so this relationship fails to
11 explain approximately 88 percent of the -- the
12 variability in this dataset; is that correct?

13 WITNESS JAHN: Yes.

14 (Pause in proceedings.)

15 MS. ANSLEY: Similarly, moving on to Page 17
16 and looking at your figures on Page 17.

17 (Exhibit displayed on screen.)

18 MS. ANSLEY: Do you have that in front of you,
19 sir?

20 WITNESS JAHN: I do.

21 MS. ANSLEY: Similarly, this -- these two
22 figures also have very low R-square values; is that
23 correct?

24 WITNESS JAHN: Yes, that's correct.

25 MS. ANSLEY: Again, showing that most of the

1 data is unexplained by the relationship?

2 WITNESS JAHN: Most of the errors in the --
3 Most of the variance in the data is unexplained by the
4 relationship, yes.

5 MS. ANSLEY: And would you categorize these as
6 weak relationships?

7 WITNESS JAHN: Yes, I would, but I think
8 they're coherent.

9 CO-HEARING OFFICER DODUC: I'm sorry. What
10 was that?

11 WITNESS JAHN: They're coherent. You can --
12 The -- The . . .

13 The -- The reanalysis of the -- of the group
14 survival and the transit time in these -- in these
15 graphs are both more coherent than the -- their
16 versions in the Hanson testimony.

17 My point here is not that what I've done is
18 the best way to analyze the data but simply to show
19 that Hanson's analysis has left some stones unturned.

20 MS. ANSLEY: In fact, you're doing that by
21 comparing the differences in the R-squared values; is
22 that correct?

23 WITNESS JAHN: That's right.

24 MS. ANSLEY: Looking at your Figure 7, though,
25 it still fails to explain more than 90 percent of the

1 variability in the data; is that correct?

2 WITNESS JAHN: That's right.

3 I made clear in my testimony that there's --
4 that the file that I had to work with didn't allow for
5 making a reasonable estimate of transit time, but that
6 the one I used was a little more explanatory than the
7 one that Dr. Hanson used.

8 MS. ANSLEY: You report the P values for your
9 graphs?

10 WITNESS JAHN: I didn't report them. I looked
11 them up. I don't think the one in Figure 7 is
12 significant but certainly the one in Figure 6 is.

13 MS. ANSLEY: I have no further questions for
14 Dr. Jahn.

15 I'd like to shuffle my papers and materials
16 for Dr. Williams.

17 Thank you, Dr. Jahn.

18 WITNESS JAHN: You're welcome.

19 MS. ANSLEY: And, sir, if you have anything to
20 add, your attorneys can redirect you after my cross.

21 Good afternoon, Dr. Williams.

22 WITNESS WILLIAMS: Good afternoon.

23 MS. ANSLEY: Nice to see you again. I believe
24 we chatted in Part 1.

25 And, sir, I'd just like to confirm some

1 answers that you gave me in Part 1 just to -- as a
2 buildup to the questions I'm going to ask you
3 specifically about your analysis in your testimony
4 here.

5 You are not a Professionally Registered
6 Engineer, that's correct?

7 WITNESS WILLIAMS: I am not a State of
8 California Certified Engineer.

9 MS. ANSLEY: Are you licensed in any other
10 state as a Professional Engineer.

11 WITNESS WILLIAMS: No, I am not. I'm now
12 retired.

13 MS. DES JARDINS: I have an objection:

14 The Department of Water Resources was able to
15 explore Dr. Williams' test -- Dr. Williams'
16 qualifications as submitted as Exhibit DDJ-162 in
17 Part 1.

18 And this is surrebuttal and this is
19 repetitive.

20 CO-HEARING OFFICER DODUC: Yes. Miss Ansley
21 did caveat at the beginning that she's asking some
22 foundational questions to lead up to specific questions
23 with respect to the surrebuttal testimony.

24 MS. ANSLEY: That's correct. I only have one
25 more question on this -- this line, and then I later

1 have a question about specific testing that was done in
2 this.

3 And, sir, let me make sure I'm looking at the
4 right thing, you are not a Registered Geotechnical
5 Engineer or a Registered Hydrogeologist; is that
6 correct?

7 WITNESS WILLIAMS: Correct.

8 MS. ANSLEY: Okay. And looking at your
9 testimony, which is DDJ-340.

10 (Exhibit displayed on screen.)

11 MS. ANSLEY: Oh, so quickly.

12 And if we could go to Page 6 of your
13 testimony, if you have that in front of you.

14 WITNESS WILLIAMS: Yes, I do.

15 MS. ANSLEY: And looking about halfway down
16 the page, do you see the sentence that starts with
17 "Assuming"?

18 WITNESS WILLIAMS: Yes.

19 MS. ANSLEY: And could you read that sentence.
20 I don't want to read it into the record.

21 WITNESS WILLIAMS: "Assuming the soil" --

22 MS. ANSLEY: Oh, don't --

23 CO-HEARING OFFICER DODUC: Read it to
24 yourself, not into the -- not out loud.

25 CO-HEARING OFFICER MARCUS: We're allergic to

1 that.

2 (Laughter.)

3 MS. ANSLEY: I'm trying to learn something
4 after all these years.

5 Meaning me.

6 (Pause in proceedings.)

7 WITNESS WILLIAMS: Yes.

8 MS. ANSLEY: And is it your understanding that
9 that seismic parameter was based on a site response
10 analysis performed near the Clifton Court Forebay?

11 WITNESS WILLIAMS: For the forebay, yeah.

12 MS. ANSLEY: And have you ever -- Have you
13 ever done a site response analysis?

14 WITNESS WILLIAMS: I have not done a site
15 analysis for this.

16 MS. ANSLEY: And is it typical in a site --
17 But you are familiar with site response analysis
18 generally.

19 WITNESS WILLIAMS: Yes.

20 MS. ANSLEY: Is -- And when you say "for
21 this," what do you mean "for this"?

22 WITNESS WILLIAMS: For the forebay and/or the
23 specifics of the southern end of the Sacramento Delta.

24 MS. ANSLEY: Okay. To make sure it's clear,
25 you have not done a site response analysis in the Delta

1 in connection with your testimony for the California
2 WaterFix; is that correct?

3 WITNESS WILLIAMS: Correct.

4 MS. ANSLEY: But you are familiar with site
5 response analyses.

6 WITNESS WILLIAMS: Yes.

7 MS. ANSLEY: Have you performed site response
8 analyses for other projects?

9 WITNESS WILLIAMS: In the UA outside the State
10 of California.

11 MS. ANSLEY: And is it your understanding that
12 it's typical to consider the data collected in the
13 immediate vicinity of the site you're working with?

14 WITNESS WILLIAMS: Yes.

15 MS. ANSLEY: And can we turn to the next page
16 and focus on your Table 3-5. I guess it's probably our
17 Table 3-5 which you reproduced here.

18 (Exhibit displayed on screen.)

19 MS. ANSLEY: And just so we don't have to pull
20 up a lot of maps:

21 Is it your understanding that the soil boring
22 that was collected near the Clifton Court Forebay is
23 the bottom row of that chart, Table 3-5, which would be
24 DCRA-DH-024; is that correct?

25 WITNESS WILLIAMS: 024, yes.

1 MS. ANSLEY: So we're both focused on the last
2 row of that chart; is that correct?

3 WITNESS WILLIAMS: Yes.

4 MS. ANSLEY: Now, based on your experience
5 with site response analysis, is it your
6 understanding -- Or do you have an under -- Well, let
7 me back up.

8 Do you have experience with Triaxial Shear
9 Strength Tests?

10 WITNESS WILLIAMS: Myself --

11 MS. ANSLEY: Yes.

12 WITNESS WILLIAMS: -- specifically? No.

13 MS. ANSLEY: So you have not performed that
14 sort of testing.

15 WITNESS WILLIAMS: I haven't. I personally
16 have not performed that. I've been around and . . .

17 MS. ANSLEY: Is it your -- Do you have an
18 understanding of what is meant by an Unconsolidated
19 Undrained Triaxial Test?

20 WITNESS WILLIAMS: Yes. In general, yes.

21 MS. ANSLEY: And, similarly, do you have an
22 understanding of what I mean by an Unconfined
23 Compressive Strength Test?

24 WITNESS WILLIAMS: Unimpacted?

25 MS. ANSLEY: Unconfined Compressive Strength

1 Test.

2 WITNESS WILLIAMS: Yeah, I -- Generally, yes.

3 MS. ANSLEY: Have you performed an Unconfined
4 Compressive Strength Test?

5 WITNESS WILLIAMS: No, I personally have not.

6 (Pause in proceedings.)

7 MS. ANSLEY: Is it your understanding that
8 these are two different tests performed pursuant to two
9 different ASTM standards?

10 WITNESS WILLIAMS: Yes.

11 MS. ANSLEY: And isn't it correct, per you're
12 understanding, that the -- sorry, these names are
13 difficult -- that the Unconsolidated Undrained Triaxial
14 Test is performed with confining pressure; is that
15 correct?

16 WITNESS WILLIAMS: I'm not familiar.

17 MS. ANSLEY: How about the Unconfined
18 Compressing Strength Test? Are you aware that is
19 performed with any confining pressure?

20 WITNESS WILLIAMS: I -- Generally, no.

21 MS. ANSLEY: No, it's not, or you're not
22 aware?

23 WITNESS WILLIAMS: I'm not aware.

24 MS. ANSLEY: So you are not aware -- You're
25 aware that these tests are performed differently

1 pursuant to different standards, but you are not aware
2 of the differences of --

3 WITNESS WILLIAMS: Of the details of the
4 operation spatially, no.

5 MS. ANSLEY: Could you explain to me how the
6 two tests are operated differently?

7 WITNESS WILLIAMS: Confine . . . No, I
8 cannot, right now.

9 MS. DES JARDINS: I have an objection as to
10 relevance. This is the data that the Supplemental
11 EIR/EIS referred to.

12 And if the Department of Water Resources wants
13 to question what data their own soil testers referred
14 to, it would be more appropriate to do that.

15 CO-HEARING OFFICER DODUC: I believe
16 Miss Ansley is trying to ascertain Dr. Williams'
17 understanding of these tests.

18 MS. ANSLEY: Yes. And the fact that he is the
19 one critiquing our use of one particular test but using
20 a different test.

21 So, my next question is: Dr. Williams,
22 looking at the bottom row of of Table 3-5.

23 Do you see that, sir?

24 WITNESS WILLIAMS: 3-5?

25 MS. ANSLEY: Um-hmm. It's on Page 7.

1 WITNESS WILLIAMS: Yes.

2 MS. ANSLEY: It's the one we've been focusing
3 on. It might be clearer to see on the screen there.

4 So looking at Table --

5 WITNESS WILLIAMS: 024.

6 MS. ANSLEY: Oh, excuse me. Go ahead. Are
7 you ready?

8 WITNESS WILLIAMS: For 024?

9 MS. ANSLEY: Yes.

10 Looking at the bottom row for boring --

11 WITNESS WILLIAMS: Yeah.

12 MS. ANSLEY: -- Sample Source 024, do you see
13 in the far right column under "Remarks" that the test
14 used was the UU Test.

15 WITNESS WILLIAMS: The UU Test. I'm not
16 familiar with them.

17 MS. ANSLEY: So is it your understanding that
18 this is actually the Unconsolidated Undrained Triaxial
19 Compression Test?

20 WITNESS WILLIAMS: I am generally, yes.

21 MS. ANSLEY: So it's your understanding that
22 that -- that those values in that chart were results of
23 the UU Test.

24 WITNESS WILLIAMS: Of the UU Test and the CU
25 Test.

1 MS. ANSLEY: Sir, can you point out the --
2 Let's talk specifically about Boring 24, which is the
3 bottom row.

4 Is it your understanding that the results in
5 the bottom row of that table were -- were calculated
6 using the UU Test, which I'm going to represent is the
7 Unconsolidated Undrained Triaxial Compression Test?

8 Is that your understanding as well?

9 WITNESS WILLIAMS: Yes.

10 MS. ANSLEY: And so it's your understanding
11 that this was not performed. Those numbers were not
12 gained using the Compressive Strength Test.

13 WITNESS WILLIAMS: Correct.

14 MS. ANSLEY: And you . . .

15 So, the C values there, the total stress, do
16 you see the C values --

17 WITNESS WILLIAMS: Yes.

18 MS. ANSLEY: -- in pounds per square foot?

19 And in our bottom row there, it's 2,000 is the
20 value.

21 Do you see that?

22 WITNESS WILLIAMS: Yes.

23 MS. ANSLEY: And this is a number that is from
24 the Unconsolidated Undrained, the UU Test; is that
25 correct?

1 WITNESS WILLIAMS: Correct.

2 MS. ANSLEY: And since this test was
3 performed -- And I'll represent to you the UU Test is
4 performed with confining pressure.

5 MS. DES JARDINS: Object -- objection --

6 MS. ANSLEY: I haven't asked a question.

7 MS. DES JARDINS: -- it's --

8 CO-HEARING OFFICER DODUC: Hold on. Hold on.
9 I don't have a question asked yet --

10 MS. DES JARDINS: Okay.

11 CO-HEARING OFFICER DODUC: -- so let her
12 finish her question.

13 MS. ANSLEY: I'm actually going to rephrase.
14 It was getting awkward to begin with.

15 WITNESS WILLIAMS: Under the CU test. Pardon
16 me.

17 MS. ANSLEY: Under the UU Test, which is what
18 was done to create the 2,000 pounds per square foot --

19 WITNESS WILLIAMS: Yeah.

20 MS. ANSLEY: -- this was performed using an
21 unconfined test.

22 Is that your understanding?

23 WITNESS WILLIAMS: Yes.

24 MS. ANSLEY: Under pressure.

25 Or, no, I'm sorry. It was an Unconsolidated

1 Undrained --

2 WITNESS WILLIAMS: Undrained.

3 MS. ANSLEY: -- Triaxial Test; correct?

4 WITNESS WILLIAMS: Yes.

5 MS. ANSLEY: We've established that?

6 Yet you report that the C value is the
7 unconfined compressive strength.

8 Do you see that on the same page, Number 7?

9 WITNESS WILLIAMS: Let me . . .

10 CO-HEARING OFFICER DODUC: It's second-to-last
11 sentence on Page 7.

12 WITNESS WILLIAMS: (Examining document.)

13 Oh, yes.

14 MS. ANSLEY: Isn't it true, however, that the
15 C values for an Unconsolidated Undrained Triaxial Test
16 is actually the shear strength and not the unconfined
17 compressive strength.

18 Is that your understanding of the
19 Unconsolidated Undrained --

20 WITNESS WILLIAMS: I am --

21 MS. ANSLEY: -- Triaxial Test?

22 WITNESS WILLIAMS: -- unsure.

23 CO-HEARING OFFICER DODUC: Hold on.

24 I didn't hear the answer, Dr. Williams.

25 WITNESS WILLIAMS: I am unsure.

1 MS. ANSLEY: You're unsure whether the 2,000
2 Total Stress C value in the last row of Table 3-5 is
3 the sheer strength or the unconfined compressive
4 strength?

5 WITNESS WILLIAMS: Unconfined progressive?

6 MS. ANSLEY: Compressive.

7 WITNESS WILLIAMS: Compressive.

8 I'm not sure.

9 MS. ANSLEY: And isn't it true that the
10 unconfined compressive strength cannot be measured
11 using the UU Test?

12 WITNESS WILLIAMS: I believe that's correct.

13 MS. ANSLEY: And -- But here in your
14 testimony, you took that C value and represented it as
15 the unconfined compressive strength; is that correct?

16 WITNESS WILLIAMS: I don't see where . . .

17 MS. ANSLEY: It's just below the chart. It's
18 a couple lines of testimony below your Table 3-5.

19 WITNESS WILLIAMS: I believe so, right.

20 MS. ANSLEY: And is it your understanding that
21 that is now incorrect?

22 WITNESS WILLIAMS: I believe so.

23 MS. ANSLEY: So, in fact, if you -- You agree
24 with me that that is perhaps incorrect, that the C
25 value is not the unconfined compressive strength value;

1 correct?

2 WITNESS WILLIAMS: Yes.

3 MS. ANSLEY: If we look back a page, onto
4 Page 6.

5 (Exhibit displayed on screen.)

6 MS. ANSLEY: If you look at Table 20.3-1, Site
7 Classification. And the C value is 2,000 pounds per
8 square feet.

9 Do you see how that falls into Site Class C,
10 very dense soil and soft rock?

11 WITNESS WILLIAMS: Yes.

12 MS. ANSLEY: And so your conclusion that the
13 sheer strength is 1,000 was based on your conclusion
14 that the C value was the unconfined compressive
15 strength; is that correct?

16 WITNESS WILLIAMS: I was also looking at the
17 other C values, but I guess so, yes.

18 MS. ANSLEY: Let me look at the remainder of
19 my questions.

20 (Pause in proceedings.)

21 MS. ANSLEY: All right. I'd like to ask just
22 two -- maybe two more questions.

23 Looking at Page 23 of your testimony.

24 WITNESS WILLIAMS: 23?

25 (Exhibit displayed on screen.)

1 WITNESS WILLIAMS: Yes.

2 MS. ANSLEY: And do you see the testimony that
3 says that (reading):

4 "It is true that sediments in
5 Clifton Court Forebay could be
6 contaminated."

7 WITNESS WILLIAMS: It would be my . . .
8 consideration, yes.

9 MS. ANSLEY: Just to confirm: It's your
10 understanding that the California WaterFix Project as
11 now proposed does not include any dredging of the
12 Clifton Court Forebay; is that correct?

13 WITNESS WILLIAMS: Yes.

14 MS. ANSLEY: And then moving on to my last
15 topic, which is Page 26.

16 (Exhibit displayed on screen.)

17 MS. ANSLEY: Where you talk about effects of
18 placing tunnel muck in the borrow pits.

19 WITNESS WILLIAMS: Yes.

20 MS. ANSLEY: Can we call up, Mr. Hunt,
21 DWR-207.

22 WITNESS WILLIAMS: What? Oh.

23 (Exhibit displayed on screen.)

24 MS. ANSLEY: And can we go to Page 13.

25 CO-HEARING OFFICER DODUC: Can we establish

1 what this is?

2 MS. ANSLEY: Pardon me.

3 This is, obviously, the Reusable Tunnel
4 Material Testing Report, March 2014.

5 Dr. Williams, are you familiar with this
6 report?

7 WITNESS WILLIAMS: I have read -- I have read
8 it, yes.

9 MS. ANSLEY: Can we go on to Page 13?

10 (Exhibit displayed on screen.)

11 MS. ANSLEY: Can we maybe zoom out a little.

12 (Exhibit displayed on screen.)

13 MS. ANSLEY: And are you familiar with this
14 flowchart?

15 WITNESS WILLIAMS: I remember seeing the
16 flowchart, but I can't see it now.

17 MS. ANSLEY: I can't see it without my
18 glasses.

19 To the extent you can see it --

20 WITNESS WILLIAMS: Yeah.

21 MS. ANSLEY: -- do you see how it -- it notes
22 that all tunnel material, dredge material and
23 construction spoils are going to be tested for
24 hazardous material?

25 WITNESS WILLIAMS: Yes, I understand that.

1 MS. ANSLEY: And that any test of hazardous
2 material will be sent to a landfill?

3 WITNESS WILLIAMS: To a proper landfill, yeah.

4 MS. ANSLEY: Thank you. I have no further
5 questions.

6 CO-HEARING OFFICER DODUC: All right. Thank
7 you, Miss Ansley.

8 I believe next up is Miss Meserve.

9 Do we know whether Mr. Ruiz intends to return
10 to conduct cross?

11 MS. MESERVE: He is not.

12 CO-HEARING OFFICER DODUC: He is not.

13 So, then, do we know whether Mr. Keeling will
14 return to conduct cross?

15 MS. MESERVE: He will not.

16 CO-HEARING OFFICER DODUC: So, then,
17 Mr. Shutes, we'll get --

18 MR. SHUTES: (Shaking head.)

19 CO-HEARING OFFICER DODUC: You're passing as
20 well.

21 All right. I guess you guys don't want to
22 stay until 6 o'clock tonight.

23 MS. MESERVE: It's such a lovely offer.

24 WITNESS WILLIAMS: Do we have to come back on
25 Friday?

1 CO-HEARING OFFICER DODUC: Not if we finish
2 the cross, and any redirect or recross.

3 All right. Miss Meserve, you are our
4 remaining cross.

5 That didn't come out right.

6 (Laughing.)

7 MS. MESERVE: At least I'm not standing
8 between anyone and lunch.

9 I just have a few questions for Dr. Jahn, as
10 well as Dr. Williams, regarding a couple of points in
11 their testimony. I should be okay with the 15 minutes.

12 I'll start out with Dr. Williams since he's
13 warmed up.

14 CROSS-EXAMINATION BY

15 MS. MESERVE: Let's see. On Pages -- And I'm
16 Osha Meserve. I represent Local Agencies of the North
17 Delta.

18 And I'm looking, Dr. Williams, at Pages 14 and
19 15 of your testimony where you discussed the borrow
20 fill areas.

21 (Exhibit displayed on screen.)

22 MS. MESERVE: And my question is: Given your
23 understanding of the subsurface water levels in many
24 Delta islands, would you think that the borrow fill
25 sites would be likely to fill with water?

1 WITNESS WILLIAMS: Yes.

2 MS. MESERVE: And would you have any concerns
3 about those pits filling with water?

4 WITNESS WILLIAMS: Yes.

5 MS. MESERVE: What are those?

6 WITNESS WILLIAMS: What?

7 MS. MESERVE: What would your concerns be if
8 they filled with water?

9 WITNESS WILLIAMS: Water and whatever was
10 seeping out of the ground surrounding them, yes, in the
11 groundwater.

12 MS. MESERVE: So are you concerned that the
13 excavation of those borrow pits could lead to transport
14 of hazardous materials, for instance?

15 WITNESS WILLIAMS: I would be quite concerned
16 about them, both from the fact that the overburden
17 would most likely be usable for fill and would be
18 stored somewhere on the site, and any leaching from
19 that would pass through into the underlying groundwater
20 and eventually into the borrow pit itself.

21 MS. MESERVE: On Page 26 of your testimony,
22 you talk about the effects of placement of --

23 (Exhibit displayed on screen.)

24 MS. MESERVE: -- tunnel muck in borrow pits.

25 And you refer to Page 46 of the ITP.

1 And maybe if we could, Mr. Hunt, bring that
2 up. That's SWRCB-107.

3 WITNESS WILLIAMS: 46 or 45?

4 CO-HEARING OFFICER DODUC: You referenced
5 both.

6 MS. MESERVE: Okay. Yeah. It goes on two
7 pages, the requirements pertaining to the pits.

8 WITNESS WILLIAMS: Yeah.

9 (Exhibit displayed on screen.)

10 MS. MESERVE: It's .pdf Page 46 also.

11 (Exhibit displayed on screen.)

12 MS. MESERVE: And if we go, yes, on to 46.

13 Is that 45?

14 (Exhibit displayed on screen.)

15 MS. MESERVE: Okay. So looking at -- I think
16 you were referring in your testimony to the fourth
17 bullet down that mentions an impervious liner --

18 WITNESS WILLIAMS: Yes.

19 MS. MESERVE: -- in your testimony.

20 And what's your understanding of the term
21 "impervious" in this context?

22 WITNESS WILLIAMS: 10 to the minus 16
23 centimeters per second.

24 MS. MESERVE: And that was 10 to the minus 60?

25 WITNESS WILLIAMS: 16 centimeters per second.

1 Permeability of the material.

2 MS. MESERVE: So, in your experience, is there
3 such a thing as impervious where there is no flow at
4 all?

5 WITNESS WILLIAMS: Effectively, 10 to the
6 minus 16 is accepted by EPA and others for hazardous
7 material storage.

8 MS. MESERVE: But the ITP doesn't actually
9 give a numeric value; does it?

10 WITNESS WILLIAMS: At least I have used, I
11 might say, one-eighth inch Gundle HDPE liners on the
12 entire subway system of downtown L.A., and it was
13 considered to be impervious at the time.

14 Again, it's a matter as to a liner needs to be
15 there and must be resilient to the chemicals that are
16 going to be exposed and, effectively, it has to be
17 impervious.

18 10 to the minus 13, I believe, centimeters per
19 second is a very, very long time.

20 MS. MESERVE: You had, I think -- Just to
21 clarify: You're saying 10 to the minus 13 is what
22 you --

23 CO-HEARING OFFICER DODUC: Hold on.

24 MS. MESERVE: -- considered?

25 CO-HEARING OFFICER DODUC: Hold on.

1 I can hear the objection now, but I'll let
2 Miss Ansley voice it.

3 MS. ANSLEY: Yes. I'm saying that this is
4 wandering beyond the scope.

5 He indeed, on Page 26, mentions impervious
6 material in the citation to the ITP, that impervious
7 material's required. But at no point did he provide
8 testimony about impervious material, impervious
9 material standards, and what would be expected in the
10 Cal WaterFix.

11 CO-HEARING OFFICER DODUC: I believe his
12 testimony was focused on its relation to the
13 groundwater table.

14 Was that --

15 WITNESS WILLIAMS: Well, if materials are
16 going to be placed on top of it --

17 CO-HEARING OFFICER DODUC: Yes.

18 WITNESS WILLIAMS: -- that's one thing. If
19 it's surrounding, it's --

20 CO-HEARING OFFICER DODUC: Well --

21 WITNESS WILLIAMS: I'd say it's the same
22 thing.

23 CO-HEARING OFFICER DODUC: Yes.

24 WITNESS WILLIAMS: Just to isolate whatever's
25 going to be in there.

1 CO-HEARING OFFICER DODUC: Thank you, yes.

2 That was the extent of his testimony, so that
3 objection is sustained.

4 MS. MESERVE: I believe the question was
5 answered, so as long as you're not saying anything
6 stricken; correct?

7 He -- He stated his understanding of what
8 "impervious" meant, which was what I was looking for.

9 CO-HEARING OFFICER DODUC: You were going for
10 a more specific number there, Miss Meserve --

11 MS. MESERVE: No, I --

12 CO-HEARING OFFICER DODUC: -- which is why
13 Miss Ansley objected.

14 So let's move on.

15 MS. MESERVE: The reason I asked the question
16 is, actually he had said 10 to the minus 16 --

17 WITNESS WILLIAMS: Yeah.

18 MS. MESERVE: -- in his initial response and,
19 then, later said 10 to the minus 13.

20 So I was just trying to determine which number
21 he intended he used.

22 CO-HEARING OFFICER DODUC: Whichever the
23 number is, it is outside the scope of his testimony.

24 Unless, Dr. Williams, you can point me to
25 where in your testimony you discuss the

1 imperviousness --

2 WITNESS WILLIAMS: I did not define

3 "impervious."

4 CO-HEARING OFFICER DODUC: Thank you.

5 MS. MESERVE: Okay. I have a few questions
6 for Dr. Jahns (sic).

7 Looking first in your testimony, Dr. Jahns
8 (sic) --

9 WITNESS JAHN: It's Jahn. There's no S.

10 MS. MESERVE: I'm sorry. I'm the one who
11 messed it up.

12 On Page 14, Line 11, you refer to eight
13 experiments that were discussed in the Gringas (sic)
14 study.

15 WITNESS JAHN: Gingras? Yes.

16 MS. MESERVE: And why do you feel those
17 studies were insufficient?

18 WITNESS JAHN: The -- The work was done by a
19 number of authors. It was just summarized by Gingras.

20 There are only eight experiments that look at
21 Salmon. In those experiments, there were nine
22 different values of the efficiency of the plant used to
23 calculate the pre-screen loss.

24 Some of those values -- One of the values was
25 as low as 0.25. Nobody knows what value ought to be

1 used. There haven't been enough repetitions of the
2 pre -- of the pre-screen -- of the efficiency of the
3 plant, the guide fish, so that any particular number
4 can be chosen.

5 And so his -- his estimates of -- of
6 pre-screen mortality, even though they resulted in --
7 in about 85 percent loss before the animals even get to
8 the trash racks, there was, I think, an insufficient
9 number of repetitions.

10 Some of the methods are a little bit suspect.
11 The fish weren't counted in all cases. They were
12 weighed, and the number of fish were sort of
13 extrapolated from that.

14 There's a lot in there that hasn't been
15 explained by Gingras' report, and no one, including
16 myself, has burrowed down to the reports on which his
17 summary is based.

18 MS. MESERVE: And also on Page 14, Lines 14
19 and 15, you recommend new work to simplify the
20 expansion calculation.

21 Is that new work, is that something that has
22 been undertaken, or do you know the status?

23 WITNESS JAHN: The Bureau of Reclamation
24 responded to National Marine Fisheries about that, and
25 they -- they agree with some of my recommendations, but

1 that one, they disagreed with.

2 They didn't explain their basis of their
3 disagreement. They simply asserted that, in order what
4 I suggested, they would have to shut down the plant
5 entirely, and that makes no sense to me, and I think
6 it's just stonewalling.

7 MS. MESERVE: Are you saying they said you'd
8 have to shut down diversions in order to do the test?
9 Is that what --

10 WITNESS JAHN: Yeah. They didn't try to
11 explain themselves in the letter.

12 MS. MESERVE: So the response you received
13 didn't -- you didn't believe was explanatory.

14 WITNESS JAHN: The response was made to the
15 National Marine Fisheries Service and it wasn't to me.
16 And I was no longer under a contract with anybody, so I
17 stayed out of it.

18 But the -- It didn't -- I haven't seen any
19 evidence that the National Marine Fisheries Service
20 responded to that first point in the letter from the
21 record.

22 CO-HEARING OFFICER DODUC: Could we hold on a
23 second, please.

24 The gong sound has stopped. Okay. I didn't
25 know if that was an emergency.

1 CO-HEARING OFFICER MARCUS: It might have been
2 on a different floor.

3 CO-HEARING OFFICER DODUC: All right. Sorry.

4 MS. MESERVE: On the following page, Page 15,
5 Lines -- Line 16, you're discussing the losses at the
6 existing facilities still.

7 And you mention, given the track records of
8 DWR and especially the Bureau, you wouldn't think this
9 will ever happen.

10 And I'm wondering, what track records are you
11 talking about?

12 WITNESS JAHN: I'm having a little trouble
13 with my papers here.

14 Oh, here you are.

15 Page 15, you said?

16 MS. MESERVE: Yeah. It's on Page 15 and,
17 then, the paragraph begins at Line 9 but the track
18 record comment is on Line 16.

19 WITNESS JAHN: Oh, yeah.

20 Well, all the way back to 2006, Williams
21 recommended that they, you know, question the validity
22 of the pre-screen loss estimates and -- and noted, I
23 think, that -- I think he also noted at that time that
24 there were no pre-screen losses at the Federal Project,
25 the CVP.

1 And he suggested at that time that those
2 things should be done better and -- and produce some
3 more valid estimates.

4 MS. MESERVE: And -- But why do you think
5 they'll never happen?

6 WITNESS JAHN: I have seen reports from the
7 Bureau of Reclamation where there are scatter plots
8 with no scatter. They just write a -- a regression
9 line, an equation. I asked the author why that was,
10 and he told me his boss told him to take out the data
11 points.

12 I -- I have been stonewalled by the
13 suggestions that I make, a lot of them, and I just
14 think that the management there is too much in charge
15 of the science.

16 MS. MESERVE: And do you think that would be a
17 risk with the Proposed Project that's the subject of
18 this Petition?

19 WITNESS JAHN: I think if you --

20 CO-HEARING OFFICER DODUC: Hold on, please.
21 Hold on.

22 Miss Sheehan is running up to the microphone.

23 MS. SHEEHAN: I would object as to vague. I
24 don't know what the questioner's referencing. I
25 believe she said "that."

1 Could you please clarify the question?

2 CO-HEARING OFFICER DODUC: Miss Ansley.

3 MS. ANSLEY: Just to add: I also believe that
4 he is not presenting an opinion as to the California
5 WaterFix, as to this Project. His testimony is
6 confined to critiquing Dr. Hanson's testimony on
7 existing conditions.

8 So I believe, if I heard Meserve's question --
9 Miss Meserve's question correctly, she was asking about
10 a risk in terms of this Project.

11 CO-HEARING OFFICER DODUC: Miss Meserve, would
12 you like to clarify your question? I didn't say
13 restate. I just said clarify.

14 MS. MESERVE: Yes. I think I could ask it as
15 a hypothetical question.

16 CO-HEARING OFFICER DODUC: (Nodding head.)
17 Try asking.

18 MS. MESERVE: Okay. So, Dr. Jahn, you stated
19 concern here about the -- the studies never happening
20 because of the track record that you're familiar with
21 the Bureau and DWR.

22 With respect to if the DWR and the Bureau had
23 different facilities in the Delta, does your
24 understanding of their track record for conducting the
25 kinds of studies you're discussing here on Page 15,

1 would you have any confidence that those studies would
2 be conducted?

3 MS. ANSLEY: Objection: Vague and ambiguous
4 as to any other facilities in the Delta they might
5 construct. I think that's an incomplete hypothetical
6 that's vague and ambiguous. Yes, it's also vague and
7 ambiguous as to what studies and then -- or what type
8 of studies.

9 And, then, also, this is the beyond the scope
10 of Dr. Jahn's testimony, frankly, to opine on impacts
11 of potential future facilities, even in the context of
12 a hypothetical, which I understand is now trying to get
13 around asking about the California WaterFix.

14 His testimony's on existing conditions and
15 critique of Dr. Hanson's testimony.

16 CO-HEARING OFFICER DODUC: Miss Meserve, your
17 response?

18 MS. MESERVE: I -- What my understanding of
19 his testimony is that he is also opining as to the
20 ability and willingness of the DWR and the Bureau to
21 undertake studies of their facilities.

22 So I am asking him as an expert about that
23 impression he has as might be applied to a different
24 facility than is discussed here.

25 MS. ANSLEY: And, specifically, he's

1 testifying about pre-screen indirect mortality related
2 to the pumps.

3 CO-HEARING OFFICER DODUC: I understand what
4 what's he talk -- what he is testifying to,
5 Miss Ansley.

6 I also understand Miss Meserve's line of
7 questioning in applying his understanding and his
8 experience with respect to these studies to other
9 studies that Petitioners have committed to conducting
10 as part of the Petition before us.

11 So I'm overruling your objection, but I will
12 say it will go towards weight.

13 Miss Meserve.

14 MS. ANSLEY: And I'd like to add, then, lack
15 of foundation regarding his knowledge of whatever
16 hypothetical we're now going to go into of facilities.

17 CO-HEARING OFFICER DODUC: He -- She did ask
18 him question about what he meant by "track record," so
19 she has established the foundation such as it was.

20 Do you need to have the question repeated by
21 this time, Dr. Jahn?

22 WITNESS JAHN: I think that would be a good
23 idea.

24 CO-HEARING OFFICER DODUC: Yes.

25 (Pause in proceedings.)

1 CO-HEARING OFFICER DODUC: Miss Meserve, if I
2 might.

3 Dr. Jahn, based on your experience, given your
4 testimony here on Line 16, would you have any concerns
5 about DWR and the Bureau completing studies as
6 committed to during this process? If you are familiar
7 with any of those commitments.

8 I think that's what you were trying to get at,
9 Miss Meserve.

10 MS. MESERVE: Yes. I think it's not
11 particular to -- You know, it doesn't need to -- I
12 understand the scope of the testimony and, yeah, I
13 don't think it needs to be particular to specific
14 studies.

15 It's just studies like the ones he's commented
16 on here would be the only modification I'd make to --

17 CO-HEARING OFFICER DODUC: Okay.

18 MS. MESERVE: -- the way you phrased it.

19 CO-HEARING OFFICER DODUC: So just the
20 study -- just those studies then.

21 MR. BERLINER: Just for the record, I know
22 it's always risky to object to a Judge or Hearing
23 Officer's question, but we do have to protect the
24 record.

25 My objection is lack of foundation to that

1 question because this witness, other than mentioning
2 before that he talked to one unnamed person at the
3 Bureau, has not laid a foundation as to how he would
4 have knowledge about whether DWR or the Bureau would do
5 anything.

6 CO-HEARING OFFICER DODUC: Understood, which
7 is why it goes to weight.

8 At this time, I don't think Dr. Jahn even
9 remembers the question anymore.

10 Miss Meserve, do you want to try again?

11 MS. MESERVE: Would it be helpful to rephrase
12 it again, Dr. Jahn, or is . . .

13 WITNESS JAHN: No, I don't think so.

14 I mean . . . I agree. I'm not a
15 psychologist. I just have seen what's been happening.
16 These guys have been operating the Bureau of Rec for,
17 what, 60 years and they still don't know what
18 pre-screen loss is.

19 If you think they're ever going to note --
20 study that without being forced, then you're
21 delusional. And so that's my opinion. That's not
22 science. That's just what I -- what I observed.

23 CO-HEARING OFFICER DODUC: And we will give it
24 the proper weight.

25 Miss Meserve.

1 MS. MESERVE: And just to clarify the weight
2 we might afford it.

3 How many years experience do you have working
4 with the Bureau and the Department of Water Resources?

5 WITNESS JAHN: One.

6 MR. BERLINER: Objection.

7 MS. MESERVE: Sorry? Is.

8 CO-HEARING OFFICER DODUC: Well, the answer is
9 only -- I'm sorry.

10 Mr. Berliner, what is your objection?

11 MR. BERLINER: Objection as to relevance.

12 This question, again, there's no foundation, no
13 perspective, whatever time he may or may not have been
14 spent working with the Bureau. There's no quality as
15 to that, as to in what respect. I can go --

16 CO-HEARING OFFICER DODUC: It goes to weight.

17 And I believe, Dr. Jahn, your answer was one
18 year?

19 WITNESS JAHN: Yes.

20 CO-HEARING OFFICER DODUC: Thank you.

21 (Pause in proceedings.)

22 MS. MESERVE: Going to Page 20 of your
23 testimony.

24 You're discussing the --

25 (Exhibit displayed on screen.)

1 MS. MESERVE: -- winter-run Chinook, and you
2 pose a question about whether the -- the second
3 question, whether the 2010 Delta Flow Criteria are
4 clearly overprotective.

5 When you think of the 2010 Delta Flow
6 Criteria, what's the geographic extent of those flow
7 criteria that your understanding reflects.

8 WITNESS JAHN: My understanding is that
9 they're asking for a reduction in the negativity of Old
10 and Middle River flows, net flows, of minus 2500 cubic
11 feet per second.

12 CO-HEARING OFFICER DODUC: Okay. I don't
13 understand the answer now.

14 MS. MESERVE: I don't, either.

15 CO-HEARING OFFICER DODUC: Miss Meserve, I
16 think you need to ask the question again.

17 MS. MESERVE: The . . . Your testimony
18 pertains to the 2010 flow criteria recommendations, at
19 least this portion of it.

20 And you answer your own question that it's
21 probably not overprotective, the 2010 flow criteria.

22 And my question is: When you think of the
23 flow criteria that pertain to the winter-run Chinook,
24 are you just -- you answered with respect to OMR.

25 Is that your only understanding of the

1 recommendations of the Flow Criteria Report?

2 WITNESS JAHN: I don't have a detailed
3 knowledge of the Flow Criteria Report, if that's what
4 you're getting at.

5 MS. MESERVE: All right.

6 On the next page of your testimony, 21 --

7 (Exhibit displayed on screen.)

8 MS. MESERVE: -- you mention at the bottom the
9 West Coast Salmon Fishery is -- has been in decline,
10 and you suggest a precautionary approach.

11 When you discuss a precautionary approach,
12 would that include Salmon that aren't yet listed?

13 (Pause in proceedings.)

14 WITNESS JAHN: The Salmon tend to migrate out
15 in the spring.

16 The criteria that would protect the winter-run
17 would protect virtually all of them, and I -- all of
18 them to some extent at least. And so, to that extent,
19 yeah.

20 MS. MESERVE: So, you understand the Salmon
21 fishery is -- involves an array of Salmon, some of
22 which are listed and some of which not, and you are
23 suggesting a precautionary principle to protect all
24 those Salmon; is that correct?

25 WITNESS JAHN: That's correct.

1 MS. MESERVE: Thank you.

2 CO-HEARING OFFICER DODUC: Do you wish to
3 request any redirect?

4 MS. KRIEG: (Nodding head.)

5 CO-HEARING OFFICER DODUC: On what particular
6 area, Miss Krieg?

7 MS. KRIEG: I wanted to ask just a question of
8 Dr. Jahn regarding Figure 4.

9 CO-HEARING OFFICER DODUC: All right.

10 REDIRECT EXAMINATION BY

11 MS. KRIEG: And, specifically, I was hoping
12 that he could just speak quickly as to the purpose of
13 Figure 4 in his testimony since Miss Ansley asked about
14 the . . . the R2.

15 CO-HEARING OFFICER DODUC: Didn't he already
16 answer that in answering her question?

17 WITNESS JAHN: Are you asking me?

18 CO-HEARING OFFICER DODUC: Yes.

19 WITNESS JAHN: I've got a little more to say
20 about that.

21 MS. KRIEG: Well, I'd like to lodge an
22 objection. I don't know if I even heard a question
23 there. She said I'd like to hear him speak more on
24 Figure 4.

25 MS. KRIEG: I'm pretty sure I said that I

1 would like him to explain the purpose of --

2 CO-HEARING OFFICER DODUC: That was her
3 question. Explain the purpose.

4 Dr. Jahn, if you have more to add.

5 WITNESS JAHN: Yes. The -- The -- The purpose
6 of presenting this Figure 4 was not to imply that the
7 analysis I've done here is something that I'm
8 recommending.

9 The purpose is simply to show that, with a
10 more -- what shall I say? -- exploratory attitude, that
11 Dr. Hanson could have found a stronger relationship
12 than the sort of shotgun pattern that appears in
13 Figure 3.

14 It's a . . . I don't think it's the right
15 approach to the data.

16 The only advantage is that you can see it. If
17 you look at the report by -- the published report by
18 Zeug and Cavallo, if I'm pronouncing those names right,
19 you get tables of R-squares and probabilities and so
20 on, but there's nothing you can really look at.

21 And so the -- the scatter plot has that -- has
22 that advantage. You can explain it to your mother.
23 But it's not the right way to analyze these data.

24 CO-HEARING OFFICER DODUC: No, I cannot
25 explain it to my mother.

1 (Laughter.)

2 CO-HEARING OFFICER DODUC: I love her too much
3 to do that.

4 (Laughter.)

5 WITNESS JAHN: Well, anyway, it was just to
6 point out that -- just to demonstrate that Hanson's
7 testimony is not really aimed at informing you but,
8 rather, it . . . supporting this argument there's --
9 that there's so much uncertainty out there.

10 CO-HEARING OFFICER DODUC: Thank you.

11 Any recross?

12 MS. DES JARDINS: Excuse me.

13 CO-HEARING OFFICER DODUC: Hold on.

14 MS. DES JARDINS: I also had some recross
15 potentially for -- I mean, yeah, redirect for Dr. Jahn.

16 CO-HEARING OFFICER DODUC: Hold on. Let me
17 finish.

18 MS. DES JARDINS: All right.

19 CO-HEARING OFFICER DODUC: Any recross of
20 Dr. Jahn?

21 MS. DES JARDINS: Oh, okay.

22 MS. ANSLEY: No.

23 CO-HEARING OFFICER DODUC: No?

24 All right. Any redirect for Dr. Williams?

25 MS. DES JARDINS: Okay. Thank you.

1 I'd like to ask if --

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

3 MS. DES JARDINS: Okay.

4 CO-HEARING OFFICER DODUC: What issue will you
5 be redirecting him on?

6 MS. DES JARDINS: I wanted to see if I could
7 confer briefly with Dr. Williams and see if there's a
8 correction he'd like to make about Page 6 of his
9 testimony on sheer strength and consolidated tests,
10 and -- if that's possible.

11 CO-HEARING OFFICER DODUC: You -- You may --

12 MS. ANSLEY: She's supposed to ask questions.

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

14 I know that we are getting close to 5:00 and
15 everybody's getting nervous, but chill, please.

16 Miss Des Jardins if your request is to conduct
17 redirect of Dr. Thomas (sic) on that particular topic,
18 that is granted.

19 If your request is to consult with
20 Dr. Williams, that is not granted.

21 MS. DES JARDINS: Okay.

22 CO-HEARING OFFICER DODUC: But you may conduct
23 redirect.

24

25

1 REDIRECT EXAMINATION BY

2 MS. DES JARDINS: Dr. Williams, is there any
3 correction you would like to make at this point to
4 Page 6 of your testimony concerning the relationship
5 between sheer strength and consolidated strength, or
6 with respect to --

7 WITNESS WILLIAMS: Just on the --

8 MS. DES JARDINS: -- tests?

9 Let me see just a minute. Is that the correct
10 page?

11 Yeah. The -- Excuse me. It's Page 7 of your
12 testimony.

13 (Exhibit displayed on screen.)

14 WITNESS WILLIAMS: At this time, no.

15 MS. DES JARDINS: Okay. Thank you very much.

16 CO-HEARING OFFICER DODUC: I assume there's no
17 recross, either.

18 All right. At this point, do you wish to move
19 your exhibits into the record on behalf of -- Well,
20 we'll start with PCFFA.

21 MS. KRIEG: Yes. I mean, they're all listed
22 as --

23 CO-HEARING OFFICER DODUC: All right. Or DDJ,
24 either one or both.

25 MS. DES JARDINS: I would like to move the

1 exhibits listed in my Exhibit List into the record.

2 CO-HEARING OFFICER DODUC: Any objections?

3 MS. KRIEG: No.

4 CO-HEARING OFFICER DODUC: In that case, we
5 will accept them into the record.

6 (California Water Research Exhibits received in
7 evidence)

8 (Pacific Coast Federation of Fishermens Associations
9 and Institute for Fisheries Resources' Exhibits
10 received in evidence)

11 CO-HEARING OFFICER DODUC: Thank you,
12 Dr. Williams, and thank you, Dr. Jahn.

13 WITNESS WILLIAMS: You're welcome.

14 CO-HEARING OFFICER DODUC: All right. With
15 that -- Boy, you guys can be efficient when I threaten
16 to make you stay till 6:00 and continue on Friday.

17 With that, then, we will adjourn and resume
18 Friday at 9:30.

19 Are we in this room again? Could someone
20 confirm quickly?

21 And just a reminder: We will hear from
22 Clifton Court.

23 We will hear from, oh, my favorite
24 photographer Mr. Wirth for Save Our Sandhill Cranes.

25 We will also hear from Mr. Bednarski and

1 Mr. -- and Dr. Chilamkuri, and that will be, I think,
2 the extent of Friday.

3 Any question? Any housekeeping matter?

4 Seeing none.

5 All right. Thank you all. We will see you on
6 Friday.

7 (Proceedings adjourned at 4:30 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: October 2, 2018

23

24

25

Candace L. Yount, CSR No. 2737

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF MARIN)

3 I, DEBORAH FUQUA, a Certified Shorthand
4 Reporter of the State of California, do hereby
5 certify that the foregoing proceedings (Pages 1
6 through 108) were reported by me, a disinterested
7 person, and thereafter transcribed under my
8 direction into typewriting and which typewriting is
9 a true and correct transcription of said
10 proceedings.

11 I further certify that I am not of counsel
12 or attorney for either or any of the parties in the
13 foregoing proceeding and caption named, nor in any
14 way interested in the outcome of the cause named in
15 said caption.

16 Dated the 3rd day of October, 2018.

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DEBORAH FUQUA
CSR NO. 12948