

STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING/HEARING  
(Portion)

MAY 20, 2015

Coastal Hearing Room - Second Floor  
1001 I Street  
Sacramento, California 95814

scribed by: Thresha Spencer, CSR No. 11788

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STATE WATER RESOURCES CONTROL BOARD  
BOARD MEMBERS

- Chair Felicia Marcus
- Vice-Chair Frances Spivy-Weber
- Board Member Tam M. Doduc
- Board Member Steven Moore
- Board Member Dorene D'Adamo

1 PORTION OF TRANSCRIPT OF PROCEEDINGS

2 (File 10 - 00:45 to end)

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4 CHAIR FELICIA MARCUS: This workshop is being held  
5 in accordance with the public notice dated May 1st, 2015,  
6 and revised on May 18th.

7 This is an informal workshop. The State Water Board  
8 will not take any formal action and there will be no sworn  
9 testimony or cross-examination of participants.

10 The Board Members and its staff may, however, ask  
11 clarifying questions of speakers. After receiving comments  
12 at this workshop, The State Water Board may provide  
13 direction to staff regarding future activities.

14 We will be focusing on drought-related water right  
15 curtailment in the Delta watershed. We'll start with an  
16 introduction from the State Water Board staff, and that will  
17 be followed by public comments -- really, conversation  
18 amongst us and with you.

19 And we'll -- the number of comment cards at the  
20 moment, people will have five minutes when we get to that,  
21 but anticipate that we'll probably ask you a lot of  
22 questions as well.

23 And, with that, I'm going to turn right to staff.

24 KATHERINE MROWKA: Hi. I'm Kathy Mrowka. I'm with  
25 the Division of Water Rights. I'm the program manager for

1 enforcement, and the curtailment program is coordinated  
2 through my program.

3           So I wanted to talk to you today about the  
4 drought-related curtailments. Curtailments can be issued  
5 for three reasons: They can be issued because a water right  
6 has a term in it that requires parties to cease using water  
7 under specific conditions.

8           We have Term 91 in the San Francisco/San Joaquin Bay  
9 Delta. It can be issued due to overall watershed  
10 conditions, or it can be issued because of specific fishery  
11 needs.

12           Thus far this year we've seen a number of  
13 curtailments issued. We've seen three fishery needs  
14 curtailments, Scott River, Deer Creek, and Antelope Creek.  
15 We've seen two of the watershed wide, Sacramento River and  
16 Delta and San Joaquin River, and those were for the  
17 post-1914 water rights. And we've seen one curtailment for  
18 our permanent condition, Term 91.

19           So the interesting thing is how many people has this  
20 affected? I think that's a more difficult statistic because  
21 we are counting 8,942 water rights curtailed thus far.

22           When you look at how this breaks out and you say,  
23 "Oh, is it a lot of fishery curtailments, is it the general  
24 watershed conditions?"

25           And, frankly, the fishery curtailments are only

1 numbering roughly 300 parties affected. The rest of this is  
2 due to the horrific watershed-wide conditions.

3 Now, when we issue a curtailment notice, we ask  
4 parties to respond back to us and tell us if they are  
5 complying with that curtailment. And I wanted to talk to  
6 you briefly about our success ratio, and I wanted to say it  
7 is really poor. We've only received 20 percent response  
8 rate for the San Joaquin River, and we've seen a 29 percent  
9 response rate for the Sacramento River curtailed rights.

10 So we've gotten very poor responses. I wanted to  
11 tell you briefly about how we've used information from our  
12 prior informational orders to try and help us on our  
13 curtailment efforts.

14 CHAIR FELICIA MARCUS: Can I -- is this going to  
15 follow on the poor response? Or if I have a question on the  
16 poor response?

17 KATHERINE MROWKA: I just wanted to report on the  
18 poor response rate.

19 CHAIR FELICIA MARCUS: But how does that compare  
20 with last year?

21 KATHERINE MROWKA: Last year we had a better  
22 response rate, at least ten percent better on the response  
23 rate. This year it's somewhat worse.

24 CHAIR FELICIA MARCUS: That's interesting.

25 KATHERINE MROWKA: And it's particularly bad on the

1 fishery-related curtailments. So, last year,  
2 fishery-related curtailments could send paper forms in.  
3 This year they have to send in data electronically.

4 For Scott River, we're only at a nine percent  
5 response rate. So although we didn't see a lot of parties  
6 affected, we also saw very, very poor response rate.

7 So what that means to me on coordinating our  
8 enforcement efforts, it means that I need to target  
9 resources to those areas where we have poor response rates  
10 to determine whether parties are complying with the  
11 compliance -- I mean, with the curtailment.

12 And the next deals with how we prioritize those  
13 inspections, but I did want to finish first with the general  
14 information.

15 CHAIR FELICIA MARCUS: Okay.

16 BOARD MEMBER DORENE D'ADAMO: Can you tell if there  
17 might be an issue about electronic reporting? Are you  
18 getting the people to, you know, send in a written report  
19 saying they don't have access?

20 KATHERINE MROWKA: Well, the interesting thing about  
21 electronic reporting is it's our sole method of reporting  
22 for water right holders when they report their yearly water  
23 use. We no longer have any paper reporting allowed.

24 BOARD MEMBER DORENE D'ADAMO: So they should be able  
25 to then?

1 KATHERINE MROWKA: Yes. And we've done a lot of  
2 outreach to -- through farm bureaus and others to try and  
3 teach people how to do our forms.

4 What we looked at this year was streamlining and  
5 whether we could, you know, relieve some of the burden on  
6 the water-using community.

7 Last year there were two different kinds of  
8 curtailment forms you had to fill out. One to tell us if  
9 you had stopped using water and one to tell us if you --  
10 there was an applicable health and safety claim.

11 So this year everything is on one form, we tried to  
12 help out on that. We tried to make it a simpler form to  
13 navigate, you know, we tried to do what we could with  
14 respect to that so that would be a little less burden on the  
15 water-using community.

16 Earlier this year we had issued an informational  
17 order to the top 90 percent of water diverters in the Delta  
18 and 90 percent of the remaining San Francisco -- I mean,  
19 Sacramento and San Joaquin basins, and we have used the  
20 data, the 2014 data on their water diversion and use in our  
21 modeling, so we had already incorporated it in curtailment  
22 model.

23 What I haven't reported to you previously is what do  
24 we see and how does it compare the 2015 initial reporting  
25 versus 2014 data. So now we've got two months of 2015 data



1 that's come to us. And what we're showing is that, you  
2 know, we had asked these people to project what they thought  
3 they used in 2015; now we're getting the actual numbers.

4 March was 14 percent less -- the actual was  
5 14 percent less for 2015. April, the actual use was  
6 23 percent less than the projected.

7 So we're seeing that people are using less than they  
8 thought they were going to need to use for 2015. Way less  
9 than the face value. And the 2014 data we had seen that  
10 where parties reported to us and said that they had used a  
11 lot less.

12 But our last year's experience, you know, we sat --  
13 we went out and did 950 field inspections on curtailment  
14 last year, and our number one finding from those in field  
15 inspections was that people were complying with the  
16 curtailment because their streams were dry. I mean, that  
17 was the most frequent thing, go out, look, they were  
18 complying, but it's because conditions are so bad.

19 CHAIR FELICIA MARCUS: (Inaudible.)

20 KATHERINE MROWKA: Yes. So, you know, we found a  
21 high compliance rate, but it's for the worst darn reason.

22 So this year we're getting our field crews out in  
23 the field, we started May 1st, and we're using the same  
24 criteria that we used last year to prioritize who we look  
25 at. Failure to respond to the curtailment certification

<http://www.yestaw.net/ndp>

1 form, size of diversion, is it currently their diversion's  
2 season, where are they located geographically, and flow  
3 conditions.

4 CHAIR FELICIA MARCUS: That's just because you're  
5 being -- I remember this from last year -- being efficient  
6 when you send the team out, you're looking in one geography.

7 KATHERINE MROWKA: Yeah. We are looking at that  
8 too. Last year we experienced a tripling of the water right  
9 complaints. And so, you know, we have some areas that we  
10 like to focus this year. We wanted to try and see, you  
11 know, what's going on in specific areas.

12 More than that, we want efficient investigations, we  
13 want them -- to cluster them so that their day's effort is  
14 meaningful. You know, if there's certain things we do, core  
15 efficiencies within the program.

16 And I really thank the Department of Water  
17 Resources. They are loaning us eight staff persons to  
18 assist with this effort, so very, very appreciative of that.  
19 And other divisions here at the State Water Board are also  
20 loaning us staff, and so we're very appreciative of that  
21 assistance.

22 Future curtailments. The San Joaquin River  
23 watershed, pre-1914 rights. We are expecting to issue  
24 curtailment this Friday.

25 San Joaquin River watershed, the riparian rights by

1 June 15th, and we're still reviewing the Sacramento River  
2 watershed and Delta pre-1914 water rights, and we don't have  
3 a recommendation yet on that.

4 Now, there are special circumstances that apply to  
5 the curtailments. For hydropower projects, if the diversion  
6 is for hydroelectric generation by direct diversion only and  
7 all water diverted is returned to the same stream system,  
8 continued diversion is allowed because, basically, you're  
9 putting back what you take out; you're not affecting  
10 someone.

11 For all diverters, water collected to storage prior  
12 to curtailment may still be beneficially used.

13 And then we have another category because there's  
14 only a health and safety exception for fishery-related  
15 curtailments. There is one there, but there's not one for  
16 general watershed-based curtailments.

17 What we are doing, though, is on the compliance  
18 certificate, we're asking parties, "Are you needing to  
19 comply with directives issued by the Division of Drinking  
20 Water or local health or drinking water regulations to  
21 provide water to meet human health and safety needs?" And  
22 these we evaluate on a case-by-case basis. Because although  
23 there are no exceptions for this, there are certainly  
24 enforcement discretion, and we want to know about those  
25 cases so we know when we need to use our enforcement

1 discretion.

2 CHAIR FELICIA MARCUS: Right. And in those orders,  
3 as I understand it, there are very strict conservation  
4 limits. No watering outdoors, program oratorium and the  
5 like.

6 KATHERINE MROWKA: It's very minimal use. That's  
7 correct.

8 So that concludes my presentation on this topic. I  
9 will be doing another presentation on another topic.

10 Did you have questions for us? I think there will  
11 be a number of questions from other speakers.

12 So now I wanted to talk briefly about the hydropower  
13 program. Okay. We have a role in the hydropower, because  
14 we act under Section 401 of the federal Clean Water Act to  
15 determine conditions in FERC licenses, and licensees have  
16 requested temporary variances to the conditions in their  
17 water quality certifications for affected FERC projects.

18 Most variance requests are to reduce minimum  
19 in-stream flows, increasing water in storage benefits summer  
20 peak power generation, and helps satisfy water supply and  
21 maintain in-stream flow releases later in the year.

22 As background under Section 401 of the Clean Water  
23 Act, water quality certifications outline conditions to  
24 protect water quality and beneficial uses. The State Water  
25 Board has received and acted upon several requests for

1 variances. And just to point out two of them, Pacific Gas &  
2 Electric Company and Tri-Dam Projects on the Middle Fork  
3 Stanislaus River asked us to allow them to forego  
4 supplemental flows and recreational flows to maintain  
5 storage for use later in the summer for power demands and  
6 continued in-stream flow releases.

7 Another example is El Dorado Irrigation District's  
8 project on the South Fork American River. The State Water  
9 Board approved reduced minimum stream flow requirements so  
10 that EID could preserve storage and satisfy water supply  
11 demand.

12 We are anticipating that there will be additional  
13 requests for variances, and the variances are normally  
14 approved by the Executive Director and, in some cases, by  
15 the Deputy Director for Water Rights. Some variances are  
16 occurring without the State Water Board's approval as there  
17 is no certification in place for the project. So if we  
18 don't have a certification, we don't have a nexus for any  
19 action on our part.

20 BOARD MEMBER STEVEN MOORE: I guess on that point, a  
21 variance from what, then, if there's no condition in a --

22 KATHERINE MROWKA: They'll still have to go to FERC  
23 and ask for variance in their operating conditions.

24 BOARD MEMBER STEVEN MOORE: From FERC?

25 KATHERINE MROWKA: But we wouldn't have anything but

1 an advisory role.

2 BOARD MEMBER STEVEN MOORE: Okay. Thank you.

3 KATHERINE MROWKA: Okay. And then I did want to  
4 mention that the Governor has a hydropower working group.  
5 This is multi-agency coordination. Since early 2014, staff  
6 from the California Energy Commission, California Public  
7 Utilities Commission, Department of Water Resources, State  
8 Water Board, and the California Independent System Operator  
9 have been coordinating weekly to monitor and assess drought  
10 impacts on hydroelectric and other sources of power  
11 generation.

12 This working group extends beyond hydropower as  
13 other sources of generation, such as gas-fired power plants  
14 also rely on stable water supplies to generate power. The  
15 working group is continuously assessing California's  
16 electric grid capabilities under the drought and proactively  
17 following up on potential areas of concern.

18 So, in 2015, it's always fun, you know, to take a  
19 look, see what we're estimating. We're estimating grid  
20 reliability reminding good overall. The 2015 projection for  
21 hydropower generation is 49 percent of the annual average.  
22 But, you know, some of the loss in hydropower generation is  
23 being made up for by additional capacity from new  
24 generation, transmission upgrades, increased reserve margins  
25 to meet peak summer conditions, and moderate load growth.

<http://www.yeslaw.net/hc1p>

1 And that concludes this set presentation.

2 CHAIR FELICIA MARCUS: That's it?

3 KATHERINE MROWKA: I'm done.

4 CHAIR FELICIA MARCUS: Okay. So I'm going to ask  
5 you to step in and help me or (inaudible). This is an  
6 opportunity -- this is a little different than the TUCP  
7 workshop that so many of you sat through. I appreciate that  
8 you did. That is an issue on which because there are  
9 petitions, we can't talk to people.

10 On the curtailment issue, we have talked to many of  
11 you, and we appreciate your engagement in, I think, a rather  
12 different way than last year. And I just wanted, at the  
13 outset, to thank people for some of the creative and engaged  
14 things that they tried to do as well as the information that  
15 people have been sharing, so I just wanted to say that.

16 And then the goal of this is just to open it up?  
17 Okay. I don't know why I was expecting more, but I was. No  
18 critique, I just was.

19 All right. With that, our first speaker is Dante  
20 John Nomellini. Yeah, but we don't have that many cards so  
21 I'm not going to be that tough. He can't have 20, but I'm  
22 not going to -- yeah. Wait a minute. I'm going to get --  
23 what I'm going to do is the person after you gets to decide  
24 how many minutes you get. What do you think about Herrick  
25 deciding how many minutes you get?

1 DANTE JOHN NOME LLINI: I don't agree, but we'll work  
2 that out outside.

3 CHAIR FELICIA MARCUS: He's waking up. I was going  
4 to order a cup of coffee for John earlier today. He was  
5 just yawning all morning. I was going to try and share with  
6 you? What?

7 JOHN HERRICK: (Inaudible.)

8 CHAIR FELICIA MARCUS: You were. You were just  
9 yawning to get more oxygen so that you could -- you could  
10 really pay attention.

11 Sorry. Mr. Nomellini, please.

12 DANTE JOHN NOME LLINI: Yes. Dante John Nomellini,  
13 Manager and Co-Counsel for Central Delta Water Agency. We  
14 understood our instruction to combine our comments on both  
15 topics, so I will deal with the curtailment as well as the  
16 temporary urgency change.

17 Of course, our concern is very high with regard to  
18 curtailment of water diversions in the Delta. We believe  
19 the water supply in the Delta not only includes flows from  
20 the east but includes flows from the west, and we have ample  
21 water continue to pump in order to farm and, therefore,  
22 water quality is the concern.

23 Now, I recognize we probably have some legal  
24 disputes on that. Just to let you know, we plan to engage  
25 on that subject. Hopefully, we can get it aired out



1 somewhere along the road so we don't have to fight over it  
2 constantly. But we're at the time where under the threat of  
3 curtailment, if we -- you haven't done it yet, is really  
4 affecting our people and their ability to continue to  
5 function.

6 We're very disappointed that we've transitioned,  
7 even though our agencies haven't been at the forefront of  
8 negotiations over water banking or fallowing in the Delta  
9 for compensation, that fell apart, and now we're dealing  
10 with an avoidance or our landowner's avoidance of  
11 prosecution and penalties in exchange for foregoing their  
12 water use.

13 I view that as a switch from an economic voluntary  
14 banking program to one of reacting to extortion under threat  
15 of curtailment and penalty.

16 Of course, I have no enthusiasm for that as a  
17 lawyer. I think it's wrong and, therefore, we're going to  
18 engage, you know, on whether or not your process is  
19 appropriate for that.

20 I recognize the curtailment of the Delta notice has  
21 not gone out yet for pre-1914s in the Delta or riparians,  
22 and I understand from just the brief presentation that  
23 decision hasn't been made yet. I suspect it's forthcoming.

24 There are a couple of things I'm going to kind of  
25 repeat to you what I've said to you before that, after 2013,

1 I believe in 2013 the reservoir storage was depleted  
2 wrongfully, and the fishery agencies, in my opinion, were a  
3 party to it. They said, you know, let the critical year  
4 criteria dominate for Delta agriculture, even though it was  
5 a dry year rather than critical under D6 -- D41. They  
6 didn't say anything about exports. And exports -- and I  
7 submitted letters to you. Exports, I didn't sue on it. I  
8 was leaving the sword in the closet.

9 But exports were taking the same water that could  
10 have been stored for cold water protection for fish. And  
11 that, to me, was wrong. We hear about water and storage  
12 being allowed after the notice of curtailment or as of the  
13 date of curtailment as if it's a sacred cow. Just because  
14 it's stored in the reservoir doesn't mean it's stored in the  
15 water. The projects have been capturing behind the  
16 reservoir water that would be otherwise natural flow to the  
17 Delta. Particularly important would be, like, in April or  
18 March because it would flush the Delta and, of course, our  
19 concern is water quality, you know, whatever solidity  
20 control is, that you've kind of dictated that.

21 But that water is actually natural flow, in our  
22 view, that would have come down fresh in the source, the  
23 water for our farmers. And we viewed the law to provide for  
24 solidity control and a balancing of that by letting people  
25 store that water in the early spring months in exchange for

1 some benefit, water quality-wise, in the summer. So that's  
2 how we've rationalized that.

3 So if you let them take that away and you curtail it  
4 later, we view that as a serious wrongdoing. And we  
5 understand the law and, of course, we don't have agreement  
6 with all your lawyers, but we think the Delta Protection Act  
7 says you can't export from the Delta unless the Delta is  
8 first provided an adequate supply.

9 Now, exports have been going on without a health and  
10 safety restriction. We haven't jumped in to stop that but,  
11 on the other hand, if they get to do that and then you  
12 curtail us, we think that's really wrong.

13 Your staff presented what I think is factually  
14 correct, that the adjustments from 2014 to 2015 mean greater  
15 exports. If you saw the pie charts, it's bigger.

16 And for the first series of months from January 1st  
17 up to now, the State Water Project has pumped from the Delta  
18 268,779 acre feet more than in the same period last year.  
19 Now, where did that water go? That water is in San Luis.  
20 You know, there's other water in San Luis, but that water is  
21 there.

22 So if all of a sudden we let -- we start curtailing  
23 our Delta diversions, that water, the exporter shouldn't  
24 have been able to take that water. They're taking advantage  
25 of it unfairly, and I'm not going to attribute why it's

1 occurring, I mean, whether there's good reasons or not.

2 The net effect is they've taken water that's in  
3 storage, so that water in storage that came out of the Delta  
4 should be available to meet Delta water quality  
5 requirements. It could come back in the San Joaquin River.  
6 They've done it as a demonstration project, bringing it down  
7 through the Westley Wasteway, so...

8 I view those as examples of what we'd be concerned  
9 about in terms of an equitable adjustment. We're not going  
10 to just sit back and let a process cripple us while others  
11 take advantage, I think, unfairly of it.

12 Now, I've said to you before, I think what we ought  
13 to do, and I think you ought to avoid curtailments. Let us  
14 sort it out, you know, among ourselves, fight over it. It's  
15 not a place for you to go because it's very complicated from  
16 a water right's standpoint. It is very specific to  
17 location.

18 Now, I'm not saying that just with regard to the  
19 Delta. The Delta, I think, is the easiest case because we  
20 have water all the time. But, as you go up river, you're  
21 getting involved in very detailed, very site specific  
22 considerations that I think rightfully have to be addressed  
23 from a water right administration standpoint. So you're  
24 supposed to -- you think you're protecting senior water  
25 rights. What I see is the advantage is to the junior water

<http://www.youlaw.net/help>

1 right holder who claims stored water, two projects, and they  
2 have statutory obligations that are not purely water right.  
3 That's their statutory rights that regulate what they do.

4 So, in any event, I just wanted to alert you we're  
5 still going to work positively on trying to get a better  
6 handle on understanding water use in the Delta. We're  
7 sending our checks for the two CVA stations. This effort by  
8 our water master to get better information. I found two  
9 sites in the central Delta. We're going to cooperate.  
10 We're going to do that. We're going to try and be  
11 responsive. We thought we helped almost everybody that  
12 needed help respond to these information requests and the  
13 patents and all of that. We'll continue to do that.

14 KATHERINE MROWKA: Oh, I do want to mention --

15 DANTE JOHN NOMELLINI: -- curtailment.

16 KATHERINE MROWKA: -- you did have a 97 -- what was  
17 it, a 97 percent? It was a huge response.

18 DANTE JOHN NOMELLINI: We've tried to help, and we  
19 will continue that.

20 KATHERINE MROWKA: I appreciate that.

21 DANTE JOHN NOMELLINI: But as we have to become more  
22 defensive, we're going to -- we're going to litigate. We  
23 personally think our shot is better in court than it is in  
24 front of you because of the hypertechnical nature of these  
25 questions dominated by staff. We know who staff are, we

1 know what their positions are from past events on these  
2 water right issues, so we're going to try and stay in court.  
3 That doesn't mean we won't be back here.

4 CHAIR FELICIA MARCUS: We would miss you.

5 DANTE JOHN NOMELLINI: I know you said you thought  
6 the Board ought to do it, but, I mean, quite frankly, we  
7 think our best shot is in the courthouse rather than before  
8 your Board because you're going to defer to staff. Not that  
9 you wouldn't go the other way, but these things are so  
10 complex, I know what you're going to do. I've only been  
11 around all these years. I lost my hair, the gray are  
12 gone --

13 CHAIR FELICIA MARCUS: You have so much faith in the  
14 judicial system, I guess.

15 DANTE JOHN NOMELLINI: -- and my estimate is that  
16 our best shot is in court.

17 BOARD MEMBER DORENE D'ADAMO: I have a question for  
18 you. So you've outlined here that you think we're going to  
19 go forward, which it appears that that's where we're headed,  
20 but you mentioned that you ought to be able to work it out  
21 yourselves. So how would you structure that?

22 DANTE JOHN NOMELLINI: Well, I think water right  
23 holders would litigate amongst themselves. I mean, you've  
24 seen the San Joaquin River entities join together, which we  
25 signed on too that said, "Look, you know, stay away from

1 this, wait until you get a formal complaint."

2 We hear John Ruben come in all the time, you know,  
3 "Beat those guys up and this, that, and the other thing."  
4 He hasn't filed anything yet, but he may. And maybe we'll  
5 file something that he's interested in.

6 But the parties are well aware, the water right  
7 holders, I mean, the people in the Sacramento River that are  
8 doing these transfers, we're concerned about the impact of  
9 water -- groundwater substitution. We didn't bring that to  
10 you as a complaint. We mentioned it, but we are litigating  
11 the environmental document on the long-term transfers.

12 I'm just indicating to you that how those things are  
13 going to get sorted out, other than you people jumping into  
14 the fray on what we view as complicated, site specific, even  
15 document-specific challenges. You may want to join them  
16 all, which is okay.

17 But I just wanted to be frank with you, let you know  
18 I do appreciate everybody's interests and the effort that's  
19 gone in, a lot of effort even at staff, but, you know, this  
20 is getting real critical. Our guys, you know, this  
21 25 percent thing, we, in the agencies, are not going to  
22 obstruct it because people have to take that risk and make  
23 that decision as to whether they're going to give up  
24 25 percent in order to get a non-prosecution type of  
25 comfort, I don't know, how could that -- anyway. But we're

1 not going to interfere, of course, because we can't predict  
2 the result. But, conceptually, we think it's wrong. We  
3 think our rights are senior, we think the statutes are set  
4 up to make sure that we come first.

5 If you can't export, you may not be able -- you may  
6 not want to give us the water that we think we need, but you  
7 can't export when we don't have an adequate supply. We  
8 think that's the law. And, of course, that's kind of an  
9 incentive on the projects to try and hammer out this  
10 solution with us.

11 You know, we've tried to get some kind of  
12 contractual situation, because we'd rather have more  
13 security. We've been unsuccessful over the years, and  
14 there's no mechanism for us to force an arbitration or a  
15 good faith negotiation. The statute puts that leverage on  
16 no exploits, we think. That's where the leverage is. That  
17 doesn't mean we're satisfied, but they can't take water out  
18 of the Delta unless this thing is resolved. Anyway --

19 CHAIR FELICIA MARCUS: Thank you.

20 DANTE JOHN NOMELLINI: -- those are my comments.  
21 Thank you very much.

22 CHAIR FELICIA MARCUS: Well, we'll be talking more.

23 John Herrick? South Delta Water Agency followed  
24 by -- sorry -- Deirdre Des Jardins from the California Water  
25 Research.



1 JOHN HERRICK: You said that like you don't know me.

2 CHAIR FELICIA MARCUS: Well, I'm trying to be a  
3 little more formal. (Inaudible.)

4 JOHN HERRICK: Thank you, Madam Chair, Board  
5 Members. John Herrick for the South Delta Water Agency.

6 Again, we appreciate everybody's efforts. There's a  
7 lot going on, very difficult decisions coming. Hopefully,  
8 we can all get through this. My comments are similar to  
9 what I've said before, and that is I really would like to  
10 stress and encourage the Board to -- to take a different  
11 route for the long-term. The short-term is too late, but we  
12 need to have hearings on this stuff.

13 The urgency statutes -- or urgency requirements in  
14 Section -- what is it -- 1425, 35, 25, you know, they're  
15 clearly for an emergency event, and they really don't fit  
16 here. And I think just a cursory look at the criteria there  
17 shows that this is not the appropriate situation for them to  
18 be employed.

19 In order to get an urgency permit change, you have  
20 to show that it does not adversely affect any legal user of  
21 water. Well, if the changes are relaxation of water quality  
22 standards to protect legal users, then it's, by definition,  
23 an injury to them.

24 Now, people may disagree to the extent of that, and  
25 I guess you could couch it in, "Well, it must be an

1 insignificant one so we must not do it," but it's clearly --  
2 it's clearly an injury to legal users.

3           Similarly, it says, "Shall not unreasonably affect  
4 fish and wildlife." Well, obviously, that's in a situation  
5 where something happens, you can do some  
6 previously-unauthorized action as long as you don't really  
7 affect the fisheries or the environment. Well, that's the  
8 opposite we're doing here. We're fundamentally altering the  
9 minimum flows for the fisheries.

10           And then the last criteria, which I've harped on for  
11 five years now, and apparently I can't read or something.  
12 But the last one says, you know, you can get an urgency  
13 change if you've shown diligence in trying to get the change  
14 under the normal procedure rather than the emergency one  
15 because of the emergency one -- because of all the criteria  
16 and the lack of public participation.

17           So I think any honest evaluation of the statute is  
18 that this is not the method by which we would have four  
19 years of Delta and upstream operations determined. And, you  
20 know, it's not my job to, you know, personally attack the  
21 Bureau and DWR. Sometimes it is, but -- you know, we rely  
22 on their presentations at these -- at these meetings, and,  
23 you know, everybody couches things to their best interests  
24 to some degree, and we just don't get to challenge what  
25 they're presenting. We don't even see it until the day of

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1 the hearing.

2 But there's all sorts of information that none of us  
3 have, especially you, dealing with all these things, like  
4 cold water supply and previous storage and what's going on  
5 here. Those things really need to be aired out with idiot  
6 attorneys like me being able to cross-examine so we can  
7 actually see. You know, there are hundreds of questions  
8 raised by this morning's presentations, but we'll never get  
9 to those, literally.

10 So I do encourage the Board to undertake, you know,  
11 the decision, and I don't know who would fight you on this  
12 but there are probably be a lot of people, but you really  
13 need to say this right now, "Okay, starting October 1, we're  
14 going to have ten days of hearings for future drought  
15 operations." It may be too late. I mean, if it doesn't  
16 rain again for another year or two, it may be too late and  
17 there's nothing to do. But we can't operate on this urgency  
18 basis where it's presentations by the people who control the  
19 system, and it's really kind of take it or leave it.

20 You know, "Oh, this is all we can do, you know, and  
21 we don't get to see what the truth is," so I encourage you  
22 to do that. The good news, I think, will be covered by  
23 Ms. Spaletta when she gives you an update on her -- on the  
24 25 percent program that she and others have spent a lot of  
25 time on.

1 So, anyway, thank you very much for your time.

2 CHAIR FELICIA MARCUS: (Inaudible.) Followed by --  
3 sorry. Followed by Steve Arakawa from Met.

4 DEIRDRE DES JARDINS: I wanted to congratulate the  
5 Board because I think this year you are light years beyond  
6 last year in terms of your amount of information about  
7 what's really going on in the Sacramento Valley.

8 CHAIR FELICIA MARCUS: It may not be saying a lot,  
9 but it is a lot.

10 DEIRDRE DES JARDINS: Yeah, no. It's very  
11 significant, and there's this major conflict in the Bureau  
12 said these guys get 75 percent of the water that they  
13 normally would contract it for even if Shasta is a dead  
14 pool. The Bureau is doing their best to meet the contracts,  
15 but they're also trying to maintain cold water pool for  
16 salmon. So that's much more in the light right now, and  
17 it's -- and our whole state is better for it.

18 But I have a more fundamental comment, and I really  
19 thought today, what would I want to talk about? What is the  
20 biggest gap? The biggest gap is DWR is doing -- helping to  
21 do the curtailment analysis, and the projects aren't looking  
22 at the fact that they, themselves, are curtailed.

23 The Coordinated Operating Agreement, the projects  
24 committed in 1986 to always meet all in-basin uses,  
25 including Delta outpost. And, for that reason, the Board

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1 has always given them wide latitude in operations.

2 I don't delve into the COA accounting. The Bureau  
3 publishes monthly reports of the COA accounting and the  
4 Delta output complications, but the COA accounting only  
5 tracks releases of stored water. It aggregates all in-basin  
6 uses, and it only loosely tracks the source of water for  
7 Delta exports. It's never intended for conditions of  
8 curtailment of the CVP and the State Water Project's permits  
9 to divert unstored water.

10 And I really have questioned whether I should bring  
11 this up, but reservoir operations people work so hard, but  
12 curtailment literally construed requires full bypass blows  
13 from all the rundowns, which is not planned for Folsom or  
14 New Melones.

15 And if you're really going to curtail downstream  
16 water rights holders, the projects may be needing to provide  
17 substitute flow for these water rights holders while USBR  
18 has devoted a lot of attention to meeting their contracts,  
19 senior downstream water rights holders, which is those from  
20 Mr. Nomellini and Mr. Herrick may have a stronger claim to  
21 these substitute flows than curtailed USBR contractors who  
22 may have post-1914 appropriative rights.

23 The water balance reports that Mr. Howard  
24 recommended are a really good start, but the information  
25 needs to be pulled together in a more complete report, the

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1 tracks stored, and then stored releases and depletions.  
2 Diversions by curtailed contractors under the Bureau's  
3 permit or State Water Project contracts, they have to be  
4 reported. It should be stored water only, and it needs to  
5 be excessed to other in-basin needs. This affects the  
6 Sacramento and Feather River settlement contractors, the  
7 exchange contractors, and also the City of Sacramento's  
8 permits on the American River.

9 And I know you guys have done a lot of work, but the  
10 Bureau needs to look at this. Finally, the source of water  
11 for exports needs to be tracked.

12 The Water Board has said repeatedly exports are  
13 junior to meeting in-basin needs. During curtailment for  
14 each project, diversions can be no more than upstream  
15 releases less contributions to require outflow.

16 And I know this, according to the Bureau's smart  
17 operations forecast, the State Water Project is planning to  
18 export more than the Feather River releases from October  
19 through January. I don't know when your curtailment project  
20 is, but that's what's planned.

21 Transfers. The Board is doing way better. They've  
22 noticed this year that some of the proposed transfers are  
23 from settlement contractors who are curtailed. Those aren't  
24 approved. But I notice there's a long-term transfer, the  
25 Yuba River transfer -- there was a really big one last year.

1           And I looked closely, and your database seems to say  
2 that all of the Yuba County Water Agency contractors are  
3 post-1914, so the only thing they could transfer is stored  
4 water. And there may have been a little more than that  
5 transferred last year. So less this year, I think there's a  
6 lot less, but it's something to look at.

7           Similarly, south of Delta, Feinstein passed some  
8 language which ended the CVPA requirement that transferred  
9 speed of water that will actually be delivered and  
10 consumptively used for south of Delta transfers.

11           So, obviously, this could cause a lot of problems,  
12 and I just noticed there's a big transfer that was just  
13 proposed, and I apologize because I missed seeing the  
14 notice. But it's saying that Arvin-Edison may transfer up  
15 to 150,000 acre feet of its CVP supplies to Metropolitan  
16 Water District this year. And I'm, like, what supply? The  
17 Bureau hasn't allocated anything. Is that from next year?  
18 Are they going to get any water?

19           You know, so I think, you know, you don't want  
20 Arvin-Edison transferring CVP water to Met until  
21 Arvin-Edison has an allocation. So it's those kinds of  
22 things, I think, need a little more scrutiny, and I'll send  
23 this in writing to the Board as well.

24           CHAIR FELICIA MARCUS: Thank you.

25           Mr. Arakawa followed by Terry Erlewine.

1           TERRY ERLEWINE: Chair Marcus, would it be okay if  
2 we reversed the order?

3           CHAIR FELICIA MARCUS: Yeah, sure.

4           TERRY ERLEWINE: Thank you. Terry Erlewine on  
5 behalf of the State Water Contractors, and I'll be followed  
6 by Steve Arakawa from Metropolitan.

7           I wanted to talk about a couple issues,  
8 curtailments, and then also talk about water conservation  
9 briefly.

10           Before I started to talk about that, though, I  
11 wanted to talk about what's happening in terms of  
12 operations. And what I've been looking at is what's  
13 happening so far in May. And if you just look at the  
14 Bureau's operations reports, which were just talked about,  
15 the Coordinator Operations Agreement accounting, the Delta  
16 outflow accounting, there's been roughly 300,000-acre feet  
17 of water that's been taken out of the project's storage, you  
18 know, in the last -- since the beginning of May. So  
19 300,000 acre feet of water has been taken from Oroville or  
20 Shasta and Folsom, released. Of that, less than 30,000 acre  
21 feet has been exported, so less than ten percent of that  
22 stored water has gone to the export projects.

23           Roughly 200,000 or so, a little bit more, has gone  
24 to outflow, so roughly 60 percent of the stored water  
25 releases has gone to outflow. So if we look at the whole



1 pie, we've got ten percent that's going to exports,  
2 60 percent that's going to outflow, and the remainder is --

3 CHAIR FELICIA MARCUS: Meaning, salinity control,  
4 right? Primarily, salinity control?

5 TERRY ERLEWINE: That's -- yeah. That could be --  
6 yeah. Although we've been hearing a lot of people talk  
7 about one person's salinity control is another person's  
8 fishery protection, so...

9 CHAIR FELICIA MARCUS: For drinking water.

10 TERRY ERLEWINE: Yeah. Yep.

11 CHAIR FELICIA MARCUS: We were already talking about  
12 putting shading into the pie chart.

13 TERRY ERLEWINE: Yep. The point I was trying to  
14 make was just that there's 30 percent of that stored water  
15 release that's not accounted for, and that's naturally what  
16 our focus is on is that where is that going, and our concern  
17 is that there are people that are -- have legitimately  
18 superior water rights that are taking some of that water.

19 There are other parties that have not had their  
20 water rights defined that are also very well likely taking  
21 our water, and that's why we support the actions the State  
22 Board has been taking in terms of curtailments because we  
23 think that's really the way -- that's the process that the  
24 Board needs to go through to make sure that people are  
25 taking the water that's legitimately their's and not taking

1 the water that's being released for outflow needs and other  
2 purposes.

3 We appreciate the Board's responsiveness to the  
4 Bureau and the Department on asking for more information  
5 from water rights holders. We also think it's positive that  
6 we're getting good results, at least in some cases in  
7 responses to the water rights information.

8 We've been pretty interested in the process the  
9 Delta Water Master has initiated to modify and improve the  
10 water right or water use information.

11 That, so far, focused on consumptive use, which is  
12 part of the puzzle that some of the other pieces of the  
13 puzzle are direct measurements of surface diversions, direct  
14 measurements of discharges back to the river, and all -- all  
15 three of those ultimately are things that we believe are  
16 going to be necessary for the State Board to have in their  
17 hands to manage the water rights system. There's also a lot  
18 of that information is needed for the projects to be able to  
19 operate effectively.

20 So we support those activities, we support what the  
21 Delta Water Master is doing, we think that there's --  
22 there's actions that need to be taken beyond that.

23 We've actually had some informal contacts with other  
24 parties, and I think, you know, we're -- we're optimistic  
25 that there may be an approach there that all of us could

1 agree that it's something that collectively meets the needs  
2 of the Board and meets the needs of the operators and is  
3 satisfactory to most parties. So we're hoping to continue  
4 those discussions.

5 I just briefly wanted to mention that many of our --  
6 some of our members are ag water -- ag contractors, ag  
7 agencies, and they are implementing major water management  
8 measures. They are responding to the shortages in water  
9 supply. Kern County Water Agency has got some of the most  
10 efficient water use in the state with a lot of drip and  
11 micro irrigation.

12 We've got other water agencies, Tulare Lake Basin  
13 Water Storage District where they've had 50 percent  
14 fallowing in the last two years, 100,000 acres for both  
15 years, as a result of the water supply shortages.

16 And, with that, I'd like to turn it over to Steve.

17 MR. ARAKAWA: Thank you. My name is Steve Arakawa,  
18 and I'm here representing also the state water contractors,  
19 but I'm also a staff person for the Metropolitan Water  
20 District of Southern California.

21 I wanted to first thank the Board and all of the  
22 time that you're putting in to deal with the situation that  
23 we're faced with. It clearly is a set of terrible choices,  
24 as you said earlier today, and I remember reading the  
25 testimony back in 1976/'77 drought about what they were

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1 confronted with, and the world is so much more complex now.

2 We -- we want to commend you for the early actions  
3 that you've taken with regard to curtailments and  
4 understanding how things are developing in the system so  
5 that you're able to make decisions in a timely way.

6 I think that given the unprecedented nature and the  
7 very severe drought that we're faced with in all parts of  
8 the state, and particularly those that count on the Delta,  
9 are required and faced with dealing with unprecedented type  
10 of things.

11 For example, urban areas in the state project  
12 service area have invested in efforts, programs, facilities  
13 for years to try to drought-proof their service area and the  
14 management of water in their area. But given the severe  
15 situation of the drought, we're all being called on to take  
16 severe -- to take significant actions.

17 Those actions include meeting the emergency  
18 regulations that the state has put forward. Also, in  
19 support of that, implementing supply allocation cutbacks  
20 with penalties.

21 So when you look at the urban areas within the  
22 contractor service area, both in the Bay Area, the Santa  
23 Clara County Water District, and the Zone 7 Agency, those  
24 agencies are implementing their mandatory programs, they're  
25 implementing rebate programs, and other types of messaging

1 to get people to cut back.

2 In Southern California, allocation plans, in  
3 addition to ramping up turf removal programs to try to  
4 reduce the amount of water in the outdoor area as a  
5 long-term trend. We think that it's important as you go  
6 through this decision process to uphold the water rights  
7 priority system particularly in a drought situation.

8 And, even going forward, I think that's going to be  
9 really key that the State Board has a handle on how to  
10 implement these types of actions. And we encourage you to  
11 take the necessary steps in doing so to protect stored water  
12 by the projects. That stored water mainly being used to  
13 protect the Delta environment this year and making sure that  
14 any water that is released out of those reservoirs, if it's  
15 intended to meet the environmental need, that it's doing  
16 that work and not getting lost in the system.

17 We know that you're going to be interested in  
18 looking at all kinds of creative solutions, and I think  
19 that's appropriate. And I think in doing so, just making  
20 sure that the intended -- the intended outcome is actually  
21 occurring, that the water that's being saved is actually  
22 being put to the use that it's intended.

23 We want to thank you for holding this workshop, and  
24 thanks very much.

25 CHAIR FELICIA MARCUS: Alan Lilly. I have a card,

1 but I don't see him. Alan Lilly.

2 Philip Martin -- oh, followed by Jennifer Spaletta.

3 PHILIP MARTIN: Good evening, Madam Chair, Board.

4 My comments, I believe, are going to be focused on  
5 what Jennifer is going to talk about, I believe, the  
6 25 percent reduction program or proposed program.

7 I'm a farmer in the Tracy area, and my concern  
8 regarding this proposed program regards crop insurance, and  
9 it's one of the few tools that farmers have to manage  
10 drought risk.

11 My question regarding this program is whether or not  
12 this voluntary program is compatible with crop insurance,  
13 and I would ask you to try and work the program so that it  
14 is compatible. By doing this, I believe the Board can  
15 reduce the pain to some of us farmers and increase the  
16 participation in this program. Thank you.

17 BOARD MEMBER DORENE D'ADAMO: I need to understand  
18 what you mean by that. You have to be able to plant a crop  
19 in order to even apply for crop insurance.

20 PHILIP MARTIN: No. If I were to prevent planting  
21 because you do not have water, you can file a claim.

22 CHAIR FELICIA MARCUS: So I thought I understood  
23 what he was saying, but just to say -- you're saying this  
24 program, if it evolves into a program --

25 PHILIP MARTIN: Right.

1 CHAIR FELICIA MARCUS: We should try to do it so  
2 that folks can claim the 25 percent on their crop insurance?

3 PHILIP MARTIN: Correct.

4 CHAIR FELICIA MARCUS: I have a feeling a voluntary  
5 program probably won't, but I'll leave that to the folks  
6 trying to figure out how to --

7 PHILIP MARTIN: That's the problem. The fact that  
8 it is worded as voluntary --

9 CHAIR FELICIA MARCUS: Right. Yeah.

10 PHILIP MARTIN: -- would be my -- I'm sure that my  
11 crop insurance company would did not want to pay me if I  
12 voluntarily complied.

13 CHAIR FELICIA MARCUS: That would be my guess,  
14 but --

15 BOARD MEMBER DORENE D'ADAMO: What about with  
16 respect to the fallow ground, though?

17 PHILIP MARTIN: Right. We're planting right now,  
18 and probably in the next ten days we will complete planting.  
19 So any decision the Board makes, I would ask that you make  
20 it quickly because if I'm -- most of the costs with these  
21 crops are incurred upon planting, probably over 50 percent,  
22 and get cut off shortly after planting is (inaudible).

23 CHAIR FELICIA MARCUS: Fair point.

24 PHILIP MARTIN: Thank you.

25 CHAIR FELICIA MARCUS: We do recognize that. Thank

1 you.

2 (Whereupon, end of transcribed portion.)

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REPORTER'S CERTIFICATE

State of California        )  
                                  ) ss.  
County of Sacramento     )

I certify that the statements in the foregoing hearing were transcribed in the within-entitled cause by audio; that said hearing was taken at the time and place therein named; that the testimony of said witnesses was reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations; and said testimony was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said hearing, nor in any way interested in the outcome of the cause named in said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of September, 2015.

\_\_\_\_\_  
THRESHA SPENCER  
Certified Shorthand Reporter  
Certificate No. 11788

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