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APPEARANCES

CALIFORNIA WATER RESOURCES BOARD

Division of Water Rights

Board Members Present:

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

Staff Present:

Andrew Deeringer, Senior Staff Attorney  
Conny Mitterhofer, Supervising Water Resource Control  
Engineer  
Hwaesong Jin

Mr. Long  
Ms. Wu

PART 2 REBUTTAL

For Petitioners:

California Department of Water Resources:

James (Tripp) Mizell, Senior Attorney  
Jolie-Anne Ansley

Duane Morris LLP  
By: Thomas Martin Berliner, Attorney at Law

The U.S. Department of the Interior, Bureau of  
Reclamation, and Fish and Wildlife Service:

Amy L. Aufdemberge, Assistant Regional Solicitor  
(Not present)

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APPEARANCES (Continued)

FOR PROTESTANTS AND INTERESTED PARTIES:

For State Water Contractors:

Stefanie Morris

For City of Antioch:

Matthew Emrick

For Clifton Court, L.P.:

Suzanne Womack

Sheldon Moore

For California Water Research:

Deirdre Des Jardins

For Local Agencies of the North Delta, et al. (LAND):

Osha Meserve

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

John Herrick

For County of San Joaquin, et al.:

Thomas H. Keeling

## I N D E X

1			
2			
3	CLIFTON COURT L.P. WITNESSES		PAGE VOL.
4	WOMACK, SUZANNE MOORE, SHELDON		
5	(Witnesses Previously Sworn)		
6	Direct testimony of Ms. Womack	49	52
7	Cross-examination by Mr. Mizell & Ms. Morris	109	52
8	Cross-examination by Ms. Des Jardins	145	52
9			
10	SAVE OUR SANDHILL CRANES WITNESSES		PAGE VOL.
11	WIRTH, SEAN (Previously Sworn)		
12	Direct examination by Ms. Meserve	90	52
13			
14	PETITIONERS' WITNESSES		PAGE VOL.
15	BEDNARSKI, JOHN CHILMAKURI, CHANDRA (Witnesses Previously Sworn)		
16	Direct examination by Mr. Mizell & Ms. Ansley	160	52
17	Cross-examination by Ms. Womack & Mr. Emrick	176	52
18			
19	SAVE OUR SANDHILL CRANES: EXHIBITS	IDEN	EVID VOL.
20	85		155 52
21	86		155 52
22	87		155 52
23	89		155 52
24	90		155 52
25			

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I N D E X (Continued)

CLIFTON COURT L.P.

EXHIBITS

IDEN EVID VOL.

60	150	52
61	150	52
62	150	52
65	150	52
66	150	52
67	150	52
68	150	52
69	150	52

1 Friday, September 28, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: All right. Good  
5 morning, everyone. It is 9:30. We are resuming this  
6 Water Right Change Petition hearing for the California  
7 WaterFix Project.

8 I'm Tam Doduc. Joining me shortly and sitting  
9 to my right will be Board Chair and Co-Hearing Officer  
10 Felicia Marcus. To my far right is Board Member Dee  
11 Dee D'Adamo. To my left are Andrew Deeringer, Conny  
12 Mitterhofer and Hwaseong Jin.

13 We're being assisted today by Mr. Long and  
14 Miss Wu.

15 I see all familiar faces so I will skip the  
16 usual announcement except most importantly, as always,  
17 as Mr. Herrick knows, is to make sure that all your  
18 noise-making devices are on silent, vibrate, do not  
19 disturb.

20 Everyone is checking.

21 All right. With that, I believe we are now  
22 set up to hear from Clifton Court and their direct,  
23 after which, then, we'll hear from Mr. Wirth and Save  
24 Our Sandhill Cranes, after which, then, we will hear  
25 from Mr. Bednarski and Dr. Chilmakuri.

1 Any housekeeping matters?

2 Miss Morris.

3 MS. MORRIS: Stefanie Morris.

4 Mr. Emrick and I spoke about Dr. Paulsen. And  
5 because the Department and no one else has said that  
6 they are going to cross-examine Dr. Paulsen, we were --  
7 we have an agreement to stipulate that she doesn't have  
8 to appear to present her testimony, that it could come  
9 into evidence.

10 Except for we do have some objections to  
11 scope, so Mr. Emrick agreed that he would appear on  
12 Monday to handle those.

13 CO-HEARING OFFICER DODUC: All right. Thank  
14 you.

15 MR. EMRICK: That's true.

16 CO-HEARING OFFICER DODUC: I appreciate the  
17 coordination, and I'm sure Dr. Paulsen appreciates it  
18 also.

19 MR. EMRICK: Thank you.

20 CO-HEARING OFFICER DODUC: Any other  
21 housekeeping matter?

22 All right. Before we get to Mr. Emrick,  
23 Miss Womack, and Mr. Moore, are there any objections to  
24 Clifton Court's case?

25 Mr. Mizell.

1 MR. MIZELL: Yes. Good morning. Tripp  
2 Mizell, DWR.

3 I do have a -- a lengthy list of objections  
4 for this morning's testimony from Clifton Court LP.

5 CO-HEARING OFFICER DODUC: If you could move  
6 the microphone a little bit closer, Mr. Mizell.

7 MR. MIZELL: Sure. Is this a little better?

8 CO-HEARING OFFICER DODUC: Yes.

9 MR. MIZELL: Thanks.

10 So, if we could bring up CCLP-60, please.

11 (Exhibit displayed on screen.)

12 MR. MIZELL: Okay. And if we could go to  
13 Page 9, please.

14 (Exhibit displayed on screen.)

15 MR. MIZELL: Okay. So, starting on Page 9 at  
16 Line 15, the section that begins "Flood protection" and  
17 running through Page 10, Line 3, which is the end of  
18 that flood protection section.

19 The Department objects to this section of  
20 testimony and moves to strike it based upon the fact  
21 that it is dealing with seepage.

22 In your oral ruling on August 28th, you were  
23 relying upon a July 27th ruling in which we all  
24 lengthily discussed whether or not seepage of the  
25 existing facilities was within the scope of this



1 hearing, and it was determined at that time it was not.

2           Based upon that ruling, we would object to  
3 this as being outside the scope of this hearing and  
4 move to strike it.

5           CO-HEARING OFFICER DODUC: Before you move on,  
6 let's hear from Mr. Emrick or Miss Womack.

7           MS. WOMACK: Yes. I wanted to bring out that,  
8 on Page 9, let's see, 19, we refer to no seepage but  
9 it's a report that says the flood safety -- about the  
10 flood safety standards are met, and there's  
11 "desiccation cracking and animal burrows and potential  
12 piping."

13           This is a -- That is a . . . a DWR report.

14           CO-HEARING OFFICER DODUC: Do you have a  
15 response to offer to the specific objection that it's  
16 outside the scope of --

17           MS. WOMACK: No.

18           CO-HEARING OFFICER DODUC: -- surrebuttal?

19           MS. WOMACK: I believe that flood protection  
20 is a very important part of this.

21           As they say, the conveyance facilities are  
22 considered to be critical lifeline facilities for the  
23 State of California. This is DWR-1304, 4-12.

24           At the beginning of that, that is there. And  
25 so we're saying this is important. Your -- Clifton

1 Court Forebay, which is a part of the SWP, which you'll  
2 be using, is riddled, according to them, dessication,  
3 cracking, and animal burrows and potential piping. So  
4 it has nothing to do with seepage.

5 CO-HEARING OFFICER DODUC: All right.

6 MR. MIZELL: It -- It does --

7 CO-HEARING OFFICER DODUC: Hold on.

8 Anything to add, Mr. Emrick?

9 MR. EMRICK: No.

10 CO-HEARING OFFICER DODUC: Hold on,  
11 Mr. Mizell.

12 MR. MIZELL: Yes.

13 CO-HEARING OFFICER DODUC: Miss Des Jardins is  
14 standing behind you. I assume she wants to weigh in on  
15 this before I give you the chance to respond.

16 MS. DES JARDINS: I would just add that, to  
17 the extent this Project is supposed to deal with  
18 sea-level rise, the level of flood protection the  
19 facilities, after the Project is completed, is relevant  
20 to the Board's consideration of whether that . . . what  
21 the Petitioner says is one of the main goals of the  
22 Project will be met.

23 Thank you.

24 MS. WOMACK: I'm sorry. I forgot that there's  
25 another reference to the . . . the -- It was determined

1 unsafe to have the diver go further closer to the south  
2 main wall due to it being unstable.

3           This was a report from March 4th, 2017, when  
4 the intake structure facility on the south shore was  
5 unstable.

6           These are two very recent -- These are from  
7 2017, very recent. March -- Yeah. March and --  
8 Anyway, two very recent times that they have said the  
9 Clifton Court Forebay themselves is unstable.

10           CO-HEARING OFFICER DODUC: Mr. Mizell, your  
11 response before we move on to your next objection.

12           MR. MIZELL: Yes.

13           The responses we've just heard relate to  
14 existing facilities.

15           I'd simply like to come back to the  
16 September 10th, 2018, ruling where we dealt with this  
17 very issue.

18           And, in fact, the Petitioners are no longer  
19 proposing Project compliance that might have remedied  
20 preexisting conditions and are not a change from the  
21 baseline, would mean that it's not, in fact, caused by  
22 this Project and, therefore, beyond the scope.

23           CO-HEARING OFFICER DODUC: Your next  
24 objection, Mr. Mizell.

25           MR. MIZELL: Yes. If we could go to Page 10,

1 Line 5 through Line 8.

2 (Exhibit displayed on screen.)

3 MR. MIZELL: Line 5 through Line 8, we would  
4 object and move to strike as, again, beyond the scope.

5 Here, it states that there are no new  
6 operations in the SEIR and there are no changes.  
7 That's the first two sentences of -- of the lines I'm  
8 speaking of.

9 They -- This is testimony related to existing  
10 conditions and not related to any changes proposed by  
11 the California WaterFix.

12 So I'll leave it at that.

13 CO-HEARING OFFICER DODUC: Response?

14 MS. WOMACK: Yes.

15 In the SEIR/EIS that we received in June, I  
16 looked very carefully at operations. And they said  
17 there are no new operations and, therefore, there's  
18 nothing -- it's one little paragraph. Therefore,  
19 there's no operations in the SEIR.

20 Therefore, until I got the CER, I could not  
21 look at anything to do with the operations.

22 This is what -- We looked that up.

23 CO-HEARING OFFICER DODUC: Next objection,  
24 Mr. Mizell, unless Mr. Emrick has anything to add.

25 MR. EMRICK: (Shaking head.)

1 CO-HEARING OFFICER DODUC: All right.

2 MR. EMRICK: Nothing right now. Thank you.

3 MR. MIZELL: If we could go down to Line 8  
4 through Line 21, same page. This is the remainder of  
5 that section.

6 We would object as being beyond the scope and  
7 move to strike.

8 Again, this is existing conditions dealing  
9 with a -- a drain pipe and its functioning or  
10 non-functioning. That is -- That drain pipe is not a  
11 part of the California WaterFix. Those are existing  
12 conditions and not a part of the Project.

13 MS. WOMACK: This --

14 CO-HEARING OFFICER DODUC: Response.

15 MS. WOMACK: This speaks directly to DWR  
16 saying that, "We will mitigate. We will maintain."

17 This is a 50-year-old structure that's been  
18 leaking for a year. I have letters that I put in from  
19 a year ago asking for the repair.

20 Now, during my farm season, on September 12th,  
21 without consulting the landowner --

22 CO-HEARING OFFICER DODUC: Miss Womack.

23 MS. WOMACK: Yes. I'm sorry.

24 CO-HEARING OFFICER DODUC: Now is not the  
25 point to actually --

1 MS. WOMACK: Okay.

2 CO-HEARING OFFICER DODUC: -- present your  
3 case, which is what you're starting to do.

4 MS. WOMACK: Okay -- let me.

5 CO-HEARING OFFICER DODUC: I -- I --

6 MS. WOMACK: -- drawback.

7 CO-HEARING OFFICER DODUC: I just wanted a  
8 response to his objection, not your testimony at this  
9 time.

10 MS. WOMACK: Well, we believe this shows how  
11 our water rights will be taken by the operations of  
12 DFD/DWR.

13 CO-HEARING OFFICER DODUC: Thank you. That  
14 was all you need to say.

15 MS. WOMACK: All right.

16 CO-HEARING OFFICER DODUC: Mr. Mizell, next  
17 objection.

18 MR. MIZELL: Certainly.

19 If we could back up to Page 2, please.

20 (Exhibit displayed on screen.)

21 MR. MIZELL: Thank you.

22 So Page 2 is within the Statement of  
23 Qualifications portion of CCLP-60.

24 This portion of the exhibit contains numerous  
25 arguments and, therefore, I'm -- I'm having a difficult

1 time understanding what his testimony was in the  
2 Statement of Qualifications.

3           So what I have attempted to do -- and I'll  
4 walk you through in my objections -- is only focus on  
5 the argument portions, leaving as much as I could to  
6 describe the Statement of Qualifications.

7           But typically one would not put substantive  
8 argument within your Statement of Qualifications. So  
9 this may appear messy but I'm trying to only seek to  
10 strike portions that I believe are not Statement of  
11 Qualifications but go to actually substantive  
12 arguments.

13           CO-HEARING OFFICER DODUC: So, before you  
14 proceed, was there a particular reason, Mr. Emrick or  
15 Miss Womack --

16           MS. WOMACK: Absolutely.

17           CO-HEARING OFFICER DODUC: -- for this?

18           MS. WOMACK: My father's a farmer. He is  
19 not -- He's had to become -- Because of actions, he's  
20 become a levee expert. He's become a finance expert,  
21 when you look at all the --

22           CO-HEARING OFFICER DODUC: I read your --

23           MS. WOMACK: So this is things that he has  
24 become -- had to become. He just wanted to be a  
25 farmer. To this day, he --

1 CO-HEARING OFFICER DODUC: All right. All  
2 right.

3 MR. EMRICK: I think it's intended to be sort  
4 of like a CV where somebody will have particular  
5 projects that they've worked on to show that they are  
6 qualified for this.

7 MS. WOMACK: Um-hmm, exactly.

8 MR. EMRICK: I think that's what they were  
9 intending to do here.

10 CO-HEARING OFFICER DODUC: So with that in  
11 mind, Mr. Mizell, you may now walk us through what you  
12 believe are the argumentative statements in this  
13 section.

14 MR. MIZELL: Okay. So, on Page 2, looking at  
15 Line 3, about halfway across the line, starting on the  
16 word "caused" and then proceeding through the citation  
17 found on Line 6, so ending with CCLP-36.

18 We move to strike that as argument within the  
19 Statement of Qualifications but, moreover, beyond the  
20 scope of this hearing because it deals with the  
21 construction of Clifton Court Forebay, as it states at  
22 the end of Line 3 there.

23 CO-HEARING OFFICER DODUC: Any response with  
24 specific --

25 MS. WOMACK: Yes.



1 CO-HEARING OFFICER DODUC: -- to this section?

2 MS. WOMACK: Absolutely.

3 This -- This is how we were made whole.

4 We keep hearing we will be made whole or we  
5 will be mitigated. This is our experience so far. I  
6 think it's very valuable.

7 CO-HEARING OFFICER DODUC: And if it's  
8 valuable, why is it not in the testimony portion rather  
9 than in the SQO (sic) sentence?

10 MS. WOMACK: Well, this is -- this is my  
11 father's qualifications. This is how he came to be  
12 this expert.

13 CO-HEARING OFFICER DODUC: Miss Womack, I  
14 understand.

15 Let's just move on to your next citation,  
16 Mr. Mizell.

17 MR. MIZELL: Very good.

18 On Line 7, beginning at the beginning of that  
19 line, and proceeding to the end of that sentence that  
20 ends with "CCF." Again, we -- So, just Line 7, not the  
21 entire sentence but just from "when" to "CCF."

22 We believe that is argument, not appropriate  
23 with the Statement of Qualifications, and we'd move to  
24 strike that.

25 CO-HEARING OFFICER DODUC: Let's move through

1 your entire list, Mr. Mizell.

2 MS. WOMACK: Could I have my father speak to  
3 that particularly?

4 CO-HEARING OFFICER DODUC: Let's just let him  
5 get his list out first.

6 MS. WOMACK: Okay. Can we refer back to that  
7 perhaps?

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

9 MS. WOMACK: Thank you.

10 MR. MIZELL: If we look at Line 11, starting  
11 with the word "because" through the end of that  
12 sentence. Similarly, this is argument and should be  
13 struck.

14 So, moving on to the next paragraph -- and  
15 please do stop me if you want --

16 CO-HEARING OFFICER DODUC: Let's just get them  
17 all out, then.

18 MR. MIZELL: Line 14, starting with the word  
19 "when" about halfway across. And again this is where  
20 it may get messy.

21 So, Line 15 at the end of the first bracket,  
22 we move to strike that.

23 CO-HEARING OFFICER DODUC: I'm -- Okay.

24 MR. MIZELL: As well as everything after  
25 "1980's" to the end of the sentence.

1           So, in combination, those two sections of that  
2 sentence, then proceeding all the way down to the end  
3 of the sentence found on Line 20.

4           So, in other words, from Line 14 to the end of  
5 the sentence on Line 20, we would move to strike, with  
6 the exception of the words "in the 1980s" because I was  
7 attempting to complete the characterization of his  
8 qualifications without -- without striking the date  
9 range.

10           We would argue that this is beyond the scope  
11 of the hearing. It deals with a separate project, the  
12 Four Pumps Project that took place many years ago.

13           It's not relevant argument to the California  
14 WaterFix and, at this point, does not provide . . .

15           Well, it's argument on the wrong project.

16           CO-HEARING OFFICER DODUC: And is that the  
17 entirety of the section you would object to as being  
18 argumentative?

19           MR. MIZELL: No. If we'd proceed to Page 3.

20           (Exhibit displayed on screen.)

21           MR. MIZELL: From Line 1 to Line 6, that  
22 paragraph we also move to strike as argumentative and  
23 beyond the -- beyond the scope of this Project.

24           Again, it deals with the Four Pumps Project  
25 which, as you can see in -- on Line 2, was a Final EIR

1 from 1986.

2           And then in the next paragraph, on Line 9,  
3 beginning with the bracketed citations through the end  
4 of that paragraph.

5           Again, these are issues dealing with existing  
6 conditions and -- from in and around the Clifton Court  
7 Forebay. They exist today. They are not a part of the  
8 California WaterFix.

9           So those are -- That's the completion of the  
10 argumentative portions of the qualifications statement  
11 of Mr. Moore.

12           And I have more objections, but I'll wait here  
13 because they don't relate to the qualifications  
14 argument.

15           CO-HEARING OFFICER DODUC: All right. Now you  
16 may respond to that.

17           And, again, not to get into the details of  
18 your testimony, but to address the assertion by  
19 Mr. Mizell that these are arguments, not Statement of  
20 Qualifications.

21           MS. WOMACK: These . . . These . . .

22           Every action has a reaction and, in my  
23 father's case, it's been -- it's almost like he's had  
24 to go to school to do each of these things.

25           When they didn't put in a cutoff wall, he had

1 to become an expert in how to deal with it.

2 Then, when they changed the rules --

3 CO-HEARING OFFICER DODUC: So --

4 MS. WOMACK: -- and they started drafting --  
5 No, each thing.

6 CO-HEARING OFFICER DODUC: I can understand.

7 You don't have to go through each one. It doesn't  
8 sound like you have any new --

9 MS. WOMACK: Well --

10 CO-HEARING OFFICER DODUC: -- rationale to  
11 provide, except that these are examples of instances  
12 where your father, as a farmer, had to become expert --

13 MS. WOMACK: Yes.

14 CO-HEARING OFFICER DODUC: -- in order to  
15 respond what you allege to be these actions or  
16 non-actions by DWR.

17 MS. WOMACK: Precisely.

18 There's one other thing: The EIR/EIS -- We're  
19 supposed to be protected by EIR/EIS. The EIR of 1986  
20 specifically talks about riprapping the levees of Old  
21 River. We were never riprapped.

22 These are -- I just want to bring to the  
23 Board's attention --

24 CO-HEARING OFFICER DODUC: Again --

25 MS. WOMACK: -- to these --

1 CO-HEARING OFFICER DODUC: Again, you are  
2 going into arguments. We're just focusing right now on  
3 the Statement of Qualifications. I think you've stated  
4 the reason why these sentences were included.

5 MS. WOMACK: Yes.

6 CO-HEARING OFFICER DODUC: And well move on  
7 from there.

8 MS. WOMACK: Thank you so much.

9 MR. MIZELL: If I may just clarify.

10 The objection is not challenging the  
11 qualifications of Mr. Moore or his expertise. We're  
12 simply looking to distinguish between proper Statements  
13 of Qualification and argument.

14 I'm not sure if that's helpful but I hope it  
15 is.

16 MS. WOMACK: I just have --

17 CO-HEARING OFFICER DODUC: So -- I'm sorry.

18 Mr. Mizell, if those statements were in the  
19 non-SQO (sic) section --

20 MR. MIZELL: We would still challenge, then,  
21 based upon scope. So, as part of my objection, in each  
22 case, I went through why they were --

23 CO-HEARING OFFICER DODUC: I understand.

24 MR. MIZELL: -- outside the scope.

25 CO-HEARING OFFICER DODUC: All right. Let's

1 move on to your next objection.

2 MR. MIZELL: So my next objection -- The next  
3 series of objections are about the Exhibit List and not  
4 about the -- the substantive testimony at this point.

5 So, the Department's going to object . . .

6 Well, in -- Here's -- Here's a question of the  
7 Hearing Officers and how you would like to proceed.

8 The remaining objections I have are on  
9 exhibits. In some cases, we have held those objections  
10 until the exhibits are moved in -- or, you know,  
11 requested to be moved into evidence. If you would  
12 like, I can stop here and address those at a later  
13 time.

14 CO-HEARING OFFICER DODUC: Let's do that  
15 because you've given us plenty to think about right  
16 now.

17 MR. MIZELL: Thank you.

18 CO-HEARING OFFICER DODUC: All right. We'll  
19 go ahead and take a break and consider these  
20 objections.

21 MS. WOMACK: Could I add one more thing, just  
22 about --

23 CO-HEARING OFFICER DODUC: No.

24 MS. WOMACK: Okay.

25 (Recess taken at 9:50 a.m.)

1 (Proceedings resumed at 10:15 a.m.):

2 CO-HEARING OFFICER DODUC: All right. We are  
3 back and let me issue some rulings.

4 Mr. Mizell, your first objection with respect  
5 to the discussion of seepage being outside the scope is  
6 overruled.

7 You are correct that there is no change in the  
8 Project or facility, but the change that was made in  
9 the Administrative Draft SEIR to no longer build on  
10 CCLP's land did change the analysis for Ms. Womack and  
11 Mr. Moore regarding potential impacts or injury to  
12 their property. Therefore, discussion of seepage is  
13 within the scope and your objection is overruled.

14 Your objections with respect to -- Well,  
15 actually, your remaining objections are also overruled  
16 because it is testimony responsive to Petitioners  
17 during Part 2 Rebuttal.

18 Petitioners have assured us and CCLP that any  
19 impacts from the WaterFix Project will be mitigated,  
20 however, without concrete descriptions of what those  
21 impacts could be and what form the ensuing mitigation  
22 might take.

23 That testimony amounts to Petitioner asking  
24 CCLP and us to trust you without any -- without any  
25 specific conditions.



1           Therefore, CCLP's testimony alleging  
2 historical and recent pattern of DWR's action or  
3 interaction is a trust issue that is relevant to the  
4 weight we would give to DWR's assurances.

5           And for that purpose, the remainder of your  
6 objections are also overruled, recognizing that there  
7 is some argumentative statement in the SQO (sic)  
8 section of CCLP-60, but those do go towards the trust  
9 and the history aspect that I just discussed, and you  
10 may, of course, conduct cross-examination on those  
11 statements that you believe to be argumentative.

12           Ms. Morris.

13           MS. MORRIS: Thank you.

14           I'm in a way asking a motion for  
15 reconsideration on the latter half of the ruling.

16           The reason being is --

17           CO-HEARING OFFICER DODUC: I'm sorry. Please  
18 clarify. The latter half?

19           MS. MORRIS: Well, the ones -- All of the  
20 rulings that you overruled on trust as to recent --  
21 Like, for example, some of the evidence related to  
22 fixing a drainage pipeline.

23           Those are factual issues that have nothing to  
24 do with-California WaterFix, and the Department of  
25 Water Resources has not been allowed to put on evidence

1 about those interactions.

2           For example, there is a debate about who owns  
3 the drainage pipe and, based on the settlement, who it  
4 was transferred to.

5           And so those -- It's not fair to take one  
6 person's -- one side's factual allegations or  
7 allegations without allowing the other side the  
8 opportunity, and the Department never had that  
9 opportunity because those issues, like the seepage on  
10 existing or existing interactions related to other  
11 issues where there's other detailed legal and factual  
12 claims, are not being brought to you -- forward to you  
13 because they aren't within the scope of the California  
14 WaterFix Project.

15           So, it's inherently unfair to say: I'm going  
16 to allow one side to characterize the interactions, but  
17 not allow the other side to put on its assertions to  
18 counter those based on facts and legal documents.

19           CO-HEARING OFFICER DODUC: Response,  
20 Mr. Emrick or Miss Womack.

21           MS. WOMACK: Could I go first?

22           MR. EMRICK: Yeah.

23           MS. WOMACK: Yes. Let's see. First of  
24 all . . .

25           Oh, my gosh. I just lost it. Oh, my

1 goodness.

2 First of all --

3 CO-HEARING OFFICER DODUC: Let's be --

4 Miss Womack, let's be very focused here. Miss.

5 MS. WOMACK: Yes.

6 CO-HEARING OFFICER DODUC: Miss Morris'

7 request to us for reconsideration is, as I understand

8 it -- and Miss Morris I'm sure will correct me if I

9 misstate her motion -- is that it would be unfair

10 for -- to not allow the Department or Petitioners in

11 this matter to respond and provide evidence with

12 respect to the issues that Miss Womack and CCLP has

13 raised to characterize the trust issue --

14 MS. WOMACK: Right.

15 CO-HEARING OFFICER DODUC: -- from your

16 perspective.

17 MS. WOMACK: Okay. Right.

18 But there are two main things: First of all,

19 to use your water right as a farmer, you need to be

20 able to pump in and pump out the excess, the drainage.

21 CO-HEARING OFFICER DODUC: No, no, no. That's

22 not addressing --

23 MS. WOMACK: Okay.

24 CO-HEARING OFFICER DODUC: -- her specific

25 rationale.

1 MS. WOMACK: Well, okay. The second part is,  
2 she's talking casually about a drainage pipe and whose  
3 is it.

4 There is absolutely --

5 CO-HEARING OFFICER DODUC: Again, that's not  
6 addressing the crux --

7 MS. WOMACK: Okay.

8 CO-HEARING OFFICER DODUC: -- of her  
9 rationale.

10 Mr. Emrick, perhaps you could help?

11 MR. EMRICK: Yes.

12 I think the reason we're actually here is  
13 because DWR made changes to the Project over the  
14 summer, and we now have an opportunity to put testimony  
15 in that addresses some of those issues.

16 One of the issues is, like you -- the Board  
17 said, DWR saying that they're going to mitigate it and  
18 hold Clifton Court harmless.

19 I think it's perfectly acceptable for us to  
20 put in circumstances in which we feel -- or CCLP feels  
21 that DWR did not properly follow up, did not mitigate,  
22 did not meet what we think is their obligations.

23 If there's a -- an issue where DWR feels they  
24 should be able to respond, I don't think I have an  
25 objection to allowing them to respond.

1 MS. WOMACK: One thing, with my father here, I  
2 would like him to address, though, this whole drainage  
3 pipe. I -- For some reason --

4 CO-HEARING OFFICER DODUC: All right. We're  
5 not getting --

6 MS. WOMACK: Just because he --

7 CO-HEARING OFFICER DODUC: We are not getting  
8 into specific arguments with respect to the drainage  
9 pipe yet.

10 MS. WOMACK: Well, then, who owns --

11 CO-HEARING OFFICER DODUC: We are not there  
12 yet.

13 MS. WOMACK: Okay.

14 CO-HEARING OFFICER DODUC: We're still arguing  
15 over that. You get to proceed. So, Miss Womack,  
16 chill.

17 MR. EMRICK: So I --

18 Miss Meserve.

19 I'm sorry. Did you want to ask --

20 MR. EMRICK: Yeah. I just don't think I would  
21 object to -- I mean, they'll have an opportunity  
22 through cross-examination. And I don't think I would  
23 object to them having an opportunity to put in some  
24 sort of response.

25 CO-HEARING OFFICER DODUC: As part of their

1 cross?

2 MR. EMRICK: As part of their -- As part of  
3 their cross or . . .

4 MS. WOMACK: Yeah.

5 CO-HEARING OFFICER DODUC: Okay.

6 Miss Meserve.

7 MS. MESERVE: Good morning. Osha Meserve for  
8 LAND.

9 Yes, there was a reference in the motion for  
10 reconsideration about some -- DWR not being allowed to  
11 put in evidence.

12 I just want to clarify.

13 My understanding from the record is that, from  
14 all the way from Part 1 of this proceeding, CCLP has  
15 been bringing in evidence and talking about the way in  
16 which their farm has experienced the California DWR and  
17 Bureau of Reclamation's existing facilities and then  
18 their concerns about the -- the facilities that are  
19 petitioned here.

20 So that's been very much at issue throughout  
21 this entire proceeding.

22 DWR has had multiple opportunities to put  
23 forth evidence about its side of that story. And, in  
24 fact, it has put forward certain piece of evidence  
25 about that.

1           So I strenuously object to someone using this  
2 when there's not an opportunity.

3           And then I would just follow up with  
4 Mr. Emrick that, yes, cross-examination right now, you  
5 know, through cross-examination exhibits and otherwise,  
6 that that certainly seems like fair game as long as  
7 it's within the spirit of the testimony.

8           So I don't see an unfairness here.

9           CO-HEARING OFFICER DODUC: Excellent points,  
10 Miss Meserve.

11          MS. MORRIS: Actually --

12          CO-HEARING OFFICER DODUC: Response?

13          MS. MORRIS: Yes.

14          Actually, that is not correct, because these  
15 issues have been outside the scope of this hearing up  
16 until this point and the -- as I understand the ruling,  
17 the seepage issue, because it was not related to  
18 WaterFix.

19          As I understand the justification for allowing  
20 these issues that are outside the scope of the  
21 September 10th hearing to come in, it's not to show  
22 that those things existed but, rather, to insinuate or  
23 imply or to allow that insinuation that DWR will not  
24 follow through on its mitigation.

25          And DWR has not had the opportunity because

1 these things did not change -- these are existing  
2 conditions -- to put that into the record throughout  
3 this proceeding.

4           And these issues, I assure you, are much more  
5 complicated and nuanced than is being presented by only  
6 one side.

7           MS. WOMACK: What are the existing conditions  
8 she's -- Is that a later thing?

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

10          MS. WOMACK: Okay.

11          CO-HEARING OFFICER DODUC: Miss Des Jardins.

12          MS. DES JARDINS: I would just like to point  
13 out that Petitioners are proposing to construct a new  
14 reservoir in the same location.

15           And I think if the Board was going to  
16 consider, for example, what conditions they might put  
17 on construction, and Dr. Tom Williams did have some  
18 testimony about that, you know, it has to do with  
19 public --

20          CO-HEARING OFFICER DODUC: I'm sorry.

21          MS. DES JARDINS: -- interest --

22          CO-HEARING OFFICER DODUC: I'm sorry.

23 Miss Des Jardins.

24           You have lost me. How does this relate back  
25 specifically to Miss Morris' motion for



1 reconsideration.

2 MS. DES JARDINS: Well, seepage -- Whether --

3 CO-HEARING OFFICER DODUC: I don't believe --

4 MS. DES JARDINS: The DWR's promised to deal  
5 with seepage for the new reservoir at Byron Tract  
6 Forebay with future design.

7 And I think it's very important for the Board  
8 to consider because that is -- is a future commission.  
9 We don't have anything about the design or how --

10 CO-HEARING OFFICER DODUC: Again, that was not  
11 Miss Morris' . . .

12 MS. DES JARDINS: Okay.

13 CO-HEARING OFFICER DODUC: Mr. Emrick, any  
14 final words on this?

15 MR. EMRICK: Again, I think the final word is  
16 that, because of the way things have progressed with  
17 changes to the Project, you know, we now find ourselves  
18 in the situation where we have the right, I believe, to  
19 present surrebuttal that would go to promises and  
20 representations that DWR will follow through with what  
21 they're promising they will to hold us harmless from  
22 the new Project.

23 And I think that it's very instructive as to  
24 the situations that have occurred before with respect  
25 to the CCLP and DWR.

1           They have cross-examination. They can ask  
2 those -- those questions and . . .

3           I don't know if -- if perhaps even allowing  
4 them an opportunity to -- to supplement the record to  
5 respond rather than throwing or keeping our testimony  
6 out.

7           CO-HEARING OFFICER DODUC: Thank you,  
8 Mr. Emrick, and thank you for trying to be helpful.

9           With that, we will take another break.

10           (Recess taken at 10:28 a.m.)

11           (Proceedings resumed at 10:34 a.m.):

12           CO-HEARING OFFICER DODUC: All right. We are  
13 back.

14           And, Miss Morris, after consideration of your  
15 Request for Reconsideration, it is denied.

16           Our ruling stands that, based on Petitioners'  
17 portrayal to date, that they will address any impacts,  
18 that they are to be trusted.

19           I -- We find that Miss Womack's -- CCLP's  
20 testimony responsive to that and we will hear her  
21 argument.

22           However, DWR, Petitioners, will have the  
23 opportunity to conduct cross and establish your various  
24 arguments with respect to the testimony Miss Womack and  
25 Mr. Moore will provide. And should you wish to request

1 additional time to bring back a rebuttal to this  
2 rebuttal, you may make that request as well.

3           Before we proceed, though, there is a  
4 clarification with respect to the seepage -- our  
5 seepage -- our prior ruling with respect to the issue  
6 of seepage.

7           There might be some misunderstanding, and so  
8 I'd like Mr. Deeringer to clarify and remind parties of  
9 what that ruling was.

10           MR. DEERINGER: So, our current understanding  
11 of what the Hearing Officers have ruled is that -- What  
12 they've excluded is evidence about the following:

13           During earlier iterations of the Projects,  
14 there were seepage issues that Petitioners were  
15 proposing to correct; as a result of changes described  
16 in the Administrative Draft Supplement, they were no  
17 longer -- they deemed no longer necessary.

18           So there were issues being fixed that were  
19 then not being fixed, just to put it very colloquially.  
20 Alleged issues if that makes it better.

21           And those -- That's not a -- That's not --  
22 Those aren't impacts from the Project. Those are  
23 things that were proposing to be changed that are now  
24 no longer being changed.

25           That is different than saying that there were

1 flooding issues all along, there were seepage issues  
2 all along, that CCLP was not affected by property that  
3 was taken, but now that property is no longer taken, is  
4 very much affected by.

5           It now is a property interest because of  
6 changes in the Project that it didn't have before. And  
7 so that -- this is now their opportunity to ask  
8 questions about those -- those changes and those  
9 impacts.

10           CO-HEARING OFFICER DODUC: Miss Morris.

11           MS. MORRIS: On behalf of the State Water  
12 Contractors, I would, based on my understanding of your  
13 previous rulings, request that I be allowed to conduct  
14 cross-examination of this panel on Monday, because,  
15 given the scope of these rulings, I am going to need to  
16 pull several documents that are related to not only the  
17 seepage settlement on this property for the original  
18 contract, but as well as many communications back and  
19 forth on these other issues.

20           I also would request that the State Water  
21 Contractors and the Department be allowed to bring a  
22 witness from the Field Division to discuss this,  
23 because essentially now this has turned from something  
24 having to do with California WaterFix Project into a  
25 trial on DWR's character. And, unfortunately, we would

1 need time to be able to have time to respond to that.

2           And I don't think, given the complicated  
3 nature of these issues, because there's really  
4 two-fold:

5           On several of these issues, there's legal  
6 opinions that are existing. There's debates about who  
7 owns things. There's -- And probably about five years  
8 of correspondence back and forth on this drainage pipe  
9 issue to the point where the DWR Field Division had to  
10 say they're going to --

11           CO-HEARING OFFICER DODUC: All right.

12           MS. MORRIS: -- fix it.

13           CO-HEARING OFFICER DODUC: Now you are --

14           MS. MORRIS: So there is --

15           CO-HEARING OFFICER DODUC: -- testifying.

16           MS. MORRIS: Well, I'm trying -- not  
17 testifying but describing the complicated nature. It's  
18 not a simple issue.

19           So I would request that DWR and the State  
20 Water Contractors bring a witness back no earlier than  
21 a week from -- a week from next Monday so that we have  
22 ample opportunity to pull together all of that  
23 information since it is a change in the scope of this  
24 hearing.

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

1 Miss Des Jardins. Miss des Jardins, please step back.

2 I would assume that DWR is going to join on  
3 that motion, so let's hear from them first.

4 MR. MIZELL: Yes. Tripp Mizell, DWR.

5 We would join with the State Water  
6 Contractors' motion.

7 But I'd also like to ask for a little bit --  
8 further clarification of Mr. Deeringer if he might.

9 CO-HEARING OFFICER DODUC: Could we hold on to  
10 that thought?

11 MR. MIZELL: Yes.

12 CO-HEARING OFFICER DODUC: Mr. Emrick, let's  
13 hear from you first before we get to Miss Des Jardins,  
14 and I assume Miss Meserve also would like to speak.

15 MR. EMRICK: I'm trying to clarify a little  
16 bit what Miss Morris is asking.

17 I think what she suggested was that the  
18 cross-examination of this panel be moved to Monday and  
19 then -- if I'm correct, and then that they have an  
20 additional opportunity to bring a witness in on their  
21 own at some later time.

22 CO-HEARING OFFICER DODUC: That is my  
23 understanding of her request.

24 MR. EMRICK: I don't think we would object to  
25 that so long as we get the information, the . . .

1 MS. WOMACK: I don't know if my father is  
2 available on that Monday. He's --

3 MR. EMRICK: Okay.

4 MS. WOMACK: We've got appointments both  
5 Mondays.

6 MR. EMRICK: Okay. So when would --

7 MS. WOMACK: We've got a heart specialist and  
8 we've got a bone specialist.

9 MR. EMRICK: How about October 4th or 5th?  
10 Would he be available?

11 MS. WOMACK: I will have to --

12 Dad, are you --

13 MR. EMRICK: But that's -- that's my  
14 understanding.

15 I don't think we'd object if we got the  
16 information, the cross-examination information, ahead  
17 of time.

18 CO-HEARING OFFICER DODUC: Okay. And is this  
19 specific to the request that has been made?

20 MS. DES JARDINS: Yes, it is.

21 I just wanted to point out with respect to the  
22 Field Division, I had subpoenaed the Engineer from the  
23 Delta Field Division to come testify about his  
24 evaluation of Clifton Court Forebay and the report that  
25 he had --

1 CO-HEARING OFFICER DODUC: Let's not.

2 MS. DES JARDINS: And it was quashed.

3 CO-HEARING OFFICER DODUC: Hold on.

4 MS. DES JARDINS: Yeah.

5 CO-HEARING OFFICER DODUC: I only want to hear  
6 about the specific requests, whether you are -- you are  
7 objecting to it or supporting it.

8 I do not like -- I do not need any further  
9 offers at this time, Miss Des Jardins.

10 MS. DES JARDINS: So, for that reason, I would  
11 object to them now saying that they want to bring  
12 somebody in from the Delta Field Division to testify  
13 because the subpoena was quashed.

14 CO-HEARING OFFICER DODUC: All right.

15 Miss Meserve.

16 MS. MESERVE: Good morning.

17 If I'm not mistaken, this issue was  
18 addressed -- seepage was addressed in Part 1 and DWR  
19 submitted the testimony of Allan Davis, DWR-935 and  
20 several exhibits that specifically address seepage.

21 So the idea that DWR hasn't had the  
22 opportunity to think about and respond to seepage  
23 issues earlier, I don't think is correct.

24 And there's also some exhibits that have a  
25 Settlement Agreement and other things like that.



1           So, I think that we submitted -- and  
2 Ms. Womack as well submitted her testimony when she was  
3 supposed to. We've all been on a really quick schedule  
4 that I have complained about, but I don't see why DWR  
5 should receive additional time to think about something  
6 that they've had in hand, you know, just as long as the  
7 rest of us have.

8           And I had asked also for DWR to have the same  
9 amount of time as DWR now has on Clifton Court to  
10 respond to the testimony that DWR put in just last  
11 Monday, and that was -- You know, they're apparently  
12 going to be testifying today.

13           So I think if you start allowing more time for  
14 different -- different parties based on some perceived  
15 unfairness that I don't think exists, I do have an  
16 objection to that.

17           CO-HEARING OFFICER DODUC: Anyone else?

18           Miss Morris, would you or Mr. Mizell like to  
19 respond before we move off this topic?

20           MR. MIZELL: Certainly.

21           The Department has not presented information  
22 on seepage that goes beyond the California WaterFix  
23 despite the arguments by Miss Meserve that had been the  
24 case.

25           Furthermore, we have not presented any

1 information about the diversity of claims against the  
2 Department that have been made in CCLP's testimony here  
3 for surrebuttal. So we disagree.

4 We believe we do need an opportunity to  
5 respond to these additional issues that are now within  
6 the scope and . . .

7 Let me know when you want me to ask  
8 Mr. Deeringer the clarifying question about the scope  
9 of the ruling.

10 CO-HEARING OFFICER DODUC: Actually, I need to  
11 ask you a clarifying question.

12 I'm looking at DWR-935, surrebuttal testimony  
13 of Allan Davis, which responds to CCLP . . . and  
14 responds to the seepage problem she cited in CCLP-30.  
15 This was awhile back.

16 In what way do you believe that there is  
17 additional testimony DWR needs to provide to respond to  
18 CCLP that you -- that you did not have the opportunity  
19 to before?

20 MR. MIZELL: Up until this point, the existing  
21 conditions that will be in place, whether or not the  
22 California WaterFix is approved, have not been within  
23 the scope of this hearing.

24 Today marks a change. Today we are now  
25 opening up this hearing to a number of topics that will

1 exist regardless of what you determine about the  
2 California WaterFix.

3           That is a distinct change in the scope and we  
4 have not yet had the opportunity to address existing  
5 conditions that will not be modified by the California  
6 WaterFix.

7           The testimony of Allan Davis, if I recall  
8 correctly, was not entered into evidence. I don't  
9 believe it was, but I'd have to go back and look at my  
10 notes. That was a long time ago.

11           CO-HEARING OFFICER DODUC: Mr. Mizell, let  
12 me -- Again, this is a complicated area that we're  
13 trying to clarify here.

14           But when we're talking about opening this up,  
15 we're specifically addressing CCLP's situation because  
16 of the change that was proposed for this Project given  
17 the Administrative Draft where you propose to no longer  
18 utilize her property.

19           That changes the baseline that she needs to  
20 consider when she performs her impact analysis and her  
21 impact arguments to us.

22           So our reopening any issue with respect to  
23 existing conditions is as a result of the Project  
24 change, which then raises new concerns for her which  
25 she did not have in Part 1.

1 MR. MIZELL: And this -- And this goes to what  
2 I was hoping to clarify with Mr. Deeringer.

3 If the opening of the scope today is based  
4 only upon the fact that we have decided to not pursue a  
5 Byron Tract Forebay on Miss Womack's property but,  
6 instead, to move that to the north, then the -- then  
7 the opportunity to respond to that change should be  
8 limited to the impacts that -- that the California  
9 WaterFix now presents to Clifton Court Forebay's  
10 property.

11 That does not include existing conditions.  
12 There will be no change in the existing conditions that  
13 Clifton Court Forebay experiences by virtue of not  
14 taking her land.

15 So, when we are talking about what we're  
16 expanding the scope to consider, I think it needs to be  
17 extremely clear as to:

18 Are we talking about allowing testimony on  
19 conditions that will exist regardless of your decision  
20 in this hearing?

21 Or is it only impacts that will occur if you  
22 grant the Petition?

23 That is the cornerstone of whether something  
24 is relevant or not, within scope or out of scope.  
25 That's what I'd like some clarity on.

1 CO-HEARING OFFICER DODUC: Miss Morris,  
2 anything to add?

3 MS. MORRIS: Just the testimony of Al Davis,  
4 if we look at the -- It was never submitted. It wasn't  
5 brought into evidence.

6 And it was focused on the seepage issues with  
7 the cutoff walls when the Project -- when the Project  
8 included the forebay on Clifton Court, not on Byron  
9 Tract.

10 And, again, I just want to clarify because we  
11 do seem to be confusing issues a little bit here.

12 My understanding of the ruling of why these  
13 other issues, including existing seepage, the draining  
14 pipe, the Four Pumps Agreement, were relevant to the  
15 Hearing Officers was based on an -- an implication that  
16 DWR won't do what they say they're going to do and,  
17 therefore, they were within the scope for this  
18 proceeding.

19 And those issues have not been addressed ever,  
20 nor has that ever been clear that that was a concern.

21 And so it's only fair to the Department --

22 CO-HEARING OFFICER DODUC: Miss Morris --

23 MS. MORRIS: -- to --

24 CO-HEARING OFFICER DODUC: -- Miss Womack has  
25 brought those concerns up since the pre-hearing

1 conference and throughout Phases 1 and 2.

2 MS. MORRIS: Right.

3 And to -- Up until today, those have been  
4 outside of the scope of this proceeding except --

5 CO-HEARING OFFICER DODUC: I don't believe --

6 MS. MORRIS: -- for as they have --

7 CO-HEARING OFFICER DODUC: I don't believe  
8 we've ever rules that the trust issue is outside the  
9 scope of this hearing.

10 MS. MORRIS: I believe that --

11 CO-HEARING OFFICER DODUC: You would need  
12 to --

13 MS. MORRIS: -- if you're --

14 CO-HEARING OFFICER DODUC: You would need to  
15 point me to a specific ruling from us that says that.

16 MS. MORRIS: I didn't say that it said the  
17 trust issue was outside the scope.

18 What I said was that if these things are to  
19 come in to show as evidence of DWR not to be trusted,  
20 then DWR should have the ability to respond to those  
21 specific allegations, not to the general "trust me"  
22 allegations.

23 Because general "trust me" allegations --  
24 There are legal obligations in these documents that we  
25 have pointed to throughout in terms of mitigation, and

1 those respond to the allegations related to this  
2 Project.

3           There -- These other issues are different  
4 because they don't respond to this Project or to legal  
5 obligations of this Project. They respond to things  
6 that are outside this Project and this Project's  
7 impacts, and that's the difference.

8           CO-HEARING OFFICER DODUC: Miss Des Jardins.

9           MS. DES JARDINS: With respect to the argument  
10 that Mr. Mizell made, it's been clear since the  
11 beginning of this hearing that Miss Womack was talking  
12 about property damage and injury to her property,  
13 and -- and it's also clear that there's issues of  
14 personal injury or death.

15           The Final EIR/EIS and the Supplemental EIR/EIS  
16 all talk about property damage, personal injury and  
17 death.

18           There's a very clear due process right with  
19 property interests -- and interests in life in this  
20 proceeding. And I think that Petitioners made a legal  
21 error in their strategy and they're now trying to claim  
22 they did not have a chance to address these issues.

23           They're in . . . They're in their  
24 environmental documents. There was clear testimony in  
25 Part 1 that these issues would be dealt with in the

1 future, and now they're not.

2           And I -- Petitioners had every opportunity in  
3 their Part 2 case in chief to have any indication about  
4 how do we deal with this, and they just declined to do  
5 so.

6           Thank you.

7           CO-HEARING OFFICER DODUC: I see Miss Meserve  
8 coming up, and then, Mr. Emrick, I will give you the  
9 final word before we take yet another break.

10           MS. MESERVE: Sorry. Just I was trying to  
11 catch up on kind of the factual matter.

12           And, yes, it looks like although Mr. Allan  
13 Davis' testimony was never submitted because he wasn't  
14 available, according to the July 7th, 2017, ruling, all  
15 the exhibits that he chose to submit in support of  
16 DWR's position, at least in part in response to seepage  
17 concerns, were part of the evidence. So all that  
18 evidence is in the record.

19           Thank you.

20           CO-HEARING OFFICER DODUC: Mr. Emrick.

21           MR. EMRICK: Yes. I -- While I certainly  
22 sympathize with DWR, I -- I -- I do -- You know, the  
23 strategy, obviously, was to make an objection and -- so  
24 that this information -- this testimony wouldn't be  
25 submitted. And in doing so, they didn't -- DWR didn't



1 prepare for cross-examination on these issues.

2           That's certainly not our fault. But with that  
3 being said, I think we would still be open to the  
4 possibility of moving testimony and cross-examination  
5 to another date.

6           MS. WOMACK: Except --

7           MR. EMRICK: But we don't know what those  
8 dates are.

9           MS. WOMACK: Okay. I have an elderly -- I've  
10 got old people appointments. I've got a heart  
11 specialist. I've got a -- You know, we planned for  
12 this day as far as giving our testimony.

13           My father doesn't have to be here after our  
14 testimony, but he's -- he -- we've done a lot of things  
15 with 90-year-old people so that he could be here today.  
16 So I would hope you would respect his time.

17           And he -- He is the expert that can speak back  
18 to 1967, 1968. You know, I don't --

19           CO-HEARING OFFICER DODUC: All right.

20           MS. WOMACK: He said most people --

21           CO-HEARING OFFICER DODUC: All right.

22           MS. WOMACK: -- aren't born . . .

23           CO-HEARING OFFICER DODUC: For the record,  
24 Miss Morris, DWR-935, Mr. Davis' testimony, was  
25 admitted to the record pursuant to our August 10th,

1 2017, ruling.

2 With that, we will take a break.

3 MS. MORRIS: It's not on the website. You may  
4 want to update the website.

5 I was -- That's why -- I was not trying to  
6 obstruct. I just looked at the website.

7 CO-HEARING OFFICER DODUC: Off the record.

8 (Recess taken at 10:53 a.m.)

9 (Proceedings resumed at 11:23 a.m.):

10 CO-HEARING OFFICER DODUC: All right. Thank  
11 you, everyone, for your patience.

12 We did take the time to consider all the  
13 information provided as well as review our previous  
14 rulings, and I have two corrections -- or these  
15 revisions, anyway.

16 The first is with respect to Exhibit DWR-935.

17 I was mistaken before. Apparently DWR  
18 withdrew Exhibit 935 because Mr. Davis was not  
19 available.

20 We took official notice of many of his  
21 exhibits. In fact, we did admit most, if not all, of  
22 the exhibits associated with Mr. Davis' testimony. So  
23 that is in the record.

24 Secondly, with respect to Mr. Mizell's --  
25 which seems like hours, if not days, ago -- first

1 objection regarding CCLP-60, Page 9, Line 15 through  
2 Page 10, Line 3, regarding the discussion of seepage as  
3 an existing condition being outside the scope of  
4 surrebuttal.

5           That objection is sustained, and I will leave  
6 it to the attorney to explain why.

7           MR. DEERINGER: Thank you.

8           And my apologies. This one's on me. I was  
9 misreading the scope of what was being described in  
10 this section.

11           It does indeed refer to conditions that exist  
12 irrespective of WaterFix, and that's the Hearing Team  
13 and, I understand, the Hearing Officers' reading of  
14 this section.

15           CO-HEARING OFFICER DODUC: Then we also have  
16 Ms. Morris' request to conduct cross-examination of  
17 this panel on another day.

18           Miss Womack, are you able at this time to let  
19 us know when you might return?

20           MS. WOMACK: I -- I -- I'm -- I'm available  
21 until the 9th, but my -- my father has many doctor  
22 appointments, and it -- I -- He doesn't know, and he  
23 can't call my mother to find out. It's unfortunate.

24           CO-HEARING OFFICER DODUC: Miss Morris.

25           MS. MORRIS: I'll -- I can -- I'll withdraw

1 that, but I would not withdraw the request for the DWR  
2 witness as to the other issues.

3 CO-HEARING OFFICER DODUC: All right. So,  
4 Miss Morris -- I'm sorry -- let me make sure I  
5 understand.

6 By withdrawing it, are you proposing to  
7 conduct cross-examination today?

8 MS. MORRIS: Yes.

9 CO-HEARING OFFICER DODUC: Okay. Miss Morris,  
10 we will take your request to present an additional  
11 witness under consideration. We will issue an order on  
12 that request early next week.

13 Is there anything else I need to address?

14 (Pause in proceedings.)

15 CO-HEARING OFFICER DODUC: Apparently there  
16 is.

17 MS. DES JARDINS: So, depending upon the scope  
18 of what Miss Morris is planning, it would be my Notice  
19 calling the Delta Field Division Engineer was quashed  
20 based on -- based on that Miss Womack could have  
21 presented it earlier in the hearing.

22 And I would request to renew that if DWR is  
23 being allowed to bring in new -- new witnesses based on  
24 the scope of the hearing was somehow expanded or  
25 changed.

1 Thank you.

2 CO-HEARING OFFICER DODUC: We will take that  
3 under consideration.

4 Okay. Only two hours later.

5 Mr. Emrick, Miss Womack, Mr. Moore, if you  
6 would like to present your surrebuttal testimony.

7 MR. EMRICK: Yes. I'll turn it over to  
8 Miss Womack.

9 MS. WOMACK: Okay. At the beginning, I'd like  
10 to say there's two minor typos.

11 On Page 6, Line 2, it says "isolate" instead  
12 of "isolated."

13 And also on Page 6, Line 14, I say "DWM-2"  
14 instead of "DSM-2."

15 I believe those are the only typos.

16 But there's one other thing. I refer to  
17 testimony in transcripts and go back and forth because  
18 I -- I'm referring -- When I talked about the date,  
19 I'll say testimony off of the date. I think it should  
20 say the transcript.

21 So should I change that out? Is that  
22 necessary?

23 CO-HEARING OFFICER DODUC: No. We'll just  
24 make a note of that. Thank you.

25 MS. WOMACK: Okay. I apologize. I -- Give me

1 a -- you know, anyway, my secretary is not very good.

2

3 Suzanne Womack

4 and

5 Sheldon Moore,

6 called as witnesses by Clifton Court

7 L.P., having previously been duly sworn,

8 were examined and testified further as

9 follows:

10 DIRECT TESTIMONY OF

11 MS. WOMACK: Okay. I hope you don't mind.

12 I'm going to read this because I am so flummoxed at

13 this point. It shouldn't take too long.

14 The summary of testimony -- And I will leave  
15 out the qualifications because we've gone through them  
16 quite extensively and I know they won't go into the  
17 record.

18 (Counsel confers with Miss Womack.)

19 MS. WOMACK: Not the summary; just the  
20 testimony, then.

21 When Clifton Court L.P. reviewed the  
22 Supplemental EIR/EIS, we found it difficult to respond  
23 to the SEIR/EIS because we did not understand what was  
24 happening to our water rights.

25 CO-HEARING OFFICER DODUC: Miss Womack, sorry,

1 sorry, sorry.

2 Are you proposing you're just reading your  
3 testimony?

4 MS. WOMACK: Well, that's what I did in  
5 surrebuttal in Part 1, and so I want to make sure I get  
6 things in.

7 CO-HEARING OFFICER DODUC: Things are in.

8 MS. WOMACK: Well, I read it in surrebuttal.  
9 I've been practicing since Part 1. Part 1 surrebuttal,  
10 we had to read.

11 CO-HEARING OFFICER DODUC: I'm confused now.  
12 It's been our practice to discourage witnesses from  
13 simply just reading.

14 MS. WOMACK: Okay.

15 CO-HEARING OFFICER DODUC: If what you're  
16 reading is a summary of the testimony you provided,  
17 then, yes, please proceed. But if you're just reading  
18 directly from the testimony . . .

19 MS. WOMACK: Well -- Okay. Well, I will  
20 summarize as I go. But what I found -- I know I had to  
21 read in on the surrebuttal. I remember that because it  
22 threw me then.

23 Anyway -- Okay. So . . . So basically  
24 that --

25 In August in 2016, DWR announced that they

1 were going to take all our property. And then it was  
2 only July, I think it was 5th ruling that DWR expressly  
3 told us that they weren't going to take any of our  
4 property. Nothing.

5           And that's when we started to look carefully  
6 at the Proposed Project, the control structures and all  
7 the other things. And we found out we were still -- we  
8 believe we still are injured by -- the CWF will still  
9 injury us as a legal user of water.

10           During the testimony -- Mr. Valles' testimony,  
11 he clearly made reference that we didn't know you had  
12 pumping out in the channel, in the DMC channel.

13           It's very clear and, you know, that kind of  
14 scared us, especially since the Petitioners, DOI, were  
15 the ones that gave us the cleanest copy of -- We had  
16 the 1955 contract with the Department of the Interior.  
17 That was given to us when the -- Basically when they  
18 put in the fish screen, they took our -- Clifton  
19 Court's . . . floodgate that used no electricity or  
20 anything, and they put our riparian and all of our  
21 water -- riparian, license, everything, was put in the  
22 middle of the DMC intake at a point that they -- that  
23 Department of Interior . . . said it would go to.

24           And in 2000, my father, like I said, with  
25 CALFED, they were working with my father and they



1 brought in this contract. So, clearly, Department of  
2 Interior's very aware of this.

3           This water diversion has turned out to be our  
4 most vital of the farm's water because of different  
5 things. We tried putting something in front of the  
6 Tracy fish screen to get another water source and that  
7 did not work with all the Water Hyacinth that's . . .

8           The control structure on the DMC has gone from  
9 4 -- 2.2 to 14.8 acres.

10                           (Pause in proceedings.)

11           MS. WOMACK: And when we asked how that  
12 control structure gate would work in relationship to  
13 our diversion, Mr. Valles said, "That will be  
14 determined in the future with operations. I don't have  
15 an answer for you."

16           So he said there was not an answer.

17           And then Mr. Chilmakuri said, "There's no  
18 modeling. It appears the control structure's on and  
19 within the DMC intake channel. And so our modeling  
20 does not address the changes in those in that channel."  
21 This was what was said on 8/10 during the testimony of  
22 Mr. Chilmakuri and Mr. Valles during cross.

23           And because there is no modeling or analysis  
24 of how the control structure affects CCLP and our  
25 diversion, we have no way of looking at the impact on

1 our control structure -- the control structure would  
2 have.

3           We -- I should -- I should mention at this  
4 point that our contract says that we have unlimited  
5 right to be able to go to our pump by the shortest  
6 version, and that is via the roadway on top of the DMC  
7 intake. That is something that concerns us about  
8 construction.

9           I would hope -- I would imagine that the  
10 construction of the control structure's going to be  
11 fenced, but I will be asking Mr. Bednarski about that.

12           Anyway, the next part is the isolated North  
13 Delta operation which we only found out about in the  
14 CER. And only the Byron Tract is used in this  
15 scenario. And there was -- Unfortunately, DWR had said  
16 that there was gates at the Tracy Fish Facility and the  
17 gates would be closed.

18           And Mr. Valles said, no, there are no gates at  
19 the Tracy Fish Facility. We were aware of this but  
20 wanted to make that clear from what DWR had said in  
21 DWR-1304, 5-6.5.1.6.2.

22           Anyway, Mr. Valles in his testimony clarified  
23 that.

24           So, when we asked Mr. Valles how we'd access  
25 our year-round -- year-round water, we were told we

1 would find out later from Mr Mizell.

2           And we were -- We wrote questions and we're  
3 supposed to get a response the Tuesday after 8/10 and  
4 we did not get a response to how -- our senior water  
5 rights. We've written questions. We have not gotten  
6 answers to those.

7           And we also had questions in writing -- in our  
8 testimony in writing regarding what would happen to our  
9 diversion if the control gates closed under the  
10 isolated North Delta operations. And we'll be looking  
11 at that today with Mr. Bednarski, but . . .

12           When we -- We're trying to find out what is  
13 going to happen with these operations. And so,  
14 basically, with the isolated North Delta operation,  
15 they will be shutting down the -- the control  
16 structure.

17           And we asked if there was modeling --  
18 Mr. Emrick tried to clarify with Mr. Chilmakuri. And  
19 he said the -- Mr. Chilmakuri, when asked if there was  
20 modeling for this, he said, "The modeling I was  
21 referring to is the DSM-2 model, and it does include  
22 the intake in general but not the specic -- specif --  
23 specificity." Sorry. "We need to" -- It's late in the  
24 day. "We need to analyze Miss Womack's diversion."

25           So he says very clearly here that they don't

1 have the modeling.

2           We believe that any obstruction of the DMC  
3 intake will injure our senior riparian year-round  
4 license contract of water. Our contract is with the  
5 Department of the Interior. They promised to bring the  
6 water -- convey and transport the water to us.

7           So the potential dual operation with the  
8 WaterFix BTO. And under the dual-source operation  
9 scenario, the control gates will control flow out of  
10 the BTF, the CCF and the Old River to meet the target  
11 deliveries at both Banks and Jones.

12           The control scheme will require flowmeters,  
13 WSE transmitters -- in other words, the water levels,  
14 what's going to happen -- and then the sophisticated  
15 system downstream of both Skinner and Tracy Fish  
16 Facility. And they say that downstream of there,  
17 they're going to have a lower WSE.

18           Anytime our waters are lowered, it causes  
19 problems. It costs more for our tenants to -- to pump.  
20 And higher pumping costs that's caused by low levels,  
21 it can also lead to destruction of the pumps, which has  
22 happened on numerous times.

23           The one thing we want to make clear is  
24 that . . .

25           Let's see.

1           Right now, we have tidal water. Our farmer  
2 can look in the Almanac, know when it's a high tide,  
3 look at the Tracy Fish Facility, see if the pump -- the  
4 trash trucks are in bad shape. He can tell what's  
5 going on and he can pump at his cheapest cost.

6           Once the control structure is in in front of  
7 our -- which -- It's recent information where they're  
8 now saying it's a hundred feet in front, the control  
9 structure and our intake is a hundred feet.

10           Once that's in, we won't know when the water  
11 is going to go up or down because that's all going to  
12 be done through this very complex SCOTUS system, which  
13 I've read about a little bit but I'm looking for much  
14 more detail on. And as far as I can tell, it's not  
15 there.

16           In fact, it says (reading):

17                   "The location and design of  
18 structures capable of operating in a  
19 dual-source scenario need (sic) to be  
20 explored in further design phases of the  
21 project. Such work will refine the  
22 configuration of facilities necessary to  
23 achieve the mode of operation."

24           This is DWR-1304, 5-6.

25           So, they're talking about doing a dual

1 operation with the WaterFix BTO. But then they say,  
2 "Well, we really haven't designed it. We're going  
3 to -- We're going to do it."

4 So, I just don't know -- I know my water  
5 levels will go up and down. That's very clear. In  
6 fact -- Oh, where is that?

7 Well, anyway, they asked Mr. Chilmakuri about  
8 this (reading):

9 "How will this -- How will" the dual  
10 operation "affect my pumping . . .  
11 levels? I depend on tides now. Will  
12 this change my water -- how I get my  
13 water?"

14 And what Mr. Chilmakuri said (reading):

15 "Again, the modeling I'm describing  
16 does not take that into account . . . it  
17 "cannot be used to analyze that."

18 We talked about water levels due to the  
19 potential dual operation of WaterFix. So that's from  
20 the testimony.

21 Next, we move on to the South Tunnel and South  
22 Tunnel Outlet Structure.

23 Mr. Long, is it possible to -- I believe . . .  
24 DWR-1305, .pdf 84, and I believe it's 85. One is the  
25 picture of it and one's the map.

1 (Pause in proceedings.)

2 MS. WOMACK: So, when I asked if there was any  
3 studies and modeling that show how the diversion in the  
4 DMC intake will be affected by these structures, the  
5 South Tunnel and South Tunnel Outlet Structure,  
6 Mr. Valles stated (reading):

7 "That modeling has not been  
8 done . . . those studies have not been  
9 done."

10 We believe the structure will greatly affect  
11 the whole operation of the BTO and the dual facility.

12 Is that just not coming up?

13 (Exhibit displayed on screen.)

14 MS. WOMACK: It's -- I think it's -- I know  
15 it's DWR-1305, .pdf --

16 MR. EMRICK: It's now up.

17 MS. WOMACK: Oh, okay. Oh, that's the control  
18 structure.

19 Okay. Is that 84?

20 Okay. Could you go one page back and see the  
21 page --

22 (Exhibit displayed on screen.)

23 MS. WOMACK: Okay. One page forwards?

24 (Exhibit displayed on screen.)

25 MS. WOMACK: No. Okay. One more page

1 forward?

2 (Exhibit displayed on screen.)

3 MS. WOMACK: No. Those are the control  
4 structures. This is not -- Okay.

5 I wanted to show the -- Actually, no.

6 13 . . .

7 Oh, where is it?

8 MR. EMRICK: Is this what you wanted to show?

9 MS. WOMACK: No, no, no. I wanted to  
10 show . . .

11 (Exhibit displayed on screen.)

12 MS. MITTERHOFER: Is that it?

13 MS. WOMACK: There it is, yeah. That's it.

14 So, we believe that this operation -- and then  
15 I believe the next page shows the actual where this  
16 will --

17 (Exhibit displayed on screen.)

18 MS. WOMACK: Yes. Thank you so much.

19 So this shows, then, that this operation goes  
20 into Banks' and Jones' intake. We call it the DMC  
21 intake.

22 But that control structure, we've talked --  
23 goes right in the center there, and then there's  
24 another control structure on either side, and there's a  
25 control structure in the Banks intake, and ours is --



1 you can't see on this.

2 But this is a 127-acre structure and channels.

3 This is a huge thing.

4 We think it's going to affect what happens

5 with the water here when the water comes in.

6 Sometimes, I've been -- What I've read is that the

7 control structures -- and I'm not sure if they're the

8 ones in this yellow part; there's two, one on either

9 side -- if those are going to be half open or all the

10 way closed. There's just this whole unknown.

11 And I believe very strongly that that huge

12 opening into the channel, and just above the Byron

13 Highway there is -- just a little ways back, is our

14 control structure.

15 I -- I think this is going to affect in a big

16 way the water levels in the DMC. So -- And according

17 to Mr. Valles, the modeling has not been done,

18 certainly no modeling on how it affects my diversion

19 because that diversion, again, is not talked about.

20 (Pause in proceedings.)

21 MS. WOMACK: So . . .

22 And I think we need to be able to see impact

23 reports to be able to know how we're going to be

24 impacted.

25 I don't want someone's opinion. I want facts

1 of how these operations of all of these facilities will  
2 affect the flow in -- in the -- what I call the DMC  
3 intake -- and what it's called right now. It's not --  
4 It's not Jones Channel.

5           So, I'd also like to look for a moment at --  
6 with the control structure. I'd like to look at -- I  
7 think I passed this earlier -- DWR-1305, 87, because I  
8 think that will help.

9           (Exhibit displayed on screen.)

10           MS. WOMACK: 87, 88 and 89. So this is the  
11 control structure.

12           This is the control structure, and we think  
13 this -- There -- There's talk about whether this will  
14 affect us. This -- And when those gates are all open,  
15 so there's talk: Will that affect us?

16           And they compare it to the No-Action  
17 Alternative which would have nothing in it. And they  
18 say those two things are the same.

19           And I'm very confused how you could have this  
20 huge facility here. And this shows that this is not  
21 the DMC. This is just a -- a rendering. But how you  
22 can have that.

23           And if you could go back, Mr. Hunt -- I'm  
24 sorry, not Mr. Hunt -- Mr. Long, not that page, the  
25 page before, because this shows how they work.

1 (Exhibit displayed on screen.)

2 MS. WOMACK: This structure, the control  
3 structure plan, I'm not sure how that -- It kind of  
4 looks like it's a timer on its side.

5 I don't know how big that is, how many acres,  
6 or how -- There's nothing that shows how big this is.  
7 The only thing I have is that rendering.

8 So I don't know how that's going to affect if  
9 my diversion is on the other side. So those are things  
10 we've wondered about.

11 So I should move on, but I -- I forgot to  
12 bring that up.

13 So, the -- the implications of the WaterFix  
14 BTO on the current SWP and CVP operations is the next  
15 thing.

16 There's been quite a bit of controversy in  
17 different writings I've received and then not received,  
18 that have been taken away from me, that the CCF is not  
19 a part of the Project.

20 But in the CER, it's abundantly clear that the  
21 State Water Project has Clifton Court Forebay's,  
22 Skinner Delta Fish Protection facility, and Banks, and  
23 that the CCF has Banks Pumping and the -- I'm sorry.  
24 The C -- I'm sorry.

25 The -- The Banks connects to the Clifton Court

1 Forebay.

2           The Jones Pumping Plant is the end of the  
3 two and a half mile that starts at the Tracy Fish  
4 Collection facility and, at this point just has the  
5 Tracy fish and the pumping plant two and a half miles  
6 away. It's a tidally influenced channel. This is what  
7 we are -- we're dealing with right now.

8           Now, the BTO is going to turn -- change it.  
9 They're going to remove the tidal influence. They say  
10 that in DWR-1304, 5-14.

11           We know that already it's hard enough with the  
12 tidal influence to understand when the waters are going  
13 to drop.

14           But we cannot -- We cannot do -- We cannot  
15 know if it's -- where the tides are go -- the water  
16 level goals are going up and down because of something  
17 other than tides. And this is what the -- with the  
18 ramping up and down of -- of deciding which water's  
19 going where.

20           The water from the BTF will require a daily  
21 level of operation between DWR and Reclamation. And  
22 given the fact that they don't -- they don't even  
23 communicate now that they -- one has this -- this --  
24 one -- that we have the intake that is a Federal  
25 contract from 1955, that DOI and DWR can't communicate.

1           We -- We're very worried about how they're  
2 going to communicate. And there don't seem to be any  
3 Operational Plans in the SEIR/EIS. And we think we'll  
4 be injured by the poor communication from DWR, DWS and  
5 Reclamation.

6           The common scheduling of the individual pumps  
7 will need to manage the WSC. Again, that's the water  
8 levels and the volume and the BTF and the CC -- and the  
9 Clifton Court Forebay.

10           There are going to be common scheduling to  
11 decide who gets what. They don't know what that, is as  
12 far as I can read. I have not found it. It's going to  
13 affect water levels. It's going to affect Clifton  
14 Court's diversion.

15           Liquefaction. Available subsurface  
16 information indicates potential for liquefactions, this  
17 along all the sides of existing Clifton Court Forebay.  
18 We're worried about our tenants.

19           For the purpose of conceptual design, it's  
20 assumed that this analysis is valid for the Byron Court  
21 Forebay. We would hope that liquefaction does not --  
22 that -- that CCF and the Byron Tract Forebay will be  
23 equally taken care of so that liquefaction does not  
24 occur, and things will be brought up to the 2020, not  
25 1960s.

1           The flood protection, you're telling me -- Can  
2 I do flood protection? Is that -- What do I do on the  
3 flood protection? Because I'm talking about -- I'm not  
4 talking about seepage here. I'm talking about  
5 desiccation of the -- of not meeting the flood  
6 standards. This is nothing to do with seepage.

7           CO-HEARING OFFICER DODUC: Mr. Mizell, are you  
8 making an objection?

9           MR. MIZELL: This is the section that you  
10 revised your ruling on right just before the  
11 presentation of direct, so we would object to oral  
12 testimony on this section.

13          MS. WOMACK: If it doesn't concern seepage,  
14 though, is it . . .

15          CO-HEARING OFFICER DODUC: I believe this was  
16 part of . . .

17          If you can identify where it is, it might be  
18 helpful to us.

19          MS. WOMACK: Oh. I'm on Page 9. I'm sorry.

20          CO-HEARING OFFICER DODUC: What line, please?

21          MS. WOMACK: Flood protection. Starting with  
22 16, where the DWR states (reading):

23                   "The conveyance facilities are  
24                   considered to be critical lifeline  
25                   facilities for the State of California."

1 CO-HEARING OFFICER DODUC: I believe we struck  
2 Page 9, Line 15 through Page 10, Line 3.

3 MS. WOMACK: Okay. So -- But that was for --  
4 That was for seepage. This is not seepage.

5 CO-HEARING OFFICER DODUC: Clarify, attorney?

6 MR. DEERINGER: Those lines of testimony were  
7 stricken in their entirety regardless of subject  
8 matter.

9 MS. WOMACK: Not to do with seepage. Got it.

10 Okay. We'll go into operations.

11 There -- According to the SEIR/EIS, there's no  
12 new operations, and we are very worried about this.

13 On September 19th, I got a call from my tenant  
14 farmer telling me that he's unable to use his water  
15 rights due to DWR/DFD operations.

16 Our tenant was told by a DFD employee that DFD  
17 was replacing the 50-year-old leaking drainage pipes  
18 from the 12th of September to the 14th.

19 It should be noted that the crew in the field  
20 didn't agree that this would happen this amount of  
21 time.

22 It should be noted that Clifton Court L.P. was  
23 never contacted, nor have we signed anything.

24 Our farmer tried to be helpful and uncoupled  
25 on our side the drainage ditches. And we would not

1 have advised that. So, without any authorization from  
2 CCLP, the drainage ditches were taken out.

3 My farmer thought he would begin watering.  
4 He's putting in his next crops, September 17th. As of  
5 today, they are still not in. We might get one pipe in  
6 soon.

7 This is . . . He wasn't consulted from DFD  
8 as to when we would replace this pipe, and we were not  
9 notified, CCLP, or I think we should have had a  
10 signature.

11 We'd write this off to bad luck, except this  
12 leaking pipe debacle has been going on for well over a  
13 year.

14 This is the most recent example of how DWR/DFD  
15 operations affect SWP property. That's CCLP water  
16 rights.

17 Apparently, this team will continue operations  
18 with CWF. And I wanted to give a brief example of how  
19 this has taken place.

20 So if I could have CCLP-40. We start with a  
21 letter from DWR/DFD telling us that we -- First of  
22 all -- Oh, I'll wait until it comes up.

23 (Exhibit displayed on screen.)

24 MS. WOMACK: Could you shrink that a little?

25 (Exhibit displayed on screen.)



1 MS. WOMACK: First of all, I'm told that I met  
2 with this person. I never met with them. And what  
3 bothered us, too, is, this is not DWR/DFD letterhead.

4 So we received this saying we met with them  
5 and we agreed to replace the -- and fix the leaking  
6 drainage pipes on DWR property.

7 And then temporary.

8 And then if we go to CCLP-65, we write a  
9 letter back as soon as we receive it and say, what are  
10 you talking about? The leaky drainage pipe are their  
11 property and it's their responsibility to fix.

12 And as my father so smartly said while we were  
13 waiting, we don't have a right-of-way to be on this  
14 property.

15 And so after this -- This is a year ago.

16 After that, the 30th -- Could we go to  
17 CCLP-67.

18 So, you know, we basically say --

19 (Exhibit displayed on screen.)

20 MS. WOMACK: This -- Oh, that must be --

21 CO-HEARING OFFICER DODUC: I'm sorry. I think  
22 you mean 66.

23 MS. WOMACK: Oh. Yes, I did. I'm so sorry.  
24 I'm trying to hurry this along.

25 (Exhibit displayed on screen.)

1 MS. WOMACK: So, 66, we get a letter back --  
2 now it's from DWR -- saying -- Oh, this is the person I  
3 was supposed to deal with, because I can't -- DW -- DFD  
4 won't deal with me.

5 (Reading):

6 ". . . Be advised all drainage system  
7 equipment located on DWR property,  
8 specifically what you described as 'the  
9 south bank of Clifton Court Forebay,' is  
10 in working order."

11 There's only one drainage pipe that -- there's  
12 two but right at that one location. That's it.

13 So they've been leaking since August 10, 2017.  
14 Our last letter -- Oh, no, they weren't -- Sorry.

15 August 30th, they say they're not leaking.

16 And so now -- The next page is 67 -- CCLP 67.

17 (Exhibit displayed on screen.)

18 MS. WOMACK: This -- They decided to try to  
19 fix it. This was taken on my son's birthday, July  
20 31st, 2018.

21 And I say it shows it's leaking. There's a  
22 little bit of leaking, but it also shows the seepage.  
23 That is seepage. I have other pictures I'll show in a  
24 minute, but that's -- that's seepage from underneath.

25 But this is -- were the pipes that are 50

1 years old. They need replacing. I don't know why they  
2 stopped in July. Just, all of a sudden, we started up  
3 again. But, you know -- Then on -- Let's see.

4 Then if we go to . . .

5 Let's see. Then if we go to September 12th,  
6 2018, DFD begins work without contacting landowner and  
7 tenant.

8 (Reading):

9 "Has the tenant farmer uncoupled the  
10 drainpipe on the CCLP side?"

11 My farmer thought that it had been approved.

12 We're alarmed by the lack of legal  
13 communication and coordination. And we're also alarmed  
14 that now -- That was on the 12th. They're at the 28th.  
15 That's 16 days not being able to use our year-round  
16 water right.

17 My farmer -- It's going to rain this weekend.

18 On the 15th of September, we wrote to  
19 Catherine Cavanaugh, who we've been told to write.

20 And . . .

21 CCLP-68. Sorry. Thank you.

22 (Exhibit displayed on screen.)

23 MS. WOMACK: And we also sent a letter. We  
24 cc'd that same letter to Karla, the -- the -- the head.

25 So, this basically says, these are your pipes.

1 This -- We've had this problem for a year.

2           You know, I took a picture of leaking pipes on  
3 the 31st.

4           You take it out during the heart of our  
5 farming time. We can't do this. I don't know if my  
6 farmer is going to be able to put in his crops or not.

7           I have a letter from him and another picture  
8 of the uncoupled things. He -- This is affecting his  
9 livelihood. And I don't know when this is going to be  
10 finished and fixed so that he can actually farm.

11           Once it starts raining, it could be hundreds  
12 of thousand dollars worth of damage. And when I -- I  
13 spoke with Miss Cavanaugh and I said that. She said,  
14 "Well, you can sue us."

15           This is -- This is -- I just -- It makes me  
16 cry. My farmers are up against enough without having  
17 to not be able to get their -- their -- their -- When  
18 you irrigate, you have to drain. You can't irrigate  
19 otherwise. That's how you do it.

20           My dad says that I'm a mad science. My dad  
21 knows all this. I don't know if other people  
22 understand this much. I know you do, Tam, because  
23 you're an Engineer.

24           But, basically, what's happening is . . . that  
25 we're being ignored. And we're -- we're just -- Why

1 would you take out in the middle of summer? Why would  
2 you take out your irrigation? Why wouldn't you ask a  
3 farmer? Why wouldn't you get permission from the  
4 landowner?

5 I'm just about done. I'm so sorry. It just  
6 upsets me --

7 (Timer rings.)

8 MS. WOMACK: -- so much.

9 Anyway, our main thing is, if DWR/DFD is  
10 unable to fix a simple leaking drainage pipe in a  
11 professional, competent, timely manner, how are they  
12 going to fix the problems come up -- that come up with  
13 this huge project? This is -- This is a 1950s prob --  
14 you know, 1960.

15 This is a simple drainage ditch.

16 CO-HEARING OFFICER DODUC: Miss Womack, I need  
17 you to wrap up.

18 MS. WOMACK: I -- I -- I am. I . . .

19 Let's see. They -- So they want CCLP to  
20 believe their control structure in the South Tunnels,  
21 and the South Tunnel out-split structure, and the  
22 complex WaterFix BTO operations, and all these other  
23 things that they're dreaming about will not injure  
24 CCLP's water rights or our 1955 contract with the  
25 Department of Interior.

1           We don't believe it. Petitions -- We don't  
2 believe Petitioners are able to create and maintain  
3 their CWF Project without injuring CCLP water rights.

4           We believe Petitioners continue to inverse --  
5 continued inverse condemnation, as shown in our  
6 exhibits, will only increase if they're allowed to take  
7 our move, our diversion, in the DMC intake.

8           We wish to be made whole. We ask that as a  
9 part of a condition of the permit term: The  
10 Petitioners be required to compensate CCLP for the loss  
11 of use of its property and corresponding damages  
12 resulting from the CWF Project as set forth by CCLP or,  
13 in the alternative, purchase all of CCLP's property.

14           This should be required before DWR begins the  
15 Project so that DWR can determine how to operate the  
16 CWF without injuring CCLP water rights and contract --  
17 and our contract with the Department of the Interior.

18           Thank you.

19           CO-HEARING OFFICER DODUC: All right. Thank  
20 you.

21           MS. WOMACK: Did you want to say anything,  
22 dad?

23           CO-HEARING OFFICER DODUC: You did use up your  
24 time as well as his.

25           MS. WOMACK: Okay. That's fine.

1 CO-HEARING OFFICER DODUC: If Mr. Moore would  
2 like to make a brief addition?

3 MS. WOMACK: Are you okay?

4 He's okay. Thank you. Thank you so much. I  
5 appreciate the extra time.

6 CO-HEARING OFFICER DODUC: That takes us up to  
7 the noon hour.

8 I had previously received estimates for cross  
9 of 10 minutes by State Water Contractors and DWR.

10 Is that still the case?

11 MR. MIZELL: Based upon this morning's  
12 argument and rulings, I believe we'll need more than  
13 that in order to conduct cross-examination today that  
14 covers the scope of the surrebuttal testimony.

15 CO-HEARING OFFICER DODUC: And how much time  
16 do you anticipate needing?

17 MR. MIZELL: I would be able to give you a  
18 more precise answer after the lunch hour, but I would  
19 initially anticipate 40 minutes.

20 CO-HEARING OFFICER DODUC: All right. So we  
21 are going to have to ask you to come back after lunch.

22 Before we break for lunch, though, since I see  
23 Mr. Wirth here -- and I'm desperate to see his  
24 photos -- I had originally received no request for  
25 cross-examination of Mr. Wirth.

1           If that is still the case, then I'll allow him  
2 to go before we take our lunch break. If that is not  
3 the case, then he, too, will have to return after  
4 lunch.

5           MS. ANSLEY: I do have some objections that  
6 I'm happy to lodge and then we can go to lunch.

7           But I do not have questions. And depending on  
8 whatever testimony stays in, obviously, we don't need  
9 to question Mr. Moore.

10          CO-HEARING OFFICER DODUC: Okay.

11          MS. ANSLEY: So however you'd like to proceed.

12          CO-HEARING OFFICER DODUC: Hold on. Let me  
13 hear from Miss Des Jardins first.

14          MS. DES JARDINS: Yes.

15           I was not here. And I did have some cross for  
16 the witnesses today. I just wanted to ask for 10  
17 minutes of -- 10 minutes, if needed, for Miss Womack.  
18 I don't know if I'll need it.

19          CO-HEARING OFFICER DODUC: That was 10 minutes  
20 for Miss Womack.

21          MS. DES JARDINS: Yes.

22          CO-HEARING OFFICER DODUC: Do you have any  
23 cross for Mr. Wirth?

24          MS. DES JARDINS: I don't believe I do.

25          CO-HEARING OFFICER DODUC: Okay. Let's



1 hear -- Miss Womack, Mr. Moore, if you would like to  
2 leave for lunch, please do so.

3 MS. WOMACK: All right.

4 CO-HEARING OFFICER DODUC: We will hear -- ask  
5 you to come back for cross-examination after our lunch  
6 break.

7 MS. WOMACK: Okay. Can you do that, dad? Can  
8 you hang out a little bit longer?

9 MR. MOORE: Okay.

10 CO-HEARING OFFICER DODUC: Miss Ansley, let's  
11 hear your objection to Mr. Wirth's testimony.  
12 Hopefully, it's not to his wonderful photos.

13 And, Miss Meserve, if you could please come up  
14 and be prepared to respond.

15 MS. ANSLEY: Yes. And I've endeavored to cut  
16 it down. I tried to read the transcript from  
17 Wednesday. Obviously, we tried to listen. So I  
18 apologize.

19 CO-HEARING OFFICER DODUC: Microphone lower,  
20 please, Miss Ansley. Thank you.

21 MS. ANSLEY: And I think that the gist of my  
22 objection would be looking back at your September 10th,  
23 2018, ruling, would be that, in large part, Mr. Wirth's  
24 testimony is repetitive of his testimony in the  
25 rebuttal phase, which was SOS-80, where he provided

1 extensive testimony on Project changes in the  
2 Administrative Draft EIR, which included noise impacts  
3 in the Administrative Draft SEIR.

4           And so, again, what we have is Mr. Wirth  
5 providing testimony on impacts in the Administrative  
6 Draft SEIR and also including, specifically, also noise  
7 impacts from the ADSEIR.

8           The second level of my objections -- That  
9 would be my first objection, that I find this to be  
10 repetitive testimony and merely a continuation of  
11 impacts that he alleged in SOSC-80. I believe that  
12 there are plenty of cites throughout his testimony to  
13 SOSC-80 that makes my point for me.

14           The second --

15           CO-HEARING OFFICER DODUC: My understanding is  
16 that he was also responding to Part 2 Rebuttal  
17 testimony of Dr. Earle.

18           MS. ANSLEY: Yes. And that's what I'd like to  
19 get to right now, just briefly.

20           And I have cut this down to focus specifically  
21 on Avoidance and Mitigation -- Minimization Measure 20,  
22 which is Page 3, Line 24 through Page 9, Line 16.

23           That section is a section entitled "Avoidance  
24 and Minimization Measure 20 is Ineffective."

25           He does begin this section by saying that

1 Dr. Earle and the ADSEIR both heavily rely on the  
2 conclusions of the FEIR/S.

3           The bulk majority of the testimony on the  
4 pages I just cited, however, are a criticism of AMM 20  
5 sort of independent and free, for the most part, of any  
6 changes in the ADSEIR. They are a critique of AMM 20  
7 which has not changed itself throughout Part 2.

8           There are a couple small exceptions in there  
9 where he does reference the Construction Schedule of  
10 the Conceptual Engineering Report. But, again, the  
11 bulk of the critique of AMM 20 could have been brought  
12 at any time in Part 2.

13           So that would be, I would consider, outside  
14 the scope of surrebuttal and going specifically to  
15 noise impacts and impacts of the ADSEIR. I would call  
16 that repetitive with his SOSC-80. And I'm sorry if I  
17 garbled that because I wasn't quite ready to go right  
18 now.

19           CO-HEARING OFFICER DODUC: No. Actually, I  
20 understood that.

21           MS. ANSLEY: Okay. Thank you.

22           CO-HEARING OFFICER DODUC: Miss Meserve, your  
23 response, please.

24           MS. MESERVE: Thank you.

25           The testimony is within the -- within the

1 scope of the September 10th ruling. It is responding  
2 to new information in both the Supplemental Draft EIR  
3 as well as new information in the CER which was first  
4 provided in DWR's Part 2 Rebuttal testimony.

5           Mr. Wirth was careful actually to try to avoid  
6 being repetitive of prior testimony and simply to refer  
7 back to that in citations with respect.

8           So all of the testimony is trying to focus on  
9 really what are Items 1 and 2 in the September 10th  
10 order, and which includes, as you mentioned, the  
11 testimony of Dr. Earle.

12           And the reason why this testimony is  
13 bringing -- is appropriate now is because DWR has made  
14 some footprint changes to the Project that change where  
15 impacts would occur.

16           And the focus of his testimony is to Sandhill  
17 Crane, although some of these things would be  
18 applicable to any wildlife, which is certainly a Part 2  
19 issue.

20           And the SEIR -- The Admin Draft SEIR  
21 repeatedly points to AMM 20 as being the means by which  
22 these impacts would be avoided and, our parlance here,  
23 would not be unreasonable.

24           And the SE -- the Admin Draft SEIR does not  
25 attempt to try to analyze the different changes on the

1 landscape, including some really significant changes  
2 and increases in certain types of Crane habitat in  
3 relation to the noises and other impacts associated  
4 with the Project.

5           So, while some of the impacts of the Project  
6 may remain the same, the testimony is centered around  
7 the idea that the lands -- the impacts on the  
8 particular landscape are different and pointing to  
9 DWR's failure to analyze those in the SEIR so that they  
10 can be understood in this hearing and, in addition, the  
11 continued pointing to AMM 20, which has not been  
12 revised at all, as the means by which those impacts  
13 would be avoided.

14           So, I don't think it's the burden on -- on  
15 Protestants at this point to try to parse out every  
16 single little thing that may be different.

17           And we, in fact, are responding to this new  
18 information and the -- and how the mitigation and  
19 avoidance is ineffective.

20           Thank you.

21           CO-HEARING OFFICER DODUC: Thank you,  
22 Miss Meserve.

23           That actually was my understanding when I read  
24 Mr. Wirth's testimony with respect to AM -- AMM 20,  
25 that he was applying it to the new footprint in the

1 ADSEIR.

2 MS. ANSLEY: And I guess, in response, I would  
3 argue that that is a -- I found this to be a pretty  
4 thin hook.

5 I did not move to strike Part 2 of his  
6 testimony, which is the ADSEIR fails to address  
7 substantial changes in the footprint.

8 But if you read Section 3 of his testimony,  
9 after his introductory sentence, which he says relies  
10 heavily on the conclusions of the SEIR, the majority of  
11 the remaining testimony regarding AMM 20 is critiques  
12 of AMM 20 that are independent of the ADSEIR because  
13 they are unchanged throughout the FEIR.

14 CO-HEARING OFFICER DODUC: And I believe that  
15 was the point.

16 MS. ANSLEY: That could be the point he's  
17 making but what he is doing now is providing a further  
18 critique of AMM 20 that could have been provided at any  
19 time in Part 2. And I'm happy to rest on that.

20 And then I'd also like to add another  
21 housekeep matter for just the -- for consideration for  
22 the daily schedule -- the schedule for today.

23 I'm also prepared today to lodge some very --  
24 some short -- two short objections to Dr. Paulsen's  
25 testimony. We'd like to conclude that up today.

1 I'm not sure -- I guess that maybe that  
2 Mr. Emrick does have to come back but I did want to  
3 offer that while I'm here today as well.

4 CO-HEARING OFFICER DODUC: All right.  
5 Mr. Herrick.

6 MR. HERRICK: John Herrick for South Delta  
7 parties. Sorry to bother you.

8 I had a conversation with DWR's counsel  
9 earlier. Their understanding was that only they would  
10 be able to cross DWR witnesses Dr. Chilamkuri and  
11 Mr. Bednarski, rather than everybody else could cross.  
12 There are a number of people that were expecting to  
13 cross those witnesses, too.

14 I just wanted to get clarification on that.

15 CO-HEARING OFFICER DODUC: Who's "they"? You  
16 said you talked to DWR and . . .

17 MR. EMRICK: I think it's that CCLP would be  
18 limited to cross --

19 CO-HEARING OFFICER DODUC: Correct.

20 MR. EMRICK: -- is DWR's position.

21 CO-HEARING OFFICER DODUC: Correct.

22 MR. HERRICK: Other people can't cross.

23 CO-HEARING OFFICER DODUC: Well, I guess we'll  
24 discuss it now. I was going to discuss it later.

25 Now --

1 MR. HERRICK: We can do it after lunch.

2 CO-HEARING OFFICER DODUC: All right. How --  
3 Yeah. Let me just remind everyone that allowing CCLP  
4 to continue this line of inquiry was a special  
5 accommodation made to Miss Womack to ensure that CCLP's  
6 due process rights were preserved.

7 So the focus of Dr. Chilamkuri and  
8 Mr. Bednarski's testimony was solely on CCLP's water  
9 rights and impact to CCLP's water right.

10 I believe that, then, would focus the  
11 cross-examination to that -- only that conducted by  
12 CCLP because it is their water rights that is at stake.

13 Now, if other parties wish to offer a proof as  
14 to their standing with respect to this matter, what  
15 your property interest is in CCLP's very specific water  
16 rights, you may try to make that demonstration.

17 But, otherwise, cross-examination of  
18 Mr. Bednarski and Dr. Chilamkuri would be limited to  
19 CCLP and anyone else who can demonstrate to us that  
20 they have a property interest that is relevant to  
21 cross-examination about CCLP's site-specific water  
22 rights.

23 MR. HERRICK: John Herrick again.

24 I'm not sure I could make a proper -- My point  
25 is only that, when the -- when Dr. Chilamkuri discusses



1 water quality analyses in the South Delta, that we have  
2 an interest in challenging or examining those  
3 conclusions and the location of the conclusions.

4 CO-HEARING OFFICER DODUC: That analysis by  
5 Dr. Chilamkuri, again, is specific only to the extent  
6 that it impacts CCLP's water rights.

7 Everyone else has had the chance and plenty of  
8 opportunity -- and you did -- conduct cross-examination  
9 of these witnesses.

10 We brought them back specifically to  
11 accommodate Miss Womack and only Miss Womack -- and  
12 Mr. Moore, I'm sorry -- with respect to potential  
13 impacts to their water rights.

14 MS. MESERVE: Good afternoon. Yes.

15 The way I understood it -- and that's why  
16 we're discussing it now -- is that, in particular,  
17 Mr. Bednarski's testimony provides a long list of ways  
18 in which the water rights of CCLP would be addressed by  
19 DWR.

20 And I believe that does raise concerns by  
21 other legal users of water who are participating in  
22 Part 2 to the extent there's changes as we've discussed  
23 before, and there's some representation.

24 So that's of interest to all diverters within  
25 the Delta if there's representations as to what kinds

1 of mitigation would be offered to CCLP and whether --  
2 how those would work and whether those would apply to  
3 other diversions in the Delta.

4           So I guess I'm asking that -- I think we could  
5 ask our questions to be specific, obviously, to the  
6 testimony, but I think that there is some room for  
7 questions that are direct that, as much as CCLP has  
8 similar interests as other water users in the Delta  
9 that may have their diversions disturbed by these  
10 activities, seems that those questions should be able  
11 to be asked as well, because this is new and different  
12 testimony and --

13           CO-HEARING OFFICER DODUC: As specific to  
14 CCLP.

15           MS. MESERVE: It is --

16           CO-HEARING OFFICER DODUC: Miss Des Jardins is  
17 up next.

18           MS. MESERVE: The way I understand it, it's  
19 not -- it's not -- especially with the water quality  
20 effects, they're using information that is broader --

21           CO-HEARING OFFICER DODUC: Yes.

22           MS. MESERVE: -- geographically.

23           CO-HEARING OFFICER DODUC: And that  
24 information everyone has had opportunity to examine and  
25 cross on.

1           Again, we brought them back specifically to  
2 address CCLP's issue.

3           MS. DES JARDINS: This is Dierdre Des Jardins  
4 with California Water Research.

5           The direct testimony which is being presented  
6 is not presented as answers to CCLP's questions. It  
7 goes significantly beyond.

8           CO-HEARING OFFICER DODUC: Then Mr. Emrick  
9 will have the opportunity to conduct his cross.

10           But to the extent that it goes beyond CCLP's  
11 specific issues, Mr. Emrick, I think, will be quite in  
12 his right to bring up those issues and make any  
13 objection he or Miss Womack deem appropriate.

14           MS. DES JARDINS: And the other issue I would  
15 have is that this is new information. It's direct  
16 testimony.

17           The original September 10th ruling was that  
18 they would bring these witnesses back for  
19 cross-examination. It was then clarified that direct  
20 testimony would be presented.

21           This direct testimony provides new  
22 information --

23           CO-HEARING OFFICER DODUC: Specific --

24           MS. DES JARDINS: -- that was not in the  
25 testimony --

1 CO-HEARING OFFICER DODUC: Specific to CCLP  
2 and CCLP's water rights.

3 MS. DES JARDINS: To the extent --

4 CO-HEARING OFFICER DODUC: To the extent that  
5 you can demonstrate a property interest in CCLP's water  
6 rights, you may try to do so now.

7 MS. DES JARDINS: Then I would like to move  
8 for the consideration that any information in -- any  
9 information that is provided in this direct testimony  
10 or in cross-examination be used by the Board solely for  
11 the consideration of CCLP's water rights and not for  
12 any other consideration in the Petition because  
13 cross-examination by any other parties is being denied.

14 CO-HEARING OFFICER DODUC: All right.  
15 Mr. Emrick, do you have anything to add before I move  
16 on?

17 MR. EMRICK: I think what Ms. Des Jardins --  
18 Des Jardins just stated is -- is -- should be, I think,  
19 our understanding as well, is that if there isn't going  
20 to be additional cross-examination, that the  
21 information would be only used with respect to CCLP's  
22 water rights.

23 CO-HEARING OFFICER DODUC: Water rights. That  
24 was my understanding.

25 Anything you wish to add, Mr. Mizell, since

1 we're talking about your witnesses?

2 MR. MIZELL: The only piece of information I  
3 would add is that the testimony of Mr. Bednarski with  
4 regards to the Mitigation Measures does nothing to  
5 modify any of the Mitigation Measures previously set  
6 forth in our testimony for any other water rights  
7 users.

8 So I believe an agreement -- or at least to  
9 line up with the rationale you've just explained as to  
10 how to delineate between what we're going to hear  
11 today, what we've heard before, and -- It has not  
12 changed any other information that other parties have  
13 the opportunity to cross-examine.

14 CO-HEARING OFFICER DODUC: All right. Thank  
15 you, Mr. Mizell.

16 With that, then, I think we're all of the same  
17 understanding with respect to Mr. Bednarski and  
18 Dr. Chilamkuri's testimony and cross-examination by  
19 CCLP this afternoon.

20 If there are still no other cross-examination  
21 planned for Mr. Wirth, then I will overrule  
22 Miss Ansley's objection and ask Mr. Wirth to present  
23 his direct upon, then, we may excuse him and take our  
24 lunch break.

25 MS. WOMACK: I'd like to take my dad out to

1 lunch, so what time is the break over?

2 CO-HEARING OFFICER DODUC: Mr. Wirth, will you  
3 be wrapping up in around, say, 12:30?

4 WITNESS WIRTH: I think so, yes.

5 CO-HEARING OFFICER DODUC: All right. Then  
6 please be back at 1:30.

7 MS. WOMACK: Thank you so much.

8 WITNESS WIRTH: Where should I sit?

9 CO-HEARING OFFICER DODUC: Anywhere you want.

10 (Pause in proceedings.)

11 CO-HEARING OFFICER DODUC: Good afternoon,  
12 Mr. Wirth.

13 I always welcome people back but, in your  
14 special case, I especially mean it. Welcome back.

15 WITNESS WIRTH: Appreciate that. It was a bit  
16 of a challenge to get this together and I stayed up  
17 until about 3 o'clock in the morning putting these  
18 pictures together.

19 CO-HEARING OFFICER DODUC: Oh, no.

20 WITNESS WIRTH: So, it was a little bit of  
21 work.

22 MS. MESERVE: All right. Thank you for  
23 accommodating Mr. Wirth.

24 This testimony is presented on behalf of Save  
25 Our Sandhill Cranes.

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Sean Wirth,

called as a witness by the Save Our Sandhill Cranes, having previously been duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION BY

MS. MESERVE: And, Mr. Wirth, is SOSC-85 a true and correct copy of your written testimony?

WITNESS WIRTH: Yes, it is.

MS. MESERVE: And do you have any corrections to that testimony?

WITNESS WIRTH: I do. Page 2, Line 27, "same" should be "some."

On Page 9, Line 22, "SOSC-19" should be "SOSC-16."

MS. MESERVE: Then I think we'll want to go ahead and pull up that PowerPoint, if you could, Mr. Long. It's SOSC-86, I believe.

(Exhibit displayed on screen.)

MS. MESERVE: And, Mr. Wirth, in preparing for your testimony, did you read portions of the Administrative Draft Supplemental Environmental Impact Report as well as the 2018 CER and the other materials cited in your testimony?

1 WITNESS WIRTH: I did.

2 MS. MESERVE: And then once your PowerPoint  
3 comes up, if you could please summarize that testimony.

4 (Exhibit displayed on screen.)

5 WITNESS WIRTH: So that's a very closeup  
6 picture of the Sandhill Crane's head. What many people  
7 don't realize is that the red there is not the color of  
8 the feather. It's the color of the skin.

9 So I was tempted after putting that picture up  
10 to call my presentation, instead of the surrebuttal  
11 testimony, the Emperor Still Has No Clothes. But I  
12 thought that would be inappropriate so I stuck with  
13 something more official.

14 For the purpose of this testimony, I would  
15 like to use the word "Final" for all references to the  
16 Final EIR/EIS and use the word "Supplemental" for  
17 references to the Administrative Draft Supplemental to  
18 make it go faster and less tongue-tieing.

19 Second slide, please.

20 (Exhibit displayed on screen.)

21 WITNESS WIRTH: So my testimony states that  
22 the Supplemental fails to address substantial changes  
23 in the Project footprint, and it relies very, very  
24 heavily on the contested Final, legally contested,  
25 contested throughout the entire testimony of people



1 regarding the Crane.

2           And I want to draw people's attention to the  
3 second bullet point just to remind you what we're  
4 dealing with here. So no take species.

5           Next slide, please.

6           (Exhibit displayed on screen.)

7           WITNESS WIRTH: Relying on a flawed and  
8 legally challenged Final for concluding that the  
9 Supplemental's output is akin to a house of cards. The  
10 reason is a type of circular logic.

11           (Reading):

12           "The justification used for a new  
13 conclusion are as flawed or more flawed  
14 than the original conclusion that it is  
15 based upon (sic), but claims are made  
16 repeatedly (sic) that the original  
17 conclusions now support the new  
18 conclusions."

19           Which I found to be very problematic.

20           Next slide, please.

21           (Exhibit displayed on screen.)

22           WITNESS WIRTH: So using the example of the  
23 Greater Sandhill Crane as treatment in the Final and  
24 the Supplemental will illustrate my difficulties in  
25 this particular claim.

1           So AMM 20 is a flawed underpinning for the --  
2 for the Supplemental for Sandhill Cranes.

3           The first element of that AMM 20, the first  
4 measure, is a measure about noise and disturbance  
5 avoidance and minimization. It relates to timing. And  
6 it's supposed to minimize construction during the Crane  
7 wintering season, but only if it's practicable in light  
8 of the Project schedule and logistical considerations.

9           Next slide, please.

10           (Exhibit displayed on screen.)

11           WITNESS WIRTH: So the exhaustive qualifiers  
12 and non-binding language of this measure make it  
13 aspirational at best and, as a result, it provides very  
14 little help for dealing with the new impacts identified  
15 for the Greater Sandhill Crane in the Supplemental.

16           That's a little Meadowlark seen on the post.

17           Next slide, please.

18           (Exhibit displayed on screen.)

19           WITNESS WIRTH: Looking at the second measure  
20 in AMM 20, we see equally problematic language. There  
21 is already construction planned, as we see from the  
22 Conceptual Engineering -- Conceptual Engineering  
23 Schedule -- actually, Conceptual Construction Schedule.

24           Looking to that, we already see there is  
25 planned winter construction in areas where Cranes are

1 currently extant. There's no actual requirement in  
2 this second measure that no new disturbance occur when  
3 Cranes are here, unless it is feasible.

4           So, once again, we are left with non-binding  
5 language that is aspirational at best.

6           Next slide, please.

7           (Exhibit displayed on screen.)

8           WITNESS WIRTH: So basically these first two  
9 measures are duds. There's nothing in these measures  
10 that provides any assurance that the impacts described  
11 in the Final were adequately addressed. And,  
12 similarly, there's no assurance that it will be  
13 addressed in the Supplemental.

14           Next slide, please.

15           (Exhibit displayed on screen.)

16           WITNESS WIRTH: So we mod the AMMs to AMMs for  
17 the Greater Sandhill Crane foraging.

18           The first measure here is also to the extent  
19 practicable and relies on water conveyance facility  
20 final design to minimize pile driving and general  
21 construction-related loss of Greater Sandhill Crane  
22 habitat.

23           Next slide, please.

24           (Exhibit displayed on screen.)

25           WITNESS WIRTH: But it appears that Project

1 proponents felt that it was not practicable to minimize  
2 the loss of foraging when the northern shaft was moved  
3 south in the Supplemental and this results in  
4 significant issues with sight lines for foraging and  
5 roosting -- for roosting Cranes. The enormous scale of  
6 that shaft, its design essentially, creates these  
7 problems and serious issues for sight lines.

8           We're one slide behind so we need to move one  
9 slide forward.

10           (Exhibit displayed on screen.)

11           WITNESS WIRTH: Okay. Next one, please.

12           (Exhibit displayed on screen.)

13           WITNESS WIRTH: The next measure dealt with --  
14 dealt with noise.

15           There's a little comment there (reading):

16                   "Wasn't there supposed to be no  
17 winter construction in Crane season?"

18           That's not the case.

19           Noise was to be limited from one hour after  
20 sunrise to one hour before sunset.

21           Actually, one hour after sunrise.

22           The visual effects of these noise barriers on  
23 Sandhill Cranes are unknown according to that measure.  
24 So all other options to reduce noise will be  
25 implemented before installing noise barriers in close

1 proximity of Crane habitat.

2 Next slide, please.

3 (Exhibit displayed on screen.)

4 WITNESS WIRTH: The Greater Sandhill Crane's a  
5 "no take" species. There would likely need to be an  
6 extraordinary amount of noise barriers to avoid take  
7 from birds flushing off of their forage sites due to  
8 construction-related disturbances and hitting a power  
9 line during construction during the winter.

10 Next side, please.

11 (Exhibit displayed on screen.)

12 WITNESS WIRTH: AMM 20 is flawed in its  
13 individual measures as well as a package of measures.

14 Considering the AMMs discussed thus far, we  
15 see that:

16 There is no enforceable requirement to avoid  
17 construction during the Crane wintering season.

18 Construction is already planned during the  
19 Crane wintering season.

20 There's no enforceable requirement to complete  
21 construction projects before, or start new construction  
22 during the Crane wintering season.

23 Also, the water conveyance facility design for  
24 both the intake in the Stone Lakes Roosting Complex and  
25 the new placement of the northern shaft on Staten

1 Island indicate that it was not practicable to avoid  
2 and minimize impacts to Cranes by way of project  
3 design. Pile-driving and general construction noise is  
4 required to be limited near Crane wintering areas at  
5 night for noise exceeding 50 decibels. No existing  
6 measure for roosting -- I mean for foraging. Sorry.

7 And the experimental use of noise barriers  
8 will be used as a last option.

9 Next slide, please.

10 (Exhibit displayed on screen.)

11 WITNESS WIRTH: So that brings up the question  
12 (reading):

13 "Are sound barriers our only  
14 available solution?"

15 So we see winter construction is planned and  
16 is going to occur when the Cranes are here.

17 Daytime noise limitations aren't there, only  
18 nighttime noise limitations, so it will be a definite  
19 impact on foraging.

20 There's a correction there, too, for the blue  
21 line. There's only one "to do" instead of two.

22 The noise barriers will have to do the heavy  
23 lifting of dealing with the construction disturbances  
24 and these noise activities.

25 The measure for having enhanced foraging

1 opportunities hopefully will keep the Cranes in their  
2 wintering ground away from the loudest sounds.

3 But, essentially, the only thing they offer  
4 with the flexible language of the other measures is  
5 these noise barriers.

6 Next slide, please.

7 (Exhibit displayed on screen.)

8 WITNESS WIRTH: So Staten Island is an example  
9 of what using these sound barriers would look like, an  
10 election to look. Not "like like," but "look like."

11 For noise in general, disturbance from  
12 construction, the Staten Island performance standard is  
13 basically the same as the design for conveyance  
14 facilities measure, which includes the sound barriers.

15 Next slide, please.

16 (Exhibit displayed on screen.)

17 WITNESS WIRTH: Is it possible to zoom in on  
18 the Staten Island part of that? That would be the --  
19 about the lower third.

20 (Exhibit displayed on screen.)

21 WITNESS WIRTH: Keep going down.

22 (Exhibit displayed on screen.)

23 WITNESS WIRTH: Maybe it's not.

24 (Exhibit displayed on screen.)

25 WITNESS WIRTH: There you go.

1 I was somewhat shocked when I saw this  
2 picture. It was the first rendering that I was aware  
3 of for the noise contours for Staten Island. You can  
4 see how extensive they are.

5 I tried to cut them out and move them around  
6 to see how much of an impact it was on landscape, and  
7 it appeared to me to be about a third of the island,  
8 which is substantial.

9 But presumably they're going to be using these  
10 sound barriers to minimize this sound.

11 Next slide, please.

12 The problem with that --

13 (Exhibit displayed on screen.)

14 WITNESS WIRTH: -- is that --

15 I'll wait till it turns down.

16 -- the impact of these sound barriers on the  
17 sight lines and visibility issues for Cranes aren't  
18 known. So presumably they're going to stay some  
19 distance away from these sound barriers.

20 There's no analysis to indicate how far that  
21 might be and quite possibly the amount of land not  
22 usable on Staten Island would be the same as if there  
23 were no sound barriers there at all. They would stay  
24 as far away from those barriers as the sound would be  
25 issues.



1           So that's -- that's very concerning and was  
2 not addressed at all.

3           There was no analysis whatsoever for the  
4 changes on Staten Island, either for the northern shaft  
5 or for the changes in the safe work harbor areas.

6           Next slide, please.

7           (Exhibit displayed on screen.)

8           WITNESS WIRTH: This is a reminder that no  
9 take is the bar here. It's a very high bar. It's an  
10 absolute.

11           And this issue with the sound barriers brings  
12 up an interesting philosophical point because it  
13 illustrates the paradoxical nature of using noise  
14 barriers for a no take species.

15           Because of the inherent risk of flushing birds  
16 due to construction-related disturbance, it would make  
17 a lot of sense to use lots of these barriers to  
18 minimize those impacts on the birds. No noise, no  
19 disturbance, no flushing, they don't fly away.

20           But if you use a huge number of these  
21 barriers, you create new problems. You have roadways  
22 lined with these things, construction sites lined with  
23 them. You're limiting the sight line availability for  
24 these birds and increasing the potential they might fly  
25 into them when the visibility's poor.

1           So if you do as much as possible, you create a  
2 problem. If you go halfway, you haven't done enough to  
3 protect a no take species. So it creates really a very  
4 substantial catch-22.

5           Next slide, please.

6           (Exhibit displayed on screen.)

7           WITNESS WIRTH: The only way to avoid these  
8 construction impacts to Cranes would be just simply to  
9 say there's no construction during the wintering  
10 season.

11           This is an absolute no take. The only way you  
12 can absolutely do that is to completely avoid it, not  
13 using flexible language.

14           The sheer scale of the project and the no take  
15 status of these three different species creates a very  
16 difficult and problematic absolute.

17           The unenforcability of the AMM 20 and the plan  
18 to do winter construction in the Crane wintering area  
19 essentially guarantees there's going to be take unless  
20 there's no winter construction.

21           Next slide, please.

22           (Exhibit displayed on screen.)

23           For the northernmost shaft on Staten Island  
24 would mean no work whatsoever on the shaft, or in any  
25 of the safe haven work areas for the entirety of the

1 Crane wintering season.

2 Next slide, please.

3 (Exhibit displayed on screen.)

4 WITNESS WIRTH: Can you make that lighter?

5 You can hardly see the detail on that file.

6 For Bouldin Island, the muck storage and  
7 related services are going up in the Supplemental.

8 Bouldin is right next door to Staten Island,  
9 literally the next island to the south. Cranes have  
10 been reported on Bouldin Island for decades.

11 Cranes that live on Staten Island, the central  
12 stronghold for Sandhill Crane population in our area,  
13 easily goes there and forages. It's well within the  
14 two-mile zone.

15 So relying on AMM 20 and the Final to claim  
16 that new impacts are adequately addressed despite the  
17 Supplemental failing to analyze the extent of these new  
18 impacts is just purely inadequate at all.

19 There should have been specific analysis  
20 addressing the new muck footprint, the new noise for  
21 the muck footprint, the effect on the Staten birds,  
22 et cetera, et cetera, et cetera, not just relying upon  
23 AMM 20.

24 For Lesser Sandhill Cranes, this is a specie  
25 that uses a much larger part of the landscape. Some

1 range about 10 times that of the Greater Sandhill  
2 Crane.

3           And the theory, which is basically true, that  
4 what is good for the Greater Sandhill Crane is good for  
5 the Lesser Sandhill Crane is -- is accurate.

6           But it ignores the fact that this bird using a  
7 large amount of landscape is more likely to have  
8 impacts on that larger landscape. There's no  
9 discussion of that at all.

10           In conclusion, the Supplemental is flawed. It  
11 falls short in explicating the full impacts from the  
12 substantial change that it covers. And its reliance on  
13 the contested and flawed documents to explain why it  
14 does not need to provide any additional analysis for  
15 the substantial new impacts runs completely counter to  
16 the public trust.

17           AMM 20 falls short of avoiding and minimizing  
18 the impacts to Greater Sandhill Cranes. The only  
19 guaranteed way to assure that the impacts to this  
20 species from activities contemplated in the  
21 Supplemental and the Final are fully avoided and  
22 minimized would be the condition that no  
23 construction-related disturbances would occur for the  
24 Greater Sandhill Crane in its wintering area in the  
25 winter.

1           As things stand now, the Project would result  
2 in completely unacceptable impacts to local and  
3 protected wildlife.

4           Thank you.

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

7           That concludes --

8           MS. MESERVE: Yes, that does. Yes. So I  
9 would ask --

10          CO-HEARING OFFICER DODUC: Hold on. Let me --  
11 And I see Miss Ansley rushing to the microphone.

12          MS. ANSLEY: (Shaking head.)

13          CO-HEARING OFFICER DODUC: No?

14          MS. ANSLEY: It's minor. It's minor.

15          CO-HEARING OFFICER DODUC: Okay. Shall we let  
16 Miss Meserve proceed or do you have an objection to  
17 voice?

18          MS. ANSLEY: This is more of a -- I believe  
19 it's really more of a housekeeping matter.

20          I believe that Miss Meserve is going to move  
21 SOSC-88 into the record, which is a paper by Gary Ivey,  
22 et al. I believe this is already in the record as  
23 SOSC-17. So I just wanted to note that these are  
24 duplicative exhibits.

25          CO-HEARING OFFICER DODUC: Miss Meserve, can

1 you confirm or deny?

2 WITNESS WIRTH: I can check my --

3 MS. MESERVE: At the moment, no. If it is  
4 indeed a duplicate, then I don't wish to confuse the  
5 record.

6 CO-HEARING OFFICER DODUC: We will note that.

7 MS. MESERVE: So . . .

8 CO-HEARING OFFICER DODUC: But at this time?

9 MS. MESERVE: Yes. At this time, I will go  
10 ahead and move them all in with the caveat that if 88  
11 is the same as 17, then we don't need to move that one  
12 in. So that's Exhibits SOSC-85 through -90.

13 CO-HEARING OFFICER DODUC: All right.

14 WITNESS WIRTH: It is the same. I just  
15 checked.

16 MS. MESERVE: Oh, it is?

17 CO-HEARING OFFICER DODUC: It is the same?  
18 All right.

19 MS. MESERVE: So we will take out the . . .

20 CO-HEARING OFFICER DODUC: Thank you,  
21 Miss Ansley, for pointing that out.

22 The exhibits are received into the record.

23 (Save Our Sandhill Cranes Exhibits 85, 86, 87, 89 & 90  
24 received in evidence)

25 CO-HEARING OFFICER DODUC: Thank you,

1 Miss Meserve, and thank you, Mr. Wirth.

2 WITNESS WIRTH: Thank you.

3 CO-HEARING OFFICER DODUC: Mr. Keeling.

4 MR. KEELING: Thank you. Tom Keeling for the  
5 San Joaquin County Protestants.

6 This makes sense except, when we were  
7 reviewing his testimony, there isn't some notation in  
8 the revised testimony replacing the first -- the one  
9 exhibit number with the another. Everybody will be  
10 completely confused and we'll have to do a whole new  
11 search through all the exhibits to find out what was  
12 referred to.

13 CO-HEARING OFFICER DODUC: Ah. Good point,  
14 Mr. Keeling.

15 MS. MESERVE: I could submit a revised and  
16 just --

17 CO-HEARING OFFICER DODUC: How many places are  
18 there in his testimony is that citation made and, if  
19 so, why don't we just make it on the record right now.

20 MS. MESERVE: I believe that those were --

21 CO-HEARING OFFICER DODUC: It should be  
22 searchable.

23 (Pause in proceedings.)

24 CO-HEARING OFFICER DODUC: I don't think it's  
25 referenced at all is what I'm being told now.

1 (Pause in proceedings.)

2 CO-HEARING OFFICER DODUC: I just did a quick  
3 search. I don't see it being cited in his testimony.

4 MS. ANSLEY: It's actually on Page 10, Line 3,  
5 but it's an incorrect cite.

6 There were a number of SOSC cites that were  
7 incorrect, but since it had the name of the article in  
8 brackets, I kind of went with it.

9 There's also SOSC-86. But actually SOSC-88 --  
10 SOSC-87 on Lines 3 to 4 I think is -- a correction that  
11 might be 89.

12 So I just think that that's the article we're  
13 all referring to.

14 CO-HEARING OFFICER DODUC: Well, in that case,  
15 since there's multiple corrections to citation,  
16 Miss Meserve, I will take you up on that offer to  
17 submit an errata.

18 MS. MESERVE: Yes, I will do so.

19 CO-HEARING OFFICER DODUC: Thank you.

20 All right. With that, we will take a lunch  
21 break.

22 And if anyone sees Miss Womack and Mr. Moore,  
23 please tell them we are now returning at 1:40.

24 (Lunch recess at 12:39 p.m.)

25 \* \* \*



1 Friday, September 28, 2018 1:41 p.m.

2 ---o0o---

3 AFTERNOON SESSION

4 CO-HEARING OFFICER DODUC: All right. Good  
5 afternoon, everyone. We are back.

6 And before we turn to cross-examination by DWR  
7 and the State Water Contractors, I don't see Ms. Meserve  
8 in the room. But Mr. Emrick, let me check with you.  
9 When you conferred regarding Dr. Paulsen's testimony on  
10 behalf of Antioch, I had LAND down as requesting 10  
11 minutes for cross-examination of Dr. Paulsen. Did you  
12 confer with Ms. Meserve as well before we say that  
13 Dr. Paulsen does not need to appear?

14 MR. EMRICK: I think Ms. Meserve was in the  
15 audience when that was raised.

16 CO-HEARING OFFICER DODUC: And she didn't  
17 object.

18 MR. EMRICK: She didn't object.

19 CO-HEARING OFFICER DODUC: All right. And I  
20 don't see Ms. Ansley here. I believe she said she  
21 wanted to voice some objections with respect to Antioch  
22 testimony, so we'll get back to that when she's back in  
23 the room.

24 So for now, I will turn it over to Mr. Mizell  
25 and Ms. Morris. What is your time estimate for cross?



1           MR. MIZELL: I think we're going to stick with  
2 40 minutes.

3           CO-HEARING OFFICER DODUC: 40 minutes? And you  
4 will stick, I assume, to basically the organization  
5 that's in the testimony, or was there any particular --  
6 in terms of outlining your cross?

7           MR. MIZELL: We're going to, yes, stick to the  
8 organization of the testimony. We won't be jumping  
9 around very much at all.

10          CO-HEARING OFFICER DODUC: All right.

11          MR. MIZELL: Pretty much the page numbers in  
12 sequential order.

13          CO-HEARING OFFICER DODUC: Sequential order.  
14 All right. Thank you.

15                   SUZANNE WOMACK and SHELDON MOORE,  
16                   called as Part 2 Surrebuttal witnesses  
17                   by Protestants Clifton Court, LLP,  
18                   having been previously duly sworn, were  
19                   examined and testified further as  
20                   hereinafter set forth:

21          CROSS-EXAMINATION BY MR. MIZELL and MS. MORRIS

22           MR. MIZELL: Mr. Long, if you could go to  
23 CCLP-60, please, and go to Page 4 of that. And on  
24 Page 4, if you scroll down to Line 21, please.

25           This first line of questioning is going to be



1 focusing on the statement about halfway through Line 21  
2 that says, "Thus CCLP had no reason to question CWF  
3 facilities" --

4 CO-HEARING OFFICER DODUC: Mr. Mizell, for some  
5 reason -- I don't think it's just now -- I'm having  
6 trouble hearing you today. So more importantly, so is  
7 the court reporter. So if I could ask you to maybe  
8 bring the microphone closer and slow down a little bit?

9 MR. MIZELL: Sure.

10 CO-HEARING OFFICER DODUC: Thank you.

11 MR. MIZELL: So I'm focusing on Line 21, about  
12 halfway through the line, the statement, "Thus CCLP had  
13 no reason to question CWF facilities and operations."

14 The question is, so, Ms. Womack, you were  
15 allowed by the Hearing Officers to submit any questions  
16 you have about impacts to the CCLP diversion point; is  
17 that correct?

18 WITNESS WOMACK: I'm not sure what you're  
19 saying. When? When was I allowed?

20 MR. MIZELL: You were allowed in writing by the  
21 Hearing Officers to submit any questions you had of DWR  
22 about the changes described in the SEIR and the  
23 diversion point you have on the Jones Intake Channel; is  
24 that correct?

25 WITNESS WOMACK: I submitted questions on



1 August 9th, some questions I had.

2 MR. MIZELL: So is that a yes?

3 WITNESS WOMACK: I don't know what else --  
4 I've -- there's -- I've done this surrebuttal. I did  
5 the August 9th questions. What else did I do? And I've  
6 done my -- no, my testimony -- yeah. No, but the  
7 rebuttal was on the SEIR.

8 MR. EMRICK: Correct.

9 WITNESS WOMACK: Yeah. I was just trying to  
10 think of all this things I've done. Sorry.

11 MR. MIZELL: So you were afforded the  
12 opportunity to submit questions in writing to DWR?

13 WITNESS WOMACK: Yes, but they were not  
14 answered. The ones on August 9th were not answered.

15 MR. MIZELL: Thank you. And the Hearing  
16 Officers ordered DWR to produce witnesses and testimony  
17 for the purposes of answering your questions?

18 WITNESS WOMACK: My August 9th questions is  
19 what I've been told.

20 MR. MIZELL: Is that a yes?

21 WITNESS WOMACK: I -- this is what I -- this is  
22 what I -- my understanding is. And -- well, actually,  
23 also, no. I've been told that you -- that I was --

24 MR. MIZELL: All right.

25 WITNESS WOMACK: -- given -- no. I was given





1 that the --

2 MR. MIZELL: I think I've got the answer to the  
3 question.

4 WITNESS WOMACK: -- what is being presented.

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

6 Only one of you may speak at a time, or the court  
7 reporter will walk out --

8 WITNESS WOMACK: You're right.

9 CO-HEARING OFFICER DODUC: -- and this will  
10 end.

11 WITNESS WOMACK: That's great.

12 CO-HEARING OFFICER DODUC: Not to give her any  
13 ideas -- for today.

14 Okay. Mr. Mizell, your next question.

15 MR. MIZELL: DWR witnesses have yet to testify  
16 in response to the Board's order that they appear to  
17 answer questions, correct?

18 WITNESS WOMACK: Well, they have submitted  
19 their testimony.

20 MR. MIZELL: Right. That's not my question.  
21 My question is they have yet to testify at this point in  
22 time, correct?

23 WITNESS WOMACK: Yes.

24 MR. MIZELL: Thank you.

25 CO-HEARING OFFICER DODUC: Mr. Mizell, do you



1 have more questions along this line?

2 MR. MIZELL: I have one more.

3 CO-HEARING OFFICER DODUC: Okay. Because I'm  
4 about to ask what is the purpose of this. But go ahead,  
5 ask your question.

6 MR. MIZELL: You'll have the opportunity to  
7 question DWR witnesses about the California WaterFix  
8 facilities and operations with the scope that  
9 encompasses both Parts 1 and 2 of this hearing; is that  
10 correct?

11 WITNESS WOMACK: I have the questions that I've  
12 submitted to them that I hope to get answers to. I  
13 don't know what those answer will be.

14 MR. MIZELL: Okay. Thank you.

15 If we could go to Page 6, please. And looking  
16 at Lines 16 through 18, The statement reads, "CCLP  
17 believes that any obstruction of the DMC Intake will  
18 injure CCLP's senior, riparian, year-round, licensed  
19 contracted water rights."

20 My question is what do you mean by "any  
21 obstruction"?

22 WITNESS WOMACK: Well, I was referring to what  
23 Mr. Chilmakuri had referenced before about, "The  
24 modeling I was referring to is the DSM-2 model, and it  
25 does include a -- include the intake channel in general



1 but not with specificity. We need to analyze  
2 Ms. Womack's diversion."

3 So when I said "CCLP believes that any  
4 obstruction of the DMC intake will injure our CCLP  
5 senior riparian, year-round, licensed, contracted water  
6 rights," I was referring to the control structure.

7 But at this point, I didn't know which side the  
8 control structure was on because I think before our --  
9 this last testimony, it was on the -- the control  
10 structure was after we had our intake, and then was the  
11 control structure. So Tracy Fish Facility control  
12 structure, our intake is what I was given -- when I  
13 wrote this.

14 MR. MIZELL: So if I understand you correctly,  
15 you are referring to obstruct- -- when you refer to  
16 obstruction, you mean either the control structure or  
17 the Tracy Fish Facility or your diversion point itself?

18 WITNESS WOMACK: Well, there's other  
19 obstruction. The other --

20 (Sotto voce discussion between Ms. Womack  
21 and Mr. Emrick)

22 WITNESS WOMACK: They're going to -- there's  
23 other things that are going to influence the DMC Intake  
24 so I don't know if that's an obstruction or not.

25 MR. MIZELL: When you say "obstruction," are



1 you referring to those other things that you just  
2 alluded to?

3 WITNESS WOMACK: Any obstruction, yeah.

4 MR. MIZELL: What do you mean by "obstruction"?

5 WITNESS WOMACK: Obstruction, all of the  
6 structures you want to put in the DMC Intake and the  
7 things that connect to it. Anything is going to change.

8 MR. MIZELL: So any structure --

9 WITNESS WOMACK: Whether it's the channel  
10 that -- you have the south tunnel outlet structure; you  
11 have the channel from it; you have a control structure  
12 between that and the other; you have all the operations.  
13 And they're -- you know, the dual, the BTO, you have  
14 many different operations that depend on these different  
15 obstructions that are in -- that will be added.

16 MR. MIZELL: So you believe the operations are  
17 an obstruction?

18 WITNESS WOMACK: I think they can be. They can  
19 change -- in that they can change my water level.

20 MR. MIZELL: You're not referring to physical  
21 obstructions; you're referring to --

22 WITNESS WOMACK: Oh, I'm referring to both  
23 because there are physical ones that are going to then  
24 change things. The control structure right by me is the  
25 biggest example.





1 CO-HEARING OFFICER DODUC: Mr. Mizell, since I  
2 am also unclear about this, let me try asking it this  
3 way.

4 Ms. Womack, if we were to consider a condition  
5 to alleviate what you believe to be the impact described  
6 here, what would that condition look like? How would  
7 you phrase it? In terms of addressing this obstruction  
8 that you cited, what would be the mitigation for that?

9 WITNESS WOMACK: I honestly --

10 MR. EMRICK: If you know, you can answer.

11 I think one of the problems is, of course,  
12 that, you know, the analysis of how the control  
13 structure water levels hasn't really been performed. We  
14 don't know what that's going to be.

15 CO-HEARING OFFICER DODUC: So, I'm sorry.  
16 There's some concern, then, when she says "obstruction  
17 of the intake," is it relating to the water level?

18 WITNESS WOMACK: It's relating to anything  
19 that's going -- right now --

20 CO-HEARING OFFICER DODUC: Anything that might  
21 interfere with your --

22 WITNESS WOMACK: With our diversion.

23 CO-HEARING OFFICER DODUC: -- your diversion.

24 WITNESS WOMACK: Right now, I have nothing.

25 And, you know, somewhere in there it says the No Action



1 Alternative is the same as the control structure.

2 CO-HEARING OFFICER DODUC: I just wanted to --

3 WITNESS WOMACK: Yeah, I know.

4 CO-HEARING OFFICER DODUC: -- understand.

5 WITNESS WOMACK: Nothing versus whatever they  
6 throw in there is going to obstruct in some way in our  
7 ability to take water.

8 CO-HEARING OFFICER DODUC: Thank you.

9 MR. MIZELL: Do you know if the Jones Pumping  
10 Plant intake channel is a man-made waterway?

11 WITNESS WOMACK: I know that the upper portion  
12 by our ranch is Herdlyn Canal that was actually put in  
13 by -- in -- when there was the flood in 1907, by our  
14 property owners. So I know that it is -- that part is.

15 My dad would probably know about the other part  
16 of the DMC Intake.

17 WITNESS MOORE: Okay. That's it. Yeah.

18 WITNESS WOMACK: The DMC intake. Ours is  
19 man-made, the Herdlyn part.

20 WITNESS MOORE: No, it was -- the old -- they  
21 went down the Herdlyn Canal.

22 WITNESS WOMACK: They went down a Herdlyn  
23 Canal.

24 WITNESS MOORE: But the thing is --

25 WITNESS WOMACK: The rest of it --



1           WITNESS MOORE: My big problem here, is is the  
2 whole thing. They're taking 20- -- up to 20,000 feet --

3           CO-HEARING OFFICER DODUC: Stop please. Stop  
4 please.

5           WITNESS WOMACK: We need to -- he just wanted  
6 to know about the canal.

7           CO-HEARING OFFICER DODUC: Yes. The question,  
8 Mr. Mizell, was?

9           MR. MIZELL: Whether or not it was man-made.

10          WITNESS WOMACK: So it was -- our part, the  
11 part up to the Byron Highway, was part of a control that  
12 was made -- a canal that was made I believe in 1907 by  
13 Herdlyn people --

14          MR. MIZELL: Thank you.

15          WITNESS WOMACK: -- and then taken over  
16 eventually by the CVP.

17          MR. MIZELL: Thank you. The water right that  
18 you claim in this sentence, is it for agricultural  
19 purposes?

20          WITNESS WOMACK: We have year-round water  
21 rights. You would have to look at the license.

22                 Is it just ag?

23          WITNESS MOORE: We have riparian rights going  
24 into 1880s.

25          WITNESS WOMACK: We have riparian -- yeah.



1 WITNESS MOORE: And a 1926 license.

2 WITNESS WOMACK: Dad, he wants to know are  
3 they -- are they ag rights.

4 WITNESS MOORE: I don't have the -- what?

5 WITNESS WOMACK: We don't have the license with  
6 us.

7 WITNESS MOORE: I don't have the license with  
8 us, no.

9 WITNESS WOMACK: Yeah.

10 You would probably know that.

11 I -- we don't -- I don't have it with me today.

12 As far as -- I know it's a year-round. I know it's  
13 senior to 1880s, '70s, and it's -- I know I also have a  
14 contract with Department of Interior, and I have a  
15 license '25 -- 1925 license.

16 MR. MIZELL: Thank you. Does CCLP or its  
17 tenant farmers utilize planting practices and time  
18 frames that are common for the South Delta region?

19 WITNESS WOMACK: I don't know what's common for  
20 the South Delta region. They use year-round water  
21 rights.

22 MR. MIZELL: When you refer to a contracted  
23 water right, what do you mean?

24 WITNESS WOMACK: I'm referring to the 1955 land  
25 purchase contract where an exception was made for our





1 water because the -- they purchased our -- they  
2 purchased the farms's floodgate and they had to move it.  
3 So as you read the contract, and I'm sure you have, it  
4 says that they're moving this riparian right in the DMC.

5 It's a very unusual situation because -- with  
6 the floodgate. It -- we've -- it's cost us so much to  
7 pump.

8 CO-HEARING OFFICER DODUC: Ms. Womack, the  
9 contract was with?

10 WITNESS WOMACK: Oh, Department of the  
11 Interior, Reclamation, signed in 1955 when they  
12 purchased for the Tracy Fish -- I don't think it was --  
13 for the fish screen.

14 MR. EMRICK: If you have the exhibit for  
15 this. . .

16 WITNESS WOMACK: Yes. It is Exhibit CCLP-62,  
17 and that's along with the 2000 letter that Department of  
18 the Interior sent when they provided this contract. I  
19 believe we had it, but it wasn't in such pristine order,  
20 so -- yeah, this was regarding CalFed when they wanted  
21 to purchase our property.

22 MR. MIZELL: And the 1955 land purchase  
23 contract does not guarantee a specific quantity of water  
24 to be delivered to your diversion point by the CVP or  
25 the SWP; is that correct?



1 WITNESS WOMACK: No, you're wrong.

2 MR. MIZELL: How much water does it guarantee  
3 to be delivered by either the CVP or SWP?

4 WITNESS WOMACK: Well, we'll have to look at  
5 that contract. Could you pull it up, please?

6 And you'll have to realize this contract was  
7 made when our farm was 1157 acres.

8 CO-HEARING OFFICER DODUC: So this is the  
9 CCLP-62, and --

10 WITNESS WOMACK: Okay. So you'll have to go  
11 down to about Page 7 or 8. This is on Page 3 of the  
12 contract. So let's see. Page 3 of the contract --  
13 there we go, where the little arrow is.

14 Let's see. "The United States agrees to  
15 transport and convey through. . .riparian,  
16 appropriative, or prescriptive waters, provided,  
17 however. . .shall not exceed the rate of 1 cubic foot  
18 per second continued flow to each 80 acres of irrigated  
19 land formerly irrigated through facilities located at  
20 said point of Diversion No. 2."

21 So this is -- you have to go back quite a ways  
22 to realize this was part of 11,000 -- 1157 acres. With  
23 the way the land was taken, most of this property is now  
24 irrigated by this diversion.

25 MR. MIZELL: Isn't it correct that this



1 sentence that you just read and is indicated on the  
2 screen with the arrow in CCLP-62, Page 3 of the 1955  
3 contract, isn't it true this is a right to transport and  
4 convey water and not a water right?

5 WITNESS WOMACK: Oh, well, it's -- it is -- I'm  
6 sorry. It's taking -- it speaks of our water right on  
7 Page 2, I believe. At the very bottom of this  
8 paragraph, "There shall be reserved to Vendor, her  
9 heirs, executors, administrators, and assigns, any  
10 riparian or other water rights or water" --

11 CO-HEARING OFFICER DODUC: Ms. Womack, you need  
12 to slow down for the court reporter.

13 WITNESS WOMACK: I'm so sorry.

14 It's on Page 2 of this contract. So one page  
15 up. So it's the last -- it's a little paragraph. But I  
16 believe it's talking about our water rights because this  
17 is all to do with taking our water rights.

18 MR. MIZELL: The sentence on Page 3, we could  
19 go back to Page 3 where the arrow is, reads that it  
20 agrees to transport and convey through the canal to your  
21 pump water at a rate of 1 cfs. Is that a correct  
22 reading of this?

23 WITNESS WOMACK: I would think you need to read  
24 the entire contract, but that is one part of the  
25 contract, yes.



1           MR. MIZELL: So the language that you pointed  
2 to when I asked you if you had a contract with the CVP  
3 to deliver you a specific quantity of water does not  
4 actually guarantee you a quantity of water from the CVP  
5 or the SWP, only a right to transport water?

6           WITNESS WOMACK: Transport and convey our  
7 water. I'm sorry. I believe this is the land contract  
8 and with the ability to give us water.

9           MR. MIZELL: And as you just said, it was to  
10 transport your water, correct?

11          WITNESS WOMACK: It is taking it -- what  
12 they've done is they've removed it from the river, and  
13 they've placed it in the DMC. This is the same water  
14 right that we had at the -- at the river. It's a  
15 floodgate.

16          WITNESS MOORE: I don't have a clue what you're  
17 talking about.

18          WITNESS WOMACK: I don't know.

19          CO-HEARING OFFICER DODUC: Hold on.

20          Ms. Meserve.

21          MS. MESERVE: I'd like to object to this line  
22 of questioning. It calls for a legal conclusion from  
23 Ms. Womack, and I don't believe that she's qualified to  
24 answer that.

25          CO-HEARING OFFICER DODUC: Ms. Womack has





1 asserted that her water rights is being impacted. I  
2 need to understand what she means by that. And I  
3 believe that's the line of questioning.

4 So, overruled, Ms. Meserve.

5 (Sotto voce discussion between Ms. Womack  
6 and Mr. Emrick)

7 WITNESS WOMACK: Right. Right.

8 But this is part of this contract, that they  
9 are going to be putting our right in there. This is --  
10 this is part of this purchase agreement. I don't know  
11 why the Department of Interior would want to not -- why  
12 would you have this in the --

13 CO-HEARING OFFICER DODUC: Hold on. That's  
14 going beyond the scope of the question, so.

15 WITNESS WOMACK: Okay.

16 MS. MORRIS: Let me see if I can --

17 CO-HEARING OFFICER DODUC: Please.

18 WITNESS WOMACK: I am not a -- I am not a legal  
19 water expert on this contract, but this says "contract."

20 MS. MORRIS: Let me ask you -- let me try. Let  
21 me see if I can help clarify the record here. I only  
22 promise to try, so hopefully everyone will be very  
23 patient.

24 Does this contract provide you SWP or CVP  
25 permitted water rights, or is it simply a contract to



1 transport your existing water rights?

2 WITNESS WOMACK: It is -- since there was no  
3 SWP in 1955, it can't be SWP rights.

4 CVP rights, they are saying that they will take  
5 it to this point. This is the point they agreed upon.  
6 I don't know what that becomes.

7 MS. MORRIS: You are asserting that you have a  
8 contract for CVP-delivered water under their water  
9 rights.

10 WITNESS WOMACK: They will deliver to this  
11 point is what they say.

12 MS. MORRIS: And the basis of the contract is  
13 not -- let's be clear. We're not talking about  
14 delivered. I'm not talking about the delivery. I'm  
15 talking about what's the basis of the water that's being  
16 delivered.

17 So is it your assertion that they are  
18 delivering your water rights or CVP water rights?  
19 That's the question.

20 WITNESS WOMACK: Yeah, they are my riparian  
21 water rights. Yes.

22 MS. MORRIS: So this contract doesn't give you  
23 a right to CVP water; rather, it's a conveyance  
24 agreement to convey your existing water rights, correct?

25 WITNESS WOMACK: Yeah.



1 MS. MORRIS: Okay.

2 WITNESS WOMACK: I believe so. Mm-hmm. But I  
3 think what -- yeah, okay.

4 CO-HEARING OFFICER DODUC: Thank you. Let's  
5 leave --

6 WITNESS WOMACK: We'll leave it at that. As  
7 far as I know. I may have to come back and say  
8 something different because I'm not a contract lawyer,  
9 but this is the contract that I have.

10 MR. MIZELL: If we can go to Page 8 of CCLP-60,  
11 please. And on Page 8, looking at Lines 15 to 17.

12 Am I reading this correctly to say that you  
13 believe removing tidal influence will cost CCLP money?

14 WITNESS WOMACK: Yes.

15 MR. MIZELL: As a general statement?

16 WITNESS WOMACK: Yes.

17 MR. MIZELL: Hypothetically, if the water in  
18 your channel at your diversion point were artificially  
19 made higher, so tidal influence was removed and it was  
20 made higher, wouldn't that result in you saving money?

21 WITNESS WOMACK: Dad, do you want to explain  
22 pumping? You don't say --

23 WITNESS MOORE: I didn't -- here's the thing.

24 WITNESS WOMACK: You don't save -- there's a  
25 certain point of pumping where it's an even point. When



1 you put it higher, you don't save more. When you drop  
2 lower, it's really expensive. My -- it can double the  
3 amount of expense.

4 But when it goes higher, you don't pay less.  
5 And as an engineer, I'm sure you understand that.

6 WITNESS MOORE: You know, we're sitting here --

7 CO-HEARING OFFICER DODUC: Hold on. I'm sorry.  
8 Hold on. Hold on. We can't hear Mr. Moore.

9 WITNESS MOORE: You don't understand.

10 WITNESS WOMACK: They don't, yeah.

11 WITNESS MOORE: You don't understand.

12 WITNESS WOMACK: No, they don't, dad.

13 WITNESS MOORE: That the 20,000 second feet  
14 coming out of that river affects us. It affects us from  
15 the day one; it affects us today, right now.

16 When you go in --

17 CO-HEARING OFFICER DODUC: Hold on.

18 WITNESS MOORE: -- and you put all this  
19 artificial stuff in, it's just baloney.

20 CO-HEARING OFFICER DODUC: That is not  
21 responsive.

22 WITNESS WOMACK: Dad, we've got to stop.  
23 okay --

24 CO-HEARING OFFICER DODUC: Mr. Mizell, do you  
25 wish to explore this further, or do you wish to move on?





1           MR. MIZELL: I'd like to ask one question in  
2 response to Ms. Womack's answer.

3           So you indicated there was a point of water  
4 level elevation where it neither cost you money nor  
5 saved you money, that anything at that point or higher  
6 didn't actually save you any money. What's that water  
7 elevation?

8           WITNESS WOMACK: I wouldn't know. I'm not a  
9 farmer. My dad would know.

10          MR. MIZELL: Mr. Moore, what's the water level  
11 elevation that --

12          WITNESS MOORE: Water level? What's the water  
13 level?

14          MR. MIZELL: No. What is the water level  
15 elevation at which --

16          WITNESS MOORE: The mean sea level? You want  
17 the mean sea level? What do you want it in?

18          MR. MIZELL: Hearing Officer Doduc, I withdraw  
19 the question.

20          CO-HEARING OFFICER DODUC: Thank you.

21          MR. MOORE: What reference do you want? What  
22 reference do you want?

23          CO-HEARING OFFICER DODUC: Hold on.

24          MR. MIZELL: I withdrew the question,  
25 Mr. Moore.



1 WITNESS WOMACK: He withdrew the question.

2 WITNESS MOORE: Oh, okay.

3 MR. MIZELL: Ms. Womack, isn't it true that DWR  
4 disputes that it owns the pumps and pipes installed for  
5 CCLP drainage that you've identified in your testimony  
6 at Pages 10 and 11?

7 WITNESS WOMACK: I have received -- I -- I  
8 have -- you know, I've only been told this recently, in  
9 the last couple -- I was very surprised with counsel  
10 saying that they don't own it.

11 Dad, regarding the -- they're very interested  
12 in the discharge pipes coming from our property going  
13 onto the DWR property and into the Clifton Court  
14 Forebay. Could you explain how you had to set that up  
15 over 50 years ago because that's the only thing I can go  
16 with.

17 CO-HEARING OFFICER DODUC: Hold on. The  
18 question was, to your knowledge, has the Department  
19 disputed the ownership?

20 WITNESS WOMACK: Never, until this last -- I  
21 mean, there's been no dispute --

22 CO-HEARING OFFICER DODUC: All right.

23 WITNESS WOMACK: -- until --

24 CO-HEARING OFFICER DODUC: Until recently.

25 WITNESS WOMACK: -- until a year ago, when we



1 got a crazy letter.

2 CO-HEARING OFFICER DODUC: Thank you.

3 That answers your question, Mr. Mizell?

4 MR. MIZELL: Mm-hmm. So I'd like to bring up  
5 CCLP-40, please.

6 Ms. Womack, in this letter, the Department  
7 grants you a temporary entry permit to repair your  
8 drainage system; is that correct?

9 WITNESS WOMACK: Could we refer to the top of  
10 this paper, first?

11 There is no letterhead. This is a letter from  
12 someone -- "This letter is a response to our meeting on  
13 June 27th, 2017."

14 If you go down to the person that signed this,  
15 I have never met this person. I have never had a  
16 meeting. I don't know what else to say.

17 CO-HEARING OFFICER DODUC: Hold on. So you are  
18 disputing the authentication -- authenticity of this --

19 WITNESS WOMACK: I'm offended. I got a TEP  
20 order.

21 CO-HEARING OFFICER DODUC: Hold on.

22 MS. MORRIS: This is actually an exhibit that  
23 was made by -- this is a CCLP exhibit that they're  
24 submitting.

25 WITNESS WOMACK: Yes, to show the incompetence.



1 MS. MORRIS: I don't think there was a  
2 question.

3 WITNESS WOMACK: Sorry. I'm trying --

4 CO-HEARING OFFICER DODUC: Mr. Mizell, are you  
5 stipulating or are you hereby authenticating this letter  
6 as being from the Department? Because her purpose in  
7 submitting it was to question its authenticity. So you  
8 can't -- I mean, you're not going to ask her a question  
9 about a document to which she questions the validity.

10 MR. MIZELL: I'm having a hard time  
11 understanding why she's questioning the authenticity of  
12 her own exhibit. But if we go to CCLP-32 --

13 CO-HEARING OFFICER DODUC: We're going back to  
14 CCLP-62?

15 MR. MIZELL: 32.

16 CO-HEARING OFFICER DODUC: 32.

17 MR. MIZELL: Yes, 32. And here is a scanned  
18 image submitted by Ms. Womack from the State of  
19 California Department of Water Resources. And if we  
20 scroll to the next page, the person signing this letter,  
21 again, is Ms. Amber Candela-Cooney, the same signatory  
22 to the other letter.

23 CO-HEARING OFFICER DODUC: All right.

24 WITNESS WOMACK: Again, this is not written on  
25 letterhead. Again, I submitted this to kind of show





1 this is what I'm dealing with. This is where she claims  
2 I don't have a seepage problem because Seep 6 works.

3 CO-HEARING OFFICER DODUC: All right. All  
4 right. So let's get to a question, Mr. Mizell.

5 MR. MIZELL: So I'll restate the previous  
6 question. Looking at CCLP-40, isn't it true the  
7 Department granted a temporary entry permit to CCLP to  
8 repair their drainage system, your drainage system?

9 WITNESS WOMACK: DWR DFD sent me a letter with  
10 a TEP asking me to repair their drainage pipes.

11 My father is sitting here. If you would like  
12 to ask him about drainage pipes, I would suggest you ask  
13 him because he was there when they were installed. This  
14 would be a perfect time to get this on the record and  
15 get this cleared because I don't -- the fact that DWR's  
16 memory does not go back 50 years, it's alarming.

17 MR. MIZELL: I move to strike that last  
18 response as non-responsive.

19 CO-HEARING OFFICER DODUC: So noted. Is there  
20 a question pending, Mr. Mizell?

21 MS. MORRIS: Looking at the top of this letter,  
22 it says, ". . .in response to our meeting of  
23 June 27th. . ."

24 Is it your contention that you did not meet  
25 with anybody from DWR?



1           WITNESS WOMACK: No one from CCLP met. When I  
2 received this letter, I was shocked. We immediately  
3 wrote a letter in response.

4           MS. MORRIS: Isn't it true that you have a  
5 tenant farmer?

6           WITNESS WOMACK: I have a tenant farmer, yes.  
7 I'm a landowner with a tenant farmer.

8           MS. MORRIS: And are you aware that your tenant  
9 farmer regularly coordinates with DWR, Field Staff  
10 Division?

11           WITNESS WOMACK: You know what? What he does  
12 is entirely his own work. But that is -- that would be  
13 like asking a renter things about my rental property.  
14 I'm the owner. This is who you should deal with.

15           MS. MORRIS: That's not my question. And I'm  
16 sorry, but I'm just trying to be precise here so we can  
17 move on.

18           Is it possible that your tenant farmer met with  
19 DWR?

20           WITNESS WOMACK: I have no idea. But this is  
21 not -- they said "CCLP," which should be the people.  
22 They're -- we're the landowners.

23           MS. MORRIS: Did you ask your tenant farmer --

24           WITNESS WOMACK: No.

25           MS. MORRIS: -- if he's ever had any meetings



1 with DWR?

2 WITNESS WOMACK: Why would I do that? I am --

3 I am --

4 MS. MORRIS: I'm asking you the questions.

5 CO-HEARING OFFICER DODUC: Hold on.

6 MS. MORRIS: Have you or have you not asked

7 your tenant farmer if he's had meetings with DWR?

8 WITNESS WOMACK: Have I asked "if you've had

9 meetings" -- I may have asked, certainly.

10 MS. MORRIS: What was --

11 WITNESS WOMACK: They live --

12 MS. MORRIS: -- his --

13 WITNESS WOMACK: -- next --

14 MS. MORRIS: -- response?

15 WITNESS WOMACK: -- door.

16 I don't recall at this point.

17 MS. MORRIS: So your testimony is that you are

18 unaware of your tenant farmer ever having any meetings

19 with the Department of Water Resources?

20 WITNESS WOMACK: No, I didn't say that. I just

21 don't know. My tenant farmer has 2500 acres. We're

22 500; we're one fifth. We don't have a lot of time.

23 CO-HEARING OFFICER DODUC: All right.

24 WITNESS WOMACK: I just -- I'm a landowner.

25 CO-HEARING OFFICER DODUC: All right. All



1 right.

2 WITNESS WOMACK: I have water rights.

3 MS. MORRIS: I don't think there's an answer,  
4 but I'm going to go back to CCLP-32.

5 Is it your contention, Ms. Womack, that you  
6 never called anybody at Department of Water Resources on  
7 or before February 24th, 2017 regarding an issue of 25  
8 acres on your property?

9 WITNESS WOMACK: You know, I have -- we have  
10 had many -- many -- I have years of letters. They're  
11 regarding all sorts of problems. This was this past --  
12 this was that year. This was to do with seepage. This  
13 was to do with six-inch seepage.

14 MS. MORRIS: So the question, though, is  
15 whether or not you recall if you made a phone call and  
16 discussed this issue on or before February 14, 2017  
17 regarding this issue.

18 WITNESS WOMACK: Oh, I absolutely called and  
19 asked about -- about seepage.

20 MS. MORRIS: And do you remember who you spoke  
21 to?

22 WITNESS WOMACK: I spoke to several people to  
23 get there. I may have spoke to Amber at some point. I  
24 spoke with several people though because that was when  
25 there -- every month there was a new director after my





1 dear friend Diana went -- retired. This was a period  
2 when it took several weeks to get the right person.

3 MS. MORRIS: Do you recall writing a letter on  
4 April 11th, 2017 to Director Croyle?

5 WITNESS WOMACK: I've written many letters,  
6 yes.

7 MS. MORRIS: So you do recall writing about  
8 this same issue about the 25 acres to Director Croyle?

9 WITNESS WOMACK: I -- you know, this is --  
10 yeah, this is happening during the floods of 2017,  
11 when --

12 MS. MORRIS: I'm sorry.

13 WITNESS WOMACK: When the forebay is closed.

14 MS. MORRIS: I'm sorry. I'm not trying to -- I  
15 really am not trying --

16 WITNESS WOMACK: I'm not either.

17 MS. MORRIS: -- to cut you off. But I'm trying  
18 to ask questions, and it's really important for the  
19 record that your answer be in response --

20 WITNESS WOMACK: But --

21 MS. MORRIS: -- to the question that --

22 WITNESS WOMACK: -- nothing is --

23 MS. MORRIS: -- I'm asking.

24 WITNESS WOMACK: -- black and white.

25 MS. MORRIS: I understand nothing is black or



1 white, but some of --

2 CO-HEARING OFFICER DODUC: Ms. Morris.

3 MS. MORRIS: -- these questions are --

4 CO-HEARING OFFICER DODUC: Ms. Morris, please  
5 just ask the questions.

6 MS. MORRIS: I'm trying.

7 So let me go back and ask again. Do you recall  
8 sending an April 11th, 2017 letter to Bill Croyle  
9 director at the time for Department of Water Resources  
10 describing --

11 WITNESS WOMACK: Yes, I received that letter.

12 MS. MORRIS: -- 25 acres?

13 WITNESS WOMACK: This was at that point, yes.  
14 I was very concerned.

15 MS. MORRIS: And isn't it true that, on May  
16 26th, 2017, as you've marked CCLP-63, that the  
17 Department of Water Resources looked into the landowner  
18 seepage concerns?

19 WITNESS WOMACK: Yes, they did.

20 It should be noted --

21 CO-HEARING OFFICER DODUC: Hold on.

22 WITNESS WOMACK: Okay. Sorry.

23 CO-HEARING OFFICER DODUC: If there's any  
24 further clarification you need to provide, Mr. Emrick  
25 will do that on redirect.



1 Ms. Des Jardins.

2 MS. DES JARDINS: Yes. The Hearing Officers  
3 have stricken Ms. Womack's testimony on seepage. And  
4 there is very detailed cross-examination of letters on  
5 seepage and response. This is specifically referring to  
6 a letter that was not admitted as an exhibit because it  
7 was ruled as beyond the scope.

8 The seepage has been ruled beyond the scope.  
9 And to allow questions by Ms. Morris on seepage, it --  
10 there has to be a consistent ruling on scope for this  
11 not to be arbitrary. And if she is allowed to ask  
12 questions on seepage, then to not be arbitrary, I would  
13 like to be able to ask follow-up questions.

14 These are issues which we're -- we tried to  
15 explore, and -- the adequacy of DWR's response, and it  
16 was ruled beyond the scope.

17 CO-HEARING OFFICER DODUC: Ms. Morris, you may  
18 respond.

19 MS. MORRIS: I'm not intending to ask questions  
20 about the seepage issue but rather the understanding of  
21 the communications and the back and forth, and that's  
22 what I'm trying to explore.

23 CO-HEARING OFFICER DODUC: That's my  
24 understanding.

25 Objection overruled.



1 Proceed to your next question, please.

2 WITNESS WOMACK: Because this is what they said  
3 not to allow. I couldn't talk on this.

4 MR. MIZELL: If we could bring up CCLP-63,  
5 please.

6 WITNESS WOMACK: This is what I wasn't allowed  
7 to present.

8 CO-HEARING OFFICER DODUC: The purpose here,  
9 aside --

10 WITNESS WOMACK: I was --

11 CO-HEARING OFFICER DODUC: Ms. Womack, aside  
12 from the very specific seepage discussion, you have  
13 introduced evidence that, in your opinion, attests to  
14 the lack of communication --

15 WITNESS WOMACK: No.

16 CO-HEARING OFFICER DODUC: -- between yourself  
17 and the Department. And that is what they are  
18 exploring, not the specific issue, but the communication  
19 chain.

20 WITNESS WOMACK: Okay. So it won't be about  
21 anything to do with seepage or the desiccation or  
22 anything that I was not allowed to bring in? Yes?  
23 Okay.

24 CO-HEARING OFFICER DODUC: They are only  
25 pursuing the communication --





1 WITNESS WOMACK: Okay.

2 CO-HEARING OFFICER DODUC: -- and  
3 demonstrating -- or I think they're trying to  
4 demonstrate that there was communication back and forth  
5 with you.

6 WITNESS WOMACK: Absolutely.

7 MR. EMRICK: So just for my clarification, this  
8 was previously stricken and not allowed into evidence.

9 MR. MIZELL: Just to make things easier, I'm  
10 going to withdraw the question about CCLP-63. We will  
11 do it through a different document.

12 CO-HEARING OFFICER DODUC: Okay.

13 Can we bring up CCLP-60, please.

14 Oh, sorry. Not CCLP-60. DWR- -- DWR-936.

15 So, Ms. Womack, is this a -- is this a superior  
16 court judgment?

17 WITNESS WOMACK: My father can answer these  
18 questions.

19 WITNESS MOORE: Looks like it.

20 WITNESS WOMACK: Yeah. Speak into the  
21 microphone.

22 WITNESS MOORE: It appears to be so.

23 MR. MIZELL: And in the defendants' portion of  
24 the caption, Mr. Moore, is your name in the defendants'  
25 portion of that caption?



1           WITNESS WOMACK: We were certainly involved in  
2 that because I had a lifetime lease on the property.

3           CO-HEARING OFFICER DODUC: Ms. Womack, if you  
4 could please pull the microphone to Mr. Moore. Pull the  
5 microphone to him.

6           WITNESS MOORE: You know, I would say this. I  
7 had a -- since -- let's see, I must -- I'm named on  
8 there. I had a lifetime -- I had a lifetime lease on  
9 the property.

10          MR. MIZELL: Okay. If we can move to Page 4,  
11 please. Focusing your attention on Lines 7 through 11,  
12 does this portion of the settlement state that you've  
13 been paid for any and all damages to your property  
14 suffered by reason of the construction of Clifton Court  
15 Forebay?

16          WITNESS MOORE: It never happened.

17          MR. MIZELL: Are you claiming this judgment  
18 never happened?

19          WITNESS MOORE: Never happened.

20          MR. MIZELL: This judgment never happened?

21          WITNESS MOORE: We weren't made whole, never.

22          MR. MIZELL: If we scroll to the bottom of Page  
23 5, please.

24                 Is this judgment signed by a superior court  
25 judge and dated December 15th, 1970?



1 WITNESS MOORE: That's what it says there.

2 MR. MIZELL: So would you like to revise your  
3 statement that this judgment never happened?

4 WITNESS MOORE: I would make the statement that  
5 it was never fully carried out. It was partially,  
6 partially carried out but not fully.

7 MR. MIZELL: If we could go to Page 8, please.

8 And scrolling down to the final list of four  
9 signatures on the left.

10 Mr. Moore, is your signature found on this  
11 page?

12 WITNESS MOORE: It is.

13 MR. MIZELL: So based upon this document, isn't  
14 it true that CCLP has already been compensated for any  
15 injuries that you may claim due to the construction of  
16 Clifton Court Forebay?

17 WITNESS WOMACK: Go ahead.

18 WITNESS MOORE: No, they were never --

19 MR. EMRICK: I'm going to object that it calls  
20 for a legal conclusion. Obviously what you've shown in  
21 this document does not go to negative -- excuse me, to  
22 negligent maintenance; it doesn't go to omissions; it  
23 doesn't go to negligent operations. It only goes to the  
24 construction of the forebay.

25 MR. MIZELL: I believe that's an objection, so



1 I'm waiting for a ruling.

2 CO-HEARING OFFICER DODUC: What was your  
3 question again?

4 MR. MIZELL: Whether or not this document --  
5 isn't it true that CCLP has already been compensated for  
6 any injuries that you may claim due the construction of  
7 Clifton Court Forebay?

8 CO-HEARING OFFICER DODUC: I believe he's  
9 answered that several times that, in his opinion, they  
10 have not been.

11 WITNESS WOMACK: Yeah, CCLP has not been. My  
12 grandfather was compensated.

13 CO-HEARING OFFICER DODUC: Mr. Mizell, there's  
14 a difference between not completely --

15 WITNESS WOMACK: I just --

16 CO-HEARING OFFICER DODUC: Hold on.

17 -- about asking him what his understanding is  
18 versus what his legal interpretation of this document  
19 is. He has answered it in terms of what he understands,  
20 so we'll have to leave it at that.

21 MR. MIZELL: That's -- very good.

22 Isn't it true that DWR and CCLP have been  
23 engaged in negotiations for the purchase of your land  
24 prior to the most recent SEIR?

25 WITNESS WOMACK: We've had negotiations with





1 the CVP under CalFed. We were asked to a meeting with  
2 Sergio Valles and a few other people. There were no DWR  
3 people there that I know of. So, no, we've engaged in  
4 zero. There has been nothing.

5 MR. MIZELL: You never engaged in conversations  
6 with DWR --

7 WITNESS WOMACK: Conversations? No.

8 MR. MIZELL: -- for the purchase of CCLP?

9 WITNESS WOMACK: 2004? No, no. We had -- we  
10 had CalFed. We were almost ready to sell with CalFed,  
11 and then the bombings happened and the market fell and  
12 there was no money. So CalFed went away. That was the  
13 last time we were in any sort of thing.

14 I thin -- you are a DWR person. I --

15 MS. MORRIS: Isn't it true, Ms. Womack, that  
16 DWR had discussion with you recently regarding WaterFix  
17 and the purchase of your property and, in fact, made you  
18 an offer?

19 WITNESS WOMACK: No.

20 MS. MORRIS: And your testimony is also that  
21 you didn't counteroffer on that?

22 WITNESS WOMACK: No.

23 MS. MORRIS: So you've had --

24 WITNESS WOMACK: We met in 2012, I believe,  
25 with Sergio Valles. I don't believe he's --



1 CO-HEARING OFFICER DODUC: All right. All  
2 right. It has been asked and answered, and your 40  
3 minutes is up. Is there much more you need to ask?

4 MR. MIZELL: No, that will conclude our  
5 cross-examination.

6 CO-HEARING OFFICER DODUC: Thank you.

7 WITNESS WOMACK: Goodness.

8 CO-HEARING OFFICER DODUC: I believe LAND and  
9 DDJ- Ms. Des Jardins have also requested cross. I'll  
10 leave it to you to determine who goes next.

11 All right. Ms. Des Jardins requested 10  
12 minutes for cross.

13 MS. DES JARDINS: Yes, and I'm hoping it will  
14 take less than that.

15 CROSS-EXAMINATION BY MS. DES JARDINS

16 MS. DES JARDINS: I'd like to pull up Exhibit  
17 CCLP-62, please. Page 7. And please scroll down to  
18 where it's highlighted.

19 Ms. Womack, so if this contract states, "United  
20 States agrees to transport and convey through said canal  
21 to the pump constructed by Vendor. Said Vendor's  
22 riparian" --

23 THE REPORTER: I'm sorry. You have to slow  
24 down, please.

25 MS. DES JARDINS: ". . .said canal to the pump



1 constructed by Vendor said Vendor's riparian,  
2 appropriative, or prescriptive waters."

3 Has Reclamation ever discussed with you  
4 providing water from -- conveyed from the North Delta  
5 intakes when the -- that supply might be blocked?

6 WITNESS WOMACK: No. We've had -- CVP has not  
7 met with us at all regarding our water and what will  
8 happen to it with this California WaterFix. We've had  
9 no conversations. Of course, I -- I get things in  
10 writing, and we've had no writing either.

11 MS. DES JARDINS: Have they ever offered -- had  
12 any discussions or offered to amend this contract to  
13 provide a substitute water supply?

14 WITNESS WOMACK: Absolutely not.

15 MS. DES JARDINS: Has DWR ever offered to amend  
16 this contract to -- to provide you a contract to provide  
17 you a supply?

18 WITNESS WOMACK: Absolutely not.

19 MS. DES JARDINS: And I'd like to go to I  
20 believe it's -- was it Exhibit DWR-963, please?

21 WITNESS WOMACK: I think it's 936. It's the  
22 judgment. That one, yeah.

23 MS. DES JARDINS: DWR-936.

24 WITNESS WOMACK: Yes.

25 MS. DES JARDINS: And I wanted to ask you your



1 dad.

2           When you were negotiating the terms of this  
3 contract, the terms -- the settlement terms for this  
4 judgment, hadn't DWR obtained some of your property  
5 through some kind of action? Or didn't --

6           WITNESS WOMACK: Do you want to answer that?

7           WITNESS MOORE: I don't think I understand.

8           MS. DES JARDINS: Yeah. Were you under extreme  
9 stress when you negotiated the terms of this contract?

10          WITNESS WOMACK: My father was not involved in  
11 any negotiations. My grandfather was a great  
12 negotiator.

13          MS. DES JARDINS: Okay.

14          WITNESS WOMACK: And he -- my father was the  
15 tenant farmer.

16          MS. DES JARDINS: Okay. Thank you.

17          WITNESS WOMACK: He did not have any rights to  
18 negotiate.

19          MS. DES JARDINS: That concludes my questions.

20          CO-HEARING OFFICER DODUC: Thank you.

21          Ms. Meserve?

22          MS. MESERVE: No questions.

23          CO-HEARING OFFICER DODUC: Mr. Emrick, any  
24 redirect?

25          MR. EMRICK: Can I take just a second?





1 (Sotto voce discussion between Ms. Womack  
2 and Mr. Emrick)

3 WITNESS WOMACK: Let's get that in the record.

4 MR. EMRICK: Yes, so --

5 CO-HEARING OFFICER DODUC: On what issue?

6 MR. EMRICK: This is going to be on the May  
7 2017 meeting at the property.

8 CO-HEARING OFFICER DODUC: Okay.

9 (Sotto voce discussion between Ms. Womack  
10 and Mr. Emrick)

11 MR. EMRICK: Well, do you have -- you didn't  
12 have a meeting?

13 WITNESS WOMACK: No.

14 MR. EMRICK: But somebody came -- DWR visited  
15 the property on -- in May 2017?

16 CO-HEARING OFFICER DODUC: Hold on.

17 Are we recording this?

18 THE REPORTER: Kind of. The next thing I have  
19 is "DWR visited the property in May 2017."

20 CO-HEARING OFFICER DODUC: Yes. Mr. Emrick is  
21 not testifying.

22 MR. EMRICK: I'm asking the question.

23 CO-HEARING OFFICER DODUC: You're asking the  
24 question, so hold on.

25 So your request for redirect is to clarify



1 whether there was a meeting on --

2 WITNESS WOMACK: In May, yes. There was not.  
3 I had sent a letter to Director Croyle. And I would --  
4 at some point in May, there was an engineering report  
5 which is CCLP-63.

6 MR. EMRICK: And that was stricken. But the --  
7 there was an investigation that was performed by DWR in  
8 May of 2017 of the seepage; is that correct?

9 WITNESS WOMACK: Eventually I found that out I  
10 didn't find this out until January of 2018.

11 CO-HEARING OFFICER DODUC: All right. Stop  
12 right there.

13 Mr. Mizell. No?

14 MR. MIZELL: I'm just prepared in case we go  
15 further.

16 CO-HEARING OFFICER DODUC: Continue, please.

17 MR. EMRICK: And there was -- your  
18 understanding was that a report was prepared as a result  
19 of that investigation; is that correct?

20 WITNESS WOMACK: Yes. I should clarify, too.  
21 The --

22 MR. EMRICK: When did you get that report?

23 WITNESS WOMACK: I received the report in  
24 January of 2018.

25 MR. EMRICK: Did that report suggest certain



1 remediations of the property?

2 CO-HEARING OFFICER DODUC: Now there's going to  
3 be Mr. Mizell.

4 MR. MIZELL: Yes. I'd like to object. He's  
5 going beyond the scope of our cross-examination.

6 CO-HEARING OFFICER DODUC: Sustained

7 MR. EMRICK: But you did not receive the report  
8 until January of 2018?

9 WITNESS WOMACK: Yes.

10 MR. EMRICK: Okay. That's all I have. Thank  
11 you.

12 CO-HEARING OFFICER DODUC: Thank you.

13 Any recross?

14 MR. MIZELL: No, thank you.

15 CO-HEARING OFFICER DODUC: All right. At this  
16 time, I believe you have exhibits to move. And I  
17 believe, Mr. Mizell, you had indicated earlier you had  
18 objections to exhibits? Shall we hear your objections  
19 first, Mr. Mizell?

20 And actually, before you begin, how lengthy are  
21 these objections?

22 MR. MIZELL: I believe that many of them you  
23 will be able to deal with today. They are objections  
24 that are being put onto the record simply for  
25 completeness. But based upon our discussions this



1 morning, I expect the answer to be quite obvious to us  
2 all.

3 CO-HEARING OFFICER DODUC: Well, we shall see.  
4 Proceed, please.

5 MR. MIZELL: Okay. Let me get my copy of the  
6 testimony. Please hold on.

7 So I'd like to raise an objection to CCLP-61.  
8 It is referenced within Mr. Moore's statement of  
9 qualifications, but it deals with seepage, so I'm  
10 raising objection that it's out of scope,  
11 recognizing, however, that you overruled the motion to  
12 strike this morning.

13 CO-HEARING OFFICER DODUC: And so you are --

14 MR. MIZELL: So, for the record, I would just  
15 like to know if you will be admitting CCLP-61 over an  
16 objection of out of scope? Essentially, I just need to  
17 confirm this morning's rulings as they affect these  
18 exhibits. So if we were leaving it in the testimony, I  
19 would expect my objection to be overruled.

20 CO-HEARING OFFICER DODUC: Your objection is  
21 overruled.

22 MR. MIZELL: Okay.

23 I have an objection to CCLP-63, 64 -- 63 and 64  
24 as being beyond the scope dealing with seepage. Those  
25 are within the struck testimony.





1 CO-HEARING OFFICER DODUC: That would be 64,  
2 correct?

3 MR. MIZELL: And CCLP-63. CCLP-63 is  
4 referenced, Page 9, Line 20. And 64 is Page 9, Line 22.

5 CO-HEARING OFFICER DODUC: All right. They are  
6 so removed.

7 (Sotto voce discussion between Ms. Womack  
8 and Mr. Emrick)

9 WITNESS WOMACK: Well, it's not seepage. It's  
10 to do with a failure. It's a dam failure. Seepage --

11 CO-HEARING OFFICER DODUC: It is in the section  
12 that was struck this morning.

13 WITNESS WOMACK: Well, but it's dam failure.  
14 He's saying it's -- the wall's failing.

15 CO-HEARING OFFICER DODUC: It's in the section  
16 that was struck this morning.

17 WITNESS WOMACK: Wow, okay.

18 MR. MIZELL: Then we're objecting to CCLP-65  
19 through 68. They're referenced in the testimony on  
20 Page 11 with regards to the conversations, the letter  
21 exchanges between DWR and CCLP. We've again objecting  
22 to those as discussing existing facilities and outside  
23 the scope.

24 CO-HEARING OFFICER DODUC: And overruled.

25 MR. MIZELL: I do appreciate your patience.



1 This is just something I have to do for the record.

2 CO-HEARING OFFICER DODUC: It's a lawyer thing,  
3 isn't it?

4 MR. MIZELL: It is. We like to be annoying  
5 sometimes.

6 CO-HEARING OFFICER DODUC: Is that all,  
7 Mr. Mizell?

8 MR. MIZELL: Similarly, we object to CCLP-62.  
9 This is within Mr. Moore's statement of qualifications.  
10 We believe this is outside the scope.

11 CO-HEARING OFFICER DODUC: Similarly, it is  
12 overruled.

13 MR. MIZELL: CCLP-69, again, within Mr. Moore's  
14 statement of qualifications, we believe it's outside the  
15 scope.

16 CO-HEARING OFFICER DODUC: Overruled.

17 MR. MIZELL: And then the reference to CCLP-40  
18 found in the testimony, CCLP-40 was previously ruled  
19 beyond the scope of Part 2 in a June 18th ruling.

20 For Mr. Deeringer's purposes, that's on Page 2  
21 of that ruling. In that ruling, you indicated that  
22 CCLP-40 does not relate to the WaterFix project or any  
23 part to key hearing issues. So we would object to that  
24 exhibit as beyond the scope.

25 CO-HEARING OFFICER DODUC: I'm sorry. Where in



1 CCLP-60 is that reference?

2 MR. EMRICK: Page 11.

3 CO-HEARING OFFICER DODUC: This was introduced  
4 for the purpose of the communication argument that  
5 Ms. Womack made.

6 WITNESS WOMACK: Yes.

7 CO-HEARING OFFICER DODUC: So the objection was  
8 overruled.

9 MR. MIZELL: Thank you very much. And thank  
10 you for your patience.

11 CO-HEARING OFFICER DODUC: So what does that  
12 leave us with, Mr. Emrick? I hope you were keeping  
13 track.

14 WITNESS WOMACK: I think we're just missing 63  
15 and 64. So we would like -- well, go ahead.

16 MR. EMRICK: No --

17 WITNESS WOMACK: Oh, we would like to move into  
18 evidence everything except CCLP-63 and 64.

19 So 60, 61, 62, 65, 66, 67, 68, and 69. And my  
20 testimony -- oh, no. My testimony is 60.

21 MR. EMRICK: Yes, it is.

22 WITNESS WOMACK: Okay. And my testimony -- I  
23 don't know these things.

24 CO-HEARING OFFICER DODUC: All right. Thank  
25 you. Those have been received.



1 (Protestant Clifton Court Forebay exhibits  
2 CCLP-60 through CCLP-62 and CCLP-64 through  
3 CCLP-69 admitted into evidence)

4 Thank you, Mr. Moore. Thank you, Mr. Womack --

5 WITNESS WOMACK: Thank you for your time.

6 CO-HEARING OFFICER DODUC: Ms. Womack.

7 WITNESS WOMACK: That's okay.

8 CO-HEARING OFFICER DODUC: And thank you,

9 Mr. Emrick.

10 Let us take a short break, and we will do a  
11 musical chairs and ask Mr. Bednarski and Dr. Chilmakuri  
12 to come up.

13 We will return at 2:50 -- 55.

14 (Recess taken)

15 CO-HEARING OFFICER DODUC: All right. It's  
16 2:55. We're back. Before we turn to DWR's witnesses.  
17 Ms. Ansley, Mr. Emrick, Ms. Ansley had previously said  
18 she had some objections with respect to Dr. Paulsen's  
19 testimony. And let me confirm with Ms. Meserve, now  
20 that she's back, that although you requested time to  
21 cross-examination Dr. Paulsen, you do not object to the  
22 agreement reached between Antioch and petitioners to not  
23 require Dr. Paulsen to appear?

24 MS. MESERVE: Correct.

25 CO-HEARING OFFICER DODUC: Thank you. So





1 stated for the record.

2 Now, Ms. Ansley, your objections.

3 MS. ANSLEY: Yes. My objections for the record  
4 are it's my understanding of the September 10th, 2018  
5 ruling that the Hearing Officers discourage repetitive  
6 rebuttal evidence that provides no new evidence.

7 And it is my objection that Opinions 1 and 2 of  
8 Dr. Paulsen's surrebuttal testimony, which is  
9 Antioch-700, are wholly repetitive of the testimony  
10 provided in Antioch's case in chief, Antioch 500-Errata,  
11 and then in Part 2 Rebuttal, Antioch 600.

12 While she does purport to be responding to  
13 Dr. Chilmakuri's testimony, what she is doing in  
14 Opinions 1 and 2 is merely resummarizing her conclusions  
15 from Antioch 500 and Antioch 600, using the same charts  
16 from Antioch 600 and expressly referencing that that's  
17 what she's doing with that.

18 Aside from her repetition of her earlier  
19 testimony, she provided no new evidence or rebuttal to  
20 the testimony of Dr. Chilmakuri that was not already  
21 laid out. I am not extending this objection to her  
22 third opinion, just to make sure that's clear for the  
23 record. I am talking only about Opinions 1 and 2 of  
24 Dr. Paulsen's testimony, Antioch 700. And I'm happy to  
25 give page cites for that.



1           That would be starting on Page -- I believe  
2   it's Page 3, Line 2 with the title "Opinion 1," going  
3   through Page 8, Line 24.

4           CO-HEARING OFFICER DODUC:   Response,  
5   Mr. Emrick.

6           MR. EMRICK:   Well, my response is to -- first  
7   thing I want to ask is is this in addition to  
8   Ms. Morris's objections or is this a separate objection?

9           CO-HEARING OFFICER DODUC:   I don't believe  
10   Ms. Morris had any objection.

11          MR. EMRICK:   She told me she would have an  
12   objection to Dr. Paulsen's that she --

13          MS. ANSLEY:   I believe that --

14          MR. EMRICK:   -- was going to bring up on  
15   Monday.

16          MS. ANSLEY:   I apologize for interrupting you.

17                 I believe that what she was doing was reserving  
18   my right to make objections, over the phone, which she  
19   knew that I had.   We coordinate, and so I have the  
20   objections for Dr. Paulsen here.

21          CO-HEARING OFFICER DODUC:   So these would be  
22   objections on behalf of DWR and State Water Contractors?

23          MR. MIZELL:   That's correct.

24          MR. EMRICK:   So my second statement would be  
25   that I don't have that testimony in front of me.   I



1 just -- you know.

2 CO-HEARING OFFICER DODUC: You were focused  
3 today on other matters.

4 MR. EMRICK: If I could reply to that objection  
5 Monday morning.

6 MS. ANSLEY: Or I'm happy to provide the  
7 testimony -- I'm happy to provide the testimony on my  
8 computer, too. If you would like to show up Monday  
9 morning, that's fine.

10 CO-HEARING OFFICER DODUC: Let's do this.  
11 Since Dr. Paulsen is not appearing, in any case,  
12 regardless of our ruling on this matter, do you need  
13 Ms. Ansley to submit her objection in writing?

14 MR. EMRICK: If she could just send me an  
15 e-mail, that'd be fantastic.

16 CO-HEARING OFFICER DODUC: And she'll have to  
17 send everybody the e-mail.

18 But please do that, Ms. Ansley by -- I don't  
19 know what time we'll finish today, so how about by noon  
20 on Monday.

21 MS. ANSLEY: Sure.

22 CO-HEARING OFFICER DODUC: Unless you can do it  
23 today.

24 MS. ANSLEY: I can see if I can sit here and  
25 craft something, and we'll see if it can be served --



1 I'm not usually -- I'm not one of the people who --

2 CO-HEARING OFFICER DODUC: You know what?

3 Let's just have you submit it by noon on Monday.

4 Mr. Emrick, you may have until noon on Tuesday to  
5 respond.

6 MR. EMRICK: Thank you very much. We are not  
7 going to have further proceedings on Monday?

8 CO-HEARING OFFICER DODUC: I don't know yet.

9 MR. EMRICK: Okay.

10 CO-HEARING OFFICER DODUC: It depends on how  
11 today goes.

12 MR. EMRICK: Thank you.

13 CO-HEARING OFFICER DODUC: In any case, we also  
14 have Mr. Burke still left to hear from.

15 All right. I think that takes care of matters  
16 for now. And before I forget though, if we do reconvene  
17 next week, I believe there's been a change in location.

18 Yes, instead of Byron Sher, we will now be in  
19 the Coastal Hearing room. All right. I just wanted to  
20 before I forget.

21 Now we will turn to Ms. Ansley and Mr. Mizell.

22 JOHN BEDNARSKI and CHANDRA CHILMAKURI,  
23 called as Part 2 Surrebuttal witnesses  
24 by Petitioner California Department of  
25 Water Resources, having been previously





1           duly sworn, were examined and testified

2           further as hereinafter set forth:

3           DIRECT EXAMINATION BY MR. MIZELL and MS. ANSLEY

4           MR. MIZELL: Thank you. So in response to your  
5 ruling to have DWR produce witnesses and testimony in  
6 response to questions about CCLP's water right, we have  
7 produced Mr. John Bednarski and Dr. Chandra Chilmakuri.  
8 They have all appeared before you in earlier portions of  
9 this hearing and sworn in in those proceedings. So I  
10 won't ask them to rise at this time but simply attest to  
11 the surrebuttal testimony, and then I'll turn to  
12 microphone over to them as is our practice.

13           CO-HEARING OFFICER DODUC: Thank you.

14           MR. MIZELL: Mr. Bednarski, is DWR-1217 a true  
15 and correct copy of your surrebuttal testimony?

16           WITNESS BEDNARSKI: Yes, it is.

17           MR. MIZELL: Dr. Chilmakuri is DWR-1421 a true  
18 and correct copy of your surrebuttal testimony?

19           WITNESS CHILMAKURI: Yes, it is.

20           MR. MIZELL: Thank you. So we will start with  
21 Mr. Bednarski, and after he has completed his summary,  
22 we will turn it over to Dr. Chilmakuri.

23           Mr. Bednarski?

24           WITNESS BEDNARSKI: Thank you. I'm going to  
25 take a few minutes to summarize my testimony, DWR-1417.



1           Could we go to DWR-1305, Sheet 55 of 96. I'd  
2 like to take just a couple minutes to review the  
3 facilities in the South Delta that are now included as  
4 part of the California WaterFix with the Supplemental  
5 EIR/EIS and the July 2018 CER.

6           CO-HEARING OFFICER DODUC: Let's wait until we  
7 get it up.

8           WITNESS BEDNARSKI: Yes, absolutely.

9           CO-HEARING OFFICER DODUC: So that's DWR-1305,  
10 what page?

11           WITNESS BEDNARSKI: Sheet 55 of 96. It should  
12 be down in the bottom right there. The sheet numbering  
13 I don't have the PDF page number. There we go.

14           Okay. In front of us here is an overview of  
15 the facilities at the south end of the California  
16 WaterFix facilities. Starting at the upper left, we  
17 have the two main tunnels. We'll be entering into the  
18 Byron Tract Forebay, basically shown as that trapezoidal  
19 shape there, triangular shape. At that location, there  
20 are two pump stations, each 4500 cfs that will lift the  
21 water into the Byron Tract Forebay.

22           There is a range of water surface operating in  
23 elevations that will be established during preliminary  
24 and final design to set the final hydraulic gradient  
25 available coming out of the Byron Tract Forebay. Water



1 will then flow through a series of gates at the south  
2 end of the Byron Tract Forebay by gravity into the two  
3 south tunnels, each one about one and a half miles long.

4           The water will then well up in the connection  
5 channel that's shown in yellow here, that is on the  
6 south side of Byron Highway.

7           At this point, the water from the North Delta  
8 diversions can flow either to the Jones intake channel,  
9 or the DMC as others call it, or it can also flow to the  
10 Banks intake channel.

11           With the facilities that we are providing here,  
12 there are four control structures that allow us to  
13 operate in three different modes of operation. And  
14 those control structures on this drawing are labeled as  
15 Control Structure No. 1, which is on the intake to the  
16 Banks Plant, that yellow square. We also have Control  
17 Structure No. 2 that's located on the Jones intake  
18 channel and is shown as this yellow square over there.  
19 It's the ones that are the subject of our discussion  
20 here today.

21           And then inside that yellow connection channel,  
22 there are also two control structures there, Control  
23 Structure 3, which leads into the Banks intake channel,  
24 and Control Structure No. 4, that allows water to flow  
25 into the Jones intake channel.



1           With these four control structures, we are able  
2 to operate in three different types of modes of  
3 operation. The first is North Delta Diversions only.  
4 And under that mode of operation, Control Structures 1  
5 and 2 gates will be fully open. And Control Structure  
6 No. 3 and 4, those gates will be closed. And water will  
7 flow much as it does today into the Jones and the Banks  
8 plants with those gates fully open.

9           It will be our goal to design a structure  
10 and -- a gated structure that minimizes the amount of  
11 head loss or energy loss through each of those  
12 structures. And the reason for this is that we have  
13 relatively tight operating windows of water surface  
14 elevations at both of those pumping plants, and we want  
15 to maintain those current operating conditions into the  
16 future.

17           The second mode of operation -- I'm sorry.  
18 That mode of operation that I just described is the  
19 South Delta Diversions.

20           The second mode of operation would be for the  
21 North Delta Diversions. And under this mode of  
22 operation, the gates in Control Structure 1 and 2 would  
23 be closed, and the gates at Control Structures 3 and 4  
24 would be opened. And these gates are what we call  
25 throttling gates. The water will flow from the Byron





1 Tract Forebay, well up in what we call the South Tunnels  
2 Outlet Structure.

3           And these two control structures will modulate  
4 to regulate the amount of flow going over to the Jones  
5 intake channel and the Banks intake channel. As I  
6 mentioned earlier, gates -- or Control Structures 1 and  
7 2 will be closed, so there will be no water from the  
8 South Delta entering.

9           The third mode of operation then is what we  
10 call dual operation, where water from both the North  
11 Delta Diversions and the South Delta Diversions will be  
12 blended. Under this mode of operation as we currently  
13 envision this with our conceptual engineering completed  
14 to date, Control Structure 1 and 2 gates will be open,  
15 and then the gates at Control Structures 3 and 4 will be  
16 modulated to allow a blend, then, of water from the  
17 north and the south diversions to occur in both the  
18 Jones intake channel and the Banks intake channel.

19           So that is kind of a brief description of the  
20 three modes of operation. Based on our analysis to  
21 date, it is my opinion that there will be no impacts to  
22 the Clifton Court LP water rights either from the  
23 footprint of the Control Structure No. 2 or from our  
24 intended diversions under any of these three operating  
25 modes.



1           We still have quite a bit of work --

2           CO-HEARING OFFICER DODUC: I'm sorry,  
3 Mr. Bednarski.

4           WITNESS BEDNARSKI: Yes.

5           CO-HEARING OFFICER DODUC: Let me stop you  
6 right there.

7           Mr. Emrick.

8           MR. EMRICK: I'm sorry. I didn't see where any  
9 of that preceding testimony was in his written  
10 testimony.

11          CO-HEARING OFFICER DODUC: Mr. Bednarski?

12          WITNESS BEDNARSKI: I believe that's covered in  
13 the Conceptual Engineering Report.

14          CO-HEARING OFFICER DODUC: Is it in your  
15 testimony, however?

16          WITNESS BEDNARSKI: The description of the  
17 operations? I did not go into a detailed description of  
18 that, but I have referenced the Conceptual Engineering  
19 Report, I believe, in my testimony.

20          MR. MIZELL: And the discussion of the  
21 operation can be found on Page 3, Section 1(b).

22          CO-HEARING OFFICER DODUC: Let me locate it.  
23 I'm sorry. Where is it, Mr. Mizell?

24          MR. MIZELL: Page 3, Section 1(b), the little B  
25 at the top of Page 3 beginning on Line 4, proceeding on



1 Line 15.

2 CO-HEARING OFFICER DODUC: I see it. All  
3 right.

4 WITNESS BEDNARSKI: Proceed?

5 CO-HEARING OFFICER DODUC: Proceed.

6 WITNESS BEDNARSKI: Okay.

7 So we've completed conceptual engineering for  
8 the California WaterFix facilities. The upcoming  
9 engineering activities will include detailed hydraulic  
10 modeling of the entire California WaterFix hydraulic  
11 facilities starting at both the Jones and the Banks  
12 plant and working our way back up to the three river  
13 intakes.

14 This information and modeling will be used to  
15 develop and refine the system hydraulics that will then  
16 allow us to proceed with the preliminary and final  
17 design of the control structures and all of the  
18 facilities that have been highlighted at the south end  
19 of the California WaterFix.

20 If impacts --

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

22 WITNESS BEDNARSKI: Yes.

23 CO-HEARING OFFICER DODUC: We have another  
24 objection.

25 MS. DES JARDINS: I did have an objection to



1 the statement, "We have completed conceptual engineering  
2 for the WaterFix facilities." I did not see that in  
3 Mr. Bednarski's written testimony. And it goes  
4 considerably beyond the scope of impacts to the CCLP's  
5 water rights.

6 MR. MIZELL: The conceptual engineering reports  
7 have already been put into the record as exhibits from  
8 DWR. Those reports weren't disputed at that time.

9 To the extent that Ms. Des Jardins believes  
10 that they may be modified in the future, I don't think  
11 that's what Mr. Bednarski is testifying to. Maybe he  
12 can clarify. But his references to conceptual  
13 engineering reports are to the exhibits that are already  
14 in the record.

15 CO-HEARING OFFICER DODUC: And let's narrow it  
16 down, Mr. Bednarski. Your reference is as they pertain  
17 to potential impacts to CCLP?

18 WITNESS BEDNARSKI: Yes.

19 CO-HEARING OFFICER DODUC: Let's keep in  
20 mind -- I think you were here when we had this  
21 discussion before our lunch break -- that the very  
22 narrow scope of your testimony is CCLP and CCLP's water  
23 rights.

24 WITNESS BEDNARSKI: Thank you.

25 CO-HEARING OFFICER DODUC: So your comments and





1 testimony will be taken into that narrow focus.

2 WITNESS BEDNARSKI: Very good.

3 During the preliminary and final design, if  
4 impacts to Clifton Court LP's water rights are  
5 identified, my testimony commits DWR to implementing  
6 mitigation measures to reduce or eliminate those  
7 potential impacts. And those have all been outlined in  
8 my testimony.

9 Temporary and permanent impacts will be  
10 addressed, even if those are identified after start-up  
11 of the WaterFix facilities.

12 That's the completion of my summary.

13 CO-HEARING OFFICER DODUC: Thank you.

14 WITNESS CHILMAKURI: Good afternoon.

15 Before I start, I have a one minor typo that  
16 I'd like to correct for the record.

17 On Page 10 of my testimony -- Mr. Long, if you  
18 can please bring up DWR-1421.

19 On Page 10 of my testimony, Line 24, where it  
20 says -- the sentence that's starting, "Figure 3 is based  
21 on," it should say "Figure 5."

22 I'll give a brief overview of my written  
23 testimony here. My testimony is primarily to conclude  
24 that the operations of the control structure within the  
25 Jones Intake Channel will not diminish the availability



1 or the conditions of water to CC- -- at CCLP's diversion  
2 location.

3 Mr. Long, could you please bring up Figure 1 on  
4 Page 2 of my testimony? Thank you.

5 As Mr. Bednarski just described, the  
6 operation -- or potential operations of how the water  
7 will move through the -- between the Byron Tract  
8 Forebay, which would be the water that's coming from the  
9 North Delta Diversions into the -- that would be the new  
10 source of water that would be pumped from Banks and  
11 Jones Pumping Plants. And there's water moving from  
12 South Delta channels directly through Clifton Court  
13 Forebay and Jones Intake Channel. I just want to --

14 CO-HEARING OFFICER DODUC: Hold on a second,  
15 please.

16 Ms. Womack.

17 MS. WOMACK: Yes. I was wondering where on the  
18 maps that figure is from that shows the exact location.

19 CO-HEARING OFFICER DODUC: You may ask that  
20 during your cross-examination.

21 MS. WOMACK: Oh, sorry about that. I just was  
22 wondering about that.

23 CO-HEARING OFFICER DODUC: Please proceed,  
24 Dr. Chilmakuri.

25 WITNESS CHILMAKURI: So I think in order to



1 understand the water availability and the conditions,  
2 this figure is going to help us understand the location  
3 of Clifton Court LP's diversion location in reference to  
4 Old River and the proposed changes in the DMC Intake  
5 Channel.

6           So as you can see there, the big blue box  
7 identifies the area where the -- that would -- that's  
8 expected to be affected during construction. That's the  
9 footprint of the control structure that's being  
10 proposed.

11           And the red circle indicates the CCLP's  
12 diversion location. And I just show with the arrows  
13 where -- which direction is Old River Channel and which  
14 direction Jones Pumping Plant is, just to help us  
15 orient.

16           You can see that the proposed control structure  
17 would go into between the CCLP Diversion Intake and the  
18 Old River, which are right now tidally connected, as  
19 Ms. Womack was testifying earlier today.

20           And the new Byron Tract Forebay water, the  
21 South Canal which brings in water from the Byron Tract  
22 Forebay to the Jones Pumping Plant, that goes in between  
23 CCLP's diversion point and Jones Pumping Plant.

24           So that -- having that in mind is important to  
25 understand what kind of water will be going past CCLP



1 Diversion Intake.

2           So as Mr. Bednarski just described, there are  
3 three modes of operations that are possible. One is  
4 water -- just like today's conditions, water would be  
5 directly diverted out of South Delta, and there won't be  
6 any supply coming from the North Delta Diversions. In  
7 those conditions, the control structure gates would be  
8 open, and the CCLP's Diversion Intake will have similar  
9 conditions as the Old River Channel because those are  
10 tidally connected. They will continue to be tidally  
11 connected even after the control structure is built.

12           So I expect that the water levels and the water  
13 quality would be similar to the Old River Channel  
14 conditions near the junction of the Jones Intake Channel  
15 and the Old River. We will get to what those conditions  
16 would be like in a minute.

17           The other two operation modes that we talked  
18 about is either there is a blending operation or an  
19 isolated operation where the water is coming from North  
20 Delta Diversions alone.

21           In both -- in those situations, the water  
22 quality at CCLP's intake are expected to be better than  
23 today's conditions because there will be a -- and if it  
24 is a blended operation, then the South Delta water will  
25 be mixing with the water coming from the Sacramento





1 River, which is much fresher in terms of salinity. And  
2 so you would expect that the salinity -- the blended  
3 salinity would be lower there. And I have results that  
4 I'll show you in a minute here what I expect those  
5 results to be.

6 And if there is no blending and if the control  
7 structure is closed, then the supply we expect at the --  
8 or the water supply that we expect at CCLP's Diversion  
9 Intake will be of Sacramento River water quality, which  
10 would be much better than what they are currently  
11 getting today from the South Delta channels.

12 Mr. Long, could you please bring up Figure 2 of  
13 my testimony, please.

14 While that's happening, in the -- previously in  
15 this hearing, you have heard from Dr. Nader-Tehrani,  
16 Dr. Smith -- or Ms. Smith, and myself explaining to you  
17 that the South Delta salinity conditions with WaterFix  
18 are expected to be similar to the No Action Alternative.  
19 We have provided extensive testimony to that effect.

20 What I did here in Figure 2 is, again,  
21 demonstrating to you the same point, that in the Old  
22 River Channel -- this is right near the -- where the  
23 Jones Intake Channel intersects with the Old River. So  
24 this is -- so I would expect this water quality at  
25 CCLP's intake as well, if the control structure is open



1 and there is no flow coming from the Byron Tract  
2 Forebay. So this is -- this would be a -- an existing  
3 operation, essentially.

4 So as shown in this figure, obviously I'm  
5 presenting a long-term average here, but you can see  
6 that the salinity conditions are fairly similar. There  
7 is a slightly higher EC under the CWF H3+ compared the  
8 No Action. However, if you may recall, I believe in  
9 Part 1 of these proceedings Dr. Nader-Tehrani explained  
10 that that increase is primarily due to the Head of Old  
11 River Gate operations and that affecting the salinities  
12 in South Delta channels.

13 So based on this figure, I expect that, under  
14 that mode of operation, when the water going into Jones  
15 Pumping Plant is only originating from South Delta  
16 channels, the salinities would be similar to the No  
17 Action Alternative at CCLP's intake.

18 Mr. Long, if you can please bring up Figure 4,  
19 please. Figure 4, Number 4. Page 9. Yeah. Thank you.

20 So again, in continuing forward with the same  
21 mode of operation where the diversions are only from the  
22 South Delta channels, this figure is showing the water  
23 levels in the Old River at the junction of the Old River  
24 and the Jones Intake Channel. And I expect the water  
25 levels at CCLP's intake would be similar to the water



1 level in Old River as well because they are tidally  
2 connected.

3           And what you see here is that importing the  
4 daily minimum water levels that are modeled using  
5 DSM-2 -- and the red line here is for CWF H3+, and blue  
6 is No Action Alternative. And as you can see in the --  
7 across the 82-year period, the water levels are very  
8 similar to No Action or impacts very slightly --  
9 slightly higher, actually, than No Action Alternative.

10           And in this mode of operation, I expect that  
11 CCLP to continue to see similar water levels as No  
12 Action Alternative.

13           Mr. Long, could you please go to Figure 5. I  
14 think it's -- thank you.

15           Figure 5 here shows the blended water quality  
16 or blended EC at Jones Pumping Plant. So if the mode of  
17 operation is going to be -- there's going to be water  
18 diverted from both South Delta Channels and also from  
19 the Byron Tract Forebay, the expected water quality in  
20 the Jones Intake Channel and, by extension, at CCLP's  
21 intake is that CWF H3+ would actually result in much  
22 better salinity conditions than the No Action  
23 Alternative.

24           So I'd expect that, under all modes of  
25 operations, that CCLP should see better water quality



1 conditions than No Action Alternative.

2           And there was a lot of discussion about my  
3 responses previously about there's no modeling present  
4 to help understand what CCLP might face. My -- I just  
5 wanted to address that a little bit, and I did summarize  
6 it in my testimony to that effect.

7           We use -- all the results I'm presenting here  
8 are based on DSM-2 modeling, just to be clear. And as I  
9 said in my previous testimony, the DSM-2 model does not  
10 have the control structure we are talking about  
11 explicitly represented in it. The -- however, it  
12 reflects the operations of that control structure.

13           And it is explained -- the way the DSM-2  
14 boundary conditions are set up is explained in the  
15 DWR-1142 Appendix 5-A, which is the Biological  
16 Assessment. And it explains how the different mode of  
17 operations are considered in developing those boundary  
18 conditions.

19           So if -- for instance, I'll just give you one  
20 example. If the control structure is going to be  
21 closed, that means the water supply will come only from  
22 the North Delta Diversion. In that case, the boundary  
23 condition in DSM-2 model at the Jones Pumping Plant for  
24 the export value would be swept to zero. And you can  
25 check that, but that is how it is represented in the





1 model. And I provided references to DSM-2 input files  
2 in my testimony just to be clear about that.

3 And if there is pumping from the South Delta  
4 Channels, then there is a value for that time series,  
5 for that boundary condition. So that's how we  
6 represented it in the model even though the structure  
7 itself is not explicitly present.

8 With that, I conclude my summary.

9 CO-HEARING OFFICER DODUC: Thank you.

10 Mr. Emrick and Ms. Womack, if you could please  
11 come up.

12 MS. WOMACK: For our DSM modeling, I'd like to  
13 ask Deirdre Des Jardins to help out with the modeling as  
14 she's much more familiar. Thank you.

15 CROSS-EXAMINATION BY MR. EMRICK and MS. WOMACK

16 MR. MIZELL: So, Hearing Officer Doduc, if I  
17 might ask for some clarification. Ms. Des Jardins'  
18 providing technical support? Is that what was just  
19 discussed?

20 CO-HEARING OFFICER DODUC: That is my  
21 understanding.

22 MR. MIZELL: The questions will be coming from  
23 Mr. Emrick, the attorney for CCLP?

24 MR. EMRICK: They will be coming mostly from  
25 Ms. Womack, but they will secondarily be coming from me.



1 MR. MIZELL: Okay. Thank you.

2 CO-HEARING OFFICER DODUC: As long as they are  
3 focused on CCLP's water rights and it's within the  
4 scope. Do you have a time estimate for cross?

5 MS. WOMACK: Four hours.

6 MR. EMRICK: Probably an hour each. I think  
7 we'll start with Mr. Bednarski. Ms. Womack will take  
8 the lead; I will ask some follow-up, and then we will  
9 move on to --

10 CO-HEARING OFFICER DODUC: I will remind all of  
11 you that it is our typical process to provide for one  
12 hour of cross and then additional time upon offer of  
13 proof. So we will start with the one hour.

14 MS. WOMACK: All right. Mr. Bednarski, did  
15 anyone help you with your testimony?

16 WITNESS BEDNARSKI: DWR's legal staff assisted  
17 me in formatting it to it's present format.

18 MS. WOMACK: I appreciate that. Let's see.

19 Let's see. Who do you work for?

20 WITNESS BEDNARSKI: My employer is the  
21 Metropolitan Water District of Southern California.

22 MS. WOMACK: And are you the section manager of  
23 the Water Supply Initiative? That's what it -- is that  
24 your title?

25 WITNESS BEDNARSKI: Yes, I am. Yes, that's my



1 title.

2 MS. WOMACK: Okay. Are you the program manager  
3 for the CWF?

4 MR. MIZELL: I'm going to raise an objection  
5 here just to -- or maybe a clarification. We've been  
6 informed that they have two hours of questions they  
7 would like to ask. To the extent that we've been over  
8 Mr. Bednarski's background in many sections of  
9 cross-examination before, if we could simply go to the  
10 substantive questions, we might be able to better  
11 streamline this rather than have a fight later about  
12 whether or not the first hour was used effectively.

13 CO-HEARING OFFICER DODUC: I agree.

14 MS. WOMACK: Do you have authority to make  
15 legally binding decisions for Reclamation?

16 MR. MIZELL: Objection, calls for a legal  
17 conclusion.

18 CO-HEARING OFFICER DODUC: He does or he  
19 doesn't.

20 WITNESS BEDNARSKI: Yeah, I don't know how my  
21 authority pertains to Bureau of Reclamation. I believe  
22 that my testimony commits DWR to my statements in my  
23 testimony, though.

24 MS. WOMACK: So do you have authority for  
25 commitments from Reclamation then?



1 MR. MIZELL: It's been answered.

2 MS. WOMACK: Oh, okay. Okay.

3 Do you have a letter confirming -- do you have  
4 a signed letter from DWR confirming your legal --  
5 legally binding authority?

6 MR. MIZELL: Objection, again, calls for a  
7 legal conclusion. But as the Department's attorney, I  
8 can assert that any commitments that Mr. Bednarski has  
9 made to mitigation have been assessed at the Department,  
10 and we would commit to those if they became terms and  
11 conditions of our permit.

12 CO-HEARING OFFICER DODUC: So noted, sustained.

13 MS. WOMACK: So the control structure on Page 2  
14 of your testimony, 1417 --

15 Mr. Long, if you could put that up.

16 This is qualified at the bottom as an "aerial  
17 photo clearly shows CCLP intake structure." Is this in  
18 the CER or the SEIR/EIS?

19 WITNESS BEDNARSKI: Yes, that's a blowup of an  
20 image from the CER.

21 MS. WOMACK: Do you have a reference for that?  
22 Because it says it's an aerial photo.

23 WITNESS BEDNARSKI: Yes, I do.

24 Can we go to DWR-1305, Sheet 55 of 96. It's  
25 the same one we looked at previously.





1           There we go. Now if we can magnify that area  
2 for the control structure that's in the DMC. Yeah,  
3 it's -- scan to the right side of the image.

4           MS. WOMACK: So it's from this -- this is the  
5 reference of it?

6           WITNESS BEDNARSKI: Okay. Now that yellow box  
7 there, I believe if we continue to magnify that, we  
8 should be able to see the -- keep going --

9           MS. WOMACK: This is where you got the  
10 structure from?

11          WITNESS BEDNARSKI: I'm sorry?

12          MS. WOMACK: This is where you got this photo  
13 from? This isn't an aerial photo. Or this -- I'm just  
14 looking for the reference number for this photo because  
15 I don't see that being the same as what should show.

16          MR. MIZELL: Objection, asked and answered.

17          WITNESS BEDNARSKI: No, we created this image  
18 for my testimony based on the footprint that's shown  
19 right here, using the exact same coordinates that are  
20 shown on this drawing.

21                 We do not have this figure in the CER. We  
22 created it specifically for this testimony to show the  
23 relationship of the CCLP diversion in regards to the  
24 proposed control structure.

25          MS. WOMACK. Okay. Have there been any surveys



1 of that?

2 WITNESS BEDNARSKI: We have not done any  
3 surveys. We have gone off of GPS coordinates.

4 MS. WOMACK: Which are not included in this  
5 picture. They're not in the picture on Page 2. I don't  
6 see any coordinates.

7 WITNESS BEDNARSKI: No, we didn't include those  
8 coordinates on --

9 MS. WOMACK: I would say that this is not --  
10 this does not provide a legal --

11 CO-HEARING OFFICER DODUC: You may make that  
12 argument in your briefs. Right now, you are  
13 cross-examining these witnesses.

14 MS. WOMACK: Okay.

15 Okay. So next, on Page 2 of your testimony,  
16 you conclude there's no impacts to CCLP from the  
17 construction. And what you say here is that it is --  
18 the sole basis for -- it appears the sole basis for this  
19 opinion is that the distance between the construction  
20 impact of the control structure and our diversion is  
21 100 feet is what I've read.

22 That is on Page 2, Lines 26 -- yeah. Starts on  
23 25. So based on the conceptual engineering, the  
24 clearance between that.

25 CO-HEARING OFFICER DODUC: And your question



1 is?

2 MS. WOMACK: So the question is is that the  
3 sole basis of your opinion?

4 MS. ANSLEY: Objection, it misstates the  
5 testimony in the preface to that question where she said  
6 "the sole basis is a hundred feet." Reading his  
7 testimony exactly, he says the construction footprint is  
8 more than a hundred feet.

9 CO-HEARING OFFICER DODUC: All right. We will  
10 make a note of that.

11 And, Mr. Bednarski, answer the question,  
12 please.

13 WITNESS BEDNARSKI: I'm sorry could you repeat  
14 the question?

15 MS. WOMACK: Probably not.

16 So is the sole basis for your assertion there  
17 is no -- there's no impact of the control structure, is  
18 it just based on distance?

19 WITNESS BEDNARSKI: No. I think that this  
20 statement was related only to whether -- from the  
21 temporary construction impact or the permanent footprint  
22 would not disrupt the existing diversion.

23 This statement is not based upon any  
24 conclusions about operations of the system. This figure  
25 was only used to demonstrate that the footprint, both



1 temporary impacts and permanent impacts, did not fall on  
2 top of the existing diversion; that is about a hundred  
3 feet downstream of that location.

4 MS. WOMACK: Okay.

5 WITNESS BEDNARSKI: That was the only purpose  
6 for that statement there.

7 MS. WOMACK: Okay. You say that the 14.8  
8 construction structure is part of the approved plan. It  
9 is a 2.2 approved plan structure. Is this your best  
10 rendering of the 14.8 project acreage and how it will  
11 look and what will. . .

12 WITNESS BEDNARSKI: Well, again --

13 MR. MIZELL: Objection.

14 WITNESS BEDNARSKI: Oh, sorry. Sorry, Tripp.

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

16 MR. MIZELL: The question's vague and  
17 ambiguous. There are a number of numbers in there  
18 that --

19 MS. WOMACK: The original --

20 MR. MIZELL: -- did not read very concisely.

21 If we can get the question restated --

22 MS. WOMACK: Certainly.

23 MR. MIZELL: -- so that we understand exactly  
24 what statement you're referring to.

25 MS. WOMACK: The original structure was





1 2.2 acres. It says here that it's in the approved plan  
2 that it's 14.8.

3 I guess I'd like to know -- I'd like a  
4 rendering of what is going on in this whole acreage of  
5 14.8.

6 WITNESS BEDNARSKI: Okay. If we go to page --

7 CO-HEARING OFFICER DODUC: Hold on. Actually,  
8 I'm not clear on what the answer to the question is.

9 MS. WOMACK: If you see the blue box, there's a  
10 blue box that shows 14.8 acres. And they say there's  
11 not going to be -- that's what I've been -- is that  
12 correct? The blue box is the 14.8 acres?

13 WITNESS BEDNARSKI: Yes. If you go to the  
14 footnote on Page 4, I believe it explains what all three  
15 of those different --

16 CO-HEARING OFFICER DODUC: Okay. So then,  
17 Ms. Womack, your question?

18 MS. WOMACK: What else is going to be on here?  
19 I've been told there's some -- you see, there -- in one  
20 of the questions, in one of the responses that was --

21 CO-HEARING OFFICER DODUC: I can't refer to  
22 that response because we struck it, so.

23 MS. WOMACK: Okay. So what else will be on  
24 here, on this structure? We have the control structure  
25 in the center. And supposedly that's not going -- what



1 else is going to be on this?

2 WITNESS BEDNARSKI: The permanent footprint of  
3 the structure is shown in red. Okay? And that's  
4 approximately 4.6 acres. And I think -- I believe  
5 that's what we've cleared through the environmental  
6 process as far as a permanent footprint for the  
7 structure.

8 As we're doing our construction activities,  
9 we're going to need a staging and mobilization area. We  
10 may also need to construct a bypass of the canal around  
11 the construction area. So we've set aside the area  
12 shown in blue for those temporary construction impacts.

13 MS. WOMACK: Okay. That's --

14 WITNESS BEDNARSKI: Those areas will be graded  
15 back to their pre-existing, you know, configuration once  
16 construction is complete. So those are considered  
17 temporary impacts as opposed to what falls within the  
18 red rectangle, which is a permanent footprint for the  
19 structure.

20 MS. WOMACK: Okay. So during construction,  
21 will you have -- the blue will be --

22 Could you put that down, Mr. Long, just a  
23 little.

24 The blue will be -- it will be completely gated  
25 off? Is that what I'm led to believe -- when you do the



1 construction?

2 WITNESS BEDNARSKI: It's yet to be determined  
3 whether it would be gated off. If there are access  
4 requirements for, say, patrolling the aqueduct levees or  
5 perhaps accessing the CCLP diversion, then those would  
6 have to be -- remain open during the construction.

7 So, you know, as we get farther into the design  
8 process and understand the different constraints for  
9 usage of the levees and access to different points,  
10 those would be made available and not blocked off.

11 MS. WOMACK: So it will -- 24-hour access  
12 during construction?

13 WITNESS BEDNARSKI: Well, we'll need to figure  
14 that out as we get into the process, whether 24-hour  
15 access is required and whether our work is blocking some  
16 area that needs 24-hour access. If that's required,  
17 then that will be provided.

18 MS. WOMACK: My contract, 1955 contract? Okay.  
19 Can you commit to any specific access at this time?

20 CO-HEARING OFFICER DODUC: No, he cannot.

21 MS. WOMACK: No, he can't.

22 Was that a "no"?

23 WITNESS BEDNARSKI: I believe at this point,  
24 you know, we would provide access to your diversion  
25 point perhaps through some temporary access roads. You



1 know, we'd have to get into those details.

2 I couldn't say right now, but, you know, it  
3 doesn't seem infeasible to me that we couldn't provide  
4 you that access at that location.

5 MS. WOMACK: I have to provide huge cranes to  
6 replace my pump, my 1955-designed pump.

7 CO-HEARING OFFICER DODUC: And what's the  
8 question?

9 MS. WOMACK: So will I have a commitment that I  
10 can reach that at any time?

11 MR. MIZELL: Objection, vague and ambiguous as  
12 to what direction she'd be approaching, what time of  
13 day.

14 MS. WOMACK: It's the shortest route.

15 MR. MIZELL: The shortest route, based on the  
16 picture, does not have any obstructions between it and  
17 the road.

18 CO-HEARING OFFICER DODUC: Are you able to  
19 provide any commitment at this time, Mr. Bednarski?

20 WITNESS BEDNARSKI: I believe that we can  
21 provide her -- provide CCLP access, if required, with  
22 some notice if we were otherwise blocking their access.  
23 Otherwise, some continuous temporary access that would  
24 be outside of our construction footprint could be --  
25 could be looked at as we get into preliminary and final





1 design. It's not our intention to impede their access  
2 to that -- to that point.

3 CO-HEARING OFFICER DODUC: Okay.

4 MS. WOMACK: So can you commit that the blue  
5 line of construction will not be changed?

6 WITNESS BEDNARSKI: No, I cannot do that at  
7 this point. We have completed conceptual design. We  
8 still have preliminary and final design. But this is  
9 our best estimate at this point in time as to the  
10 temporary construction footprint.

11 MS. WOMACK: Okay. The -- I think it's still  
12 up for debate. I believe our property is 15 feet on the  
13 other side of the road between the Herdlyn Road and the  
14 canal. But we can split nails later. I'll take it that  
15 you're working on that. Let's see.

16 So in your testimony, you say that -- in your  
17 testimony, where is the 127-acre new South Tunnel outlet  
18 control structure that you showed but you don't talk  
19 about in your testimony?

20 WITNESS BEDNARSKI: Can we go back to DWR-1305,  
21 Sheet 55 of 96? I guess we're on that sheet already.  
22 Keep scanning down, the way you're going. Right there.  
23 Stop right there.

24 That is it, where you see that kind of like  
25 figure-eight circles. I believe that's the structure



1 that you're referring to.

2 MS. WOMACK: Yes. It's not in your  
3 construction potential impacts. Why not?

4 WITNESS BEDNARSKI: I'm not clear.

5 MS. ANSLEY: Vague and ambiguous as to what --  
6 what piece of paper she's looking at? What exact  
7 construction impacts? Are you holding his testimony?  
8 Are you holding --

9 MS. WOMACK: I -- I am -- let's pull up --  
10 let's see, 1305, PDF 84 would have it.

11 I want to know why this structure isn't  
12 considered as part of your testimony.

13 CO-HEARING OFFICER DODUC: Which structure?

14 MS. WOMACK: The South Tunnel outlet structure.

15 MS. ANSLEY: And just for clarity, DWR-1305 is  
16 a volume of the CER?

17 MS. WOMACK: CER PDF 84.

18 MR. MIZELL: I'm going to object to facts not  
19 in evidence and beyond the scope.

20 Ms. Womack has not laid any foundation that  
21 this structure's footprint would be on her property and  
22 therefore have any impacts to her water right.

23 CO-HEARING OFFICER DODUC: What is --

24 MR. MIZELL: We're looking at property south of  
25 Byron Road.



1 CO-HEARING OFFICER DODUC: So, Ms. Womack, what  
2 is this that we're looking at?

3 MS. WOMACK: This is the South Tunnel control  
4 structure that all the water from the tunnels will be  
5 coming into. And then I -- I'm -- I believe, I'm not  
6 sure, this is going to be sorting the water. The water  
7 will come up in it, I don't know if SCADA will be housed  
8 here. I don't know how this 127-acre addition --

9 If you go to the next page, Mr. Long, 85.

10 This shows this. This is 127 acres. That  
11 structure is -- well, you can see where it's labeled  
12 "South Tunnel Outlet Structure."

13 And again it goes into the -- into the DMC  
14 outlet -- intake.

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

17 MS. WOMACK: And my question is how is that  
18 going to affect my diversion?

19 WITNESS BEDNARSKI: To the best of my  
20 knowledge, that structure should have no impact on your  
21 diversion.

22 MS. WOMACK: So it has nothing to do with the  
23 amount of water, or -- does it house SCADA? Where is  
24 SCADA housed?

25 WITNESS BEDNARSKI: We haven't determined the



1 location for the SCADA system. We'll probably have it  
2 distributed through different computer modules at each  
3 of the control structures. And then there will be  
4 devices at that outlet structure that you noted. Where  
5 that data is collected and processed, I don't have an  
6 answer for you right now.

7 MS. WOMACK: That outlet structure I noted,  
8 which you mean the South Tunnel?

9 WITNESS BEDNARSKI: Yes, is says "South Tunnel  
10 Outlet Structure" is it, that's called out?

11 MS. WOMACK: Yes, just like the DMC Intake.

12 So that is going to be -- that will have data  
13 there as well?

14 WITNESS BEDNARSKI: I believe there will be  
15 equipment there that will collect data. It may process  
16 data that point. I do not know at this point where DWR  
17 plans to set up their main control facility for  
18 California WaterFix facilities, but that data would be  
19 relayed to that location.

20 And then operators at that location could take  
21 actions remotely to operate the gates in either those --  
22 that structure or in the two control structures that are  
23 in that channel as well as the control structure that is  
24 shown in the Banks Intake Channel there, off to the  
25 left, and then also the one that's in the DMC.





1 MS. WOMACK: Is there any way CCLP can  
2 commit -- can communicate with the operators with the  
3 control structures, if there is one, so that -- if our  
4 water levels are impacted?

5 WITNESS BEDNARSKI: I -- I assume that you  
6 would have some sort of communication protocol with the  
7 field operations group or with DWR operations in  
8 general. I don't have an answer to that at this point.

9 MS. WOMACK: Are you willing to -- are you  
10 willing to commit to that?

11 MS. ANSLEY: Objection, there's been no  
12 foundation laid that Mr. Bednarski is going to be an  
13 operator of California WaterFix.

14 MS. WOMACK: Well, he is an expert.

15 MS. ANSLEY: He's the construction expert here.  
16 He's testified to where he thinks the SCADA may be  
17 located, which is yet to be determined. And, frankly,  
18 it would be my objection that the location of the SCADA  
19 system or data processing is irrelevant to the issue of  
20 who in the field operations Ms. Womack would be  
21 regularly dealing with that may not even be different  
22 from the past.

23 So I think any further questioning on this line  
24 would be beyond the scope of Mr. Bednarski's testimony.

25 MS. WOMACK: Yes, you bring up a good point.



1 Mr. Bednarski, according to your CV --

2 CO-HEARING OFFICER DODUC: That was an  
3 agreement. Sustained. All right.

4 MS. WOMACK: So, yeah.

5 According to your CV, you have -- work has  
6 included reconfiguring the river intakes, the tunnels,  
7 and pumping system to achieve budget, schedule, and  
8 environmental commitment for the program. Where -- this  
9 is -- I'm taking this from your CV. Where is your  
10 construction expertise?

11 MR. MIZELL: I'm going to object as to  
12 relevance. Challenging Mr. Bednarski's CV at this point  
13 is not productive.

14 CO-HEARING OFFICER DODUC: Sustained.

15 MS. WOMACK: Yeah, okay. All right. All  
16 right.

17 So let's see. So what about CCLP's other water  
18 diversions? Where do you analyze the potential  
19 operational impacts from the new Byron Tract Forebay,  
20 the tunnel configuration, and the pumping plants on  
21 CCLP's other diversions?

22 CO-HEARING OFFICER DODUC: What other --

23 MR. MIZELL: Objection --

24 CO-HEARING OFFICER DODUC: What other  
25 diversions? You need to be more specific, Ms. Womack.



1 MS. WOMACK: Well, we have a total of three  
2 diversions.

3 CO-HEARING OFFICER DODUC: So be specific.

4 MS. WOMACK: The diversion in front of the  
5 Tracy Fish Facility.

6 MR. MIZELL: Is it located on a map?  
7 Objection, vague and ambiguous. Until we have a  
8 location provided by Ms. Womack in any of her testimony  
9 as to her other diversion points, Mr. Bednarski isn't,  
10 at this point, prepared to answer those questions.

11 There has been absolutely no foundation laid  
12 that Ms. Womack has other diversion points that are  
13 impacted in any -- in ways other than what Mr. Bednarski  
14 has explained here.

15 CO-HEARING OFFICER DODUC: All right.  
16 Sustained.

17 Ms. Womack.

18 MR. EMRICK: Let me ask a follow-up, maybe  
19 clarifying question of Mr. Bednarski.

20 Are you aware of any other diversions that CCLP  
21 has to take water for use on its property?

22 WITNESS BEDNARSKI: No, I'm not.

23 MR. EMRICK: Only the one that is located in  
24 the -- what we're calling the DMC?

25 WITNESS BEDNARSKI: That's correct.



1           MR. EMRICK:  And when did you first become  
2 aware of the location of CCLP's diversion within the  
3 DMC?

4           WITNESS BEDNARSKI:  As far as its specific  
5 location, I believe it was at some point after the  
6 Part 2 Rebuttal process.  I knew that there was a  
7 diversion in that channel.  I did not know specifically  
8 where it was.

9           MR. EMRICK:  And so when these facilities were  
10 being designed and the operation being considered, you  
11 weren't aware of the specific location of that  
12 diversion -- CCLP's diversion in the DMC; is that  
13 correct?

14          WITNESS BEDNARSKI:  No, I was not.

15          MS. WOMACK:  Okay.  Have you personally  
16 performed any specific studies or investigations, other  
17 than what you have in the testimony, as to the possible  
18 operational impacts to CCLP's water rights?

19          MR. MIZELL:  Objection, vague and ambiguous.  
20 Which water rights is she referring to, and where are  
21 they located?

22          CO-HEARING OFFICER DODUC:  Has he done any  
23 other analysis?

24          MR. MIZELL:  The question was based on as to  
25 CCLP's water rights.  We have produced analysis that is





1 in the testimony regarding impacts to that region of the  
2 Delta. So without more specificity, it would be very  
3 difficult for Mr. Bednarski to know if those water  
4 rights fall within the range of impacts discussed in the  
5 testimony provided or not.

6 MS. WOMACK: We can make that inside the water  
7 at the diversion.

8 CO-HEARING OFFICER DODUC: I'm sorry. That  
9 does not help.

10 MS. WOMACK: The impacts to CCLP's water  
11 diversion in the DMC.

12 MS. ANSLEY: And this would be the one located  
13 on Mr. Bednarski's figure?

14 CO-HEARING OFFICER DODUC: Ms. Womack, if there  
15 are other points of diversion that you wish to ask  
16 Mr. Bednarski about, it would be helpful if you can show  
17 where that is on a map.

18 MS. WOMACK: I -- you know, the -- where's a  
19 map of -- yeah, I wasn't -- you know what? It's DWR --  
20 well, give me a minute with that. We'll find a map that  
21 would show them. It's very simple.

22 Let's see. Currently, the Jones Channel -- you  
23 say currently the Jones Channel is subject to existing  
24 water level variation and existing south -- southern  
25 Delta water quality.



1           When the control structure gates are open, the  
2 control structure will not be an impediment to the CCLP  
3 diversion or inhibit its access is what you're saying.

4           So you're saying when the control structure is  
5 open, it will not be an impediment to our diversion?

6           WITNESS BEDNARSKI: That's our understanding at  
7 this point, based on our conceptual engineering  
8 completed to date.

9           MS. WOMACK: And are there impact studies to  
10 that?

11           WITNESS BEDNARSKI: There is -- my  
12 understanding that, under our current concept, those  
13 gates, which we're believing at this point will be  
14 radial gates, will be fully opened when we are diverting  
15 water from the South Delta or when we are doing the  
16 combined North or South Delta and that our goal is to  
17 minimize head loss across that structure such that we do  
18 not change the water surface elevations for the Jones  
19 Pumping Plant.

20           So we will be configuring that structure to  
21 minimize losses across that structure when we're flowing  
22 water. Thereby, we anticipate that the water levels at  
23 your diversion will remain as they presently are.

24           MS. WOMACK: But I've asked if you have impact  
25 repor- -- any sort of -- you don't -- studies?



1           WITNESS CHILMAKURI: Ms. Womack, in my  
2 testimony, I presented the water level analysis for  
3 the -- what I expect your -- at your intake --

4           MS. WOMACK: You also told me on the 10th that  
5 you don't have that information to that specificity.

6           MR. MIZELL: Objection, argumentative.

7           CO-HEARING OFFICER DODUC: Let's not argue back  
8 and forth. If there's a specific question, Ms. Womack,  
9 ask it, please.

10          MS. WOMACK: Do you commit to the no impact on  
11 water levels at CCLP?

12          MS. ANSLEY: Objection. Mr. Bednarski has put  
13 forward his testimony. He has laid out exactly the  
14 basis for his conclusions, and his conclusions are in  
15 this testimony.

16                 That is -- that is a blanket statement. I  
17 believe that she should point specifically to the -- you  
18 know, he has this caveated with sentences. So I would  
19 prefer if she point to a conclusion he raises here that  
20 is supported by the evidence in his testimony and ask  
21 that -- I mean, I guess she could ask him to confirm  
22 what is written here, that, based on these parameters  
23 and this structure, that he made this conclusion, for  
24 example.

25                 I don't want to put words in his mouth, but I



1 don't want him answering a blanket statement apropos of  
2 nothing.

3 CO-HEARING OFFICER DODUC: Sustained.

4 MS. WOMACK: I'm just trying to get something  
5 that says -- I keep -- I've got opinions so far. So --

6 CO-HEARING OFFICER DODUC: Ms. Womack, these  
7 witnesses have provided testimony. In your closing  
8 briefs, you may make arguments as to how you believe  
9 their statements might translate into a condition that  
10 you might propose.

11 I don't think you'll get much from them if you  
12 to continue to ask whether or not they agree to various  
13 conditions. They have not. Any of petitioners'  
14 witnesses, I think, have been very careful to avoid  
15 making any statements of proposed conditions.

16 So I would suggest that you narrow your focus  
17 on specific questions to them that would help you  
18 formulate your closing briefs in terms of conditions  
19 that you might propose rather than asking them whether  
20 they would commit to something.

21 MS. WOMACK: Okay. That's fine.

22 MR. EMRICK: Maybe I can ask the clarifying  
23 question then, based on Dr. Chilmakuri's response, just  
24 to narrow it down.

25 So, Mr. Bednarski, in looking at





1 operational-based potential impacts, Page 3, you did not  
2 look at water level impacts of operations; is that  
3 correct?

4 WITNESS BEDNARSKI: I don't believe that's  
5 correct. It -- can we go to DWR-1304, the CER? We have  
6 information in there that I believe we've presented that  
7 shows our expectation as far as water level at the Jones  
8 Plant. And I guess I would just like to point that out.  
9 Maybe that would answer some questions.

10 So DWR-1304, Page 5-7. Keep going back up.  
11 It's in Section 5.1.6.3.

12 There we go. Okay. Stop. Oh, went too far.  
13 Okay. Stop right there.

14 So for the CVP under, "Isolated South Delta  
15 Operations," so this would be basically similar to what  
16 the current operation is now, for the CVP, we've  
17 identified the design minimum operating elevation at  
18 minus 1.43 feet with a maximum operating elevation of  
19 9.57. Again, this is to operate the Jones Pumping Plant  
20 within this range, which is their current range of  
21 operation from what I understand.

22 Now, if we scroll down just a little bit  
23 further, keep going a little bit more. The -- okay.  
24 Stop there.

25 This bottom grouping of information provides



1 under the dual operation, and you will see that the  
2 design operating elevations for the CVP are the same  
3 under the dual-operation mode as they are under South  
4 Delta Diversion-only mode.

5 So this was our way of characterizing that we  
6 do not plan to modify or adjust or change the water  
7 surface elevations in that channel.

8 MS. WOMACK: Yes, I appreciate that so much.  
9 However, the elevations now are tidal based. This is  
10 based on operations. This is why operations is huge to  
11 me. The dual operation, the isolated North Delta  
12 operation, I have a huge range that my farmer doesn't  
13 know -- we go by suns and moons and high tides, low  
14 tides. There's no high tide, low tide with a closed  
15 control structure.

16 CO-HEARING OFFICER DODUC: And the question is?

17 MS. WOMACK: Is there any tidal information  
18 here with the isolated North Delta operation or the dual  
19 operation?

20 MS. ANSLEY: Objection, vague and ambiguous as  
21 to is there any tidal information there. Is she asking  
22 whether there will continue to be tides or if these  
23 numbers take into account tides? But I think I'd like  
24 the question to be more specific.

25 CO-HEARING OFFICER DODUC: Agreed.



1 MS. WOMACK: I would like to know. My water  
2 levels -- right now, I can depend on a Farmer's Almanac.  
3 I can open it up. I know when the high tides, the low  
4 tides. Here, I have a huge range, just like I have now,  
5 but I have no guarantee. I have no one I can talk to.  
6 DFD won't respond.

7 CO-HEARING OFFICER DODUC: And I still don't  
8 know what the question is.

9 MR. EMRICK: So maybe I can ask a clarifying  
10 question.

11 Through these operations and trying to maintain  
12 water levels, is there going to be some mechanism in  
13 which CCLP will be able to communicate with DWR, CVP to  
14 know when it will be able to divert?

15 WITNESS BEDNARSKI: I would expect there would  
16 be some sort of communication mechanism between the two  
17 parties.

18 MR. EMRICK: But nothing developed right now?

19 WITNESS BEDNARSKI: Nothing at this point. I  
20 believe we would do that during our preliminary and  
21 final design, as we get a better handle on any impacts  
22 to CCLP's operations, if there are any.

23 MS. WOMACK: I'm very concerned about  
24 communications, given what we have going.

25 Right now, let's see. What I wanted to know is



1 the water that comes from the North Delta Diversion, is  
2 that Reclamations's water?

3 MR. MIZELL: Objection --

4 MS. WOMACK: Right now I'm getting water from  
5 the Old River.

6 MR. MIZELL: Objection, relevance

7 MR. EMRICK: I think I can clarify.

8 CO-HEARING OFFICER DODUC: Please do,  
9 Mr. Emrick.

10 MR. EMRICK: Yes. And Dr. Chilmakuri, you can  
11 certainly join in here.

12 I think one of the issues -- and I think  
13 Mr. Mizell actually brought it up this morning -- is at  
14 in point in time, the control structure is going to cut  
15 off water from Old River to this diversion point. Water  
16 is going to come from the other facility, North Delta  
17 facility, and that water is going to be either I guess  
18 SWP water, CVP water, origin in Sacramento River.

19 What is going to be CCLP's entitlement to that  
20 water? Is it going to be with a contract with CVP? Is  
21 it going to be a contract with State Water Project?  
22 Right now, they're taking Old River water. That water  
23 will not be Old River water.

24 So I think there's a concern is what's going to  
25 be CCLP's guarantee, entitlement, right to that water?





1           MR. MIZELL: I'd object as needing a legal  
2 analysis and conclusion.

3           CO-HEARING OFFICER DODUC: Mr. Mizell, your  
4 witness may answer that they don't know. But that is a  
5 valid question that goes to potential injury to CCLP's  
6 water rights. Your objection is overruled.

7           WITNESS CHILMAKURI: I don't have a -- I mean,  
8 I'm not qualified to be a water rights analysis person.  
9 All I can tell you is that there will be water present  
10 at their intake.

11          CO-HEARING OFFICER DODUC: By what means?

12          WITNESS CHILMAKURI: Either through  
13 operation -- if the control structure is open, they will  
14 continue to get the water from Old River. If the  
15 control structure is closed, the water will come from  
16 Byron Tract Forebay.

17          CO-HEARING OFFICER DODUC: And by what  
18 mechanism will it be provided to CCLP?

19          WITNESS CHILMAKURI: If you will recall that  
20 figure I was describing, the channels are -- so the  
21 South Canal.

22          CO-HEARING OFFICER DODUC: You're answering  
23 that from a technical, physical perspective. And I  
24 guess you cannot answer it from a legal perspective.

25          WITNESS CHILMAKURI: Correct. That's the only



1 way I can answer it.

2 MS. WOMACK: I'm just -- go ahead.

3 MR. EMRICK: So the question is you don't know  
4 what the legal entitlement or facilitation for CCLP to  
5 use that North Delta water will be? Only that it will  
6 be present?

7 MS. WOMACK: Well, maybe I can --

8 WITNESS CHILMAKURI: Correct. It will be  
9 present. I just don't know what -- yeah.

10 MS. WOMACK: So does your analysis assume CCLP  
11 will be able to divert North Delta Diversion water at  
12 will is basically what you're saying?

13 MS. ANSLEY: Objection, vague and ambiguous as  
14 to "at will." But if she truncates that off, I think  
15 that question is fair.

16 CO-HEARING OFFICER DODUC: We'll ignore the "at  
17 will" part. Related to you water rights.

18 MS. WOMACK: I have year-round water rights.

19 CO-HEARING OFFICER DODUC: Let's frame it as  
20 pursuant to your water rights.

21 MS. WOMACK: Okay.

22 WITNESS CHILMAKURI: Yes, that's my opinion.

23 MS. WOMACK: And you have the ability to make  
24 that commitment?

25 CO-HEARING OFFICER DODUC: He is answering that



1 from his technical, physical perspective.

2 MS. WOMACK: All right. Let's move on.

3 And are the -- so the control structure -- oh,  
4 is there a question?

5 MS. ANSLEY: Yeah. I'd like to, at this point,  
6 maybe lodge an objection to the continued use of the  
7 word "commitment," which I think can get a little  
8 confusing, whether you're asking them to commit to what  
9 they state in their analysis or based on what they've  
10 written here and whether you're asking them for a  
11 commitment that later you're going to come back and it's  
12 beyond their personal knowledge and is some way a  
13 commitment.

14 I understand earlier we had a little bit of a  
15 distinction going. But I think that it's getting a  
16 little dangerous to do a continued use of that word.  
17 And I think it's now being meant more colloquially. So  
18 I do have a problem with that word in the questions. So  
19 vague and ambiguous when that word is used.

20 CO-HEARING OFFICER DODUC: All right.

21 MS. WOMACK: I'm very concerned about our water  
22 rights.

23 CO-HEARING OFFICER DODUC: Yes --

24 MS. WOMACK: So I am looking for commitments  
25 that are real, that mean something.



1 CO-HEARING OFFICER DODUC: And I have already  
2 mentioned several times, as has counsel for DWR, that  
3 you're highly unlikely to get that level of commitment  
4 from these witnesses. But what you may do and you have  
5 done very successfully, with Mr. Emrick's help, is lay  
6 the foundation for argument in your closing briefs with  
7 respect to the commitments you would request be placed  
8 on any approval issued to petitioners.

9 So, Ms. Womack, you're ahead. Let's keep  
10 going.

11 MS. WOMACK: Okay. As long as you say so.  
12 Let's see.

13 (Sotto voce discussion between Ms. Womack  
14 and Mr. Emrick)

15 MR. EMRICK: Mr. Bednarski, on your testimony,  
16 on Page 4, Lines 2 through 5, you talk about next phases  
17 of California WaterFix design process, detail, and  
18 extensive hydraulic modeling and assessments of the  
19 entire California WaterFix, including the Jones Pumping  
20 Plant intake channel will be conducted.

21 Can you describe for me in more detail what  
22 these next phases of design is going to be and the  
23 detailed and extensive hydrologic modeling that's;  
24 proposed?

25 MS. ANSLEY: And I would object that that is





1 well broad beyond the scope and has been the subject of  
2 a lot of testimony in this proceeding. Maybe if the  
3 question could be narrowed down in some way -- but we've  
4 spent many days going over the level of the Conceptual  
5 Engineering Reports and then the next phases that would  
6 occur.

7 CO-HEARING OFFICER DODUC: Let's try to narrow  
8 it, Mr. Emrick.

9 MR. EMRICK: Yeah, we can narrow it as to  
10 potential impacts to CCLP's diversion.

11 WITNESS BEDNARSKI: I guess, at a summary  
12 level, we'll be completing a hydraulic model or profile  
13 of the entire WaterFix system, starting at both the  
14 Jones and the Banks Pumping Plant and looking at a  
15 variety of different potential operating scenarios and  
16 then determining, you know, the impact of those  
17 operating scenarios on water levels in the Jones Intake  
18 Channel and then using that information to further  
19 develop the configuration and the operational modes  
20 for the control structure that's located in that  
21 channel as well as the ones that are located in the  
22 interconnection channels and then, you know,  
23 developing, you know, designs and operating scenarios,  
24 you know, around those hydraulic models that have been  
25 developed.



1 I'm not sure how to be more detailed than  
2 that.

3 MS. WOMACK: I just -- what -- I -- so you have  
4 nothing that can help me make a decision about things  
5 right now; it's going to happen in the future?

6 MS. ANSLEY: Objection, vague and ambiguous.  
7 It's also asked and answered now. He just answered that  
8 that was the level of detail that could provide.

9 CO-HEARING OFFICER DODUC: Sustained.

10 MR. EMRICK: Yeah, thank you.

11 Let me try to ask a follow-up question, maybe  
12 more clearly.

13 So to date you haven't looked at any of that  
14 with respect to impacts to CCLP, but you plan to in your  
15 future analysis; is that correct?

16 MS. ANSLEY: Again, objection as to "you  
17 haven't looked into any of that."

18 CO-HEARING OFFICER DODUC: Sustained.

19 MR. EMRICK: Well, you have not looked at the  
20 impacts to CCLP at this time --

21 MS. ANSLEY: And again --

22 MR. EMRICK: -- with respect to this future  
23 WaterFix design process, detailed and extensive  
24 hydraulic modeling and assessments? You haven't done  
25 that yet with respect to CCLP's diversion; is that



1 correct?

2 MS. ANSLEY: Objection, it was asked and  
3 answered. He answered what the next step was. And now  
4 the question is specific to CCLP, although that was  
5 included in his answer. The question to him was what is  
6 the next step in reference to CCLP? So that question  
7 has been asked and answered, and indeed what they're  
8 doing is asking for a different answer now.

9 CO-HEARING OFFICER DODUC: Sustained.

10 MS. WOMACK: All right. Let's see. Part of  
11 mitigation -- I want to look at mitigation in the CER.

12 So basically, the CER one of the things is that  
13 the -- you will have -- if there's any problem, you're  
14 going to provide groundwater wells or temporary river  
15 diversions and pumping capabilities.

16 Could you kind of -- could you kind of show me  
17 evidence -- not evidence, but explain how that would  
18 happen? So, if I have a problem with my diversion, I  
19 can't get water. This is going to happen once our  
20 diversion is going; is that correct, Mr. Bednarski? I'm  
21 sorry.

22 MR. MIZELL: I'm going to object as vague and  
23 ambiguous. Ms. Womack has selected one bullet point out  
24 of a long list of potential mitigations and asked if  
25 that's the particular mitigation Mr. Bednarski would use



1 based upon an undefined circumstance. I think we need  
2 more specificity.

3 CO-HEARING OFFICER DODUC: Sustained.

4 MR. EMRICK: Let me see if I can clarify.

5 First of all, where did these mitigation  
6 measures come from? Are they in another document? I  
7 think some of them are in the EIR, if I'm not mistaken.  
8 But I don't believe all of them are. I think some of  
9 them are from Ag 1 mitigation from the EIR.

10 CO-HEARING OFFICER DODUC: So, I'm sorry. Let  
11 me interrupt and make sure we are clear on the record,  
12 Mr. Emrick. You are referring to DWR-1417, Page 5, I  
13 believe it is? Starting on Line --

14 MR. EMRICK: Right. 8.

15 CO-HEARING OFFICER DODUC: 8, yes, with the  
16 bullet starting on Line 10.

17 MR. EMRICK: Correct.

18 CO-HEARING OFFICER DODUC: All right.

19 MR. EMRICK: So what I'm asking is is this --  
20 these mitigation measures something that you personally  
21 developed? Did somebody else at DWR develop them? Are  
22 they in another document and you're using them here?

23 WITNESS BEDNARSKI: I previously presented  
24 these mitigation measures -- if we go to the top of  
25 Page 5 here. DWR -- stop right there, Line 2, DWR-57.





1 I believe in my Part 1 testimony, these  
2 mitigation measures were presented because we were  
3 specifically talking about diversions along the  
4 Sacramento River that would be either temporarily or  
5 permanently obstructed by the construction of the  
6 intakes. So these have been talked about, discussed in  
7 detail before in these hearings.

8 MS. WOMACK: With the Sacramento diversion?

9 WITNESS BEDNARSKI: Yes.

10 MS. WOMACK: Thank you.

11 WITNESS BEDNARSKI: So we've used those same  
12 mitigation measures here, now, down at Clifton Court LP.

13 MS. WOMACK: Okay. So -- so looking at the  
14 three of them, not -- I don't care, you know, all  
15 three -- you're going to do ground wells; you're going  
16 to provide alternative water supply from a permitted  
17 source. Where would that be from?

18 MS. ANSLEY: Just to make clear, we're talking  
19 about the three bullet points under "Temporarily  
20 Affected"?

21 MS. WOMACK: Mm-hmm.

22 MS. ANSLEY: So Line 8 through 14?

23 MS. WOMACK: Yes. You're going to drill  
24 groundwater wells; you're going to have alternative  
25 supply from a permitted source; or -- I don't know how



1 this, "Once construction is completed, reactivate  
2 original diversion and discontinue."

3 So that's not -- so there's really two ways  
4 you're going to temporarily affect what you're going to  
5 do during construction.

6 MS. ANSLEY: I don't understand the question.

7 MS. WOMACK: Well, I guess I'd like to know  
8 how -- how -- it takes weeks, if not months, to drill  
9 wells. If I'm temporarily affected, drilling a well is  
10 not very -- I don't know how that will -- I don't want  
11 my farmer without water.

12 Providing an alternative water supply from a  
13 permitted source, where would that be from at Clifton  
14 Court, at -- from the DMC intake?

15 MS. ANSLEY: Objection, compound. I think she  
16 just needs to ask each of those individually so the  
17 record is clear.

18 But I heard two distinct questions there about  
19 the timing of groundwater wells and then where would the  
20 alternative water supply potentially be from, if he  
21 knows.

22 CO-HEARING OFFICER DODUC: All right. Let's  
23 break it up.

24 Mr. Bednarski, answer the first bullet first.

25 WITNESS BEDNARSKI: Yeah, I think what we were



1 trying to do is provide several options here that could  
2 be evaluated, just like they would be evaluated up along  
3 the Sacramento River at the river intakes, and select  
4 one of these that is most appropriate for the specific  
5 application at that location.

6 In some locations, a new groundwater well may  
7 be appropriate. In some locations, a temporary river  
8 diversion and pumping capabilities with that diversion  
9 may be most appropriate. And then there may be some  
10 other alternate water supply.

11 We wanted to have a menu of options to select  
12 from so that the most appropriate one could be selected  
13 for the specific application.

14 And then finally, the last bullet was to  
15 address, if there was a temporary impact due to  
16 construction, we would reestablish the original  
17 diversion point once construction was completed if we  
18 were able to do that.

19 CO-HEARING OFFICER DODUC: So in other words,  
20 you are not able at this time to provide any additional  
21 specifics with respect to source of alternative supply  
22 or timing for well construction or any additional  
23 details?

24 MS. WOMACK: For temporary.

25 WITNESS BEDNARSKI: No, I -- not at this time,



1 not with the limited amount of information that we have  
2 available to us through the conceptual engineering  
3 effort.

4 MS. WOMACK: So then -- thank you for  
5 clarifying.

6 So then if our diversion is permanently  
7 affected, you will provide the measures listed above,  
8 provide -- listed above until the mitigation measures  
9 are complete.

10 So you'll do what's above, or you'll relocate  
11 the existing diversion outside of the control structure  
12 footprint into a location that ensures the relocated a  
13 diversion would function in a manner that is equivalent  
14 to its current operations.

15 CO-HEARING OFFICER DODUC: So let's be clear.  
16 You're now talking about if there are permit effects,  
17 you are now focusing on Lines 16 through 23 on Page 5.

18 MS. WOMACK: Yes, basically the other bullet  
19 points. So I -- yeah.

20 MS. ANSLEY: Is there a question?

21 CO-HEARING OFFICER DODUC: And the question is?

22 MS. WOMACK: The question is how does that --  
23 how do you marry that with my -- my right to -- my  
24 contract to divert water at my diversion point?

25 MS. ANSLEY: I would say vague and ambiguous.





1 I have no idea what she means by "marry" to her  
2 contract.

3 CO-HEARING OFFICER DODUC: Yes. I'm not sure I  
4 understand either.

5 MS. WOMACK: Well, I have a diversion point in  
6 the CVP -- in the DMC intake. And this is -- you  
7 know -- now you're going to relocate my diversion.  
8 That's changing where I divert water. So changing my  
9 water -- where I divert my water rights, something that  
10 I've had since 1955.

11 CO-HEARING OFFICER DODUC: So is your question  
12 whether or not Mr. Bednarski can provide any additional  
13 specifics at this time with respect to how DWR would  
14 achieve these measures?

15 MS. WOMACK: Yes.

16 WITNESS BEDNARSKI: Well, I think there were  
17 three parts to this.

18 If the diversion point was permanently  
19 affected, we would provide temporary mitigation that was  
20 described above in the bullets that we just discussed.

21 Then, if the diversion fell within the final  
22 footprint, whether it was the construction footprint or  
23 the permanent footprint, we would relocate that  
24 diversion outside of that footprint to a suitable  
25 location that would ensure, you know, water diversions



1 by CCLP as they presently have them.

2           And then, finally, we added this third bullet  
3 because we recognized the potential, once we start  
4 preliminary and final design, that there could be an  
5 unanticipated impact to your diversion based on the  
6 construction and operation of the gates and the entire  
7 WaterFix scheme. So we wanted to leave ourselves the  
8 option that, even though your diversion was not affected  
9 by the footprint of the structure itself, we would still  
10 commit to relocating your diversion if, through our  
11 hydraulic analysis, we were to determine that there was  
12 going to be an impact to that diversion.

13           MS. WOMACK: So this would be before any  
14 construction?

15           WITNESS BEDNARSKI: Potentially. If there was  
16 not a way to mitigate that hydraulic impact to yours,  
17 then we would potentially relocate it prior to  
18 construction.

19           MS. WOMACK: And what if it's discovered after  
20 construction?

21           WITNESS BEDNARSKI: We've addressed that also.

22           Let's see. Can we go to Page 7 of my  
23 testimony, Line 1, sentence starting, "Additionally, if  
24 unexpected impacts are identified in the design phase or  
25 in subsequent operation, they will be mitigated with the



1 measures discussed above." So that loops you back to  
2 the mitigation measures that we've already discussed.

3           So DWR's committing that, even after  
4 operations, if there's something that we missed in our  
5 analysis and it affects your diversion, we will take  
6 mitigation actions to correct that.

7           MS. WOMACK: Currently if there's something  
8 wrong, I'm told to sue.

9           What would be the mitigation -- I -- this is  
10 where I -- I've been told today or few days ago that I  
11 have to sue on my water diversion if my farmer's hurt.

12           This is -- I -- my farm needs -- when it needs  
13 water, it needs water. It cannot wait days and weeks  
14 while people decide what they're doing. How will this  
15 process happen? It's not very clear to me. Can you  
16 explain the process?

17           MS. ANSLEY: I'm going to object that that  
18 question is vague and ambiguous. I believe that  
19 Mr. Bednarski is here to testify as to engineering and  
20 as to what is known based on the current level of  
21 engineering design on impacts on CCLP.

22           He is not a member of the Field Division Office  
23 that Ms. Womack may be dealing with on a daily basis or  
24 in some way regarding the operations of the Clifton  
25 Court diversion point.



1           So I believe that we are straying outside his  
2 knowledge. But that question was so broad and vague and  
3 ambiguous that I can't tell what is falling in  
4 Mr. Bednarski's purview.

5           So I would ask that the question be reframed.

6           MS. WOMACK: Well, I guess my question  
7 really to -- overall to anyone, you're my experts here,  
8 is what is the process for enforcing your commitments?

9           CO-HEARING OFFICER DODUC: Answer?

10          WITNESS BEDNARSKI: Well, I believe the answer  
11 is generally characterized on Page 5 of my testimony.  
12 Starts there and continues onto Page 6.

13          Can we go to the bottom of Page 5.

14          MS. WOMACK: I'm sorry. Could you read it to  
15 me because I'm not seeing it?

16          MS. ANSLEY: Give the line numbers.

17          WITNESS BEDNARSKI: Line 25, "DWR will  
18 implement this mitigation through the following steps,"  
19 and there's one, two, three, four, five steps which, to  
20 me, are characterized by an engagement process between  
21 DWR and the owner of the diversion that will take place  
22 during this mitigation effort.

23          And it would be my expectation that there would  
24 be continuous dialogue during the preliminary and final  
25 design as to the findings from the modeling and





1 potential impacts and that there would be this  
2 engagement that's outlined here that would lead  
3 towards -- to a resolution of the issue.

4 MS. WOMACK: But there is no -- this is your  
5 opinion?

6 WITNESS BEDNARSKI: This is my testimony. And  
7 in the past, my testimony has committed DWR to doing  
8 certain things. I would expect this testimony would be  
9 treated the same way.

10 MR. EMRICK: Let me ask a follow-up question.

11 So this mitigation measure, all these  
12 mitigation measures would become part of any change  
13 petition order that would be issued by the Board; is  
14 that your understanding?

15 MR. MIZELL: Objection, calls for the witness  
16 to put himself in the place of the decision makers.

17 CO-HEARING OFFICER DODUC: Sustained.

18 MR. EMRICK: But you don't know -- so you don't  
19 know what, then, an enforcement measure might be for  
20 these mitigation measures?

21 MS. ANSLEY: Objection, also calls for a legal  
22 conclusion. So the same objection --

23 CO-HEARING OFFICER DODUC: And now outside the  
24 scope, yes. Sustained.

25 MR. MIZELL: The objection was sustained,



1 Mr. Emrick.

2 MS. WOMACK: We're waiting for Osha.

3 MS. MESERVE: I was waiting to be recognized.

4 CO-HEARING OFFICER DODUC: Ms. Meserve.

5 MS. MESERVE: Oh, I just had an objection as  
6 well because I believe the question misstates the  
7 testimony.

8 I don't believe that the things listed in  
9 Mr. Bednarski's testimony are in fact mitigation  
10 measures, so I believe it's causing confusion in the  
11 record to refer to them as mitigation.

12 CO-HEARING OFFICER DODUC: I'm sorry. I did  
13 not understand that.

14 MS. WOMACK: Well, if you -- working with  
15 affected right holders, they're very -- they're not very  
16 specific, these things that -- she's very right.

17 MS. MESERVE: My point is they're not listed in  
18 the MMRP or anywhere else in mitigation measures in  
19 complete. Parts of them may be.

20 So for us in this hearing to refer to them in  
21 questions or otherwise as "mitigation" I do not believe  
22 is correct, and it's confusing. They've -- apparently  
23 are commitments being made on behalf of certain witness.

24 CO-HEARING OFFICER DODUC: We will refer to  
25 them as steps.



1           MR. EMRICK:  If there were, in your mind, or if  
2 you know or if you've thought about it, if there is some  
3 disagreement between a particular landowner and DWR over  
4 which mitigation measure to take, would there be a  
5 process to resolve that outside of suing DWR or coming  
6 back before this Board somehow?

7           What would you expect if you said -- DWR says,  
8 hypothetically, "We think you need a well," and the  
9 landowner says, "Oh, I think you need to move my  
10 diversion"?

11           MS. ANSLEY:  I think -- objection, that calls  
12 for legal conclusion, legal advice about how a landowner  
13 would enforce what Mr. Bednarski is testifying are the  
14 steps that DWR has committed to.

15           And so I think this is beyond his purview and  
16 beyond the scope.

17           MR. EMRICK:  Well, my question has to do, if I  
18 can explain, is you're making commitments that you'll --  
19 I guess you, on behalf of DWR, will take certain  
20 measures here: provide a new groundwater well, temporary  
21 river diversion, move Ms. Womack's diversion if  
22 permanent.

23           My question is have you given any consideration  
24 or are you aware of any consideration on DWR's part for  
25 any sort of dispute resolution if there's disagreement



1 over what -- which of these measures, steps, the  
2 landowner wants to take and maybe DWR disagrees with  
3 that?

4 CO-HEARING OFFICER DODUC: To your knowledge,  
5 Mr. Bednarski, has there been discussion of any such  
6 dispute resolution process?

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

8 MR. EMRICK: What if it comes to be that a  
9 particular step that DWR wants to take or the landowner  
10 wants to take is proven to be infeasible and there's no  
11 feasible alternative? What then?

12 Does the landowner have to sue? Is there a  
13 process that DWR will have for dispute resolution within  
14 the CWF?

15 MS. ANSLEY: I would state an objection that  
16 that question became very compound. The beginning part  
17 called for a legal conclusion about whether the  
18 landowner would have to sue the DWR on any particular  
19 grounds.

20 And I believe the end of the question was then  
21 back to whether the DWR will have a dispute resolution  
22 mechanism. And Mr. Bednarski, of course, may answer to  
23 the best of his knowledge based on his personal  
24 experience here, if that's how Mr. Emrick would like to  
25 rephrase the question based on my objection.





1 CO-HEARING OFFICER DODUC: Yes.

2 Answer that question, Mr. Bednarski. Good  
3 luck.

4 MR. EMRICK: All I'm trying --

5 WITNESS BEDNARSKI: Could somebody summarize  
6 that again? I --

7 MR. EMRICK: All I'm trying to -- it's a  
8 complex question for -- just looking for an easy answer,  
9 which is, if there's a dispute over these steps between  
10 DWR and the landowner, is there or has DWR given any  
11 consideration to how that dispute would be resolved?  
12 Litigation, come before the Board, come up with a  
13 dispute resolution?

14 CO-HEARING OFFICER DODUC: And Mr. Emrick, how  
15 is that question different from the last question you  
16 asked to which Mr. Bednarski has answered to his  
17 knowledge there is no dispute resolution process?

18 MR. EMRICK: Okay.

19 MS. WOMACK: So could that be part of a permit  
20 process? I mean, I'm just --

21 CO-HEARING OFFICER DODUC: That's up to you.  
22 I'm not going to suggest any arguments on your behalf.

23 MS. WOMACK: Yeah, yeah. Because I mean --

24 CO-HEARING OFFICER DODUC: Ms. Womack, let's  
25 move on to your next line of questioning.



1 MS. WOMACK: Okay. Yeah. We've got so many  
2 questions. Oh my goodness.

3 So let's see. Should we start with  
4 Mr. Chilmakuri or --

5 MR. EMRICK: If you would like to start with  
6 Mr. Chilmakuri you can.

7 MS. WOMACK: Okay. That would be good. I'm  
8 going to double-check with Mr. Bednarski's, that I'm  
9 done.

10 You know, I have still my questions that were  
11 never answered, and I need to go back and make sure that  
12 those questions that are relevant, that I've asked all  
13 of those.

14 CO-HEARING OFFICER DODUC: Then let's do it.

15 MS. WOMACK: Okay.

16 CO-HEARING OFFICER DODUC: I would prefer not  
17 to have to call these witnesses back next week, but I  
18 also don't want to be here till 8:00 o'clock at night,  
19 so let's get moving, please.

20 Actually, let me check with Debbie.

21 Do you need a break?

22 (Discussion off the record)

23 MR. EMRICK: I can ask questions of  
24 Dr. Chilmakuri while Ms. Womack --

25 CO-HEARING OFFICER DODUC: Please do.



1           MR. EMRICK. Dr. Chilmakuri, I'm Matthew Emrick  
2 assisting Ms. Womack today. We've talked before. And I  
3 appreciated your testimony and frankness previously.

4           What I'd like to do is start you off by going  
5 to Page 3 of your testimony, DWR-1421.

6           Line 23, you state that the DSM-2 boundary  
7 condition time series for Jones Pumping Plant exports  
8 from the South Delta channels reflects the operations of  
9 the control structure.

10          That's wrong. Excuse me.

11          "DSM-2 model used to analyze the salinity and  
12 water levels in the Delta for CWF...included a  
13 representation of the control structure operations even  
14 though the control structure itself was not explicitly  
15 included in DSM-2."

16          What do you mean by that?

17          WITNESS CHILMAKURI: It means that the metric  
18 inputs or the control structure inputs that are -- that  
19 we provide incorporated in DSM-2 did not include that  
20 control structure we were discussing.

21          MR. EMRICK: So in doing the modeling, the  
22 control structure wasn't considered; is that correct?

23          WITNESS CHILMAKURI: The physical footprint of  
24 the control structure, how it would fit within the DMC  
25 intake channel was not part of the model.



1           MR. EMRICK:  When you did the modeling, was  
2 inflow to the Jones Pumping Plant intake channel blocked  
3 at times to represent the closure of the control  
4 structure?

5           WITNESS CHILMAKURI:  No.  That's exactly what  
6 I'm stating there.  The way we modeled that is by  
7 turning off the diversion from the Jones Pumping  
8 Plant -- at the Jones Pumping Plant to reflect the --  
9 basically the fact that we're not diverting anything  
10 from South Delta channels directly, which would be to  
11 operate consistent with shutting down the control  
12 structure.

13          MR. EMRICK:  If I could go to Page 4 of your  
14 testimony, Lines 6 through 19, starting with, "The  
15 control structures" on Line 6 and concluding with  
16 "analysis of CWF H3+" on Line 19.

17          With respect to this testimony, how does it  
18 relate specifically to CCLP and its diversion  
19 structure?

20          WITNESS CHILMAKURI:  I was explaining the  
21 reason I provided that information is basically to  
22 indicate that DSM-2 -- what the DSM-2 inputs were  
23 specifically and what they were not.

24          I just wanted to make sure that the -- I mean,  
25 there's enough evidence or testimony in the record that





1 where you can find that information of what's in the  
2 model and what's not in the model.

3 MR. EMRICK: I guess my question, maybe I  
4 misunderstood, is how this relates specifically to the  
5 CCLP's diversion and impacts from the -- from the  
6 Cal WaterFix.

7 MS. ANSLEY: And I'm going to object as vague  
8 and ambiguous.

9 Is what you're asking is how Dr. Chilmakuri's  
10 modeling applies to CCLP?

11 MR. EMRICK: How his -- how his testimony is  
12 here with respect to -- bathymetric inputs for DSM-2,  
13 how does that relate to any analysis of impacts for  
14 CCLP?

15 WITNESS CHILMAKURI: We used the DSM-2 model to  
16 analyze the expected water quality changes and the water  
17 level changes in the Old River, which is what I  
18 presented in this testimony.

19 And I was providing this information to make  
20 any readers clear what -- where they can look at the  
21 information to see what was included and what was not  
22 included in the model with respect to CCLP diversion or  
23 the control structure we are proposing.

24 CO-HEARING OFFICER DODUC: But does this not  
25 apply to everything and not just CCLP?



1           WITNESS CHILMAKURI: Yeah, because that's the  
2 same model we use for everything. But it's also  
3 applicable for CCLP.

4           CO-HEARING OFFICER DODUC: But not specific to  
5 CCLP?

6           WITNESS CHILMAKURI: Nothing's -- I mean, it's  
7 not specific -- the only part that's specific to CCLP is  
8 the fact that I'm saying it's not explicitly  
9 represented. And I'm just providing references where  
10 you can see that.

11           MR. EMRICK: Then I would move to limit his  
12 testimony to what he just stated and to strike the rest  
13 of this.

14           MS. ANSLEY: Oh, and I would -- I would like to  
15 respond.

16           And though I would hate to quibble with the  
17 Hearing Officer about the use of the word "specific to  
18 CCLP," it is unclear. Dr. Chilmakuri is providing  
19 testimony here that he -- his testimony states that it's  
20 his opinion that this modeling at the Jones Pumping  
21 Plant is indicative of conditions in the stretch of the  
22 DMC in which the CCLP diversion intake is present.

23           And certainly Dr. Chilmakuri can speak for  
24 himself.

25           So to say that this does not specifically take



1 into account the CCLP assumes facts not in evidence, and  
2 it's not -- it's a misstatement of Dr. Chilmakuri's  
3 testimony.

4 And so boxing him in here when he's explained  
5 that this page is providing the model assumptions that  
6 he used to reach -- for accuracy and completeness of the  
7 record that he used to reach his conclusions about  
8 conditions in that channel I think is a misstatement of  
9 his testimony.

10 So I think we've gotten a little bit confused.  
11 And I think that -- and that is why I would oppose any  
12 motion to strike here because I think we are talking at  
13 cross purposes, and that is not what Dr. Chilmakuri  
14 said.

15 MR. EMRICK: I would object. I think  
16 Ms. Ansley is actually testifying on behalf of  
17 Mr. Chilmakuri.

18 What I'm just asking is why is this relevant to  
19 CCLP? I understand that there's -- that there's, you  
20 know, modeling that's been done, and background to the  
21 modeling. I'm just trying to understand why he chose to  
22 put this --

23 MS. ANSLEY: And that is a much more clear  
24 question.

25 MR. EMRICK: -- put this into your testimony



1 with respect to CCLP.

2 CO-HEARING OFFICER DODUC: Okay.

3 WITNESS CHILMAKURI: Yeah. And I was trying to  
4 explain that, and maybe I was not very clear.

5 So I can walk you through individual pieces of  
6 why I include it. For example, we can start on Line 17;  
7 I referenced DWR-1142, Appendix 5-E.

8 The reason I included that is it is important  
9 to review that appendix, which is where the DSM-2  
10 modeling methodology has been described, the -- how the  
11 -- what the exemptions were, the inputs were described.  
12 That's where you will find information that the -- the  
13 effect -- the operation of the control structure is  
14 reflected through the boundary condition of Jones  
15 Pumping Plant.

16 And you cannot find that anywhere else, so I'm  
17 providing references here in the record that -- that  
18 would just corroborate what I'm saying in here.

19 CO-HEARING OFFICER DODUC: Mr. Emrick, do you  
20 still wish to file an objection?

21 MR. EMRICK: I do because I still think that  
22 this testimony is in here for potentially other uses.

23 CO-HEARING OFFICER DODUC: You do not --

24 MR. EMRICK: And I don't know how it relates  
25 to CCLP, but that's -- I'll leave my objection at





1 that.

2 CO-HEARING OFFICER DODUC: We'll take that  
3 objection and Ms. Ansley's response under consideration.

4 Ms. Meserve.

5 MS. MESERVE: Yes, and this is just to support  
6 Mr. Emrick's objection, I think those of us who had  
7 belief that we would have an opportunity to  
8 cross-examine this panel were concerned that this  
9 testimony went beyond just the CCLP diversion.

10 CO-HEARING OFFICER DODUC: Understood.

11 MS. MESERVE: And so that's why we also agree  
12 with that objection.

13 CO-HEARING OFFICER DODUC: Understood, which is  
14 why we will take that under consideration.

15 MR. EMRICK: Thank you.

16 Also on Page 4, last sentence, you state that  
17 you've identified and extracted specific data for the  
18 location within DSM-2 results near the junction of Old  
19 River and Jones Pumping Plant intake channel, which is  
20 presented below.

21 My question is in DSM-2 there's nodes, correct,  
22 in which you look at water quality?

23 WITNESS CHILMAKURI: Yes.

24 MR. EMRICK: Yes. And for this statement, are  
25 you using Node 181?



1                   WITNESS CHILMAKURI: I'm using an output  
2 location called ROLD046.

3                   MR. EMRICK: And how does that relate to Node  
4 182 or 179?

5                   WITNESS CHILMAKURI: I need to look at the base  
6 DSM-2 grid. If you have that, I can help answer.

7                   MR. EMRICK: So Exhibit State Water Resources  
8 Control Board 102, Appendix 5-A, Section B,  
9 Attachment 6.

10                  All I'm trying to find is where this  
11 information was gathered from, how close to CCLP this  
12 was.

13                  CO-HEARING OFFICER DODUC: As that is being  
14 pulled up, Mr. Emrick or Ms. Womack, could either of you  
15 give me a time estimate for the remaining cross that you  
16 have?

17                  MR. EMRICK: Without objections, 20 minutes to  
18 a half hour.

19                  CO-HEARING OFFICER DODUC: In that case, then,  
20 we will try accomplish it today.

21                  MR. EMRICK: Appendix 5-A, sorry. 5-A.

22                  MS. WOMACK: Yeah. And --

23                  MR. EMRICK: Section B.

24                  MS. WOMACK: And I have -- in these questions,  
25 I've identified five or six that I need to ask.



1 MR. EMRICK: Attachment 6. Thank you.

2 CO-HEARING OFFICER DODUC: I'm sorry. That's  
3 in addition to the 20 minutes to half an hour that  
4 Mr. Emrick proposed?

5 MS. WOMACK: Well, these are questions that I  
6 submitted.

7 CO-HEARING OFFICER DODUC: Is that in addition  
8 to Mr. Emrick's response?

9 MS. WOMACK: Yes, because of the water quality,  
10 yeah.

11 WITNESS CHILMAKURI: Mr. Long, the link --  
12 there was actually a separate link to that attachment,  
13 just to speed this up. You can scroll down.

14 MS. WOMACK: Now you say. Oh, my goodness.

15 WITNESS CHILMAKURI: You can see there is  
16 additional modeling Section D, Attachment 6. Right  
17 there, you can see. Keep going down, down. Keep going.  
18 Yep, right there.

19 MR. EMRICK: Page 9?

20 CO-HEARING OFFICER DODUC: And I've been  
21 advised that we do have a hard stop at 5:00 today, so it  
22 looks like we will ask you to return on Monday.

23 WITNESS CHILMAKURI: Zoom in towards the  
24 south -- yeah, keep going down. Sorry. Wrong page.

25 MR. EMRICK: Page 9.



1           WITNESS CHILMAKURI: Yeah, you see that circle  
2 with "1"? Can you please zoom into that area, please,  
3 at the bottom left.

4           So the output that I -- outputs that I'm  
5 presenting in my testimony, what I'm calling as near the  
6 junction of Old River and Jones Pumping Plant intake  
7 channel, was on Channel 80, ROLD '46, do you see that?

8           MS. WOMACK: No. No. Oh, I see 80.

9           WITNESS CHILMAKURI: And ROLD '46 is designated  
10 as the Old River Channel at the junction of Old River  
11 and Jones Pumping Plant intake channel. You can see  
12 that on the map as well.

13          MS. WOMACK: The 80, is that within the Tracy  
14 Fish Facility?

15          WITNESS CHILMAKURI: It's in Old River Channel.

16          MS. WOMACK: Is 181 the Tracy Pumping Plant?

17          WITNESS CHILMAKURI: Yes, that's where the --  
18 that boundary condition for Jones Pumping Plant export  
19 is applied in DSM-2.

20          MS. WOMACK: And what is 179? Is that 179  
21 right at the next link up?

22          WITNESS CHILMAKURI: It's within the Jones  
23 intake channel, Jones Pumping Plant intake channel.

24          MS. WOMACK: Okay. Then 70 is -- I'm just  
25 trying to --





1           WITNESS CHILMAKURI: 70 is the junction between  
2 Old River and intake channel.

3           MS. WOMACK: So is that the Tracy Fish  
4 Facility?

5           WITNESS CHILMAKURI: Yeah. It's -- as far as I  
6 know, the Tracy Fish Facility is within the intake  
7 channel itself. It's not -- it's a little bit where --

8           MS. WOMACK: The boundary -- Old River goes  
9 directly by, and that's where they picked all the --

10          WITNESS CHILMAKURI: Yes, that's approximately  
11 where the Node 70 would be.

12          MS. WOMACK: Okay. And then 80 is on Old  
13 River, so kind of not quite there. Is 80 on Old River?

14          WITNESS CHILMAKURI: Yes.

15          MS. WOMACK: Okay. But why isn't it in front  
16 of the Tracy Fish Facility? I guess -- because that  
17 would be closer to Jones.

18          MS. ANSLEY: Are you asking why the location of  
19 80 was placed where it is when it was done?

20          MR. EMRICK: I think what they're trying to  
21 determine is -- and you can correct me if I'm wrong  
22 Suzanne -- is how these nodes, these numbers relate in  
23 proximity to Ms. Womack's CCLP's diversion.

24          WITNESS CHILMAKURI: Right. And I'm trying to  
25 explain that. That is the -- in fact, going back to the



1 previous issue that you raised, Mr. Emrick, that's  
2 exactly why I was including that information in my  
3 testimony, so it's easier for anyone to go back and  
4 reference and find out where those -- what those nodes  
5 mean and what the inputs were.

6 But coming back to your question. ROLD'46,  
7 that station, as noted on the grid, is at the junction  
8 or near the junction of the Old River and Tracy intake  
9 channel. And that's the output location I'm using to  
10 prepare the results that I presented in my testimony  
11 today.

12 MS. WOMACK: I -- yeah, that looks to be  
13 further in. Is the blue the Old River and the channel?

14 WITNESS CHILMAKURI: Correct.

15 MS. WOMACK: Because -- yeah. Where that is  
16 located is around the bend from Tracy Fish Facility.

17 WITNESS CHILMAKURI: Ms. Womack, what I can  
18 tell you is, just based on the -- the level of precision  
19 we have in DSM-2 model is the water quality results in  
20 Channel 80 would be reflective of or very similar to  
21 what you would see in Channel 214.

22 MS. WOMACK: But is my diversion in 214?

23 WITNESS CHILMAKURI: Again, this is the point I  
24 made in my previous testimony. We don't have that level  
25 of specificity in DSM-2 model, meaning that your



1 diversion is not explicitly modeled in there. And the  
2 control structure is not modeled in there.

3           It's a representation of the Jones Pumping  
4 Plant intake channel. And the -- the best information  
5 we can get out of it is what we can -- what the water --  
6 I mean, we are trying to simulate what the water levels  
7 may be with and without project. And that's the result  
8 I'm showing you right there.

9           I cannot tell you exactly what the water level  
10 will be at your intake. That's not the purpose of this  
11 model.

12           What I'm trying --

13           MS. WOMACK: My farmer -- so I cannot tell my  
14 farmer the impact of this WaterFix on his pumping?

15           MS. ANSLEY: That's vague and ambiguous. We've  
16 testified to the extent of Dr. Chilmakuri's knowledge.  
17 He's made clear the bounds of what he is testifying to  
18 and what he is not testifying to. So that, in a sense,  
19 is asked and answered. He's explained the level of  
20 specificity in his analysis.

21           WITNESS CHILMAKURI: But I do want to add one  
22 point, that the -- I'm showing you there is expected  
23 changes because of the WaterFix operations at your  
24 intake. And that's in the Figure 4 with respect to when  
25 the control structure gate is open.



1           Now, when the control structure gate is closed,  
2 we would need the hydraulic modeling that Mr. Bednarski  
3 referenced.

4           MS. WOMACK: Could we put up the control  
5 structure, the DWR-1305. I think it's Page 87, PDF 87,  
6 looking at the control structure. Because you're --  
7 gosh, it must be -- 87, 88, 89? Is that 89? Is that --  
8 did we start at 87? There's like three. I'm looking  
9 for the picture. 87, 88, 89 -- you went by it.

10           That's the control structure.

11           So the No Action Alternative, is that your --  
12 Mr. Chilmakuri or Mr. Bednarski, that says that the No  
13 Action Alternative and having the gates open are the  
14 same for the water levels?

15           WITNESS BEDNARSKI: We've provided at least two  
16 different alternatives for the control structure. This  
17 is one of them. We do not have a final configuration  
18 for that. We will be developing that as we get into  
19 preliminary and final design and do our hydraulic  
20 modeling.

21           But if our goal is to keep the water levels in  
22 the channel basically the same as they are now, I don't  
23 expect that we would use something like this because the  
24 way the structure obstructs the channel, we're going to  
25 get a lot of hydraulic losses across that structure.





1 and so you would see a much lower elevation on the  
2 downstream side.

3 I would expect we're going to use some type of  
4 a radial gate structure that can be lifted entirely out  
5 of the water in order to preserve the current tidal  
6 influence in that channel and keep us within the water  
7 surface elevations that we presently have at the Jones  
8 Pumping Plant, which would translate to basically  
9 attempting to keep your water level at your diversion  
10 point where it is now, riding on the tidal influence.

11 MS. WOMACK: But you don't -- you don't have  
12 any -- and the radial gates, these are the radial gates  
13 like the radial gates at the Clifton Court Forebay are  
14 stuck -- one's been stuck open for two years?

15 I'm just trying to figure what it would look  
16 like because this, to me, impedes my property control --  
17 this impedes the waterway.

18 CO-HEARING OFFICER DODUC: The question, rather  
19 than argument please.

20 MS. WOMACK: The question -- so your answer,  
21 let me, just to clarify. Your answer is you're not  
22 using this, but you don't have anything that shows what  
23 you are using?

24 WITNESS BEDNARSKI: No. I think, as I've tried  
25 to explain several times, we have several concepts for



1 this location. Once we do our hydraulic modeling and  
2 understand what restrictions we have, we would then  
3 narrow the choices to a preferred alternative.

4 And one of the criteria for that alternative  
5 would be to have minimum or no disruption to the current  
6 water surface elevation fluctuations that occur during  
7 the -- kind of the tidal sequence. And that will take  
8 place in the next stages of design.

9 MS. WOMACK: Where are those documents that  
10 show the different control structure because I'm very  
11 intend in how -- what this is going to look like?

12 WITNESS BEDNARSKI: Well, if Mr. Long can go up  
13 one page, we have another alternative that we listed as  
14 a radial gate option. And then if you go to the next  
15 one, we have another --

16 MS. WOMACK: I can't --

17 WITNESS BEDNARSKI: Just the next page up, we  
18 do have another option that we've listed.

19 So we've shown several different options that  
20 could conceivably be used at the different locations.  
21 And that's what we've attempted to do here is have,  
22 again, a menu that we can further develop in preliminary  
23 and final design to meet this hydraulic criteria that we  
24 know we have to meet.

25 MS. WOMACK: Is there a reason that you don't



1 have pictures? You have a picture of one. You have --  
2 I thought these were all the same radial gate because --  
3 well, you know, because the -- I don't know which -- it  
4 says it's a control structure. I don't know --

5 CO-HEARING OFFICER DODUC: And your question?

6 MS. WOMACK: Well, do you have pictures of  
7 them, what they look like? You have the one picture  
8 that you say you're not going to use, the 1305.

9 Where are the other pictures?

10 MS. ANSLEY: And I'm going to lodge an  
11 objection. This argumentative. These are the  
12 schematics he's showing where the operations are laid  
13 out. It lacks foundation that there should be pictures  
14 necessarily in the CER map book or drawings.

15 And so I think that the question is frankly  
16 just argumentative. If she wants to ask if there are  
17 other representations like that one in this document or  
18 any other document, that's a little differently framed  
19 than how this is now being framed.

20 CO-HEARING OFFICER DODUC: Sustained.

21 MS. WOMACK: I could ask it that way. Are  
22 there other documents that look like this anywhere in  
23 the CER? Or the -- I want information.

24 WITNESS BEDNARSKI: We'll be preparing that  
25 information in preliminary design. We'd be happy to



1 share that with you at that time.

2 CO-HEARING OFFICER DODUC: All right. Thank  
3 you.

4 On that, note we're going to adjourn for the  
5 week.

6 Mr. Mizell.

7 MR. MIZELL: Yes, I have a quick question that  
8 maybe Mr. Emrick can ask -- or answer, sorry.

9 In the question that followed the motion to  
10 strike, it became quite clear why Dr. Chilmakuri has the  
11 technical data contained in Page 4, Lines 6 through 19.

12 When he was he questioned about the accuracy of  
13 DSM-2, we went into the node charts and into the  
14 cross-sections and actually spent some time discussing  
15 which are closest to CCLP's diversion point and which  
16 would be most accurate.

17 At this time, does Mr. Emrick wish to withdraw  
18 his motion to strike?

19 MR. EMRICK: No. Thank you.

20 CO-HEARING OFFICER DODUC: Thank you. On that  
21 note, we will adjourn until 9:30 on Monday. We will see  
22 you then.

23 MR. EMRICK: Thank you.

24 (Whereupon, the proceedings recessed  
25 at 4:54 p.m.)







1 State of California )  
2 County of Sacramento )

3

4 I, Candace L. Yount, Certified Shorthand Reporter  
5 for the State of California, County of Sacramento, do  
6 hereby certify:

7 That I was present in the morning session of the  
8 above proceedings;

9 That I took down in machine shorthand notes all  
10 proceedings had and testimony given in the morning  
11 session;

12 That I thereafter transcribed said shorthand notes  
13 with the aid of a computer;

14 That the above and foregoing is a full, true, and  
15 correct transcription of said shorthand notes, and a  
16 full, true and correct transcript of Pages 1 - 107;

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 5, 2018

23

24

25

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Candace L. Yount, CSR No. 2737