

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

IN RE THE MATTERS OF:

SWRCB Enforcement Action
ENF01951; ENF01949

WEST SIDE IRRIGATION
DISTRICT CEASE AND DESIST
ORDER HEARING,

and

BYRON-BETHANY IRRIGATION
DISTRICT ADMINISTRATIVE
CIVIL LIABILITY HEARING.

_____ /

DEPOSITION OF BRIAN COATS

November 12, 2015

Reported by: THRESHA SPENCER, CSR No. 11788

kathryndavis & associates
deposition reporting

WSID CDO/BBID ACL
WSID0150

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APPEARANCES

For the Central Delta Water Agency:

SPALETTA LAW PC
By: JENNIFER SPALETTA
DAVID GREEN
Attorneys at Law
P.O. Box 2660
Lodi, California 95241

For the Byron-Bethany Irrigation District:

SOMACH SIMMONS & DUNN
By: DANIEL KELLY
Attorney at Law
500 Capitol Mall, Suite 1000
Sacramento, California 95814

For the West Side Irrigation District:

HERUM/CRABTREE/SUNTAG
By: JEANNE M. ZOLEZZI
Attorney at Law
5757 Pacific Avenue, Suite 222
Stockton, California 95207

For the Westlands Water District:

KRONICK MOSKOVITZ TIEDEMANN & GIRARD
By: REBECCA R. AKROYD
Attorney at Law
400 Capitol Mall, 27th Floor
Sacramento, California 95814

WESTLANDS WATER DISTRICT
Deputy General Counsel
By: PHILIP A. WILLIAMS
Attorney at Law
400 Capitol Mall, 29th Floor
Sacramento, California 95814

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APPEARANCES (continued)

For the San Joaquin Tributaries Authority:

O'LAUGHLIN & PARIS LLP
By: TIM O'LAUGHLIN
Attorney at Law
2617 K Street, Suite 100
Sacramento, California 95816

For the State of California:

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
By: JENNIFER KALNINS TEMPLE
Attorney at Law
300 S. Spring Street, Suite 1702
Los Angeles, California 90013

For the Division of Water Rights:

SWRCB OFFICE OF ENFORCEMENT
By: ANDREW TAURIAINEN
JOHN PRAGER
Attorneys at Law
1101 I Street, 16th Floor
Sacramento, California 95814

For the California Department of Water Resources:

OFFICE OF THE CHIEF COUNSEL
By: ROBIN MCGINNIS
Attorney at Law
1416 Ninth Street, Room 1104
Sacramento, California 95814

For the State Water Contractors:

STATE WATER CONTRACTORS
By: STEFANIE MORRIS
Attorney at Law
1121 L Street, Suite 1050
Sacramento, California 95814

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APPEARANCES (Continued)

Also Present:

SUSAN C. PAULSEN, Ph.D, P.E.
EXPONENT

THOMAS K. BURKE, P.E.
HSI HYDROLOGIC SYSTEMS

NICHOLAS BONSIGNORE
WAGNER & BONSIGNORE

KENNETH R. HENNEMAN
KENNETH R. HENNEMAN CONSULTING

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INSTRUCTED NOT TO ANSWER

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1 BE IT REMEMBERED, that on Thursday, November 12,
2 2015, commencing at the hour of 9:31 a.m. thereof, at the
3 Law Offices of Somach, Simmons & Dunn, 500 Capitol Mall,
4 Suite 1000, Sacramento, California, before me, THRESHA
5 SPENCER, a Certified Shorthand Reporter in the State of
6 California, duly authorized to administer oaths and
7 affirmations, there personally appeared

8 BRIAN COATS,

9 called as witness herein, who, having been duly sworn, was
10 thereupon examined and interrogated as hereinafter set
11 forth.

12 --o0o--

13 MS. TEMPLE: Before the questions start, I just
14 wanted to mark as an exhibit, if I could, the objections
15 that we served to the deposition notice.

16 MS. SPALETTA: That's fine.

17 MS. TEMPLE: We do intend to end the deposition
18 today after seven hours given that the Hearing Officer has
19 ruled that we're not likely to make a witness appear more
20 than once, and the documents that have been produced to date
21 have been produced on schedule. So once seven hours is
22 complete, we intend to end the deposition.

23 MS. SPALETTA: Before we get into deposition
24 marking, I think it would be helpful for the record for us
25 to introduce everyone in the room, and I will start.

DEPOSITION OF BRIAN COATS

1 My name is Jennifer Spaletta with Spaletta Law. I
2 am counsel for the Central Delta Water Agency, who is a
3 party in the action.

4 And I'll turn around and go behind me to the next
5 person, and then we'll go around the room.

6 MR. O'LAUGHLIN: Tim O'Laughlin. I represent the
7 San Joaquin Tributary Authority.

8 MS. ZOLEZZI: Jeanne Zolezzi. I represent the West
9 Side Irrigation District, Patterson Irrigation District, and
10 Banta-Cardona Irrigation District.

11 MS. PAULSEN: I'm Susan Paulsen, Exponent consultant
12 to the Byron-Bethany Irrigation District.

13 MR. YOUNG: Greg Young with Tully & Young, contract
14 to Somach to support the effort.

15 MR. KELLY: Daniel Kelly, Somach, Simmons & Dunn,
16 for the Byron-Bethany Irrigation District.

17 MR. BONSIGNORE: Nick Bonsignore with Wagner &
18 Bonsignore Engineers, consulting to West Side Irrigation
19 District and Byron-Bethany Irrigation District.

20 MR. GREEN: David Green, also with Spaletta Law,
21 representing Central Delta Water Agency.

22 MR. BURKE: Tom Burke with Hydrologic Systems,
23 representing Central Delta Water Agency, South Delta Water
24 Agency, and West Side Irrigation District.

25 MS. MORRIS: Stefanie Morris, representing State

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1 Water Contractors.

2 MS. AKROYD: Rebecca Akroyd with Kronick Moskovitz,
3 representing Westlands Water District.

4 MR. PRAGER: John Prager, State Water Resources
5 Control Board.

6 MR. TAURIAINEN: Andrew Tauriainen, State Water
7 Board.

8 MS. TEMPLE: Jennifer Kalnins Temple, Attorney
9 General's Office.

10 MR. COATS: I'm Brian Coats, State Water Board.

11 MR. HENNEMAN: Ken Henneman, consultant to BBID.

12 MS. MCGINNIS: Robin McGinnis, Counsel for
13 California Department of Water Resources.

14 MS. SPALETTA: All right. Before we begin, we have
15 a request to mark the Prosecution Team's objection, so we'll
16 mark those as Deposition Exhibit No. 1.

17 (Whereupon, Exhibit No. 1 was
18 marked for identification.)

19 MS. SPALETTA: And I will note that the objections
20 have been noted. We don't necessarily agree with them, but
21 we'll deal with them if we need to at the appropriate time.

22 MR. KELLY: And I'll say for the record, Dan Kelly
23 for BBID, that while I appreciate that, the Hearing
24 Officer's order didn't provide for a single day of
25 depositions. It was one deposition per person in an attempt

DEPOSITION OF BRIAN COATS

1 to get us to coordinate the depositions. This is two
2 separately-noticed depositions, one in the West Side
3 Irrigation District proceeding and one in the BBID
4 proceeding, and we're attempting to coordinate those.

5 So to the extent that this deposition needs to go
6 more than a day, we're going to continue it more than a day.
7 And if the State Water Board or the Attorney General's
8 Office would like to get a protective order to prevent that,
9 that's fine, but this is two separately-noticed depositions.
10 So I wanted to make sure the record is clear on that.

11 MS. TEMPLE: It's clear, but the Hearing Officer's
12 rulings are also clear, that she is not -- that she expected
13 us to coordinate, which would mean that an individual would
14 not be deposed twice, once in each matter. Whether the
15 deposition goes forward longer than seven hours will be
16 something that will be subject to motions practice.

17 MS. SPALETTA: I will also request that the court
18 reporter mark, for the record, all of the minutes that are
19 taken up during the deposition on objections or discussion
20 over objections that are not dedicated to testimony so that
21 that can be taken into account, if needed.

22 EXAMINATION BY MS. SPALETTA

23 Q BY MS. SPALETTA: Okay. Are we ready to begin?

24 A Yes.

25 Q Mr. Coats, the purpose of today's deposition is for

DEPOSITION OF BRIAN COATS

1 myself and other attorneys who represent the parties to be
2 able to gain information about pending enforcement
3 proceedings.

4 A Uh-huh.

5 Q There were three separate deposition notices issued
6 to take your deposition in two different enforcement
7 proceedings, and we did seek to coordinate, but you will be
8 asked questions that relate to both proceedings.

9 Do you understand that?

10 A Yes.

11 Q Have you ever had your deposition taken before?

12 A No.

13 Q Have you ever testified under oath before?

14 A No.

15 Q So since you have not had your deposition taken or
16 testified before, I'm going to go over some of the rules so
17 that we can be clear about how this will proceed.

18 Your testimony is under oath, and that means that it
19 needs to be complete and accurate testimony. Is there any
20 reason you cannot provide complete and accurate testimony
21 today?

22 A No.

23 Q Also, your testimony may, in fact, be used in the
24 hearing.

25 Do you understand that?

DEPOSITION OF BRIAN COATS

1 A Yes.

2 Q And your testimony may, in fact, be used in other
3 court proceedings after the hearing.

4 Do you understand that?

5 A Yes.

6 Q Okay. There will be times when I ask you a question
7 and you may be tempted to answer my question before I have
8 completed my question. It's very important for the purposes
9 of the court reporter getting an accurate record that we
10 each allow each other to finish our thoughts before
11 answering. And there's also another reason. Your counsel
12 today may want to lodge an objection to my question, and
13 it's important that she be allowed to get her objection out
14 before you answer for a clear record.

15 Do you understand that?

16 A Yes.

17 Q Now, I want to talk about objections. When
18 objections are made by your counsel, there are two different
19 kinds of objections. One objection is going to be to the
20 form of the question, okay?

21 A Uh-huh.

22 Q If there is an objection to the form of the
23 question, you are still required to answer the question to
24 the best of your ability.

25 If you do not understand my question, I would ask

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1 that you simply tell me, "I don't understand your question,"
2 and I will try to clarify the question. I try to ask good
3 questions, but as the day goes on, in particular, I may not
4 ask good questions, and I don't mind you asking me to
5 clarify my question.

6 There is another type of objection where your
7 counsel may actually object on the ground of privilege and
8 will instruct you not to answer. That is the only time that
9 you should not answer my question.

10 Do you understand that?

11 A Yes.

12 Q I'm going to be asking for your best testimony
13 today, but it's very important that we have you explain what
14 you can testify to based on your own personal knowledge or
15 knowledge that you've gained through your work or speaking
16 with others. I don't want you to guess or speculate.

17 Do you understand that?

18 A Yes.

19 Q All right. So we're going to start with a little
20 bit of background unless you have any questions for me about
21 how the day will proceed.

22 A No.

23 Q One thing I didn't say is if at any time you'd like
24 to take a break, please ask and we will take a break. The
25 only thing I ask is that you don't request a break while a

DEPOSITION OF BRIAN COATS

1 question is pending. We need to have you answer the
2 question and then we will take a break.

3 All right. Let's start with your college education.
4 Where did you go to college?

5 A I went to college at the University of California,
6 Davis.

7 Q And what was your degree?

8 A Chemical engineering.

9 Q Is that your only degree?

10 A Yes.

11 Q And when did you graduate?

12 A December 1996.

13 Q Do you have any other special education or
14 certificates?

15 A Just my professional engineering license.

16 Q Is that a civil engineer?

17 A Chemical engineer.

18 Q Okay. What's involved in getting a professional
19 engineering license for a chemical engineer?

20 A Required two years of engineering work under the
21 supervision of a licensed engineer, and then you take an
22 exam with the Department of Consumer Affairs, pass it, and
23 then you're licensed.

24 Q Do you have a license as a civil engineer?

25 A No.

DEPOSITION OF BRIAN COATS

1 Q Do you have a license as a hydrologist?

2 A No.

3 Q What was your first job after obtaining your college
4 education?

5 A Underwriters Laboratories in Santa Clara as a safety
6 engineer.

7 Q And what did you do there?

8 A Safety and certificate engineering.

9 Q What is that?

10 A Just certifying consumer products. In that
11 particular case, electrical circuit boards to comply with
12 regulations.

13 Q Did that job have anything to do with water?

14 A There was -- part of my job there was certifying
15 plumbing fixtures and fittings.

16 Q How long did you have that job?

17 A Two years.

18 Q What was your next job?

19 A With the State Water Board.

20 Q And what job was that?

21 A That was with -- as an engineer with the Petitions
22 Unit.

23 Q How long did you have that job?

24 A Well, I've been employed with the State Water Board
25 since, but that particular unit, I believe I worked there

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1 until 2001 or 2002-ish or something.

2 Q So from '98 to 2001?

3 A 1999 to 2001.

4 Q What were your responsibilities?

5 A Providing notice to requested petitions and just
6 proceeding with that administrative work.

7 Q And what was your next job?

8 A I was with the Compliance and Enforcement Unit.

9 Q When did that start?

10 A Around the same time, 2001.

11 Q And what was your position?

12 A As an engineer.

13 Q What were your job responsibilities?

14 A Reviewing permits and licenses for compliance with
15 terms and conditions, installation of gauges for
16 surveillance purposes. And there's some other stuff listed
17 on my resume, but --

18 Q Did you bring a copy of your resume?

19 A No, I did not.

20 Q Okay. Since you don't have a copy of it, I'd like
21 you to explain to me what your other responsibilities were.

22 MS. TEMPLE: Objection. Vague.

23 Q BY MS. SPALETTA: You said "other things as listed
24 on your resume." Since we don't have a copy of it, I'm
25 asking you to explain what those other things were.

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1 MS. TEMPLE: Objection. Vague. Can you ask him a
2 more specific question about his history?

3 Q BY MS. SPALETTA: Do you understand my question?

4 A You're asking me for additional responsibilities
5 listed on my resume?

6 Q Correct.

7 A And what is the purpose in that if we've already
8 submitted my resume?

9 Q I don't have a copy of your resume.

10 A You don't have a copy? We didn't submit the copies
11 of the resume?

12 MR. TAURIAINEN: We'll submit that with your witness
13 statement.

14 THE WITNESS: Oh, okay. I can't go into specific
15 detail, but that's generally just making sure that --
16 performing compliance inspections, generating reports, just
17 the standard stuff we do with the Compliance and Enforcement
18 Unit.

19 Q BY MS. SPALETTA: So that job started in 2001.

20 A Yes.

21 Q Have your job responsibilities changed since then?

22 A Yes.

23 Q How have they changed?

24 A I'm now a supervisor.

25 Q When did you become a supervisor?

DEPOSITION OF BRIAN COATS

1 A It was 2012, I believe, September.

2 Q So you went from being an engineer to a supervisor.
3 Were there any other responsibility changes in between?

4 A No.

5 Q And your current role is as a supervisor in the
6 Compliance and Enforcement Unit?

7 A Correct.

8 Q What are your job responsibilities as a supervisor
9 in the Compliance and Enforcement Unit?

10 A Supervising the work of all the staff that I
11 supervise, in this case, engineers, and then also working on
12 higher-level engineering projects.

13 Q Who are the staff that you supervise?

14 A Jeff Yeazell, Samuel Cole, Chuck Arnold, and Matthew
15 Quinn.

16 Q Yeazell, Cole, Arnold, and Quinn?

17 A Correct.

18 Q And you said also working on higher-level
19 engineering projects. Which higher-level engineering
20 projects have you worked on since becoming a supervisor in
21 2012?

22 A Predominately, the curtailment-related efforts
23 starting in January 2014, and additional failure to file
24 enforcement actions taken against people that don't submit
25 their licensee or permittee reports by July of every year.

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1 Q When you say the "curtailment actions beginning in
2 2014," can you break that down for me as to what your
3 specific engineering projects were associated with the 2014
4 curtailment actions?

5 A In 2014, starting in January, both my -- I started
6 working on researching what past efforts were taken by the
7 State Water Board in response to a drought. We discovered a
8 1977 report that we used as a basis for our efforts for the
9 future.

10 I worked on the San Joaquin Watershed in 2014, and a
11 co-worker at the time, Aaron Miller, worked on the
12 Sacramento Watershed. And we both reported to John O'Hagan
13 with our recommendations.

14 We also, additionally, worked on developing a U.C.
15 Davis curtailment-related model, and that's just basically
16 supervising the work of the U.C. Davis group.

17 Q What is the U.C. Davis curtailment-related model?

18 A The curtailment model was developed -- a prototype
19 was developed in March of 2014 for the Eel River Watershed.
20 The model seeks to disaggregate supply into localized HUC 12
21 level watersheds, and then iteratively assign what water is
22 available on each HUC 12 level to the reported demands from
23 our eWRIMS database. And then, based on that, project a
24 graphical display of what particular rights are expected to
25 be served with water and to what extent.

DEPOSITION OF BRIAN COATS

1 Q Okay. Do we have a copy of that model in the
2 documents that have been produced to date, do you know?

3 A I don't know.

4 Q Does that model have anything to do with the West
5 Side enforcement action?

6 A No.

7 Q Does it have anything to do with the BBID
8 enforcement action?

9 A No.

10 Q Why not?

11 A Those models have not been developed yet. The Eel
12 River isn't the same as the Sacramento River. The Eel River
13 has been completed last year, the Russian River model was
14 completed in the summer 2015, and the U.C. Davis group is
15 currently working on the Sacramento River water -- River
16 model right now.

17 Q The Eel River model that was completed, was it used
18 for curtailment efforts in either 2014 or 2015?

19 MS. TEMPLE: Objection. Compound.

20 Q BY MS. SPALETTA: You can answer.

21 A Okay. So, in 2014, since the model was not
22 developed, it was not used.

23 In 2015, we looked at the results of that model, and
24 the model conflicted with the supply sources that we saw,
25 and we decided not to take action against that.

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1 Q So it was not used for curtailment purposes?

2 A No.

3 Q Why are you participating in this effort on
4 developing the U.C. Davis curtailment-related models?

5 A As it stands right now, I'm the only senior engineer
6 remaining that's worked on curtailment in both 2014 and
7 2015, and I've just participated in a lot of the U.C. Davis
8 group meetings in fielding, you know, answers to their
9 questions on how they need to develop the model and with
10 respect to questions about basic water right principles,
11 such as pre-14s, riparians, water right demands, things of
12 that nature.

13 Q Why are these models being developed, the U.C. Davis
14 models?

15 MS. TEMPLE: Objection. Vague.

16 Q BY MS. SPALETTA: You can answer.

17 A Okay. So the U.C. Davis models are being developed
18 to proceed with the future in the event, you know, we can
19 allocate supplies to localize the demands on a HUC 12 level
20 versus a global watershed. The problem with that is we
21 still need to refine the prototype models once they even are
22 developed and then for the stakeholders for their comments
23 and refinement.

24 Q Was the U.C. Davis curtailment-related model effort
25 instigated by the State Board or by U.C. Davis?

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1 MS. TEMPLE: Objection. Calls for speculation.

2 You can answer to the extent you know.

3 THE WITNESS: I don't know.

4 Q BY MS. SPALETTA: Okay. Has the State Board
5 retained or hired U.C. Davis or funded their effort?

6 A Yes.

7 Q And what was the source of the funding, do you know?

8 A I don't know.

9 Q Who is heading up the work at U.C. Davis?

10 A Jay Lund.

11 Q Other than the experience that you have described to
12 me so far in the deposition, do you have any other
13 professional experience regarding hydrology?

14 A No.

15 Q Do you have any professional experience regarding
16 water quality?

17 A No.

18 Q Have you performed a water availability analysis?

19 A To the extent that you're referring to the supply
20 and demand analysis we've undertaken in the last two years,
21 yes. But as to a formal water availability analysis prior
22 to 2014, no.

23 Q Have you ever been to the West Side Irrigation
24 District service area?

25 A We may have passed through it over the last 13,

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1 15 years on an inspection and not known about it, but not
2 intentively.

3 Q And have you ever looked at the West Side
4 facilities?

5 A No.

6 Q Have you ever been to the Byron-Bethany service
7 area?

8 A As I answered earlier, I may have passed through it
9 and not realized it, but not as the focus of an inspection.

10 Q And have you ever been to the BBID diversion
11 facilities?

12 A No.

13 Q Who is your supervisor?

14 A My current supervisor is Kathy Mrowka.

15 Q How long has she been your supervisor?

16 A One year.

17 Q Who was your supervisor before that?

18 A John O'Hagan.

19 Q Today, with Kathy being your supervisor, is John
20 O'Hagan then Kathy's supervisor?

21 A Correct.

22 Q I believe we asked this question off the record, but
23 did you bring any documents with you today in response to
24 the document requests in the three deposition notices?

25 A No.

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1 Q Just to clarify the record, Mr. Tauriainen did send
2 us an email last night saying he was going to produce
3 various documents on a jump drive today. We are going to
4 take care of that at a next break.

5 What was your role in the West Side Irrigation
6 District enforcement action?

7 A Reviewing the CDO that was issued against West Side.

8 Q Is that it?

9 A That's it.

10 Q Did you review it after it was issued or before it
11 was issued?

12 A As it was -- before it was issued.

13 Q Did you contribute to the drafting of the final CDO?

14 A No.

15 Q Did you provide comments on the draft CDO?

16 A No.

17 Q So you just looked at it?

18 A We looked at it and we surnamed it for appropriate,
19 but I didn't provide any comments as to changes that were
20 made, no.

21 Q I think you spoke in some terms that I'm not
22 familiar with.

23 A Okay.

24 Q So can you repeat what you said and then explain to
25 me what that means?

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1 A Okay. So whenever we draft up an action, various
2 levels of staff and supervisors are responsible for
3 reviewing it and then signing off on what's called a surname
4 copy, which is a copy for our files that indicates various
5 levels of employees have reviewed it, but they're not
6 required to comment on it.

7 Q So you read it, but --

8 A So if we have any issues with the correctness or any
9 questions about it, we can provide comments directly on the
10 form. If not, we may just go talk with the individual
11 person drafting it for more clarification.

12 MS. TEMPLE: And I'm going to object that any
13 particular answer calls for privileged information if you
14 work with the lawyers in reviewing such documents. So I'd
15 just advise you to be careful in your answer in that regard.

16 THE WITNESS: Okay.

17 Q BY MS. SPALETTA: And just so we're clear, I
18 understand that objection and I don't have a problem with
19 the objection, but I want to make sure that when you're
20 explaining to me your answer --

21 A Uh-huh.

22 Q -- you tell me if you're not going to answer because
23 you believe it would implicate a privileged communication.
24 If that's the case, that's fine, as long as you tell me
25 that's the reason.

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1 A Okay.

2 Q Who drafted the CDO that you reviewed?

3 A I don't know.

4 Q How did it get in front of you to review?

5 A It was provided to me by Kathy Mrowka.

6 Q And I take it, from your description of what you
7 did, that you signed off on it, but you did not provide any
8 comments to anyone regarding it?

9 A To anyone directly -- on the CDO, no.

10 Q Did you provide any comments to anyone regarding the
11 draft CDO?

12 A I don't recall.

13 Q Is there anything that would refresh your memory?

14 A No.

15 Q When did you become part of the Prosecution Team?
16 MS. TEMPLE: Objection. Vague.

17 Q BY MS. SPALETTA: Is there a Prosecution Team for
18 the West Side CDO?

19 A I believe so, yes.

20 Q Are you a member of the Prosecution Team?

21 A Yes.

22 Q Okay. Who are the other members of the Prosecution
23 Team?

24 MS. TEMPLE: Objection. Relevance.

25 Q BY MS. SPALETTA: You may answer.

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1 A Paul Wells, myself, our attorneys, Kathy Mrowka, as
2 far as I know.

3 Q You, Mr. Wells, Ms. Mrowka, and the attorneys?

4 A Correct.

5 Q The attorneys being Mr. Tauriainen?

6 A Yes.

7 Q Okay. Any other attorneys?

8 A I'm not sure whether Jennifer is listed on there as
9 well.

10 MS. TEMPLE: And this information has been provided
11 on the Notices of Intent to Appear, so the question is
12 what's the need for the witness to recount this information
13 to you?

14 MS. SPALETTA: Well, I get to ask the questions.

15 MS. TEMPLE: That's fine.

16 Q BY MS. SPALETTA: So I have four members of the
17 Prosecution Team that you're sure of: Yourself, Mr. Wells,
18 Ms. Mrowka, and Mr. Tauriainen. When was the Prosecution
19 Team formed?

20 MS. TEMPLE: Objection.

21 To the extent you know, you can answer.

22 THE WITNESS: I don't know.

23 Q BY MS. SPALETTA: When did you understand that you
24 became a member of it?

25 A As soon as I signed off on the surname after I

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1 reviewed the CDO.

2 Q And when was that?

3 A I don't know the date.

4 Q Can you estimate?

5 A No.

6 Q Let's go ahead and mark, as our second exhibit, the
7 West Side draft CDO.

8 (Whereupon, Exhibit No. 2 was
9 marked for identification.)

10 Q BY MS. SPALETTA: I did attempt to make copies of
11 things I'm marking today. I think, other than what I have
12 handed out, I have seven copies, so the other counsel in the
13 room can share.

14 A Okay.

15 Q I have handed you what has been marked as Deposition
16 Exhibit No. 2, which is a letter from the State Water
17 Resources Control Board with a date stamp of July 16th,
18 2015, addressed to West Side Irrigation District President
19 and counsel with a copy of the draft Cease and Desist Order
20 attached to it.

21 Does this appear to be similar to or the same as the
22 draft that you signed off on?

23 A Yes.

24 Q Does the date on the top of the letter refresh your
25 memory as to when you would have reviewed or signed off on

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1 this draft?

2 A Prior to that date, yes.

3 Q How much prior, can you estimate?

4 A I don't know.

5 Q Would it have been more than a month?

6 A I really don't know.

7 Q I believe I asked you this question already, but I
8 just want to confirm your testimony that the only thing you
9 understand you have done as part of the Prosecution Team is
10 review and sign off on the draft CDO?

11 A Correct.

12 Q You are designated to testify in this enforcement
13 proceeding on several issues.

14 A Uh-huh.

15 Q Have you done any work related to the issues for
16 which you've been designated to testify?

17 MS. TEMPLE: Objection. Vague.

18 THE WITNESS: If you could clarify the question.

19 Q BY MS. SPALETTA: Sure. Why don't we go ahead and
20 mark, as an exhibit, the Notice of Intent where your
21 testimony is described.

22 A Okay.

23 Q We will mark, as Exhibit No. 3, the Notice of Intent
24 to Appear of the Prosecution Team in the West Side matter.

25 ///

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1 (Whereupon, Exhibit No. 3 was
2 marked for identification.)

3 Q BY MS. SPALETTA: And we will mark, as Exhibit No.
4 4, the Notice of Intent to Appear of the Prosecution Team in
5 the BBID matter.

6 (Whereupon, Exhibit No. 4 was
7 marked for identification.)

8 Q BY MS. SPALETTA: Okay. So I asked you a question
9 about whether you had done any work related to this
10 subjected proposed testimony that is next to your name in
11 the Notices of Intent, and the question was objected to as
12 vague, so we have marked the Notice of Intent so we can
13 directly correlate how you have been designated.

14 A Okay.

15 Q Looking at Deposition Exhibit No. 3, do you see your
16 name on that?

17 A Yes.

18 Q Okay. This is the Notice of Intent, and after your
19 name, Brian Coats, the subject of the proposed testimony is
20 "Water availability determination; Key issues 1 and 2."

21 A Okay.

22 Q Do you see that?

23 A Yes.

24 Q What work have you done related to these subjects of
25 proposed testimony?

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1 A The water availability determination with respect to
2 the supply and demand analysis.

3 Q Anything else?

4 A No.

5 Q So when it says "Key issues 1 and 2," do you
6 understand that that testimony simply relates to the water
7 availability determination?

8 A Correct.

9 Q Now, I asked you previously what work you had done
10 as part of the Prosecution Team, and it did not include
11 water availability determination. So was that work done
12 outside the scope of your role on the Prosecution Team?

13 A Can you clarify the question?

14 Q Sure. I asked you what you did as part of the
15 Prosecution Team, and you told me all you had done was
16 reviewed the draft CDO?

17 A Uh-huh.

18 Q The subject of your proposed testimony, however, is
19 broader. It relates to a water availability determination.

20 A Correct.

21 Q Did you make the water availability determination as
22 part of your work on the Prosecution Team or in some other
23 role at the State Board?

24 A Could you separate the questions?

25 Q Did you do your work on the water availability

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1 determination as part of your role on the Prosecution Team?

2 A Yes.

3 Q When did you do that work?

4 A The supply and demand analysis in 2015.

5 Q When in 2015?

6 A Starting from February 2015 until current.

7 Q Was the Prosecution Team formed in February 2015?

8 A No.

9 Q So this work began before the Prosecution Team was
10 formed?

11 A Yes.

12 Q And when you were performing the work on the water
13 availability determination, were you performing it simply as
14 a supervising engineer in the Enforcement Section of the
15 State Board?

16 A I was performing it as I, as I indicated earlier, a
17 senior level project in support -- with support from staff.

18 Q And who directed your work on the water availability
19 determination that you started working on in February 2015?

20 A Two supervisors, the main supervisor being John
21 O'Hagan, and the second being Kathy Mrowka.

22 Q Did you take direction from anyone other than
23 Mr. O'Hagan and Ms. Mrowka regarding the water availability
24 determination work?

25 A No.

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1 Q Did you have anyone working under you on the water
2 availability determination work?

3 A Yes.

4 Q Who?

5 A Jeffery Yeazell.

6 Q Anyone else?

7 A Underneath me, no.

8 Q How about alongside of you?

9 A There is additional staff that worked in separate
10 watersheds, but not related to the West Side or BBID areas.

11 Q Was there a specific water availability
12 determination made for West Side Irrigation District?

13 A No.

14 Q Was there a specific water availability
15 determination made for BBID?

16 A No.

17 Q Which water -- well, let me ask you this. Strike
18 that.

19 How many water availability determinations did you
20 perform beginning in February 2015 to the present?

21 MS. TEMPLE: Objection. Vague.

22 THE WITNESS: I can describe them; I can't give you
23 a quantity.

24 Q BY MS. SPALETTA: Let me ask a simpler question.
25 Was there more than one?

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1 A Yes.

2 Q Can you estimate how many there were?

3 A Three.

4 Q What are the three that you're thinking of?

5 A Scott River Watershed, Sacramento River Watershed,
6 and San Joaquin River Watershed.

7 Q Who made the decision to perform those three?

8 A Upper management.

9 Q Who is upper management?

10 A John O'Hagan and above.

11 Q Do you understand that when you took direction from
12 John O'Hagan that decisions had been made above John O'Hagan
13 which he was communicating to you?

14 A No.

15 Q So, previously, you told me you took your direction
16 from John O'Hagan and Kathy Mrowka?

17 A Correct.

18 Q But now you believe some decisions regarding which
19 water availability determinations to make were made above
20 John O'Hagan; is that correct?

21 A Correct.

22 Q Okay. Who do you believe above John O'Hagan made
23 those determinations?

24 A I can't speculate.

25 Q Why do you believe they were made above John

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1 O'Hagan?

2 A John took direction from someone to perform those.
3 I can't specifically label any one particular person, but
4 usually we get direction from higher up.

5 Q Give me an example of usually how that happens.

6 A Could be someone from the Board Members based on
7 concerns of the local watersheds, and then that gets relayed
8 down the chain of command to John O'Hagan.

9 Q But in this case you're not sure who gave direction
10 to John that may have trickled down to you?

11 A I can't name a person, no.

12 Q Do you know why those three watersheds were selected
13 for a water availability determination?

14 A From the 2014 drought, we used those three
15 watersheds in addition to the Russian River, and then we
16 just applied the same watersheds to 2015.

17 Q Was there any hydrologic rationale for the selection
18 of the three watersheds, that you know of?

19 A No.

20 Q How has the Prosecution Team utilized the water
21 availability determinations in the West Side Irrigation
22 District enforcement action?

23 MS. TEMPLE: Objection to the extent it calls for
24 privileged information.

25 You're directed not to answer.

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1 THE WITNESS: Next question.

2 Q BY MS. SPALETTA: Well, let's clarify.

3 A Uh-huh.

4 Q One of the purposes of the deposition is to
5 understand the basis for the water availability
6 determination that forms the foundation of the enforcement
7 action. To the extent that you will testify regarding that
8 topic at the hearing, we are entitled to understand how the
9 water availability determination was applied in the
10 enforcement action.

11 If you are being instructed not to answer that
12 question, then I, of course, at the hearing will be making
13 an objection to any testimony on that subject matter.

14 A Uh-huh.

15 Q So maybe we should re-visit the question and ensure
16 that your attorney really does not want you to answer the
17 question.

18 MS. TEMPLE: And let me just clarify for the record.
19 You keep using the term "Prosecution Team," which is really
20 a legal term, and Mr. Coats is a staff member of the State
21 Water Board.

22 So you're entitled to ask him questions about his
23 job and his responsibilities and what he did with respect to
24 the water supply availability analysis that he has been
25 named as a witness to testify about, but to the extent that

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1 you keep referring to his role in a Prosecution Team and how
2 he has performed work in connection with a Prosecution Team,
3 it sounds like it is calling for privileged information, so
4 maybe you want to rephrase your question.

5 Q BY MS. SPALETTA: Is everything that you know about
6 how the water availability analysis was applied to the West
7 Side enforcement action subject to a privileged
8 communication with counsel?

9 A No.

10 Q Okay. So for everything that is not subject to the
11 privilege, can you please explain to me how the water
12 availability analysis that you performed was used as a basis
13 for the West Side enforcement action?

14 A So based on hydraulic conditions in comparison to
15 the 2014 drought watersheds, we elected to apply the same
16 analysis in 2015 to include the Sacramento and the San
17 Joaquin.

18 Q And then how does that relate to the West Side
19 enforcement action?

20 A West Side being within the boundary of the San
21 Joaquin Watershed.

22 Q When you say "San Joaquin Watershed," what is the --
23 what, generally, are the hydraulic parameters of that?

24 A We have the geographic map posted on our website
25 from 2014, but it generally includes portions of the San

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1 Joaquin Delta, along with the Stanislaus, Tuolumne, Merced,
2 Upper San Joaquin, and the Valley Floor.

3 Q So, previously, you told me you worked on three
4 different water availability determinations: The Scott
5 River, the Sacramento Watershed, and the San Joaquin River
6 Watershed?

7 A Correct.

8 Q Were all three of those relevant to the West Side
9 enforcement proceeding?

10 A No.

11 Q Which ones were relevant to the West Side
12 enforcement proceeding?

13 A The San Joaquin River Watershed.

14 Q And which ones were relevant to the BBID enforcement
15 proceeding?

16 A BBID being within the same San Joaquin River
17 boundary, just the San Joaquin River analysis.

18 Q Okay. I asked you a series of questions about the
19 formation of the Prosecution Team for West Side. I want to
20 ask some similar questions regarding BBID.

21 Are you a member of the BBID Prosecution Team?

22 A Yes.

23 Q And who are the other members of the Prosecution
24 Team?

25 A BBID, I believe that's John Collins, Andrew

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1 Tauriainen, of course, Kathy Mrowka, and any other attorneys
2 such as Jennifer and support.

3 Q So we know that there's at least four members:
4 Kathy Mrowka, yourself, John Collins, and Andrew Tauriainen
5 and possibly other attorneys?

6 A Correct. And then, I think, for BBID, Paul Wells,
7 actually -- or maybe I'm getting that confused with West
8 Side. I think Paul Wells was with BBID, and then I think
9 John Collins was with West Side.

10 MS. TEMPLE: Yeah. We've marked as Exhibits 3 and 4
11 the Notices of Intent to Appear under which the Prosecution
12 Teams are identified. So to the extent this is just some
13 exercise in testing his memory as to who is on the team,
14 feel free to refer to the exhibits that have been marked and
15 placed before you, Exhibits 3 and 4.

16 MR. KELLY: Is there an objection? Are you
17 testifying or is there an objection? I just don't know what
18 that was.

19 MS. TEMPLE: What that was, was referring the
20 witness to the exhibits before him to refresh his
21 recollection since your colleague appears to simply be
22 testing his memory as to who is on the team. We have an
23 exhibit right there.

24 MR. KELLY: Okay. Thank you.

25 MS. SPALETTA: I would like to seek a clarification

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1 from counsel on this. Is it counsel's position that
2 everyone listed on the Prosecution Team's Notice of Intent
3 to Appear is part of the Prosecution Team?

4 MR. TAURIAINEN: The members that are State Board
5 employees are members of the Prosecution Team. The witness
6 has listed they are State Board, plus counsel. I can
7 clarify who that is from the exhibits.

8 MS. SPALETTA: That's okay. I just didn't have that
9 understanding before, but that clarification is helpful.
10 Thank you.

11 Q BY MS. SPALETTA: And when was the BBID Prosecution
12 Team formed?

13 MS. TEMPLE: Objection. Calls for speculation.
14 To the extent you know, you can answer.

15 THE WITNESS: I don't know the exact date, but it
16 was in the summer.

17 Q BY MS. SPALETTA: Summer of 2015?

18 A Correct.

19 Q And what did you do as a member of the BBID
20 Prosecution Team?

21 A I reviewed the ACL -- the draft -- it assisted with
22 drafting up the ACL calculation as well as the actual formal
23 ACL document, and proceeded with that.

24 Q So you actually had a drafting role in that
25 document?

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1 A Correct.

2 Q Did you perform a water availability analysis as it
3 relates to the BBID ACL?

4 A Not specifically targeting that BBID, but just a
5 general San Joaquin River analysis that we always do.

6 Q So I take it, from what you've testified to so far,
7 that the San Joaquin River Watershed water availability
8 analysis that you worked on from 2015 to the current is the
9 water availability analysis that forms the basis for both
10 the West Side and the BBID enforcement actions?

11 A Correct.

12 Q And there is no other water availability analysis
13 that forms the basis of those enforcement actions?

14 A We have some additional -- additional check that we
15 performed after the fact, but based -- it used some elements
16 from the San Joaquin River Watershed analysis.

17 Q Can you describe that in more detail, please.

18 A Yes. So in the case of BBID, the ACL amount was
19 drafted for the diversions taking place from June 13th to
20 June 25th, 2015. On those particular days, I was provided a
21 summation of the amounts diverted from staff, and then we
22 drafted up an ACL amount based on the violation that
23 occurred per diversions after our notice went out on
24 June 12th.

25 Q Other than that, have there been any other

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1 additional checks related to the water availability
2 determination?

3 A So we performed a check of the flow at Vernalis, and
4 to compare that with the prorated amount of downstream
5 senior demand, based on the prorated method we used in the
6 2015 supply and demand analysis, as well as the 2014
7 analysis, where we had allocated the Central and South Delta
8 demands to the San Joaquin River Watershed.

9 Based on the prorated amount for 2015, the
10 prorated -- the remaining senior demand and the prorated
11 amount that was allocated to the San Joaquin Watershed
12 exceeded the flow at Vernalis on those days.

13 Q When was this after-the-fact additional check
14 performed?

15 A I don't have the exact day, but I want to say within
16 a week.

17 Q Of what?

18 A Of the issuance of the ACL.

19 Q And is that analysis in writing?

20 A We have the graph depicting that as an exhibit, I
21 believe.

22 Q Exhibit where?

23 A I don't know the exhibit number, but it's something
24 the attorneys would have a knowledge of where it is on the
25 thumb drive.

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1 Q So you believe it's a graph that has been produced?

2 A It's been developed by staff but was not published
3 to the website.

4 Q So it's not on the website?

5 A Correct.

6 Q Is there a spreadsheet that supports the graph?

7 A Usually when we develop graphs there is a separated
8 sheet behind it, so, yes, there is somewhere.

9 Q So we think that this additional check related to
10 flow at Vernalis and prorated senior demand has a
11 spreadsheet and a graph and that it has been produced as
12 part of the public records at request?

13 A Correct.

14 Q But it is not on the website?

15 A Correct.

16 Q So we, at some point in this deposition, are going
17 to put in that thumb drive and have you find that for us,
18 okay?

19 A I'll make an attempt to.

20 Q Okay. Did you organize the information on the thumb
21 drive?

22 A No.

23 Q Who did?

24 A Our attorneys.

25 Q Did you provide them with information to produce?

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1 A Yes. Partial information, yes.

2 Q Was this additional check document one of the things
3 that you provided?

4 A I can't recall if it was produced by Jeff Yeazell,
5 but as to whether he provided it or I provided it, I can't
6 answer.

7 Q Has it been updated since or was it a one-time deal?

8 A It was a one-time deal.

9 Q Okay. So we have talked about two bases for the
10 water availability determination for these two enforcement
11 actions, one being the San Joaquin River Watershed analysis
12 and the second being this after-the-fact additional check.

13 Is there any other analysis that was performed
14 related to the water availability determination for the two
15 enforcement actions?

16 A No.

17 Q Do you plan to perform any additional analyses
18 between now and the time of the hearings?

19 A No.

20 Q Do you understand that your scope of testimony at
21 the hearing will be based on the San Joaquin River Watershed
22 analysis and this additional after-the-fact analysis?

23 A Yes.

24 Q Is there anything else that you believe you will be
25 testifying to besides those two topics?

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1 A No.

2 Q I believe you have already clarified this in your
3 testimony, but I want to make sure that I understand it
4 correctly before I decide not to ask you additional
5 questions about it.

6 Did you have any involvement in looking at the West
7 Side enforcement matter issues that relate to the Bethany
8 drain or the City of Tracy wastewater?

9 MS. TEMPLE: Objection. Vague, ambiguous, and
10 compound.

11 Q BY MS. SPALETTA: Do you understand my question?

12 A No, I don't.

13 Q Okay. The West Side CDO involves, to a certain
14 extent, West Side tailwater that flows through the Bethany
15 drain.

16 A Uh-huh.

17 Q Were you involved at all in that aspect of the
18 enforcement action?

19 A No.

20 Q The West Side CDO also involves the City of Tracy
21 wastewater discharges. Were you involved at all in that
22 aspect of the enforcement action?

23 MS. TEMPLE: Objection. Assumes facts not in
24 evidence.

25 Q BY MS. SPALETTA: You can answer.

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1 A I don't know.

2 Q You don't know if you were involved?

3 A You have to repeat the question.

4 Q Okay. The question was, the West Side CDO involves
5 the City of Tracy wastewater discharges.

6 A Uh-huh.

7 Q Do you understand that to be true?

8 MS. TEMPLE: Objection. Assumes facts not in
9 evidence.

10 You can answer.

11 THE WITNESS: I assume that the West Side CDO, as I
12 was looking at it, was based on the drain water being
13 returned into the intake cut and then re-diverting that
14 water when it had mixed with the fresh water supplies.

15 Q BY MS. SPALETTA: We marked the draft CDO as
16 Exhibit 2, so let's just look at the specific paragraph,
17 make sure that this is something you don't have knowledge
18 about.

19 A Uh-huh.

20 Q Will you look at paragraph 30 and 31 that's on page
21 5 of 7.

22 A Uh-huh.

23 Q I'll give you a minute to read those.

24 A (Witness reviewing.)

25 Q Have you had a chance to read them?

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1 A I'm reading them now, but yes.

2 Q Do you see that those two paragraphs discuss the
3 City of Tracy's wastewater discharges?

4 A Correct.

5 Q Were you involved at all in this aspect of the
6 enforcement action relating to the city's wastewater
7 discharges?

8 A In reviewing the draft CDO for the surname, yes, but
9 not in the actual determination of that, no.

10 Q So you did not perform any investigation or analysis
11 relating to the city's wastewater discharges?

12 A No.

13 Q Were the city's wastewater discharges included in
14 your water availability analysis?

15 A No.

16 Q And then was the Bethany drain water included in
17 your water availability analysis?

18 A No.

19 Q Why not?

20 A They weren't sources of full natural flow.

21 Q Okay. And is that the same reason for the city's
22 wastewater not being included?

23 A Correct.

24 Q So did your water availability analysis only look at
25 sources of full natural flow?

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1 A Correct.

2 Q Why?

3 A So for our supply analysis, we need to know how much
4 water is available for all diverters. In the case of a
5 wastewater discharge that may be subject to appropriation,
6 the source of that water -- let me rephrase that.

7 There's no way to quantify the exact amount that we
8 can forecast for a source of supply. So for our supply and
9 demand analysis, we used exclusively full natural flows.
10 Additional flows that we can't quantify or support from a
11 credible source, we didn't use.

12 Q So are you saying that the State Board doesn't have
13 any information about the amount of the City of Tracy's
14 wastewater discharges?

15 A No. No. We may have an amount of water that we
16 know has been discharged into that area, but it is not full
17 natural flow.

18 Q So my question was, why did you only look at full
19 natural flow for the water availability analysis?

20 A That's what we were instructed to do by management.

21 Q Who instructed you to do that?

22 A John O'Hagan.

23 Q Anyone else?

24 A No.

25 Q Did you have any input in that decision?

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1 A No.

2 Q Did you agree with that decision?

3 A Yes.

4 Q Why do you agree with it?

5 A Because our supervisor told me to, for one thing.
6 The second thing, all sources of natural supply are
7 available to all diverters, both riparian and pre-14. The
8 wastewater discharges would be available for appropriation
9 by pre-14s and post-14s but not riparians because they're
10 not natural in origin.

11 It is hard to quantify the exact amount that's going
12 to be available on a monthly basis or weekly basis for our
13 supply/demand analysis, and it is also subject to change if
14 the City of Tracy decides to stop diverting water or
15 discharging water into the stream.

16 Q What type of water right does West Side have?

17 A West Side has a post-1914 right.

18 Q So what type of water is available for West Side to
19 divert under that right?

20 A Appropriative water.

21 Q And that includes sources other than natural flow,
22 correct?

23 A Correct.

24 Q And then what type of water right does BBID have?

25 A Has a pre-14 right.

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1 Q What type of water is available for BBID to divert
2 under that right?

3 A Appropriative rights as well.

4 Q And those rights would include sources other than
5 full natural flow?

6 A Correct -- sources other than natural flow? Yeah.
7 You're co-mingling the terms here between full natural flow
8 and natural flow. It's a little bit different.

9 Q Okay. But, based on your testimony, your water
10 availability analysis relied on for both the West Side and
11 BBID matters did not look at anything other than natural
12 flow?

13 A Than full natural flow or unimpaired flow, correct.

14 Q And you did not have input in that decision?

15 A No.

16 Q Looking at -- we're still looking at Exhibit 2, if
17 you can turn to paragraph 23. I'll give you a moment to
18 review that, please.

19 A (Witness reviewing.) Okay.

20 Q So you'll see, in paragraph 23 of the West Side CDO
21 which we marked as Exhibit 2, there is a statement that
22 says, "See, for example, the combined Sacramento/San Joaquin
23 River Basin Senior Supply Demand Analysis," and then there's
24 a link.

25 A Okay.

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1 Q Is that the same San Joaquin River Watershed
2 analysis that you were describing to me earlier --

3 A No.

4 Q -- that formed the basis?

5 A No.

6 Q The next sentence also says, "The Watershed Analysis
7 website also provides graphical summations of the Sacramento
8 River Basin Senior Supply/Demand Analysis with Proportional
9 Delta Demand."

10 A Correct.

11 Q Is that the watershed analysis for the San Joaquin
12 River Basin that you said earlier formed the basis of this
13 enforcement action?

14 A No.

15 Q Okay. Is there anywhere in this West Side CDO that
16 there is a reference to the water availability analysis for
17 the San Joaquin River Basin that you said formed the basis
18 of this enforcement action?

19 MS. TEMPLE: Take your time to review the document.

20 Q BY MS. SPALETTA: You can take as much time as you
21 need. And if you'd like a break, just holler.

22 A (Witness reviewing.) And your question was against
23 which, West Side or Byron-Bethany?

24 Q Let's start with West Side.

25 A Okay. For West Side, since that was in the San

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1 Joaquin, that was based on the -- that was a post-14 right.
2 That would have been based on the April 23rd graph.

3 And in the case of BBID being a pre-1914 right, it
4 would have been based on the June 12th analysis.

5 Q My question was whether the analysis that formed the
6 basis of each enforcement action was referenced in the CDO,
7 and we're starting first with the West Side CDO.

8 Does the CDO reference the San Joaquin River Basin
9 Watershed analysis that formed the basis of the water
10 availability determination for the West Side CDO?

11 A It looks like paragraph 16.

12 Q I see paragraph 16 as referencing an April 23rd,
13 2015, notice.

14 A Correct.

15 Q Okay. Does that include a reference to the
16 watershed analysis that you referred to before?

17 A It's an implied definition that the notice is based
18 on something, and that notice would have been based on the
19 April 23rd analysis.

20 Q So where would I find the April 23rd analysis?

21 A That would be within the documents that we submitted
22 to you.

23 Q Okay. I think at this point we'll probably go ahead
24 and try and pull that up off the thumb drive.

25 A Okay.

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1 Q And while Greg is working on pulling it up, I'm
2 going to ask you just a couple more questions so we don't
3 waste any time.

4 A Okay.

5 MS. TEMPLE: Before you move to the thumb drive
6 questions, I'm going to suggest that we take a quick
7 five-minute break.

8 MS. SPALETTA: Do you want to take that break now?

9 MS. TEMPLE: It's on you. If you want to finish
10 your train of thought.

11 MS. SPALETTA: We can take the break now. It's
12 10:30. We've been going for an hour.

13 MS. TEMPLE: He's been testifying for an hour, so
14 let's take a quick five minutes.

15 (A recess was taken.)

16 Q BY MS. SPALETTA: We're going to go back on the
17 record. We've had a short break, and we're going to start
18 digging into the water availability analysis.

19 A Okay.

20 Q And we have pulled up on the screen in the
21 conference room a computer screen that shows us the list of
22 files that were produced in one of the subfolders of the
23 public records at request.

24 So I'm going to mark, as our next exhibit,
25 Exhibit 5, which contains the file list of everything in

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1 this water availability subfile.

2 A Okay.

3 (Whereupon, Exhibit No. 5 was
4 marked for identification.)

5 Q BY MS. SPALETTA: So, for the record, we received,
6 on October 12th, a jump drive with public records at request
7 production.

8 A Uh-huh.

9 Q There were several subfiles. One of the subfiles
10 was entitled "Water Availability."

11 A Okay.

12 Q On the first page of Exhibit 5, you'll see the
13 contents of the water availability subfile which include the
14 1977 Drought Report.

15 A Uh-huh.

16 Q A 2014 file, a 2015 file, and an unimpaired flow
17 file.

18 A Okay.

19 Q And I believe you said we need to look at the
20 April 23rd analysis?

21 A For the San Joaquin post-14, correct.

22 Q So let's open up the 2015 subfile, and on the second
23 page of your exhibit you will see all the file contents --

24 A Uh-huh.

25 Q -- for the 2015 subfile, which actually span, I

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1 believe, two and a half pages.

2 A Okay.

3 Q Can you identify for us which file we should now
4 open to find the water availability analysis that you've
5 referred to?

6 A I don't have the exact name of the file. That was
7 prepared by staff.

8 Q So how would we navigate and locate it here?

9 A More than -- you'd have to -- for the demand -- what
10 exactly are you looking for?

11 Q I would like to review and be able to ask you
12 questions about the water availability analysis that formed
13 the basis of the water availability finding for the West
14 Side CDO.

15 A So it would be under the supply and demand charts.

16 Q Can you repeat the answer?

17 (Whereupon, the record was read.)

18 Q BY MS. SPALETTA: So we opened up the subfile that
19 was entitled "Supply and Demand Charts," and it has several
20 subfiles.

21 Can you tell me which one we should open next?

22 A I can only speculate; I didn't prepare this.

23 Q Can Mr. Tauriainen assist us here so we can get to
24 the right spreadsheet quicker?

25 A It would be under the San Joaquin River Basin, would

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1 be my guess.

2 MS. TEMPLE: Don't guess, though. We don't want you
3 to guess.

4 THE WITNESS: I really don't know.

5 MR. TAURIAINEN: First, Brian, have you had a chance
6 to look at paragraph 18 from the --

7 THE WITNESS: Okay. From the actual CDO, right?

8 MR. TAURIAINEN: From the CDO, yeah.

9 MS. TEMPLE: For the record, I believe Brian may
10 want to -- did you want to clarify one of your earlier
11 answers to a question about what analysis was referenced in
12 the CDO or do you not need to do that?

13 THE WITNESS: Yeah. The May 1st availability
14 notice, which is paragraph 17 and 18, it looks like.

15 MS. TEMPLE: And do you want to -- do you need to
16 make a statement on the record about a prior question that
17 was asked? Do you recall the question?

18 THE WITNESS: I don't recall the question. If it
19 could be reiterated.

20 Q BY MS. SPALETTA: Okay. What we're trying to do
21 here is we are trying to locate the water availability
22 analysis --

23 A Uh-huh.

24 Q -- that you performed --

25 A Uh-huh.

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1 Q -- that served as the basis for the West Side CDO
2 enforcement action. You previously testified that it was
3 the San Joaquin River Watershed analysis associated with the
4 April 23rd notice.

5 A Correct.

6 Q Do you need to change that testimony?

7 A It is the April 23rd notice, but I'm not sure if it
8 is an actual document that we had kept prior to the PRA
9 being served.

10 MR. TAURIAINEN: If I would suggest, back up from
11 the supply and demand chart into the previous. There's a
12 subfolder marked 20150423_notice.

13 THE WITNESS: Here?

14 MR. TAURIAINEN: Yeah. And do you have an
15 individual list that the witness can look at?

16 Q BY MS. SPALETTA: Yes. So I previously marked for
17 you Exhibit 5, which contains the file contents of the water
18 availability folder --

19 A Okay.

20 Q -- broken down, and you are now seeking to look at
21 the contents of the April 23rd, 2015, subfolder. I have the
22 subfile listed, but I don't have the file contents of that
23 listed because I didn't want to kill too many trees. So we
24 have it up on the screen.

25 Do you need to get closer to the screen to identify

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1 which of the --

2 A The problem there is that I don't know the exact
3 file name, so I would be speculating.

4 Q Okay. We are going to need to take a break then so
5 you can confer with your counsel.

6 A Uh-huh.

7 Q Because the purpose of this deposition is to
8 identify the analysis that formed the basis of the
9 enforcement action and be able to ask you questions about
10 it, and there are multiple analyses that are contained in
11 the Public Records Act production.

12 A Right.

13 Q So it's very important that you be able to tell me
14 what you did, how you did it, and where it is memorialized.

15 MS. TEMPLE: And he can do that to the best of his
16 recollection. But, as you're well aware, his witness
17 statement isn't due until January, so he's in the middle of
18 doing this for December. He's in the middle of doing this
19 work right now. And the Hearing Officer was clear that that
20 work would not have to be sped up in time for your
21 deposition schedule.

22 MS. SPALETTA: I'm not asking him about any work
23 that he may do later, and we can talk about whether or not
24 that would even be admissible. I'm asking him about the
25 work that was done to form the basis of a CDO that was sent

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1 out in July of 2015, which he has previously testified was
2 work that began in February.

3 MS. TEMPLE: Right. So you can ask him about that
4 work. And what may be helpful is if you asked him if
5 spreadsheets that are up on the screen were spreadsheets
6 that he created.

7 Q BY MS. SPALETTA: Well, let's start with that
8 question.

9 A Okay.

10 Q Can you answer it?

11 A I didn't create those spreadsheets, no.

12 Q Okay. Where would I find the spreadsheets that you
13 created?

14 A I didn't create any spreadsheets.

15 Q Who created the spreadsheets?

16 A Jeff Yeazell.

17 Q Did you provide any input to Mr. Yeazell on how to
18 create the spreadsheets?

19 A Not the design, no.

20 Q What about any other input regarding the
21 spreadsheets?

22 A Yes.

23 Q What input did you provide Mr. Yeazell?

24 A What supply and demands to use for each watershed.

25 Q And then did Mr. Yeazell create spreadsheets based

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1 on the direction you gave him?

2 A Yes.

3 Q And did you review those spreadsheets?

4 A I reviewed the charts that were the work product of
5 the spreadsheets.

6 Q Have you ever actually reviewed the underlying
7 spreadsheets that were the basis of the charts?

8 A Not line by line, no.

9 Q At all?

10 A No.

11 Q You have never looked at the underlying
12 spreadsheets?

13 A I have looked at the formulas that are used to make
14 sure that the concept of what it is we're trying to do with
15 supply and demand, but as far as the actual programming
16 language used, no.

17 Q How did you view the formulas that were used?

18 A Looking on the Excel cells and him explaining to me
19 what he did, and then so long as his explanations matched
20 what we were trying to accomplish, I approved it.

21 Q So where would I find the sheets that contained
22 those formulas that you reviewed?

23 A You'd have to ask Jeff Yeazell on that.

24 Q Okay. So what information did you provide to
25 Mr. Yeazell regarding the supply to include for the San

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1 Joaquin River Watershed?

2 A So that was a work in progress, but the full natural
3 flows that were produced by DWR under the B120 forecast for
4 various stations, then additional flows on the supply side
5 from DWR's 2007 Bay Delta report for the Valley Floor, and
6 then the demands from our eWRIMS database that have been
7 quality controlled since 2014.

8 Q Did you provide these instructions to Mr. Yeazell in
9 writing or in email?

10 A I don't recall.

11 Q You don't recall how you gave him the instructions?

12 A Likely, it would have just been verbal. We're not
13 as unsociable.

14 Q And you testified previously that John O'Hagan
15 directed you and then you directed Mr. Yeazell?

16 A Correct.

17 Q Did Mr. O'Hagan or Ms. Mrowka provide you any input
18 on these supply and demand limits in writing?

19 A I don't believe so.

20 Q Is there any of the documents here in the
21 April 23rd, 2015, file that we have put up on the screen
22 that contain data that you directed Mr. Yeazell to use?

23 A Could you repeat the question and make it simpler?

24 Q I will try. We have on the screen the contents of
25 the April 23rd, 2015, file folder that was produced to us by

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1 the attorney for the State Board, Mr. Tauriainen.

2 A Uh-huh.

3 Q I'm asking you to look at the files and tell me if
4 any of those files contain the information that you directed
5 Mr. Yeazell to use in his spreadsheet analysis.

6 MS. TEMPLE: Objection. Calls for speculation.

7 You can answer, if you can.

8 THE WITNESS: I have to approach. I can't really
9 see it that well.

10 Q BY MS. SPALETTA: Okay. Please do.

11 MS. TEMPLE: He's already testified, though, that he
12 didn't create these spreadsheets, and he's also testified
13 that Mr. Yeazell did, so it does call for his speculation.
14 I'll direct him not to guess if he doesn't know.

15 MS. SPALETTA: And, for the record, this file
16 content, as far as I can tell, includes only two Excel
17 spreadsheets, and the rest of the dozens of files are all
18 pdf's.

19 MS. TEMPLE: And that's fine. But if he didn't
20 create them, asking him what they contain calls for
21 speculation.

22 THE WITNESS: And these file names, I didn't create
23 the file names, so it is hard for me to guess. I really
24 can't answer that.

25 Q BY MS. SPALETTA: So what we're going to do then to

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1 make sure that we are able to explore what you did, is we're
2 going to go ahead and just open each one of these files.

3 A Okay.

4 Q And you can tell me if it contains information that
5 you relied on as a part of the water availability analysis.

6 A Uh-huh.

7 Q So we'll start with the first one, which is an Excel
8 spreadsheet entitled "Sac-SJ Basin with Proportional Delta
9 Demand," and this is an Excel workbook.

10 A Okay.

11 Q So we've opened up this workbook, and it has several
12 sheets.

13 A Uh-huh.

14 Q The one that has come up on the screen is the supply
15 and demand chart.

16 A Okay.

17 Q Is this an Excel workbook that you're familiar with?

18 A It appears to be an initial summary chart.

19 Q Is it a document you're familiar with?

20 A The format appears familiar, but I'm not -- we
21 haven't used that particular color scheme for some time.

22 Q So do you believe this document to be related to
23 your water availability analysis?

24 A I can't speculate.

25 Q You don't know?

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1 A I don't know.

2 Q Okay. What about the other tabs here? There's a
3 "Senior Demand" tab, a "Junior Demand" tab?

4 A That's all prepared by Jeff Yeazell. You'll have to
5 ask him for that.

6 Q Okay. Let's exit out of here. And I'll open the
7 next one, which is a "San Joaquin River Basin-Wide
8 Curtailment Letter"?

9 A Uh-huh.

10 Q Dated April 10th.

11 A Okay.

12 Q A letter to the State Board. Are you familiar with
13 this letter?

14 A I recall seeing it, yes.

15 Q Did you use it as part of your water availability
16 analysis?

17 A I'd have to review the contents of the letter before
18 giving an answer to that question.

19 Q Okay. Well, let's see what it is. It is the San
20 Joaquin River Basin stakeholders writing to the State Board
21 asking them not to do curtailments unless one of them files
22 a complaint.

23 Does that refresh your memory?

24 A Yes.

25 Q And did you utilize this letter in your analysis?

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1 MS. TEMPLE: Objection. He hasn't had a chance to
2 review the whole letter, so I would suggest if you want to
3 ask questions about it, you should print it and mark it as
4 an actual exhibit and let him have a chance to review it in
5 full.

6 Q BY MS. SPALETTA: Can you answer my question?

7 A That letter, since it was addressed to Mr. Tom
8 Howard, we received instructions -- I received instructions
9 from John O'Hagan as a result of that. So any decisions
10 that were made in response to this curtailment analysis, if
11 it was based on this letter, it came from John.

12 Q So it wouldn't have been a decision you made?

13 A No.

14 Q Let's go back.

15 A I can't speak for Tom.

16 Q In order to speed this up, I'm going to try asking
17 you the questions about your work on the water availability
18 analysis a little bit differently.

19 You told me that you gave information to
20 Mr. Yeazell?

21 A Uh-huh.

22 Q Supply and demand inputs?

23 A Okay.

24 Q Was there anything else that you did related to the
25 water availability analysis?

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1 A Just discussions with management on ways to
2 implement the analysis.

3 Q Okay. Who did you have discussions with?

4 A Predominantly John O'Hagan and, to a small extent,
5 Kathy Mrowka.

6 Q What was the nature of those discussions?

7 A Just what supplies to use, the status of our demand
8 quality control, and then just aesthetic improvements to the
9 graph to simplify for posting to the website.

10 Q Let's start with the first category.

11 A Okay.

12 Q "Discussions regarding what supply to use."

13 A Correct.

14 Q Can you describe what was discussed?

15 A Two different strategies on supply, one utilizing
16 the DWR B120 forecast for supply on a monthly basis for
17 select areas. And then, additionally, using the daily full
18 natural flow calculations prepared by DWR.

19 Q Who recommended using those two things?

20 A It wasn't so much of a recommendation. It's just
21 what we had used in the past and we agreed to use.

22 Q Who agreed to use?

23 A John O'Hagan, myself, Aaron Miller, as far as I
24 know.

25 Q So when you say "used in the past," do you mean used

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1 in 2014?

2 A Correct.

3 Q And who made the decision to use those sources in
4 2014?

5 A I don't know.

6 Q So it was a decision made before your time?

7 A We had -- I don't know if it was made before our
8 time. I don't know.

9 Q Did you have any input in that decision?

10 A No.

11 Q So it was a decision that was made and then directed
12 to you?

13 A I can't speculate on that. I don't recall what
14 happened in 2014.

15 Q Do you think those are the correct sources of supply
16 to use?

17 A Yes.

18 Q Why?

19 A Because they're full natural flow supplies provided
20 by a public agency with no particular bias as to the actual
21 amount of water, something that can be verified and quality
22 controlled for accurateness.

23 Q And what do you believe that the full natural flow
24 from DWR pursuant to Bulletin 120 represented?

25 A That's a forecasted amount of flow that's likely to

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1 be present at each individual station for the upcoming year.

2 Q And where are those stations located?

3 A In the San Joaquin Basin that we used for our supply
4 and demand analysis?

5 Q Yes.

6 A Okay. So the four full natural flow stations, the
7 predominate major ones are the Stanislaus River at Goodwin,
8 we have the Tuolumne River at La Grange, the Merced at
9 Exchequer, and on Millerton on the Upper San Joaquin, and
10 then we have some additional supplies -- full natural flow
11 supplies coming in from the Cosumnes, Mokelumne, and
12 Calaveras.

13 Q And how far are those stations away from the West
14 Side point of diversion?

15 A I can't speculate as far as distance. I don't have
16 a map in front of me.

17 Q So do you understand those sources of data to be
18 relevant to the available supply at the West Side point of
19 diversion?

20 A Yes.

21 Q Why?

22 A Because they're full natural flow supplies for fresh
23 water.

24 Q How does that make them relevant to the West Side
25 point of diversion if they are located in different places?

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1 A Those are the supplies that can possibly reach West
2 Side's point of diversion.

3 Q Are there any other supplies that can possibly reach
4 West Side's point of diversion?

5 A Fresh water supplies that I'm aware of, no.

6 Q Okay. The timing, how did you address the timing of
7 the supply --

8 MS. TEMPLE: Objection.

9 Q BY MS. SPALETTA: -- in your analysis?

10 MS. TEMPLE: Objection. Vague.

11 Q BY MS. SPALETTA: What did you assume regarding
12 timing of the full natural flow availability?

13 MS. TEMPLE: Objection. Vague.

14 THE WITNESS: You need to clarify what "timing" is.

15 Q BY MS. SPALETTA: What time step does DWR publish
16 the full natural flow data?

17 A Monthly.

18 Q So how did you apply that in your water availability
19 analysis?

20 A We took the monthly amount that was forecast and
21 divided that into a daily time step.

22 Q And then what assumptions did you make regarding
23 whether or not that flow on the daily time step would be
24 available at the West Side point of diversion?

25 A We didn't verify that.

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1 Q You did not verify it?

2 A No.

3 Q Okay. As you sit here today, do you have an
4 understanding of the timing of how long it takes flow to get
5 from the full natural flow measuring stations to the West
6 Side point of diversion?

7 A No.

8 Q Is there anyone at the State Board who you
9 understand to have that knowledge?

10 A I don't know.

11 Q You said you also used a second source of supply,
12 which was the 2007 Bay Delta Report for the Valley Floor?

13 A Correct.

14 Q And why did you use that information?

15 A Additional, there was some comments from
16 stakeholders in the early part of 2015 that there were
17 additional sources of supply that were not accounted for on
18 those four full natural flow locations that we should
19 consider adding. And so, receptive to that comment, we
20 obtained the 2007 Bay Delta Report that outlines the
21 unimpaired flows that have occurred over in the past by
22 various geographical locations. And we found a particular
23 area that matched the San Joaquin Valley Floor, and then we
24 looked at the amount of water that was reported and added in
25 an appropriate year.

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1 Q I don't understand this last part of your testimony.

2 A Uh-huh.

3 Q When you say you looked at the amount reported and
4 added in an inappropriate year?

5 A Right. So the amount that's reported in the Bay
6 Delta Report prepared by DWR lists the amount of unimpaired
7 flow by geographic location. And so once we matched up a
8 geographic location that addressed stakeholder comments for
9 additional flows, we looked at the table which had the
10 unimpaired flows that were calculated by that report by
11 year. And then the question then becomes what year would
12 you use, and then you find a year that mimics the current
13 situation with respect to the drought.

14 Q And the process you just described, is that in
15 writing anywhere?

16 A I don't recall. Since it's this year, I don't know.

17 Q Was it something that was discussed between you and
18 John O'Hagan verbally or was it discussed via email or
19 memos?

20 MS. TEMPLE: Objection. Compound. Vague.

21 THE WITNESS: I don't recall on either.

22 Q BY MS. SPALETTA: Do you recall any discussion with
23 John O'Hagan about it?

24 A Verbal potentially, but nothing -- if it is
25 something in writing, I'm sure you would have it.

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1 Q And what about discussions with Mr. Yeazell?

2 MS. TEMPLE: Objection. Vague.

3 THE WITNESS: Discussions with Jeff Yeazell in
4 regard to what?

5 Q BY MS. SPALETTA: Regarding this additional 2007 Bay
6 Delta report flow information?

7 A Only to include whatever respective year that we
8 thought would best represent current conditions, yes.

9 Q So who made the decision as to which represented
10 year to include?

11 A I did.

12 Q And what year did you pick?

13 A 1977.

14 Q And why did you pick that year?

15 A Because the snowpack -- the current snowpack for
16 2015 is the lowest on the record, and the snowpack on 1977
17 was the next-worst scenario, so it appeared appropriate to
18 choose that year.

19 Q And the stakeholders that had expressed concern
20 about including this information. Did you have any
21 discussions with them about whether they were satisfied with
22 what you did as a result of their concern?

23 MS. TEMPLE: Objection. Vague.

24 THE WITNESS: I don't think so.

25 Q BY MS. SPALETTA: Why not?

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1 A We never received any comment from them, to my
2 knowledge, that it was insufficient using that particular
3 year.

4 Q And the fact that you used the information from that
5 year, from this 2007 Bay Delta Report, how was that
6 disseminated to stakeholders so that they would know it
7 happened?

8 A We had a notation on the supply and demand charts
9 that indicated we had added in that additional flow in the
10 note section and the legend section, I can't recall which.

11 Q And the actual quantities that were added in, where
12 would we find that information?

13 A That would be in one of the spreadsheets that Jeff
14 Yeazell identified.

15 Q Okay. And did you look at those quantities and
16 determine that they looked reasonable or was that something
17 that you left to Mr. Yeazell?

18 A I looked at the quantities, and they appeared
19 reasonable.

20 Q How did you view those quantities?

21 A On the report.

22 Q What report?

23 A The 2007 Bay Delta Report.

24 Q Okay. So that's going to be in our production
25 somewhere?

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1 A I don't know if the actual report is there. It's
2 likely an exhibit. It's a pdf, not something that we
3 prepared, something that DWR prepared. It is on the web.

4 Q It is on the what?

5 A It is on the web.

6 Q Website for DWR?

7 A Internet. Just type in Google "2007 Bay Delta
8 Report," and you should come up with it.

9 Q All right. So you have identified for me two
10 sources of supply information that were used.

11 A And the third, yes.

12 Q And the third is what?

13 A The daily full natural flow.

14 Q What's the difference between the daily full natural
15 flow and the Bulletin 120 full natural flow?

16 A To my knowledge, the daily full natural flow is a
17 calculated amount based on operator input from the
18 reservoirs or gauging stations. DWR calculates it, and they
19 add in known upstream diversions in preparation of those
20 numbers.

21 The Bulletin 120 forecast is prepared based on
22 historical records and snowpack conditions.

23 Q You mentioned earlier in your testimony that there
24 was some difference between full natural flow and natural
25 flow. Do you recall that?

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1 A Full natural flow being the unimpaired flow
2 available. Natural flow in reference to riparians only
3 having access to natural flow.

4 Q So what is the difference between full natural flow
5 and natural flow?

6 A Natural flow may be water that is available for a
7 diversion by riparians, but it may not be the full amount
8 that's available because of some upstream diversions.

9 Q Can you walk me through an example of that so I can
10 understand it?

11 A If you have 100 CFSs at one location, riparian
12 decides to divert 50 CFS of that, there's 50 CFS remaining
13 downstream, it is still natural flow. That's the natural
14 flow, but the full natural flow would be the 100 CFS.

15 Q Okay. So, for me, thinking about it, would it make
16 sense to say that full natural flow is the amount of natural
17 flow available at the top of the watershed before anyone
18 diverts?

19 A No. The full natural flow is available at the point
20 that's referenced.

21 Q Okay.

22 A So it includes everything upstream of that point,
23 but it's not necessarily on the top of the watershed.

24 Q I see. Other than these three sources of supply
25 data, was there any other information regarding supply that

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1 was considered in the water availability analysis?

2 A We added in for the San Joaquin River analysis using
3 the prorated method that we discussed with stakeholders.
4 There's additional -- we added in additional supply for
5 return flows in the Delta and also return flows for the
6 Valley Floor.

7 Q Why did you do that?

8 A Because they were referenced within the 1977 report
9 with respect to the valley return flows. And then after
10 meeting with stakeholders in 2015, they expressed concern
11 that the amount diverted in the Delta, not all of it was
12 consumed, some of it was returned. And so after discussions
13 with all of you, a 40 percent factor was agreed upon, and
14 then we implemented that in our graphs.

15 Q Who agreed on the 40 percent factor?

16 A I can't recall the exact people in the room, but I
17 think Jeanne Zolezzi was a member, you were a member, Tim
18 O'Laughlin was there, Donte Nomellini Jr. was there, myself,
19 Kathy Mrowka, and some other stakeholders.

20 Q You think there was an agreement reached at the
21 meeting?

22 A Not -- I didn't -- I didn't say a formal meeting.

23 MS. TEMPLE: Let her finish her question.

24 THE WITNESS: Okay.

25 Q BY MS. SPALETTA: So there wasn't a formal

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1 agreement. I'm trying to understand what you think happened
2 to result in the 40 percent.

3 A Okay.

4 Q Can you explain that to me?

5 A There was -- one of the stakeholders expressed
6 concern about the amount of water -- the actual demand in
7 the Delta and, to alleviate that concern, they brought up
8 the issue of a return flow factor to be used in our
9 analysis.

10 Q And you don't remember who it was?

11 A No, I don't.

12 Q Do you remember what number they suggested?

13 A The 40 percent is the only thing I remember.

14 Q Sometime after that meeting your analysis changed to
15 account for this return flow factor?

16 A Correct.

17 Q And who actually performed the analysis at the
18 return flow factor?

19 A Analysis? Expand that.

20 Q Well, you said there was a 40 percent return flow
21 factor added.

22 A Right.

23 Q Who did that?

24 A The actual numerical calculation was done by Jeff
25 Yeazell in the spreadsheets.

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1 Q And then did you review his calculation?

2 A We reviewed the resulting graphs. I reviewed the
3 resulting graphs.

4 Q Now, you said there was also a return flow factor
5 for the Valley Floor.

6 A Correct.

7 Q And what factor was that?

8 A The factor varied by month.

9 Q And where did that number come from?

10 A 1977 Drought Report.

11 Q Was there any correspondence with stakeholders over
12 the selection of those numbers?

13 A Not that I can recall.

14 Q Why not?

15 A I don't recall.

16 Q Do you have confidence in the return flow factors
17 that were used in the analysis?

18 MS. TEMPLE: Objection. Vague.

19 THE WITNESS: Define "confidence."

20 Q BY MS. SPALETTA: Do you think that they're
21 accurate?

22 A We used what was available to us. As far as the
23 accuracy, I'd have to actually go out and measure that.

24 Q Was there any measurement done?

25 A No.

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1 Q We've now talked about four sources of information
2 for the supply analysis. Are there any others?

3 A Not that I can recall, no.

4 Q Was there any attempt or discussion, I should say --
5 let's ask it that way.

6 Was there any discussion regarding including a
7 return flow for groundwater?

8 A There was a discussion in 2014, I think, brought up
9 by Jeanne Zolezzi in regard to including some additional
10 groundwater for the Valley Floor.

11 Q And was that ever discussed at the State Water
12 Resources Control Board staff level?

13 A I don't recall it being in 2014.

14 Q Why wasn't a groundwater return flow included in the
15 analysis?

16 A We didn't have a third party source from a public
17 agency to support using that number in addition to any way
18 to qualify those numbers.

19 Q Was there a discussion about the fact that it should
20 be included?

21 A I don't recall.

22 Q Do you understand return flows from groundwater to
23 be a source of supply in the channels of the San Joaquin
24 River Basin?

25 A It's possible, sure.

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1 Q But it was not included in your analysis?

2 A No.

3 Q Was there any discussion regarding including return
4 flows from the use of stored water?

5 A No.

6 Q Why not?

7 A Not full natural flow.

8 Q Can you explain that to me?

9 A We only considered full natural flow sources in our
10 supply and demand analysis.

11 Q Do you have an understanding as to whether or not
12 return flows from the use of stored water are available for
13 appropriation?

14 A If they are abandoned, they can be used for
15 appropriation for pre-14s and post-14s, yes.

16 Q Okay. So why didn't you include them in your
17 analysis?

18 A As I indicated earlier, if they weren't -- there was
19 no way for us to actually qualify that those actual amounts
20 were full natural flow sources.

21 Q And what about regulatory flows released from the
22 reservoirs that are abandoned after their regulatory
23 purpose?

24 MS. TEMPLE: Objection. Assumes facts not in
25 evidence.

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1 Q BY MS. SPALETTA: Was there any discussion about
2 including those?

3 MS. TEMPLE: And incomplete hypothetical.

4 Q BY MS. SPALETTA: I'm not asking a hypothetical.
5 I'm asking if there was a actual discussion among you and
6 the other members of the State Board staff who worked on the
7 water availability analysis. Was there an actual discussion
8 about whether or not to include regulatory flows that had
9 been abandoned?

10 A I don't recall recently, no.

11 Q What about previously?

12 A As I indicated, what happened in 2014 when this
13 process started, I don't know exactly what was said.

14 Q Do you have an understanding as to whether or not
15 those type of flows, once abandoned, can be available for
16 appropriation?

17 A They can be once at the abandonment point, yes.

18 Q And where is the abandonment point?

19 A That depends on what individual project is releasing
20 the water for water quality purposes.

21 Q Has the State Board determined that location for the
22 various regulatory flows that are released on the
23 tributaries of the San Joaquin River Basin?

24 A I don't work in water quality, so I can't answer
25 that question. I don't know where the actual point is.

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1 Q Do you know whether or not that point has been
2 determined, though, by someone?

3 A No.

4 Q You don't know one way or the other?

5 A No.

6 Q Who would know that?

7 A I don't know.

8 Q Do you understand that the channels of the Delta are
9 influenced by the tide?

10 A Yes.

11 Q Was there any consideration of the tidal influence
12 in the water availability analysis?

13 A No.

14 Q Why not?

15 A It is not a fresh water source.

16 Q And who made the decision not to consider the
17 influence of the tide?

18 A I don't know the exact person, but it was upper
19 management. I don't know.

20 Q Who determined that the tidal flow was not a fresh
21 water source?

22 A I don't know the answer to that.

23 Q Who directed you to not include it in the water
24 supply analysis?

25 A John O'Hagan.

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1 Q Did John O'Hagan explain why?

2 A I don't recall why, but he may have been directed by
3 upper management, I don't know.

4 Q Do you understand that channels in the San Joaquin
5 River Basin have accretion and depletion?

6 A Yes.

7 Q Was there any effort to address that in the water
8 availability analysis?

9 A Yes.

10 Q How?

11 A We didn't -- we elected not to include depletions
12 downstream of the full natural flow points as well as any
13 accretions that came in due to their inability to be
14 quantified.

15 Q Was there any effort made to gain an understanding
16 of what those accretions and depletions were?

17 A As far as the amounts, no.

18 Q Why not?

19 A As I said, we didn't have the resources to actually
20 go out there and quantify every single stream reach.

21 Q And I think I asked you this question in the context
22 of the City of Tracy already, but I'll ask it more globally.

23 A Uh-huh.

24 Q Was there any effort to quantify treated wastewater
25 discharges that are discharged into the channels of the San

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1 Joaquin River Watershed?

2 A Quantification for what purpose?

3 Q To include them in water available for
4 appropriation?

5 A No.

6 Q Why not?

7 A As I indicated earlier, it wasn't a full natural
8 flow supply. That's what we were instructed to do.

9 Q When you say "we were instructed," you mean
10 instructed by?

11 A Upper management.

12 Q Including Mr. O'Hagan?

13 A Correct.

14 Q And anyone who would have advised Mr. O'Hagan?

15 A Correct.

16 Q And, as you sit here today, you don't know who that
17 is?

18 A No.

19 Q Okay. Did you consider water stored in Delta
20 channels?

21 A No.

22 Q Why not?

23 A It wasn't a full natural flow supply.

24 Q Who determined that it wasn't a full natural flow
25 supply?

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1 A I don't think anyone determined it wasn't a full
2 natural flow supply.

3 Q Then why do you say that today?

4 A Can you repeat the question again?

5 Q Sure. Are you aware of water that is stored in
6 Delta channels?

7 A It's possible it's there, sure. Okay.

8 Q Do you understand that these channels are below sea
9 level?

10 A Yes.

11 Q Okay. So why wasn't the storage of water in Delta
12 channels considered in the water availability analysis?

13 A It wasn't a fresh water source.

14 Q And why do you say it wasn't a fresh water source?

15 A If it's below the tide on an elevation basis,
16 there's always going to be some saltwater content in it.

17 Q And who has made the decision that water with
18 saltwater content is not a fresh water source?

19 A That would be upper management. I can't speculate
20 as to who.

21 Q But that's what you were directed?

22 A Correct. To only use full natural flow supplies.

23 Q Other than the direction you received from upper
24 management, are you aware of any other source of information
25 that relates to whether or not water with saltwater content

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1 could be considered a natural flow source?

2 A No.

3 Q There are some places in the San Joaquin and
4 Sacramento River Basin where stored water is delivered to
5 satisfy prior right holders. Are you aware of that?

6 MS. TEMPLE: Objection. Assumes facts not in
7 evidence.

8 Q BY MS. SPALETTA: I'm asking if you're aware of it.

9 A I know that there are stored water releases used to
10 satisfy water quality requirements.

11 Q What about stored water releases that are used to
12 satisfy, for example, the Feather River contractors of DWR?

13 MS. TEMPLE: Objection. Vague.

14 Q BY MS. SPALETTA: Are you aware of those?

15 A Yes.

16 Q How were those stored releases to satisfy the
17 Feather River contractors dealt with in the Water
18 Availability Analysis?

19 A They weren't used.

20 Q Why not?

21 A Because they weren't full natural flow supplies from
22 here forward. They weren't used as -- anything that stored
23 water isn't a part of our curtailment analysis.

24 Q Were the Feather River contractors' demands used in
25 the analysis?

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1 A If it was a reported demand under their permit or
2 license, yes.

3 Q So if -- I'm going to give you a hypothetical just
4 for the sake of trying to understand.

5 If a Feather River contractor had demanded 10,000
6 acre feet in June and that demand was met with stored
7 water --

8 A Uh-huh.

9 Q -- how did you address that in the water
10 availability analysis?

11 A If it was reported as under their water right, we
12 used it, but in the Sacramento system we had received
13 comments from MBK Engineers that certain permits and
14 licenses, if they did receive stored water, we should look
15 at revising the demands associated with that. And provided
16 enough information was used to support that, we would go
17 ahead and adjust our demand based on that.

18 Q So, as you sit here today, are you confident that
19 the demands that are reflected in the water availability
20 analysis have been adjusted to account for reductions
21 necessary due to delivery of stored water?

22 A Yes.

23 MS. TEMPLE: Objection. Vague and ambiguous.

24 Q BY MS. SPALETTA: You are confident?

25 A Yes.

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1 Q So which ones were adjusted?

2 A I don't have the exact number. There's a fair
3 amount.

4 Q And where would I find that information?

5 A Within our spreadsheet.

6 Q Which spreadsheet?

7 A The Water Right Demand spreadsheet.

8 Q And is that the one available on the website?

9 A There's many available on the website, but it's
10 largely -- it depends on what you're looking at. If you're
11 looking for the Feather River, it's likely within the
12 Sacramento global.

13 Q And was that same concept utilized in the San
14 Joaquin River Basin analysis?

15 A We made some demand adjustments for the exchange
16 contractors based on our informational order. But, other
17 than that, if there was no forwarding of adjustments that
18 needed to be made to our demand database, we obviously
19 couldn't consider that.

20 Q By "forwarding," you mean if someone didn't tell you
21 to make the adjustment?

22 A Someone didn't tell us to make the adjustment with
23 supporting information that was reasonable, we couldn't make
24 the adjustment unless it was an obvious error.

25 Q Did you affirmatively seek information from people

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1 or entities that received stored water in order to make
2 those adjustments or did you simply wait for someone to tell
3 you the adjustments should be made?

4 MS. TEMPLE: Objection. Compound.

5 Go ahead.

6 THE WITNESS: So we posted our analysis results in
7 advance for people to evaluate and -- on the Sacramento side
8 of the system. And MBK Engineers came in and indicated
9 there were some adjustments that obviously needed to be made
10 based on topics you just brought up. I don't recall
11 receiving any comments from the San Joaquin stakeholders in
12 regards to adjustments for storage and contracts.

13 Q BY MS. SPALETTA: And when you say you "posted the
14 analysis" --

15 A Yes.

16 Q Do you mean the spreadsheet that Jeff Yeazell
17 prepared?

18 A The spreadsheets and the graphs.

19 Q When was that posted for the San Joaquin River?

20 A The actual days were overwritten, so it would be in
21 advance or prior to April 23rd for the post-14s.

22 Q So we have put up on the screen the actual State
23 Water Board Drought Year Watershed Analysis page.

24 A Okay.

25 Q Do you see that?

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1 A Yes.

2 Q And there is a section entitled "2015 Water
3 Availability Analysis." Do you see that?

4 A Yes.

5 Q Where on here would I find the water availability
6 analysis that relates to the West Side and BBID enforcement
7 actions?

8 A That would be under the "San Joaquin with Prorated
9 Delta Demand."

10 Q And so if we click on that, we have a chart.

11 A Uh-huh.

12 Q Is this a one- or two-page document?

13 A Two-page document.

14 Q Two-page document. So it is a chart and a page of
15 notes?

16 A Now, that's the location of the website, but that
17 particular one you pulled up is the current October 27th in
18 regards to the West Side ID. We'd be using the April 23rd
19 graph.

20 Q And that's not on the website anymore?

21 A No. It's overwritten.

22 MR. TAURIAINEN: Actually, it is on the website.

23 THE WITNESS: Oh, it is? Oh, okay.

24 MR. TAURIAINEN: There's a separate.

25 THE WITNESS: Oh, there is a separate link at a

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1 different location. He's right.

2 Q BY MS. SPALETTA: So let's go, though. I'm looking
3 on San Joaquin River Watershed. Where is the spreadsheet
4 that relates to the San Joaquin River Watershed?

5 A I don't see it posted right now.

6 Q Was it ever posted here?

7 A I believe it may have been, yes.

8 Q But you don't know for sure?

9 A No, as it was five, six months ago.

10 Q How would we find that out?

11 MS. ZOLEZZI: That would be under curtailment,
12 Andrew.

13 MR. TAURIAINEN: That's correct.

14 THE WITNESS: The spreadsheets would be posted
15 there. The graphs may be referenced at another location.

16 MS. ZOLEZZI: Do you want the graphs?

17 MS. SPALETTA: Let's take a five-minute break.

18 (A recess was taken.)

19 Q BY MS. SPALETTA: We will go back on the record. On
20 the break the witness indicated he had something he needed
21 to clarify, so let's start by asking the witness to make
22 that clarification.

23 A Okay. With respect to the West Side and
24 Byron-Bethany enforcement actions, they are based on the
25 Sacramento May 1 notice, and that's because those locations

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1 are within the Delta. And the way we approached the
2 treatment of the Delta demand was on a prorated basis,
3 because the Sacramento River supplies a majority of the
4 water coming into the Delta relative -- the full natural
5 flow water coming into the Delta relative to the San
6 Joaquin, our analysis with respect to curtailment decisions
7 were based on Sacramento.

8 Q So, Mr. Coats, we've just spent about two hours
9 talking about the basis for your April 23rd water
10 availability analysis.

11 A Uh-huh.

12 Q Which it sounds like now we have to start over. But
13 my first question for you is, during our last break and
14 before this clarification, did you discuss the topics of
15 your deposition with anyone other than your counsel?

16 A No.

17 Q So if I'm understanding your clarification
18 correctly, all of our discussion about the April 23rd water
19 availability analysis is not relevant to the water
20 availability analysis that was actually used?

21 A It's partially relevant in the sense that the
22 prorated amount of the San Joaquin full natural flow
23 relative to the Sacramento. So that you have your entire
24 Delta demand and a prorated portion of that based on the
25 full natural flow supplies coming into the Delta.

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1 The San Joaquin River analysis is a small percentage
2 of that decision, but the majority being -- of the Delta
3 demand being allocated to the Sacramento side of the system
4 due to the fact that the full natural flows coming into the
5 Delta predominantly came from the Sacramento River
6 Watershed.

7 Q Okay. So I feel like I now need to go back and
8 re-ask several of the questions that I already asked.

9 So let's start with the basic question.

10 A Okay.

11 Q Which water availability analysis was used for the
12 purposes of the West Side CDO?

13 A Both the Sacramento and San Joaquin Watershed
14 analyses were used with the majority of the decision making
15 in regards to the enforcement action were from the
16 Sacramento River Watershed analysis.

17 Q And is that the same for the BBID enforcement
18 action?

19 A Yes.

20 Q And who made the decision about which watershed
21 analysis to use for those two enforcement actions?

22 A Myself. And in talking with upper management and
23 they agreed.

24 Q And who is upper management?

25 A Predominantly John O'Hagan.

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1 Q Anyone else?

2 A Partially Kathy Mrowka.

3 Q Anyone else?

4 A Not that I'm aware of, no.

5 Q And what did you do to conduct the water
6 availability analysis that was used for the West Side and
7 BBID enforcement actions?

8 A We prepared the supply -- or I directed the staff to
9 prepare the supply and demand graphs for the Sacramento
10 River Watershed, both with a north Delta demand allocation
11 and with the prorated demand allocation.

12 Q When you say you directed staff, do you mean you
13 direct Mr. Yeazell?

14 A Correct.

15 Q Did you direct anyone else?

16 A No.

17 Q Did you provide this direction orally or in writing?

18 A Orally, likely.

19 Q And if I understand your testimony, you directed
20 Mr. Yeazell to prepare two different graphs?

21 A Yes.

22 Q One being the Sac Basin with prorated Delta?

23 A Correct.

24 Q And the other being the Sac Basin with North Delta?

25 A Correct.

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1 Q Why?

2 A There was a discussion with stakeholders, I believe
3 the San Joaquin River stakeholders, in May about how to
4 treat Delta demand, and we approached them with an idea of
5 allocating a prorated portion of the Delta demand to each
6 watershed, which is a function of how much full natural flow
7 is supplied to the Delta from those respective watersheds.

8 After we relayed our thoughts on that, the San
9 Joaquin stakeholders appeared to approve of that versus the
10 2014 method, which was a lot more stringent.

11 Q I think your explanation relates to the analysis of
12 the Sac Basin with prorated Delta?

13 A Correct.

14 Q You told me there was a second analysis. The Sac
15 Basin with North Delta Water Agency?

16 A Correct.

17 Q What was the purpose of the second analysis?

18 A The purpose of the second analysis was used to see
19 if the curtailment data that we arrived at would have
20 changed at all incorporating the entire North Delta demand
21 with the Sacramento River Watershed and leaving the Central
22 and South Delta demand with the San Joaquin.

23 In the North Delta demand case, while the demand was
24 less because they didn't have the prorated amount of the
25 central and south Delta, it still didn't change the

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1 curtailment date.

2 Q Were the West Side and BBID demands included in the
3 North Delta Water Agency version?

4 A No.

5 Q So they were only included in the Sac Basin with
6 prorated Delta?

7 A Correct.

8 Q And what, specifically, did you tell Mr. Yeazell to
9 do with respect to conducting the analysis?

10 A Just the general method of how to calculate the
11 prorated percentage of full natural flow, which was used
12 then as the same percentage multiplied by the total Delta
13 demand, and allocated to each respective watershed.

14 Q Can you explain that to me, please.

15 A So with respect to the full natural flows coming
16 into the Delta, we used the four from the Sacramento River
17 system and then the six to seven on the San Joaquin system.
18 Added those up together, and then took a percentage of the
19 flows coming in from the Sacramento, those coming in from
20 the San Joaquin. Once you arrived at the percent supply
21 natural -- full natural flow supply to the Delta, we used
22 that same percentage, multiplied it by the total Delta
23 demand, and allocated that to the respective watershed.

24 Q What other specific direction did you provide to
25 Mr. Yeazell to conduct his analysis?

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1 A For which analysis?

2 Q For the Sac Basin with proportional Delta analysis
3 that was used as the basis for the West Side and BBID
4 enforcement action?

5 A Treatment for the additional supplies from return
6 flows for the Delta and the additional unimpaired flow
7 sources come in from the Sacramento River Watershed as
8 referenced in that 2007 DWR report.

9 Q Was that instruction on return flows the same as
10 what you previously described to me for the San Joaquin
11 River analysis?

12 A Correct.

13 Q So that was the 40 percent assumed return flow for
14 Delta demand?

15 A Correct.

16 Q And then what was the assumed return flow for the
17 remaining demand outside the Delta?

18 A For the Sacramento, there was no additional return
19 flows added in.

20 Q Why not?

21 A The 1977 report, the drought report made a reference
22 to not including that for the Sacramento River system.

23 Q What was the rationale for not including a return of
24 flow for the Sacramento River?

25 A I don't recall.

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1 Q Do you have an understanding of the rationale?

2 A Not at this point, no, I don't. I have to review
3 the report.

4 Q Do you understand whether or not there are any
5 return flows from the Sacramento Basin?

6 A Yes.

7 Q What's your understanding?

8 A Whatever water is diverted that is in excess is
9 returned, such as the Colusa Basin drain.

10 Q And do you have an understanding that there were
11 actually return flows that flowed into the Sacramento River
12 during 2015?

13 MS. TEMPLE: Objection. Assumes facts not in
14 evidence.

15 THE WITNESS: I don't have an actual understanding,
16 no.

17 Q BY MS. SPALETTA: Was there any effort made by you
18 or your staff to verify whether or not there were return
19 flows in the Sac Basin during 2015?

20 A I'm not 100 percent positive, but I believe one of
21 my staff members did go out to measure something, and I
22 don't think he came back with anything. I can't recall, no.

23 Q Okay. Now, you said there was a third direction you
24 gave to Mr. Yeazell regarding unimpaired flow sources. Can
25 you describe what that would be for the Sac Basin with

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1 proportional Delta demand?

2 A Can you describe the first two?

3 Q The first two was you said you gave Mr. Yeazell
4 direction on the proportional method to use for the Delta.

5 A Uh-huh.

6 Q The second one was you said you gave Mr. Yeazell
7 direction on the return flows to include?

8 A Okay.

9 Q And then the third one was you said you gave him
10 direction on the unimpaired sources to use.

11 A Okay. So the unimpaired flow sources from Bend
12 Bridge on the Sacramento, Oroville, on the Feather. And
13 then we've had at the Yuba River at Smartville and on the
14 American at Folsom, and then the additional flows on the
15 Valley Floor as referenced in the 2007 DWR report.

16 Q And why did you direct him to include those?

17 A That was the flows that we had used last year.

18 Q Do you understand why the decision was made to use
19 those flows?

20 A No.

21 Q Was that your decision or someone else's decision?

22 A In 2014, Aaron Miller, a prior worker with the
23 division, worked on the Sacramento River Basin, and those
24 were the full natural flow sources we used last year.

25 Q Where is Aaron Miller now?

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1 A He's with the Department of Water Resources.

2 Q What does she do?

3 A Aaron is a he.

4 Q Oh, sorry. What does he do?

5 A I'm not exactly sure of his job title, but he's a
6 senior engineer.

7 Q Is there any other directions that you gave
8 Mr. Yeazell regarding the Sac Basin with Prorated Delta
9 Water Availability Analysis, other than what you have just
10 described to me?

11 A No.

12 Q Were there any decisions that you made regarding how
13 to perform the Sac Basin with Prorated Delta Analysis?

14 A No.

15 Q Were there any decisions that you delegated to
16 Mr. Yeazell to make regarding how to perform the analysis?

17 A Preparation of the spreadsheet to incorporate the
18 supplies and demands, and then graphically present a summary
19 in the form of a chart.

20 Q Okay. The demand side of the analysis?

21 A Uh-huh.

22 Q Did you provide any direction to Mr. Yeazell
23 regarding the demand side of the analysis?

24 A Just to perform quality control checks after we
25 received the raw data from eWRIMS, which included removing

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1 obvious duplication errors, nonconsumption uses, things of
2 that nature just to go over the actual quality of the data
3 received.

4 Q Did you give him specific direction on what to do in
5 that regard or did you leave it up to him?

6 A For the majority of the -- any of the spreadsheet
7 data that we posted to the web, MBK Engineers downloaded.
8 And if it didn't, there was obvious errors or issues they
9 had, for example, such as the State Water Contractors, they
10 provided input to us through email or through meetings.

11 And then if the outcome of that -- those changes
12 sounded reasonable, we went ahead and implemented those.

13 Q Did you affirmatively reach out to stakeholders in
14 the Delta or at West Side or BBID to seek their input on the
15 demand data?

16 MS. TEMPLE: Objection. Compound.

17 THE WITNESS: No. We didn't actually seek out input
18 from them, other than what we were proposing to do for our
19 curtailment efforts for 2015.

20 Q BY MS. SPALETTA: And why didn't you seek input
21 regarding the demand data?

22 A We posted our demand data on the web, and if there
23 were any issues with its accurateness or quality, we
24 expected people to come by and tell us that.

25 Q How did you determine obvious duplication or did you

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1 do that? Was that your job or Mr. Yeazell's job?

2 A That was Mr. Yeazell's job.

3 Q Did you give him direction on how to identify
4 duplication?

5 A Yes.

6 Q What direction did you give him?

7 A If the reported use for a particular entity was the
8 same for every single month of every, you know, throughout
9 the year, then we flagged it, and then we did some
10 additional research to see whether or not there was a
11 problem with it.

12 Q Did the research include looking at the comments on
13 Statements of Diversion and Use?

14 A No.

15 Q Why not?

16 A We didn't have the resources or the time to do that.

17 Q So if someone filled out a Statement of Diversion
18 and Use that explained that it was duplicative of another
19 statement --

20 A Uh-huh.

21 Q -- you would not have caught that?

22 A If the amount was the same under both statements, it
23 would have been flagged. But if it was a different amount,
24 but then -- I don't see how that fits into the definition of
25 being duplicative if it is a different amount. But only if

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1 the amounts were equal for every month throughout the year,
2 we would have flagged it and researched it. But if the
3 amounts were different at all, no.

4 Q Are you familiar with the Woods Irrigation Company
5 area on Roberts Island?

6 A I'm somewhat familiar with it, yes.

7 Q Did you make any effort to determine if there was
8 duplicative reporting for the Woods Irrigation Company area?

9 A Not specifically.

10 Q Why not?

11 A We don't treat anyone any different.

12 Q So, for example, when you pull up the eWRIMS map --

13 A Uh-huh.

14 Q -- did you make any effort to see if there were
15 multiple statements at the same point of diversion?

16 A No, we didn't flag that as anything unusual, no.

17 Q All right. I'm going to mark -- actually, before I
18 do.

19 Peer review. So you receive direction from
20 Mr. O'Hagan, you gave direction to Mr. Yeazell.

21 A Uh-huh.

22 Q Have we now exhausted all of the directions that you
23 gave to Mr. Yeazell about how to perform the water
24 availability analysis?

25 A Correct.

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1 Q Did you or anyone you worked with seek any peer
2 review of the water availability analysis to verify the
3 methodology?

4 MS. TEMPLE: Objection. Vague and ambiguous.

5 THE WITNESS: Once we prepared our supply and demand
6 analysis, Les Grober, I think, reviewed our analysis to
7 determine whether or not it was similar to what he was
8 seeing, but that was just on occasion. It wasn't a regular
9 thing.

10 Q When you say "similar to what he was seeing," what
11 does that mean?

12 A He deals predominantly with the Delta, so a
13 comparison of the reported eWRIMS demand for the Delta in
14 comparison to the net Delta consumptive use models that he
15 was using to see if the numbers matched or if they were
16 close.

17 Q So he performed that comparison?

18 A He didn't perform the comparison. We provided our
19 results to him, and then as to whether or not he commented
20 on them, I can't say.

21 Q So when you say you provided your results, what
22 exactly did you provide to him?

23 A We provided our supply and demand chart, which
24 summarized all of our numerical data.

25 Q Uh-huh. And then you understand that he conducted

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1 some comparison?

2 A Uh-huh.

3 Q What did he compare your chart to?

4 A Well, if in the case of the Sacramento with the
5 proportional Delta, in the actual analysis spreadsheet,
6 there is a reference to the actual total Delta demand. And
7 then taking that demand and doing a comparison with the net
8 Delta consumptive use to give an idea whether or not the
9 numbers were appropriate.

10 Q Who undertook that analysis?

11 A I don't recall exactly who.

12 Q It wasn't you?

13 A No.

14 Q Did you see the results of the analysis?

15 A I believe I looked at some of the numbers that were
16 generated from DWR, the projects and calculation of the net
17 Delta consumption use in comparison to our statement demands
18 and post-14 demands.

19 Q And what did you conclude based on that review?

20 A I didn't conclude anything. I just remember looking
21 at it.

22 Q Was there anything done with that comparison?

23 A I don't believe so, not on my part.

24 Q How did you get the net Delta consumption use
25 numbers from the DWR?

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1 A That's not something I do. That's something you
2 have to ask Les Grober.

3 Q Les Grober?

4 A I don't obtain that information.

5 Q All right. We're going to mark the deposition
6 notices as our next in order, which is going to be 6, 7, and
7 8, I believe.

8 I'm going to mark, as Exhibit 6, the notice from
9 Central Delta and South Delta.

10 (Whereupon, Exhibit No. 6 was
11 marked for identification.)

12 Q BY MS. SPALETTA: I'm going to mark, as Exhibit 7,
13 the one from West Side.

14 (Whereupon, Exhibit No. 7 was
15 marked for identification.)

16 Q BY MS. SPALETTA: We'll mark, as Exhibit 8, the
17 notice from Byron-Bethany Irrigation District.

18 I don't have lots of copies of these. I assume all
19 the attorneys in the room have them. I just marked the
20 wrong notices, didn't I? Did I mark Yeazell?

21 A Uh-huh.

22 Q Sorry. We are going to remark the ones for you.
23 That's what I get for being in charge of the paper.

24 MS. TEMPLE: What was Exhibit 5?

25 MS. SPALETTA: Exhibit 5 was the file list.

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1 MS. TEMPLE: Oh, okay.

2 MS. SPALETTA: Sorry about that.

3 Q BY MS. SPALETTA: I corrected my error, and we've
4 marked, as Exhibit 6, your deposition notice from Central
5 Delta and South Delta Water Agency.

6 A Okay.

7 Q Have you ever seen this notice before?

8 A As it was amended on November 12th, no.

9 Q Did you see the original one?

10 A I believe so.

11 Q Turning to page 3 of the notice.

12 A Okay.

13 Q Do you see the list of documents that were requested
14 for you to bring with you?

15 A Yes.

16 Q Okay. What did you do to comply with this request?

17 A All of the documents that are referenced on there,
18 if we have those prepared, they would have been supplied in
19 the PRA.

20 Q So who actually responded to the request to produce
21 these documents that were listed in your deposition notice?

22 A My attorneys.

23 Q Did you give the documents to your attorneys that
24 were responsive?

25 A Yes.

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1 Q So will you be able to identify those documents here
2 today that you gave them?

3 A Probably not. There were a lot of them.

4 Q Did you keep a list?

5 A No.

6 Q How long did it take you to compile these documents?

7 A I want to say about a week, looking through my hard
8 drive.

9 Q So if we gave you a break and let you peruse the
10 Public Records Act request, would you be able to identify
11 the documents that you compiled that were responsive to your
12 deposition notice?

13 A As they're not -- the file names aren't indicating
14 who actually produced them, whether myself or Jeff, I
15 couldn't affirmatively say yes or no.

16 Q So as you sit here today with the information you
17 have available to you, are you able to identify for us the
18 documents that illustrate, for example, the number 3, the
19 documents related to the analysis of which sources of supply
20 to include in the water availability analysis for 2015?

21 A Not specific ones, no.

22 Q Let's look at Exhibit 7 -- actually, I take that
23 back. Let's look at Exhibit 8. This is the deposition
24 notice of BBID.

25 (Whereupon, Exhibit No. 8 was

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1 marked for identification.)

2 THE WITNESS: Uh-huh.

3 Q BY MS. SPALETTA: Did you see this document before?

4 A The original one, I believe, if this is the same
5 one.

6 Q And then you see that there is an Attachment A which
7 lists the documents to be produced?

8 A Correct.

9 Q And what did you do to comply with this request for
10 production?

11 A All documents that we had in preparation for this
12 were supplied in the PRA.

13 Q And did you personally look at each of these items
14 and compile the documents that you had?

15 A In response to this, everything that I had prepared
16 up to this point complied with that.

17 Q So there were no additional documents?

18 A No.

19 Q So, for example, for number 1 --

20 A Uh-huh.

21 Q -- where it asks for documents relating to the State
22 Water Resources Control Board's determination of the water
23 availability --

24 A Uh-huh.

25 Q -- in the Sacramento and San Joaquin River

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1 Watersheds and the Delta for 2015 --

2 A Right.

3 Q -- you compiled documents responsive to that
4 request?

5 A Myself or my staff if they were duplicated, yes.

6 Q Who is your staff?

7 A Jeff Yeazell.

8 Q And, as we sit here today, are you going to be able
9 to identify what documents were produced in response to that
10 request?

11 A Among the list, no.

12 Q Did you do any preparation to prepare for your
13 deposition today?

14 A No.

15 Q Nothing?

16 A Aside from making sure that all of the information
17 that I had on file was supplied to the PRA.

18 Q Did you make an effort to identify which spreadsheet
19 or graphs related to the water availability analysis for
20 West Side or BBID's enforcement action in preparation for
21 your deposition today?

22 A No.

23 Q We are going to, at this point, need to lodge an
24 objection for the record. We had a discussion with counsel,
25 Mr. Tauriainen, over his objections to the deposition and

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1 the desire to have a time limit. And our discussion focused
2 on the fact that we were having difficulty locating the
3 specific spreadsheets and analyses that the State Board
4 relied on to support the enforcement actions. So we've
5 requested that he work with the witnesses to identify the
6 spreadsheet that was relied on for the enforcement actions
7 that were previously issued. Those were issued during
8 July 2015, so this would have been work that was already
9 completed.

10 A Uh-huh.

11 Q And because you are coming to the deposition unable
12 to identify and locate that specific spreadsheet --

13 A Uh-huh.

14 Q -- we are prejudiced and unable to ask you questions
15 about that analysis and those graphs. So we are getting
16 ready to go into a lunch break here in a few minutes, and
17 I'm going to reiterate our request to Mr. Tauriainen that he
18 work with you over the lunch break to identify the
19 spreadsheets and graphs that support the water availability
20 analysis that underlies the West Side and BBID enforcement
21 proceeding so that we can actually ask you questions about
22 that analysis and that we don't waste any more time during
23 the deposition.

24 MS. TEMPLE: Your objection is noted; however, the
25 time that's been wasted so far is also the witness's time.

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1 You know there was a schedule in this case for the witness
2 statement to be prepared, and he's in the process of putting
3 that together from the many, many, many volumes of files
4 that his office has. And he had no obligation to come here
5 in advance of that outside of the records set by the Hearing
6 Officer or the schedule set by the Hearing Officer to come
7 prepared with any particular spreadsheets, so we're not
8 going to spend the lunch hour going through the PRA
9 requests, finding spreadsheets so that he can identify them
10 for you before the deposition commences again. If you want
11 to seek relief from the Hearing Officer, you're free to do
12 so.

13 MS. SPALETTA: Actually, I think the relief that
14 will probably be sought is the due process violation for
15 Constitutional protections in a trial court.

16 MS. TEMPLE: There are no due process of violations
17 here.

18 MS. SPALETTA: Because what due process requires is
19 that when someone is subject to an enforcement proceeding,
20 they have the ability to understand the action against them.

21 MS. TEMPLE: Right. And you had the opportunity to
22 notice the deposition for after the witness statement was
23 served, but you didn't want to wait. And the Hearing
24 Officer said that she would not necessarily allow people to
25 be deposed twice. You chose to proceed now before he had a

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1 chance to put the statement together.

2 MS. SPALETTA: To the extent that Mr. Coats --

3 MS. TEMPLE: You will have your opportunity to
4 examine him. You will have a full witness statement with
5 exhibits.

6 MS. SPALETTA: Counsel, I would respectfully request
7 that when I am speaking, you don't interrupt me.

8 MS. TEMPLE: I am not interrupting you.

9 MS. SPALETTA: I will give you -- I will give you
10 the same courtesy. What I am saying is that Mr. Coats
11 performed an analysis. He has testified that he performed a
12 specific analysis that was underlying the enforcement
13 actions that were served on West Side and BBID in July of
14 2015.

15 He has been unable, as we sit here at this table, to
16 identify where that analysis is, so I am unable to ask him
17 questions about his past work. If he chooses, at the
18 direction of the Prosecution Team, to change his work
19 between now and the time of the hearing, we will deal with
20 it at that time. I think that would be unwise.

21 However, as we sit here today, I want to ask him
22 about the work that he already did which is memorialized in
23 a specific spreadsheet that we asked to be brought to this
24 deposition. Nothing more, nothing less.

25 MS. TEMPLE: Are you finished?

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1 MS. SPALETTA: I am.

2 MS. TEMPLE: He has testified that he did not create
3 those spreadsheets, he directed his staff to. You're
4 deposing that witness tomorrow. So to the extent you have
5 very specific questions about what spreadsheet relates to
6 the analysis, you have that witness tomorrow.

7 MS. SPALETTA: Do I have a commitment from you that
8 we will have that spreadsheet identified and available to
9 start with that witness first thing tomorrow morning?

10 MS. TEMPLE: You will be able to ask the witness to
11 identify it from the production, just as you had the
12 opportunity to do so with Mr. Coats today.

13 MS. SPALETTA: And if we get the same response from
14 that witness that we got from Mr. Coats, where do we go from
15 there?

16 MS. TEMPLE: I guess you'll have to seek relief from
17 the Hearing Officer.

18 MS. SPALETTA: Okay. Is there anything, Mr. Kelly,
19 that you would like to add to this line of discussion?

20 MR. KELLY: I'll do that during my questioning this
21 afternoon, thank you.

22 MS. SPALETTA: Okay. I will take the lunch break
23 then now, actually, because I want to go through my notes
24 and not waste your time waiting for me, and I will probably
25 wrap up after lunch, then I'll turn the questioning over to

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1 Mr. Kelly. I want to thank you for your time.

2 THE WITNESS: Uh-huh.

3 MS. TEMPLE: Before we go off the record,
4 Mr. Tauriainen wants to make a statement.

5 MR. TAURIAINEN: I have the thumb drive that I
6 indicated yesterday has our third PRE disclosure on it, and
7 I offer it to whomever would like to copy it now, otherwise
8 it will be available for copying at the State Board's
9 headquarters in the Records Unit beginning probably this
10 afternoon, although let me confirm that with the Records
11 Unit during the lunch hour. Would anyone like it now?

12 MR. KELLY: Yeah. Let me ask you, how about if I
13 have it copied here over the lunch break and then I just
14 return it to you?

15 MR. TAURIAINEN: That would be perfect, yeah.

16 MR. KELLY: So I'll take it, and then I'll take care
17 of distributing copies to the folks here.

18 (A luncheon recess was taken.)

19 MS. SPALETTA: We can go back on the record.

20 MS. TEMPLE: Prior to the break, Ms. Spaletta had
21 made a statement about being unable to question Mr. Coats as
22 to his work, and that if his work changed or his testimony
23 about his work changed between now and the time of the
24 hearing, that there would be a problem.

25 And we want to clarify for the record that you're

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1 more than able to ask him questions about his work today,
2 and he's been more than able to answer your questions. He's
3 testified that he didn't create spreadsheets, that your
4 witness tomorrow will be able to answer those questions.

5 But we need to make it clear that his witness
6 statement is not complete. He's in the process of working
7 on it, and to the extent that it contains something that you
8 didn't ask him about because you didn't know to ask him
9 about it at this deposition is not going to be a due process
10 violation.

11 MS. SPALETTA: Your statement is noted. We'll keep
12 track of how much time it took. I don't agree with it, but
13 we're here to take a deposition, so let's move on.

14 Q BY MS. SPALETTA: Okay. You talked to me about a
15 QAQC process for the eWRIMS data?

16 A Correct.

17 Q When did that process start?

18 A Sometime in 2014.

19 Q And has it evolved over time?

20 A Yes.

21 Q What did it start as and how has it evolved?

22 A It started out as a raw data sets dump from 2014.
23 In 2014, we removed certain duplicative recording errors,
24 obvious direct diversion power issues that wouldn't apply to
25 consumptive use.

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1 In 2015, we received some comments from MBK
2 Engineers, specifically in reference to the Sacramento side
3 of the system, as to what additional refinements should be
4 made.

5 Q Did you accept all of MBK's comments?

6 A No.

7 Q Why not?

8 A There were some particular issues with removal that
9 we didn't feel supportive of.

10 Q Which ones?

11 A I don't recall exactly which ones, but there were
12 some issues with reported use under certain rights that were
13 not strictly non-consumptive. There was a consumptive
14 purpose of use mixed in with the other uses.

15 Q So I don't have that MBK letter handy. Maybe we'll
16 mark it later today. But did you take part in reviewing MBK
17 comments and then making decisions about how to adjust the
18 eWRIMS data?

19 A Yes.

20 Q Were you in charge of it or was someone else in
21 charge of that effort?

22 A I think the ultimate person in charge of that effort
23 would have been John O'Hagan, but after meeting with MBK, if
24 he agreed with some of their comments, then he instructed us
25 to make certain removals or additions.

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1 Q Did you make any of those decisions on your own?

2 A No.

3 Q All right. Was there any QAQC process for the WDR
4 full natural flow information?

5 MS. TEMPLE: Objection. Calls for speculation.

6 To the extent you can answer, go ahead.

7 THE WITNESS: We made adjustments to the full
8 natural flow estimates based on the Delta return flows that
9 we posted to our supply and demand analysis. Not so much
10 adjusting DWR's calculations, but adding to it based on our
11 own integration of the return flows in the Delta.

12 Q BY MS. SPALETTA: Was there any effort to do QAQC on
13 DWR's full natural flow numbers?

14 A No.

15 MS. TEMPLE: Objection. Calls for speculation.

16 Q BY MS. SPALETTA: Why not?

17 A We don't have the expertise to evaluate DWR's
18 calculations.

19 Q Did you seek that kind of expertise outside of the
20 State Water Resources Control Board?

21 MS. TEMPLE: Objection. Vague.

22 THE WITNESS: No.

23 Q BY MS. SPALETTA: Why not?

24 A I don't have an answer to that.

25 Q Did your analysis of supply and demand include any

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1 review of CDP or DWR operations data?

2 MS. TEMPLE: Objection. Compound.

3 THE WITNESS: Can you separate the questions?

4 Q BY MS. SPALETTA: Sure. You have said you were in
5 charge of water availability analysis for 2014 and 2015, and
6 I am asking you if that work involved any review of Central
7 Valley Project or Department of Water Resources operations
8 data?

9 MS. TEMPLE: Objection. Compound.

10 THE WITNESS: We reviewed the amount of releases
11 they were making, but not -- we didn't incorporate that into
12 our supply analysis at all.

13 Q BY MS. SPALETTA: Did you look at their daily
14 outflow calculations?

15 MS. TEMPLE: Objection. Vague.

16 THE WITNESS: We used the measured outflow in 2014
17 as a chartable data set. We did not use that in 2015.

18 Q BY MS. SPALETTA: Why not?

19 A No reason for that. It wasn't a full natural flow
20 source. No reason for that.

21 Q Well, who made the decision to use it in 2014?

22 A Upper management.

23 Q Was that Mr. O'Hagan?

24 A Mr. O'Hagan, yes.

25 Q And who made the decision not to use it in 2015?

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1 A There wasn't any reason to use it in 2015 up to the
2 curtailment dates. In 2014, I believe we added the measured
3 outflow after curtailments had been issued. For 2015, we
4 just never added it in.

5 Q And who made that decision?

6 A It wasn't really a decision. We just never got
7 around to doing it.

8 Q Did you feel it was not important?

9 A We were just busy with a lot of other stuff.

10 Q Are you aware of the different computer models that
11 the Department of Water Resources utilizes for management of
12 the State Water Project?

13 A I'm not familiar with them, no.

14 Q Was any effort made by you or your staff to utilize
15 those computer models to assist you with the water
16 availability analysis?

17 A No.

18 Q Why not?

19 A We didn't have the expertise to evaluate DWR's work
20 on the computer models.

21 Q Was there any effort made to work with DWR to
22 utilize those models?

23 A We began evaluating whether we could integrate DWR's
24 model with our U.C. Davis curtailment model development, but
25 that's the extent. But no curtailment decisions were made

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1 or was used in our supply/demand analysis.

2 Q You have explained to me that the supply side of the
3 water availability analysis utilized full natural flow, the
4 unimpaired flow data, and the return flow data?

5 A Uh-huh.

6 Q Was there any analysis of actual flows near the West
7 Side Irrigation District point of diversion?

8 A There was an analysis of -- on West Side?

9 Q Yes.

10 A I do not believe so, no.

11 Q Was there any analysis of the actual flows near the
12 BBID point of diversion?

13 A We did that separate analysis that I referred to
14 with the -- charting the Vernalis flow in response to the
15 prorated portion of Delta demand.

16 Q Explain that to me again, I don't remember that.

17 A Okay. So we basically charted the Vernalis -- the
18 actual measured flow at Vernalis during the June 13th
19 through June 25th time period and compared that to the
20 prorated portion of Delta demand that was allocated to each
21 system and produced a graph and reported it.

22 Q Where is that graph?

23 A It's one of the exhibits. I don't know which one.

24 Q Do you know what the name of that graph is?

25 A I don't know the name of it, no. You can look by

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1 file date.

2 Q What file date would I look for?

3 A Sometime, I think, in July.

4 Q And is that specific to the BBID matter?

5 A Yes.

6 Q Did you or your staff identify the senior rights
7 downstream of West Side Irrigation District?

8 MS. TEMPLE: Objection. Vague.

9 THE WITNESS: Not specifically, no.

10 Q BY MS. SPALETTA: What was the purpose of the
11 curtailment on May 1st?

12 A The May 1st curtailment was to notify anyone with
13 post-1914 rights that there was a water unavailable for
14 their diversion.

15 Q Why did the State Board want to do that? What was
16 the overarching purpose of telling someone there was no
17 water available?

18 MS. TEMPLE: Objection. Calls for speculation.

19 Go ahead, to the extent you can answer.

20 THE WITNESS: To provide farmers with an idea that,
21 based on our analysis, there wasn't enough water to service
22 any potential crops that they might be using the water for
23 and to give them a heads-up.

24 Q BY MS. SPALETTA: And why was the State Board taking
25 it upon themselves to do that?

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1 MS. TEMPLE: Objection. Calls for speculation.

2 You can answer.

3 THE WITNESS: We were -- I was directed by upper
4 management.

5 Q BY MS. SPALETTA: You don't have an understanding of
6 why that was done?

7 A No.

8 Q Is there a specific definition of water availability
9 that you are operating under?

10 A No.

11 Q No?

12 A Not a specific definition, no.

13 Q There's no written definition?

14 A No.

15 Q What do you understand water availability to mean in
16 the context of the work that you did?

17 A For our supply and demand analysis work, we compare
18 the available full natural flow supply for a particular
19 watershed against the known demands and make a determination
20 based off of those known demands whether there is enough
21 water to service their needs.

22 Q And where does your understanding that you just
23 described to me come from?

24 A Practical knowledge over the past two years.

25 Q Is it anything more than just what you've been

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1 directed to do by your supervisors?

2 A No.

3 Q Was there any water quality analysis that was used
4 as part of the water availability determinations?

5 A No.

6 Q For the demand data that was utilized, you testified
7 that the demand data came from eWRIMS --

8 A Uh-huh.

9 Q -- with certain modifications?

10 A Correct.

11 Q Which year's demand data was used for the 2014 water
12 availability?

13 A For the 2014 water availability, we used a
14 combination. For the Sacramento Watershed, we used the 2010
15 and 2012 data set.

16 For the San Joaquin and the Scott River and the Eel
17 River, we used the 2010 data set.

18 Q And how about for the 2015 analysis?

19 A For the 2015 analysis, we used a little bit
20 different demand data set. We used the years 2010 to 2014.
21 Basically averaging out whatever years were reported to us
22 for those -- for that four-year respective time period
23 averaging an amount. For the recipients of the
24 February 2015 informational order, we used whatever 2014
25 demand they reported to us as a basis, and then we took into

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1 account the 2015 projections off of the informational order.

2 Q Who made the decision to use the data you just
3 described?

4 A The four-year average data was instructed by upper
5 management, John O'Hagan. The informational order use was,
6 again, from upper management.

7 Q O'Hagan?

8 A Yes.

9 Q Now at the end of that explanation you said that the
10 2015 projected demand influenced the decision?

11 A Uh-huh.

12 Q How did it influence the decision?

13 A For release of curtailments.

14 Q I don't understand your answer. Can you explain it?

15 A Okay. So for the monthly informational order -- as
16 part of the February informational order is a requirement
17 that they submit their 2015 actual demands on a monthly
18 basis due to the 5th or the 6th of every month.

19 When we started after we had initiated curtailments
20 in April, May, and June, we began compiling the data in the
21 summer around July or August. With that data, we were able
22 to determine, while there was some additional increased
23 demands in the spring and summer months, that there were
24 forecasted reduced demands in the fall. And based on actual
25 reported demands, we were able to project out a reduced

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1 demand based on what was reported the prior month or months,
2 one or two months, what the forecasted demand would be going
3 forward. And then using that reduced demand along with the
4 daily FNF supply trends, make a decision as to whether who
5 should be released from curtailment.

6 Q If I remember correctly, the information order
7 sought not only actual 2014 diversions but also projected
8 2015 diversions?

9 A Correct.

10 Q Were the projected 2015 diversions used at all in
11 the water availability analysis?

12 A There was a -- when we received the data set in
13 March for the 2015 projections, there was a reduction of an
14 additional four percent relative to 2014. We didn't feel
15 that was significant enough to warrant using that.

16 And looking hindsight, the additional increased
17 demands in the late spring would not have been a good use of
18 that data.

19 So since the difference was only four percent
20 relative to 2014, we elected to use the actual 2014 data or
21 the four-year average for those now subject to the
22 informational order.

23 Q I'm going to ask a series of questions now about the
24 priority for each of the demands.

25 A Uh-huh.

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1 Q And all of these questions are going to relate to
2 what was done for what you've described as the Sacramento
3 and prorated Delta water availability analysis --

4 A Okay.

5 Q -- applicable to West Side and BBID.

6 A Okay.

7 Q How did you treat demands where the claimant had
8 claimed both a riparian and pre-1914 right?

9 A For those claimants in the Delta that had both a
10 riparian and pre-1914 claim, at the recommendation of you
11 and some other stakeholders, we elected to assign all of
12 that demand to riparian.

13 And then for the other areas within the Sacramento
14 River Watershed outside of the Delta, if they had reported
15 both, there was usually an indication of how much they were
16 going to use in their informational order submittal for each
17 particular claim, and then we used that.

18 Q And how did you treat -- let me ask you first.

19 A Uh-huh.

20 Q Did priority date for the pre-1914 or riparian
21 rights play into your analysis?

22 A Yes.

23 MS. TEMPLE: Objection. Vague.

24 Q BY MS. SPALETTA: How did it impact your analysis?

25 A For the priority dates for the pre-1914s, we used

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1 that along with their reported demand to determine, based on
2 the comparison of the supply, who should be curtailed.

3 Q Did you utilize priority date at all for the
4 riparian claims?

5 A No.

6 Q So that was some of the information requested in the
7 information order --

8 A Correct.

9 Q -- I believe -- and I should clarify the question
10 for the record.

11 A Uh-huh.

12 Q The information order requested priority date for
13 the riparian right claimants?

14 A Right.

15 Q Was that information used at all as part of the
16 water availability analysis for 2015?

17 A No.

18 Q Was it used as part of the curtailment process for
19 2015?

20 A Yes.

21 Q How was it used?

22 A We, due to staffing considerations, had one of our
23 staff evaluate the 1,060 submittals to our email account for
24 accurateness and completeness, but just to determine whether
25 or not they had submitted something that would be sufficient

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1 to evaluate. And right now we are still evaluating the
2 efficacy, I guess you could say, of the data that was
3 submitted.

4 Q So the review is continuing, but that specific
5 information did not play into the specific curtailment
6 decision, for example, on May 1st?

7 A Correct.

8 Q Or on June 12th?

9 A Correct.

10 Q We are going to mark Exhibit No. 9.

11 (Whereupon, Exhibit No. 9 was
12 marked for identification.)

13 Q BY MS. SPALETTA: I've marked, as Exhibit No. 9, a
14 map of the Sacramento River Watershed --

15 A Uh-huh.

16 Q -- that was produced by the State Water Resources
17 Control Board, with a date on the bottom of April 14th,
18 2015.

19 Do you recognize this map?

20 A Yes. It's a map that my staff prepared.

21 Q And what does it represent?

22 A The location of all of the points of diversions for
23 riparian, pre-14, and post-1914 rights with the combined
24 Sacramento and Delta Watershed.

25 Q And so does this represent the geographic area that

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1 was the scope of your water availability analysis applicable
2 to West Side and Byron-Bethany?

3 A I'm not sure. I'd have to verify the -- I'd have to
4 actually review my files to verify that, but it looks as if
5 it is.

6 Q Who made the decision on the scope of this
7 geographic area?

8 MS. TEMPLE: Objection. Vague.

9 THE WITNESS: John O'Hagan.

10 Q BY MS. SPALETTA: Did you have any input on that
11 decision?

12 A No.

13 Q Did you have any input on the scope of the
14 geographic area for any of the water availability analyses
15 in 2015?

16 A For some of the tributary level watershed boundaries
17 within the San Joaquin Watershed, yes, and also the
18 Sacramento for that report.

19 Q What do you mean by "tributary boundaries"?

20 A The tributary level boundaries that are within these
21 global boundaries that are individual watersheds, such as
22 the Stanislaus, the Tuolumne, Merced, Feather, American
23 River.

24 Q Why were you looking at those tributary boundaries?

25 A For senior-level evaluation.

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1 Q What does that mean?

2 A For senior-level right evaluation for pre-14s.

3 Q I don't understand that. What were you going to do
4 with the information?

5 MS. TEMPLE: Objection. Vague.

6 Q BY MS. SPALETTA: Or what did you do with the
7 information?

8 MS. TEMPLE: Objection. Vague.

9 THE WITNESS: Based on a tributary level analysis
10 for more senior rights due to the limited supply available
11 in all of the tributaries, since they only have access to
12 that particular stream system, we limited the supply to
13 those localized boundaries as well as the demands.

14 Q BY MS. SPALETTA: Did that have any impact on the
15 Sac Basin and Prorated Delta Water Availability Analysis?

16 A Can you expand or rephrase that?

17 Q Sure. I think you've described to me a process
18 where you looked tributary specific at supply and demand?

19 A Yes.

20 Q And I'm asking if that process where you looked
21 tributary specific --

22 A Uh-huh.

23 Q -- had any impact on the water availability analysis
24 for the Sacramento and prorated Delta?

25 A Yes.

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1 Q What impact did it have?

2 A For the Sacramento analysis for releasing
3 curtailment, which was done after the summer, we used that
4 to determine if there was enough supply available in
5 tributary levels such as the Yuba and the American River.
6 There wasn't enough supply to service the demands on that
7 stream system. We removed that supply and demand from the
8 global Sacramento prorated Delta analysis.

9 Q So that was a process that occurred to decide
10 whether to lift curtailment?

11 A Correct.

12 Q So let's go to the front end of the process, which
13 is when you decided to impose curtailment.

14 A Uh-huh.

15 Q Was that tributary analysis performed on the front
16 end?

17 A No.

18 Q Why not?

19 A For the reasons that we initiate curtailments, we
20 were looking strictly at the post-14s initially, and then we
21 evaluated it as the same we had in 2014 on a global basis.

22 And then as we got into more senior-level
23 curtailments starting in June, we realized that the
24 downstream demands from the senior rights wouldn't
25 necessarily -- that the people on the upstream tributaries

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1 wouldn't necessarily have -- if there wasn't enough supply
2 on those upstream tributaries to even get to the confluence
3 with another stream system that could service those needs,
4 there was no reason to put them in.

5 Q So if I could simplify what you've explained?

6 A Uh-huh.

7 Q Does that mean that, for example, on the Yuba --

8 A Uh-huh.

9 Q -- if the supply was 100 and the demand was 120,
10 then it wouldn't make sense to include the Yuba in the
11 watershed analysis because there wasn't even enough supply
12 to meet the demands on the trib?

13 A In the global watershed boundary, correct.

14 Q So when you made the decision, for example, on
15 June 12th to curtail BBID --

16 A Uh-huh.

17 Q -- had any effort been made to go back and check on
18 the tribs as to whether that was the case?

19 MS. TEMPLE: Objection. Vague and ambiguous.

20 THE WITNESS: No.

21 Q BY MS. SPALETTA: We are going to go ahead now and
22 look at the documents that we got in the Public Records Act
23 request.

24 I know you haven't been able to identify the
25 spreadsheets specifically so far in your deposition, I'm

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1 hoping that we can show you a couple and at least narrow
2 down what we're looking at.

3 A Do you have access to the internet?

4 Q We do, yes.

5 A Okay. The spreadsheet should be on the internet.
6 That's the master spreadsheet that all of our graphs are
7 based on. And I think there's some confusion here as to
8 what that spreadsheet is. The spreadsheet is a work in
9 progress, and it reflects all of the demands and supplies
10 that are continuously updated over the summer. That's the
11 latest iteration. That's the master file. From there, you
12 can re-create any of the past supply and demand charts.

13 Q So if I'm understanding your testimony correctly,
14 the demand information that is in the spreadsheet on the
15 website right now would be the exact same demand information
16 that was used for the spreadsheet that supported the May 1st
17 curtailment, for example?

18 A It should be, yes.

19 Q And it would be the exact same demand information
20 that supported the June 12th curtailment?

21 A Yes.

22 MS. TEMPLE: For the record, why don't we get out a
23 printout and mark it, and that way there is no confusion as
24 to what we're talking about.

25 MS. SPALETTA: If we were to try to print the

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1 spreadsheet --

2 MS. TEMPLE: Not the spreadsheet, but the page from
3 the internet with the link to the spreadsheet.

4 Q BY MS. SPALETTA: Okay. So let's go to -- direct
5 us. We have the website up on --

6 A Okay. You're on -- go back. Go to the drought
7 website. "Water Availability" tab. Go down to -- that one
8 right there, good.

9 MR. KELLY: So the record is clear, can you just
10 describe what web page that is and where we're going?

11 THE WITNESS: Okay.

12 MR. KELLY: Can we go back to the drought page and
13 start from there?

14 THE WITNESS: Okay.

15 MR. KELLY: Thank you.

16 MS. TEMPLE: Can you guys print a print version of
17 this?

18 MR. KELLY: So I can -- so here's what I'm going to
19 do. Can we go off the record for a second?

20 (Off-the-record discussion.)

21 (Whereupon, Exhibit No. 12 was
22 marked for identification.)

23 Q BY MS. SPALETTA: Back on the record. We took a
24 break so that we could navigate the State Water Resources
25 Control Board website, and we have printed from the website

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1 a series of screen shots that we marked as Exhibit 13 -- or
2 12? 12. Exhibit 12.

3 So, Mr. Coats, if you could look at those, it is
4 three pages of screen shots. Can you tell us how we would
5 get to the relevant spreadsheet that you were describing on
6 the State Board website?

7 A Okay. So off the waterboard.ca.gov main web page,
8 you're going to want to click on the "Drought" icon on the
9 very bottom which directs you to the first page of
10 Exhibit 12 which has the title "State Water Board Water
11 Actions."

12 On the fourth tab, there's a tab titled "Water
13 Availability." If you could go ahead and click that. That
14 brings you to -- or you just mouse over it, and that brings
15 up another list of available links. You go ahead and click
16 the "Preliminary Supply and Demand Analysis Graphs for the
17 2015 Water Year" link. Once you click that, it brings you
18 to the Watershed Analysis web page.

19 The master database that we have posted with all the
20 embedded calculations is the fourth link under the 2015
21 Water Available Analysis section titled "2015 Water
22 Informational Order Demand Data Sets."

23 Q Does that spreadsheet include only the demand data
24 that was used in the water availability analysis?

25 A You'd have to ask Jeff Yeazell for an answer to that

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1 question.

2 Q Okay. So we have pulled up on the screen --

3 A Uh-huh.

4 Q -- the file that you have identified as the 2015
5 information order demand data set with embedded
6 calculations.

7 A Uh-huh.

8 Q 41.53 megabytes, updated June 15th, 2015.

9 A Okay.

10 MR. KELLY: And, for the record, on the spreadsheet,
11 the name of the spreadsheet is "info_order_demand.xlsx.

12 THE WITNESS: Okay.

13 Q BY MS. SPALETTA: Okay. Who prepared this
14 spreadsheet?

15 A Jeff Yeazell.

16 Q Did you review the spreadsheet?

17 A I reviewed the supply and demand charts that were
18 made using data from the spreadsheet.

19 Q So have you ever gone through and looked at each
20 sheet in this spreadsheet workbook?

21 A Not line by line, no.

22 Q So can you tell us what's represented on each sheet
23 of the workbook?

24 A I can read, but there's the application number on
25 the first column.

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1 Q Well, let's make sure the record is clear. There is
2 an Excel workbook that contains multiple sheets. The first
3 sheet has a name of "WRUDS2015-06-15."

4 A Okay.

5 Q What information is contained in that sheet?

6 A You have to ask Jeff Yeazell for the specifics, but
7 the impression is it is the water right user demands data
8 set.

9 Q So can we scroll all the way over and look at the
10 different columns? Do you know how all the information in
11 the various columns on this first sheet were populated?

12 A From our eWRIMS data set.

13 Q Scroll over a little more. We're now looking at
14 Columns G, H, I, and J, which are entitled "Area, Hydrologic
15 Unit, Add_HU, HUC_12."

16 Did this information also come from eWRIMS?

17 A Yes.

18 Q Scroll over a little more. Now we are looking at
19 Columns L through W. Did all of this information come from
20 eWRIMS?

21 A I can't answer to that. You'd have to ask Jeff
22 Yeazell.

23 Q Okay. Scroll over a little more. Now we're looking
24 at Columns W through AE. Did this information come from
25 eWRIMS?

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1 A I do not believe so, no.

2 Q Do you know what's represented in these columns?

3 A Not affirmatively, no.

4 Q Scroll over some more. Now we have columns AF
5 through AQ. Do you know what's represented in these
6 columns?

7 A This appears to be the demand for 2010 by month for
8 each of the water rights.

9 Q From eWRIMS?

10 A Yes.

11 MS. TEMPLE: Don't speculate, though, if you don't
12 know since you didn't create this spreadsheet.

13 THE WITNESS: I don't know specifically.

14 Q BY MS. SPALETTA: Okay. Let's scroll all the way
15 over to the end of the column on the spreadsheet. Okay.
16 Stop there. We have some purple columns. We're looking at
17 EW through FJ. Do you know what the information here
18 represents?

19 A No.

20 Q Now if we could scroll over to the next sheet, which
21 is labeled "Delta Senior Combined 20150615." Do you know
22 what this information represents?

23 A No.

24 Q And then let's scroll all the way over to the last
25 sheet in the workbook that's entitled "Manuals Additions to

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1 WRUDS Table." Do you know what that sheet represents?

2 A No.

3 Q Let's close out this spreadsheet, please.

4 All right. Now we're back on the screen to the
5 watershed analysis page from the State Board website. And
6 you previously indicated that we should be looking at the
7 Sacramento River with Prorated Delta Demand. And underneath
8 that heading there is a Supporting Analysis Spreadsheet.

9 Do you see that?

10 A Yes.

11 Q Is that the spreadsheet you were referring us to?

12 A I'm not certain.

13 Q Let's go ahead and open that up and look at it.

14 MS. TEMPLE: And, for the record, you found that
15 link on page 3 of Exhibit 12, correct?

16 MS. SPALETTA: Correct.

17 Q BY MS. SPALETTA: Okay. We have opened up the Excel
18 workbook, and it's a multi-sheet workbook. The current
19 highlighted sheet is entitled --

20 MR. KELLY: For the record, the name of the file is
21 "sacprorated.xlsx."

22 Q BY MS. SPALETTA: And the highlighted sheet is
23 entitled "Chart." And there's a chart on the screen.

24 Do you recognize this chart?

25 A I recognize the chart.

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1 Q Okay. What is it?

2 A It is a 2015 Sacramento River Basin Supply and
3 Demand Analysis with Proportional Delta Demand, and it
4 appears to be through mid-October.

5 (Whereupon, Exhibit No. 11 was
6 marked for identification.)

7 Q BY MS. SPALETTA: I previously marked an Exhibit 11.
8 Can you look at that and tell me if that is the same chart?

9 A I can't answer that because I don't see a date on
10 the bottom of that chart. There's a date on this chart
11 that's not the same.

12 Q Does the chart look the same?

13 A There's a solid line in the middle, so it is
14 different. It looks like the Projected Post-14 Demand. The
15 one that I have as Exhibit 11 is hashed. The one in the
16 middle there is different.

17 Q Any other differences?

18 A I haven't really had time to review it. It looks as
19 if there are some labels that are different as well.

20 Q So should we go ahead and print then this version
21 from the website?

22 A I don't care what you do.

23 Q We're having some technical difficulties, so while
24 they work that out, let's have you look at what was marked
25 as Exhibit 10, which is another chart.

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1 (Whereupon, Exhibit No. 10 was
2 marked for identification.)

3 THE WITNESS: Okay.

4 Q BY MS. SPALETTA: This chart was part of the Public
5 Records Act request protection by the State Board.

6 A Uh-huh.

7 Q It is entitled "2015 Sacramento River Basin Supply
8 and Demand," and it has a footer dated April 29th, 2015.

9 Do you recognize the chart?

10 A Yes.

11 Q And what is it?

12 A It is the supply and demand analysis for the
13 Sacramento Watershed.

14 Q Is this the analysis that was used to support the
15 May 1st curtailment for West Side Irrigation District?

16 A Yes, it appears to be.

17 Q Okay. So was there a spreadsheet that supported the
18 information in this chart?

19 A There was, but it likely had been overwritten on the
20 website.

21 Q And is the spreadsheet that you just referred us to
22 on the website that was located under the Sacramento and
23 Delta Prorated Analysis the overwritten version?

24 A I don't know.

25 Q Who would know that?

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1 A You'd have to ask our web support staff. They'd
2 have to look at a file date.

3 Q So --

4 A There's no file date listed on that.

5 Q -- as you sit here today, are you confident that the
6 spreadsheet that's on the website, that we had pulled up on
7 the screen entitled "sacprorated.xlsx" has all of the
8 information in it that was used to support the curtailment
9 decision on May 1st?

10 MS. TEMPLE: Objection. Calls for speculation.

11 THE WITNESS: I can't answer that. You'd have to
12 ask Jeff Yeazell.

13 Q BY MS. SPALETTA: Well, since we don't know from you
14 and this is the only one we've been able to identify, we're
15 going to go ahead and walk through this spreadsheet with you
16 to a certain extent.

17 So let's go ahead and start with the first sheet in
18 this spreadsheet. If we could start with the first sheet in
19 this spreadsheet which is entitled "WRUDS2015-0828."

20 Do you recognize this information?

21 A The columns displayed appear to be a download from
22 eWRIMS.

23 Q Okay. And let's go to the next sheet, which says
24 "Remove Demand." Do you know what this information is?

25 A You'd have to ask Jeff Yeazell.

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1 Q Okay. Let's scroll over to -- I skipped the first
2 sheet, did I? I didn't see it. It says "Notes." Let's
3 look at that one, "Notes." Do you know what these notes
4 are?

5 A They are notes prepared by my staff, Jeff Yeazell.

6 Q Do you know what they refer to?

7 A I could read what they are, but as far as where they
8 are applicable in the spreadsheet, you'd have to ask him.

9 Q Okay. So let's scroll over then to the fifth sheet
10 over that's entitled "Riparian Demand Pivot." Do you know
11 what this spreadsheet represents?

12 A No.

13 Q And the next spreadsheet is entitled "Delta Pre-14
14 Pivot." Do you know what that spreadsheet represents?

15 A No.

16 MS. TEMPLE: Counsel, for the record, I think you
17 know you have a witness tomorrow that created this
18 spreadsheet. So to the extent we're anticipating making
19 arguments about not having enough time with this witness,
20 you're wasting an awful lot of time asking about something
21 he didn't create.

22 MR. KELLY: So I'm going to -- for the record, we
23 conferred with Mr. Tauriainen several weeks ago in the
24 ordering of depositions and the timing for depositions, and
25 we were informed very clearly that Mr. Coats was the primary

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1 witness that will be available to address all these
2 questions and that we wouldn't need much time for
3 Mr. Yeazell. I won't say on the record how Mr. Yeazell was
4 referred to, but he was not the guy that was going to give
5 us all the information on these spreadsheets, so this is all
6 very new to us, so you're going to have to give us a little
7 bit of time to go through it with Mr. Coats because he was
8 the witness identified as the one who knew about these
9 spreadsheets.

10 MS. TEMPLE: No. He was not identified as the one
11 who knew about the spreadsheets, sir. He was identified as
12 the person who understood the analysis who could --

13 MR. KELLY: Counsel --

14 MS. TEMPLE: You're interrupting me now.

15 MR. KELLY: Yes, I am. I didn't talk to you on the
16 phone, Counsel. I talked to Mr. Tauriainen. So I'm saying
17 for the record --

18 MS. TEMPLE: He's right here.

19 MR. KELLY: -- about my conversation with
20 Mr. Tauriainen about who was going to be able to answer
21 questions. It's for the record.

22 MS. TEMPLE: Thank you for that, for the record.
23 And, for the record, he explained that Mr. Coats would be
24 here to explain the water supply and the availability
25 analysis and how it was created and calculated. And he's

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1 been here and he's available to do that. But you're wasting
2 time asking him about spreadsheets he didn't create.

3 So, for the record, to the extent that you're going
4 to claim you don't have enough time with Mr. Coats, continue
5 on with the spreadsheet questions.

6 MS. SPALETTA: Are you finished?

7 MS. TEMPLE: Yep.

8 MS. SPALETTA: Okay.

9 Q BY MS. SPALETTA: Which of the tabs in this
10 spreadsheet are the tabs that you told me earlier you
11 reviewed to verify the formulas that were used by
12 Mr. Yeazell?

13 A I didn't review all of the formulas. We -- I had
14 indicated what we needed done, and then he showed me on his
15 computer particular examples, but I didn't understand all of
16 the coding or programming involved.

17 Q Okay. Let's go to the "Demand Summary" tab. Is
18 this a sheet that you reviewed?

19 A I have looked at those in the past, but maybe not
20 that particular one.

21 Q All right. And let's go to the chart data. Have
22 you reviewed the data in this chart?

23 A Not all of it, no.

24 Q Some of it?

25 A To the extent that it's being used to generate the

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1 graphs where he copies and pastes some of the information to
2 it, but that's it.

3 Q So if I asked you to explain to me where the numbers
4 that appear in this chart data come from and exactly how
5 they were derived in the spreadsheet, would you be able to
6 explain that to me?

7 A No.

8 Q Okay. We're going to mark, as Exhibit 13, the chart
9 that was printed from the spreadsheet on the State Board
10 website, the spreadsheet being entitled "sacprorated.xlsx,"
11 and the chart, when it printed, had a date of November 12th.

12 (Whereupon, Exhibit No. 13 was
13 marked for identification.)

14 Q BY MS. SPALETTA: If you could look at that and just
15 verify that that Exhibit 13 is the chart that was printed
16 from the website.

17 A Okay.

18 Q Is it?

19 A It appears to be.

20 Q Okay. So was the information in this chart, that
21 we've marked as Exhibit 13, used to support the
22 curtailments?

23 A The information in the chart up to June 12th was the
24 data used to support curtailments. And then the data
25 afterwards with respect to the daily FNF and the projected

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1 reduced demands were used in the release of curtailments.

2 Q Okay. So how did the process work between the time
3 that Jeff Yeazell generated this chart --

4 A Uh-huh.

5 Q -- and the time that the decision to issue
6 curtailment was made?

7 A So what are you asking for here?

8 Q So you told me that Jeff Yeazell generated the
9 chart?

10 A Correct.

11 Q And that you worked with Jeff to make sure that it
12 was aesthetically pleasing?

13 A Correct.

14 Q And then at some point thereafter there was a
15 curtailment letter issued to BBID.

16 A Okay.

17 Q What happened between the time that Jeff Yeazell
18 generated the chart and the curtailment letter was issued?

19 A I don't know exactly.

20 Q Did you do anything between the time that the chart
21 was prepared and the curtailment letter was issued --

22 MS. TEMPLE: Objection. Vague and ambiguous.

23 Q BY MS. SPALETTA: -- with respect to making a
24 decision about whether to do curtailment?

25 A I don't recall.

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1 Q Who was in charge of making the curtailment
2 decision?

3 A Ultimately, it is Tom Howard who signs the
4 documents.

5 Q So did you have any communications with Tom Howard
6 about the curtailment decision?

7 A No. Most of my communications go directly through
8 John O'Hagan at the very top.

9 Q Did you and Mr. O'Hagan discuss when a curtailment
10 should occur for the different types of water rights?

11 A Yes.

12 Q What was that discussion?

13 A Just generally following the supply and demand
14 analysis. Based on the results on the chart, looking at
15 where the projected -- which for some reason isn't displayed
16 on this graph. Oh, I guess that's because the B120
17 forecasts aren't on that one.

18 So, for this particular graph, the daily FNF is the
19 squiggly blue line right there, and we would discuss, based
20 on the trending on the daily FNF in relation to the senior
21 right demands at various levels of priority which years of
22 priority should be curtailed.

23 Q So we actually marked a different graph which was
24 Exhibit 10. If you want to pull that out.

25 A Yes.

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1 Q And I believe you testified that this was the graph
2 that you were looking at at the time that the May 1st
3 curtailment decision was made, correct?

4 A Correct.

5 Q So other than the information depicted in this
6 graph --

7 A Uh-huh.

8 Q -- that you've just described, was there any other
9 information that went into the discussion and the decision
10 relating to curtailment?

11 A No.

12 Q So this graph, if I'm reading it correctly, and I'm
13 looking at Exhibit 10 --

14 A Uh-huh.

15 Q -- shows the daily full natural flow line as a solid
16 blue line, right?

17 A It's a solid blue line that varies frequently, yes.

18 Q And for the time period between March 1st and --

19 MR. KELLY: Excuse me, Counsel. Are you on
20 Exhibit 12 now or 10?

21 Q BY MS. SPALETTA: 10. On Exhibit 10 for the time
22 period between March 1st and April 29th, the daily full
23 natural flow line is significantly below the dark orange
24 boxes on the chart, right?

25 A Correct.

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1 Q And what do the dark orange boxes represent?

2 A That's the level of the entire post-1914 demand,
3 which is the darker brown color you see.

4 Q So why wasn't the curtailment decision made earlier?

5 A You would have to ask upper management.

6 Q Did you have any discussion with anyone about that?

7 A I don't recall exactly.

8 Q At this point I think I'd like to turn the
9 deposition questioning over to Mr. Kelly. And, hopefully, I
10 won't have anymore questions for you, but thank you for your
11 time. I'll reserve the right to ask more.

12 MR. KELLY: Take a five-minute break so we can
13 transition. Off the record.

14 (A recess was taken.)

15 EXAMINATION BY MR. KELLY

16 Q BY MR. KELLY: Go back on the record, please.

17 Good afternoon, Mr. Coats. My name is Daniel Kelly.

18 I'm general counsel for the Byron-Bethany Irrigation
19 District. And, as you probably know, we are involved in
20 ENF01951 --

21 A Uh-huh.

22 Q -- the enforcement action brought against
23 Byron-Bethany Irrigation District, whom I will refer to as
24 "BBID" for convenience, because of alleged violations of the
25 Water Code 2015.

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1 (Whereupon, Exhibit No. 14 was
2 marked for identification.)

3 Q BY MR. KELLY: You have before you Exhibit No. 14.
4 Have you seen that document before?

5 A Yes.

6 Q Can you tell me what that document is?

7 A The first two pages are the cover letter of the ACL
8 issued to BBID, and then the remaining pages are the actual
9 Administrative Civil Liability Complaint.

10 Q Okay. And when you were being questioned by
11 Ms. Spaletta, I thought I recalled you saying that you
12 reviewed the West Side enforcement document, the draft CDO,
13 but you were involved in the drafting of this ACL; is that
14 correct?

15 A Correct.

16 Q Can you tell me which portions of the draft ACL and
17 proposed ACL that you had -- that you drafted or
18 participated in drafting?

19 A Calculation of the ACL amount.

20 Q Anything else?

21 A No.

22 Q Go ahead and mark that.

23 (Cell phone interruption.)

24 We can go off the record for a second.

25 (A recess was taken.)

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1 (Whereupon, Exhibit No. 15 was
2 marked for identification.)

3 Q BY MR. KELLY: Okay, Mr. Coats, before we went off
4 the record, you had explained to me that you had
5 participated in another drafting or calculating the amount
6 in the draft ACL; is that correct?

7 A Correct.

8 Q Exhibit 15, are you familiar with that document?

9 A It appears to be an email chain, and it references a
10 value of water to be used.

11 Q And so you were CC'd on that --

12 A Yes.

13 Q -- email? And so what did you do in calculating the
14 amount of proposed fine against BBID?

15 A The first thing we looked at was the value of water,
16 and so with respect to the amount of alleged violations that
17 BBID was undertaking after the curtailment notice had been
18 issued on June 12th, we added up the amounts of water from
19 June 13th through June 25th, totaled that amount of water in
20 acre feet. To get the value of water, we looked at a \$250
21 per-acre-foot estimate for 2015, so we needed something that
22 was fairly recent and something that was localized to get a
23 value of water.

24 Once we multiplied that amount by the amount of
25 the -- the acre foot amount that was alleged to have been

DEPOSITION OF BRIAN COATS

1 diverted, we went ahead and sum totaled that along staff
2 costs and a disincentive factor and added in an additional
3 fine for the recent drought regulations that allowed for a
4 \$2,500 per-acre-foot fine. Multiplied everything together,
5 added it up, and we came up with the amounts that we had
6 listed.

7 Q Okay. And why is -- did you say June 12th or
8 June 13th through the 25th?

9 A I'd have to look at the actual --

10 Q I think it's June -- I want to make sure the record
11 is clear and we're talking about the same dates.

12 The violation description is June 13th through June
13 the 25th?

14 A That's what it is, yeah.

15 Q You may have said that, and I just --

16 A Right. It is June 13th through June 25th.

17 Q So can you tell me why June 13th is the date the
18 alleged violation started?

19 A That was the date after the curtailment issue was
20 noted on June 12th.

21 Q And so, if you know, why is the date of the
22 curtailment notice important?

23 A I don't understand your question.

24 Q Well, is it -- the curtailment notice was issued on
25 June the 12th, correct?

DEPOSITION OF BRIAN COATS

1 A Correct.

2 Q And in the ACL it talks about BBID receiving that
3 via email --

4 A Correct.

5 Q -- on that date. And the fines kick in -- start
6 kicking in on June the 13th.

7 A Correct.

8 Q Do you know if it's the Prosecution Team's position
9 that the curtailment notice was sufficient to trigger fines?

10 MS. TEMPLE: Objection. Calls for speculation and
11 potentially privileged.

12 Q BY MR. KELLY: I asked if you know.

13 A I don't know.

14 Q Can you look at, on Exhibit 14, paragraph number 18.

15 A Okay.

16 Q The second sentence, can you just read that to
17 yourself?

18 A Uh-huh.

19 Q And tell me when you're done.

20 A (Witness reviewing.) Okay.

21 Q So, if you know, is it the position of the
22 Prosecution Team that BBID diverted water that was needed
23 for diverters with claims of pre-1914 appropriative rights
24 with a priority date of 1903 and later?

25 MS. TEMPLE: Objection. Calls for speculation and

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1 potentially privileged information.

2 Q BY MR. KELLY: I asked if you know.

3 A I don't know.

4 Q So if I asked you to look at paragraph 24 on page 4
5 of that same exhibit.

6 A Okay.

7 Q Same question.

8 MS. TEMPLE: Objection. Calls for speculation of
9 privileged information.

10 Q BY MR. KELLY: Do you know, Mr. Coats, that when I
11 ask you if you know something or if you have knowledge of
12 something, that I'm asking you to not speculate but just
13 convey your knowledge?

14 A Yes.

15 Q Okay. Thank you.

16 A (Witness reviewing.) I've read the paragraph. What
17 is your question?

18 Q It was the same question. Is the administrative
19 civil liability complaint --

20 A Uh-huh.

21 Q -- if you know, based on the allegation that BBID
22 diverted water that was needed to satisfy appropriate
23 water rights with priority dates of 1903 and more senior?

24 MS. TEMPLE: Same objections.

25 THE WITNESS: I don't know. I don't know.

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1 Q BY MR. KELLY: Could you take a look at Exhibit 10.
2 I believe that you testified that this was the graph that
3 was used to make curtailment decisions in 2015; is that --

4 A For May 1st --

5 Q For the May 1st.

6 A -- post-14 analysis, yes.

7 Q And at the bottom of this, the -- I almost don't
8 know how to identify all the portions -- everything is
9 depicted on this graph. But there's a yellow section on the
10 bottom that has "Riparian Demand" in there.

11 Do you see that?

12 A Yes.

13 Q Can you tell me what that is?

14 A That the sum total of the riparian demand that we
15 have allocated to the riparian category after accounting for
16 all of the Delta demands that claim both riparian and pre-14
17 as well as anyone claiming a riparian demand within the
18 Sacramento River Watershed.

19 Q And that's in the Sacramento River Watershed?

20 A Sacramento River Watershed with -- and it looks like
21 it includes the prorated portion of the Delta.

22 Q Are you looking at Exhibit 10?

23 A Yes. Demand includes legal Delta demand in
24 proportion to the Sacramento River contribution to the --
25 yes. That's the first paragraph of the legend section.

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1 Q Okay. And then the -- what looks to be to be orange
2 section, it says "Pre-14 Demand." Can you explain what that
3 is?

4 A The light orange section is the pre-14 demand that
5 we had summed up for the remainder of the people within the
6 Delta claimed pre-14 only and not riparian as well as anyone
7 claiming a pre-14 demand in the Sacramento River Watershed.

8 Q Okay. And above that, I guess, is a darker orange
9 color that says "Post-1914 Demand." Can you tell me what
10 that includes?

11 A That's the same geographic area, all of the
12 post-1914 demand within the Sacramento River Watershed and
13 those within the Delta.

14 Q Okay. And then towards the top of the graph there's
15 a blue dashed line that's depicted as "Water Year 2010 FNF,"
16 which is full natural flow.

17 A Correct.

18 Q And then there's a green dashed line that says
19 "50-Year Average FNF." Are those just for reference or do
20 they have some meaning?

21 A Those are for the public, just to document when we
22 started this curtailment process this year of what a
23 normal -- or an average water year looks like, and then what
24 the most recent substantial rainwater year looked like,
25 which being 2010, in support of our curtailment efforts just

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1 to show them what was actually occurring this year with the
2 daily FNF in comparison.

3 Q Okay. And so, from there, I want to just work my
4 way down the chart with the dashed lines. So the next dash
5 line is -- it might be brown, but it's depicted as
6 "50 Percent FNF Forecast"?

7 A Correct.

8 Q Can you tell me what that is?

9 A That's the 50 percent full natural flow B120
10 forecast issued by DWR.

11 Q And FNF full natural flow --

12 A Uh-huh.

13 Q -- is a combination of the full natural flow
14 stations in that watershed, and it's a calculated number
15 that gets to the -- to where the station is geographically;
16 is that correct?

17 A Those locations in addition to, as it's referenced
18 in the third paragraph of the legend, there are some
19 additional areas that are included from that 2007 DWR
20 report.

21 Q Okay. And then below that is a 90 percent FNF
22 forecast?

23 A Uh-huh.

24 Q What does that line depict?

25 A That's the next level of 90 percent exceedance

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1 forecast provided by DWR and their B120 forecast.

2 Q So 90 percent exceedance, does that mean there's a
3 90 percent chance that the full natural flow will be at or
4 above that line or at or below that line?

5 A The 90 percent line represents that there's a
6 90 percent chance that the actual flow will be above that
7 forecast.

8 Q Okay. And then below that, I'll let you tell me
9 what the color is.

10 A Dark blue.

11 Q Okay. It says "99 Percent FNF Forecast."

12 A And that's the 99 percent DWR B120 forecast for
13 those respective FNF stations.

14 Q And when it came to curtailment decisions, did you
15 use one of those forecast lines or something else?

16 A We used -- based on the daily FNF trending, we
17 selected whatever forecasted line, along with consideration
18 for where the daily FNF was trending, to base curtailment
19 decisions on.

20 Q Now, the solid blue line is daily FNF, I think you
21 described earlier.

22 A Yes.

23 Q Is that an actual FNF or is that a forecasted?

24 A That is a calculated daily FNF number from DWR.

25 Q Are there actual full natural flow numbers

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1 available, do you know?

2 A DWR produces them.

3 Q Actual?

4 A Past ones, yes.

5 Q Do you know how far back -- in other words, how long
6 does it take, if you know, to report the actual full natural
7 flow numbers?

8 A I don't know.

9 Q Okay. So, based on this graph, there was -- I'm
10 going to say in the months of March and April, there appears
11 to be approximately 10,000 CFS --

12 A Uh-huh.

13 Q -- of full natural flow on a daily basis?

14 A Correct.

15 Q Does the variation in the full natural flow line
16 occur because of daily changes, weekly, monthly, do you know
17 what that --

18 A Those are daily variations that DWR posts to their
19 CDEC website.

20 Q Okay. And so were you involved at all in the
21 decision to bring any enforcement action?

22 A No.

23 Q In conducting your analysis, your water availability
24 analysis, did you make recommendations to anybody on timing
25 or extent of curtailments?

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1 A We provided updates to management indicating where
2 the current daily FNF supply trends were, where the B120
3 forecasts were in relation to demands, and then relayed that
4 to upper management, and then they decided what they wanted
5 to do.

6 Q But the curtailments were issued because the supply,
7 which you've indicated is the daily FNF number --

8 A Uh-huh.

9 Q -- was --

10 A We use that along with the B120 forecast. There's a
11 difference.

12 Q Where is the B120 forecast on this chart?

13 A The B120 forecast are that dark brown/purple and
14 dark blue lines with the center dots within each month.

15 Q So they look to start around mid-April, right?

16 A Correct.

17 Q And so which one would have been used, if -- did you
18 meet or discuss this with anybody prior to May 1st?

19 A We discussed it frequently with John O'Hagan.

20 Q How often would you discuss it with him?

21 A Maybe every three to four days.

22 Q Okay. So at least weekly?

23 A Oh, yes.

24 Q So it is safe to say then in the middle of April --
25 sometime in the middle of April that you would have had a

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1 discussion around where the time that the forecasted figures
2 are shown on Exhibit 10 --

3 A Yes.

4 Q -- which of the forecast lines would you have used
5 to discuss or make curtailment decisions, do you know?

6 A The B120 forecast, we would have used the 90 percent
7 forecast based on the daily FNF trending below that but
8 slightly peaking above it.

9 Q And based on your analysis, any demands above
10 approximately 10,000 CFS in the watershed, there would not
11 have been sufficient water to meet those demands; is that
12 correct?

13 A Above 8,000, if you extrapolated over closer to
14 8,000, but yes.

15 Q Above 8,000, and I'm saying approximately 10,000.
16 I'm looking at roughly where the 90 percent FNF forecast
17 line is.

18 A Starting in May, yes.

19 Q Well, I would say starting in mid-April, is where
20 I'm starting. Approximately the date it appears --

21 A Uh-huh.

22 Q -- that the forecasted figures are on this chart.

23 A Right.

24 Q Would you agree that looks to be around mid-April?

25 A Is when we would have what?

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1 Q Is where the forecasted figures begin?

2 A Yes.

3 Q And so as of -- and we could estimate it to be
4 April 15th or you could tell me a different date.

5 A Sure.

6 Q As of approximately April 15th, there's roughly
7 10,000 CFS of full natural flow --

8 A Sure.

9 Q -- forecasted to be available?

10 A Correct.

11 Q Which means -- or tell me, does that mean that any
12 demand in excess of 10,000 CFS could not have been met by
13 full natural flow?

14 A We wouldn't have issued anything with that first
15 data point because we need something to qualify which
16 forecast to use. And so all recent FNF -- daily FNF data is
17 subject to revision; therefore, we decided not to make any
18 curtailment decision. I mean, that's one thing DWR advised
19 us is to never make any curtailment decisions based on the
20 most recent daily FNF data because it's subject to revision
21 is often revised.

22 And so based on the April 15th date you're referring
23 to, which is our first forecast point for those three levels
24 of exceedance, we needed some time to evaluate which
25 exceedance forecast to follow for our curtailment decisions

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1 and also which one to use based on the trend and daily FNF,
2 taking note of the most recent daily FNF is subject to
3 revision.

4 Q Let me ask a more basic question then. Are
5 curtailments based on the lack of availability or on FNF
6 projections?

7 MS. TEMPLE: Objection. Vague.

8 Q BY MR. KELLY: Do you understand the question,
9 Mr. Coats?

10 A Repeat it again.

11 Q When curtailment decisions are made, you assisted in
12 the curtailment decision-making process by determining
13 whether demand outstripped full natural flow supplies; is
14 that correct?

15 A Correct.

16 Q And so is it fair to say then that curtailment
17 decisions were based on full natural flow forecasts?

18 A Full natural flow forecasts and daily full natural
19 flow trending.

20 Q And curtailment decisions were not based on actual
21 water availability?

22 MS. TEMPLE: Objection.

23 THE WITNESS: No.

24 Q BY MR. KELLY: Are you saying no, that they weren't,
25 or no, I'm wrong?

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1 A No, they weren't based on actual water availability.

2 Q And had they been based on water availability, when
3 I look at Exhibit 10 as of April 15th --

4 A Uh-huh.

5 Q -- I'm going to estimate that about 85 to 90 percent
6 of the demand could not have been met --

7 A Correct.

8 Q -- by full natural flow as of April 15th.

9 A Correct.

10 Q And so if enforcement actions are brought based on
11 people diverting when there's not enough full natural flow,
12 it looks like about 85 percent of the post-1914 water right
13 holders were violating the Water Code.

14 MS. TEMPLE: Objection. Assumes facts not in
15 evidence.

16 THE WITNESS: You're basically looking at it
17 hindsight, though. At the time it could have been -- we
18 could have used the 50 percent forecast or the 99 percent
19 forecast, we were unsure at which priority level to issue
20 anything on.

21 Q BY MR. KELLY: Even if you use the 50 percent
22 forecast, which the 50 percent forecast is, from a water
23 supply perspective, the most optimistic, correct?

24 A Correct.

25 Q So even if you use the 50 percent forecast, you're

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1 still left with about 80 percent of the post-1914 demand
2 that cannot be met with full natural flow, correct?

3 A Based on the way this chart is graphed, yes.

4 Q Well, this chart is the chart that was used to
5 impose curtailments, right?

6 A Yes.

7 Q And so based on the logic that the State Water Board
8 used to do curtailments, 80 percent of the post-1914 demand
9 could not have been met in the middle of April, correct?

10 MS. TEMPLE: Objection. Assumes facts not in
11 evidence.

12 THE WITNESS: I would say 70 percent.

13 Q BY MR. KELLY: 70 percent. So 70 percent of the
14 demand could not have been met by the forecasted full
15 natural flow?

16 A Provided the daily FNF did not go above the
17 50 percent forecast, yes.

18 Q And so why -- if you know, why didn't the State
19 Water Board bring enforcement actions against the 75 percent
20 of the people that were diverting when there wasn't
21 sufficient full natural flow to satisfy their water rights?

22 MS. TEMPLE: Objection. Calls for speculation.

23 THE WITNESS: I don't know.

24 Q BY MR. KELLY: Do you know where the California
25 Department of Water Resources fits in in that post-1914

DEPOSITION OF BRIAN COATS

1 demand set?

2 MS. TEMPLE: Objection. Vague and ambiguous.

3 THE WITNESS: I don't know the exact priority dates,
4 no.

5 Q BY MR. KELLY: Let's assume that the California
6 Department of Water Resources has a priority date of about
7 1950, let's say.

8 A Okay.

9 Q Do you know where 1950 would be on that graph?

10 A No.

11 Q If 1950 was around the 30,000 CFS mark --

12 A Uh-huh.

13 Q -- would DWR have been diverting illegally?

14 A If it was around the 30,000 CFS mark, on April 15th
15 since we had not issued any curtailment notice, no. But as
16 of May 1st if they were around the same level, then yes.

17 Q So it's not based on somebody individually analyzing
18 this on a realtime basis, it is based in part -- well, it's
19 based on the State Water Board telling them they have to
20 stop because there's not enough water?

21 MS. TEMPLE: Objection. Calls for speculation.

22 THE WITNESS: So it's based on the priority dates
23 for the post-1914 rights and where those fall within the
24 full natural flow supply.

25 Q BY MR. KELLY: Yeah. But I think that you just told

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1 me that if -- on April 15th, if DWR was around the 30,000
2 CFS mark in priority, that they wouldn't be subject to
3 enforcement because you hadn't sent them a curtailment
4 notice; isn't that what you told me?

5 A Correct.

6 Q And so what I'm asking is, what's the trigger for
7 enforcement? Is it diverting when there's not sufficient
8 full natural flow available or is it diverting after having
9 received a curtailment notice from the Board?

10 A It is for proof of diversions either by inspection,
11 or in the case of BBID, the actual data that was given to us
12 from CDEC, proof of diversions after a curtailment notice
13 has been issued.

14 Q What, if anything, did you do, or anyone under your
15 direct supervision do, with respect to gathering information
16 from BBID on the actual availability of water at BBID's
17 point of diversion for the period of June 12th through June
18 the 25th?

19 A I was given the data set from Kathy Mrowka of the
20 actual amounts of water that were reported to have been
21 diverted by BBID from CDEC.

22 Q Yeah. I'm talking about the actual water that was
23 available, not diverted.

24 A Uh-huh.

25 Q So what, if anything, did you do to determine

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1 whether there was any water available at BBID's point of
2 diversion between June the 12th and June the 25th?

3 A We didn't do anything.

4 Q Exhibit 16.

5 (Whereupon, Exhibit No. 16 was
6 marked for identification.)

7 Q BY MR. KELLY: Have you ever seen what's been marked
8 Exhibit 16 before?

9 A Yes.

10 Q Can you please generally describe what that is?

11 A It is an organizational chart of the State Water
12 Board.

13 Q Do you believe that it's accurate?

14 A As of the date of November 1st, 2015, yes.

15 Q Okay. And can you tell me where -- if you're on
16 this organizational chart, where you are?

17 A I am under Kathy Mrowka under the "Enforcement"
18 section.

19 Q So on the left-hand side or right-hand side of the
20 chart?

21 A Right-hand side.

22 Q Right-hand side. So let's start at the top.

23 A Okay.

24 Q The top has a green box with the board members in
25 it?

DEPOSITION OF BRIAN COATS

1 A Correct.

2 Q Directly below that is a blue box with the Executive
3 Director, that's Tom Howard?

4 A Correct.

5 Q And then it branches off. And if you go to the
6 right --

7 A Uh-huh.

8 Q -- then if you go to the far right and down a little
9 bit, there is the Chief Deputy Director, that's Caren
10 Trgovcich?

11 A Correct.

12 Q T-r-g-o-v-c-i-c-h.

13 And then where is Kathy Mrowka?

14 A Underneath Barbara Evoy.

15 Q Okay. So then you go down from Caren, and you go to
16 a yellow box?

17 A Correct.

18 Q And that has Barbara Evoy, and she is the Deputy
19 Director of the Division of Water Rights?

20 A Correct.

21 Q And then directly below her you have John O'Hagan?

22 A Uh-huh. Yes.

23 Q And then below him and to the right is Kathy Mrowka.
24 She's the manager of the Enforcement Section?

25 A Correct.

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1 Q You're in the Enforcement Section?

2 A Yes.

3 Q And so then you would be below Kathy?

4 A Correct.

5 Q And John is Kathy's supervisor, John O'Hagan?

6 A Yes.

7 Q And then John O'Hagan refers to Barbara Evoy?

8 A Yes.

9 Q Barbara reports to Caren Trgovcich?

10 A Correct.

11 Q Caren reports to Tom Howard?

12 A Correct.

13 Q And then Tom Howard to the Board?

14 A The Board Members, yes.

15 Q The Board Members.

16 And I recall your testimony, you said that the final

17 call on curtailments was made by Tom Howard?

18 A With upper management, but Tom Howard is the one

19 that signs the curtailment orders.

20 Q So were you ever in any meetings with anyone other

21 than Kathy Mrowka and John O'Hagan to discuss curtailments

22 in 2015?

23 A Some of the stakeholders --

24 Q Okay.

25 A -- for both the Sacramento and San Joaquin River

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1 Watersheds. We invited some members from DWR, specifically
2 Stephen Nemeth and Dave Rizzardo.

3 Q Were the meetings with DWR outside of the
4 stakeholder meeting process?

5 A Not for 2015, no.

6 Q Were you ever in any meetings to discuss
7 curtailments when Barbara Evoy was there?

8 A No.

9 Q Were you ever in any meetings to discuss water
10 availability when Barbara Evoy was there?

11 A No.

12 Q If I asked you the same two questions for Caren
13 Trgovcich, would the answers be the same?

14 A Yes.

15 Q If I asked you the same two questions about Tom
16 Howard, would the answers be the same?

17 A Yes.

18 Q Were you ever in meetings when any board members
19 were present?

20 A There may have been a conference call with Dee Dee,
21 but I don't recall exactly when.

22 Q Mr. Coats, did you -- do you recall whether or not
23 you gave a presentation at any public board meetings to the
24 Board on curtailments or water availability?

25 A No.

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1 Q Were you ever in any meetings to discuss
2 curtailments or water availability with Michael George, the
3 Delta Water Master?

4 A I was with the stakeholder meeting with the San
5 Joaquin River folks, I believe in May, and I believe he was
6 attending that meeting as well.

7 Q Other than the stakeholder meetings, had you ever
8 met with Michael George to discuss -- or were you ever part
9 of a meeting where curtailments or water availability was
10 discussed with Michael George present?

11 A There may have been one four or five months ago, I
12 don't recall exactly when.

13 Q You say you don't recall when, but there may have
14 been one. What do you remember about that meeting?

15 A I remember visually seeing him upstairs in a meeting
16 with myself and some other people, maybe one or two other
17 people, but I don't recall the substance of the meeting or
18 when it was.

19 Q Okay. Where is Les Grober on this organizational
20 chart? Or where would he be if he's not on here?

21 A He should be on there. He's right underneath Kathy
22 Mrowka.

23 Q He's underneath -- when you say "underneath Kathy
24 Mrowka" --

25 A Spatially on the page underneath.

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1 Q But he appears to be from a --

2 A He's in an equivalent position to John O'Hagan.

3 Q From a management perspective?

4 A From a management perspective, but spatially on the

5 organizational chart, he's directly below Amanda Montgomery

6 and Kathy Mrowka.

7 Q Okay. And, if I recall correctly, Les Grober signed

8 a declaration in one of the proceedings challenging what the

9 State Water Board did. Are you familiar -- had you ever

10 seen that declaration that Les Grober signed?

11 A I don't believe so.

12 Q Okay. When it comes to -- Ms. Spaletta talked to

13 you a little bit earlier today about who is on the

14 Prosecution Team.

15 A Uh-huh.

16 Q And correct me if I'm wrong, but you weren't

17 absolutely sure who was on each Prosecution Team, and you

18 referred to, I believe, the witness list to refresh your

19 recollection --

20 A Correct.

21 Q -- about who was on which Prosecution Team. When

22 you -- Mr. Tauriainen is on the Prosecution Team, right?

23 A Yes.

24 Q Do you know who supervises Mr. Tauriainen?

25 A I believe it's Cris Carrigan.

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1 Q Do you know whether Mr. Carrigan is considered part
2 of the Prosecution Team?

3 A I don't know.

4 Q So when you have conversations -- do you talk to
5 anybody at the State Water Board about water right
6 curtailments or water availability?

7 A Aside from Kathy Mrowka, Jeff Yeazell, and John
8 O'Hagan, no.

9 Q You don't talk to anybody?

10 A Not really, no.

11 Q Okay. How do you know who you can and cannot talk
12 to?

13 A I know I can't talk to anyone within the hearing
14 sections due to ex parte communication issues.

15 Q So explain that to me. Explain to me your knowledge
16 of the ex parte rule and how it applies in the BBID
17 proceeding.

18 A We're not allowed to communicate with any board
19 members or anyone above the prosecution people, I guess you
20 could say, on anything related to the enforcement action.

21 Q How about, do you know if that applies to
22 curtailments?

23 A Curtailments --

24 Q And let me restate that.

25 A Uh-huh.

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1 Q And so I'm going to use the word "curtailments" to
2 be broader than -- the enforcement actions are about
3 curtailments.

4 A Uh-huh.

5 Q And so I'm going to separate those.

6 A Okay.

7 Q Do the prohibitions, the ex parte communication
8 prohibitions exist as it relates to curtailments generally
9 or only to the enforcement action?

10 MS. TEMPLE: Objection. Vague and ambiguous.

11 THE WITNESS: The enforcement action, the ex parte
12 communications result are kind of applicable just to the
13 enforcement action so we can only communication with direct
14 enforcement staff, which include Kathy Mrowka and below,
15 myself, Jeff Yeazell, and anyone else on the Enforcement
16 Section of the Prosecution Team.

17 For curtailment decisions which are separate and
18 apart from any enforcement actions, I communicate with those
19 same people and then John O'Hagan.

20 Q And you had indicated that the curtailment decisions
21 go all the way up to at least Tom Howard because he signed
22 the curtailment?

23 A Correct.

24 Q And to find out anything about those conversations,
25 would I -- who would I need to talk to? Would it be John

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1 O'Hagan?

2 A Likely, yes.

3 Q How about Barbara Evoy?

4 A If she had direct communication with Tom Howard or
5 Caren Trgovcich, yes.

6 Q And then so possibly Caren as well? But you have no
7 knowledge of anyone other than John O'Hagan and Tom who
8 signed then? You don't have any knowledge of anybody in any
9 intermediary discussions?

10 A No.

11 Q Okay. Was there ever -- you said that you were
12 involved in the analysis of water availability in 2014; is
13 that correct?

14 A For the San Joaquin River Watershed, yes.

15 Q Just for the San Joaquin River Watershed?

16 A Yes.

17 Q And generally tell me what you did as part of that
18 analysis.

19 A So we defined a boundary for the San Joaquin River
20 Watershed, and then we determined the full natural flows
21 that we were going to use for that analysis. And then we
22 looked at the reported demands for 2010, since that was the
23 most complete data set that we had up to that point.
24 Compared the two, and then prepared graphs and uploaded
25 those for management.

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1 Q Uploaded those for management. When you say
2 "uploaded those for management"?

3 A We gave those to management for review, and then
4 they determined whether or not to post this to a website.

5 Q And when you say "management," who are you referring
6 to?

7 A 2014 at the time, it would be John O'Hagan.

8 Q And following the 2014 curtailments --

9 A Uh-huh.

10 Q -- were there any follow-up meetings that happened
11 at the State Water Board to kind of talk about what you all
12 did?

13 MS. TEMPLE: Objection. Vague and ambiguous.

14 THE WITNESS: The most -- the follow-up meetings
15 that I can recall were the ones with the Sacramento/San
16 Joaquin folks in 2015 as to what we were planning on doing.

17 Q BY MR. KELLY: So let me rephrase, if I didn't ask
18 this already.

19 Internally --

20 A Uh-huh.

21 Q -- did you have any meetings to review the 2014
22 curtailment process?

23 A No.

24 Q In 2014, who made the decisions on how to do the
25 water availability analysis?

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1 A We, myself, and Aaron Miller, provided
2 recommendations to John O'Hagan, and he relayed that up to
3 upper management for their input. And then, based on that,
4 he gave us direction on what to do next.

5 Q And you have to forgive me. You use the term "upper
6 management" and "management" a lot.

7 A Uh-huh.

8 Q And I don't know who that is when you say that.
9 Sometimes when you say "management" or "upper management,"
10 you're referring to John O'Hagan?

11 A Uh-huh.

12 Q And then sometimes you say "John O'Hagan ran that up
13 to upper management."

14 A Sure.

15 Q And so I don't need to follow up. When you're going
16 to answer a question and say that, I'd appreciate you just
17 kind of letting me know if you know the name of the
18 person --

19 A Okay.

20 Q -- or what position they're in --

21 A Okay.

22 Q -- telling me that.

23 And so when you say that you gave the
24 recommendations to John O'Hagan --

25 A Correct.

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1 Q -- and he ran them to upper management, who are you
2 referring to?

3 A He made those recommendations to either Caren
4 Trgovcich or Tom Howard.

5 Q Did you get any feedback on those recommendations?

6 A I would occasionally get CC's from those either
7 party, but they were directed back towards John as direct
8 contacts.

9 Q So you got CC'd on emails from either Caren and/or
10 Tom Howard?

11 A Yes.

12 Q Do you know if those communications were produced as
13 part of the Public Records Act request response?

14 A I don't know.

15 Q Do you know the time frame within which those emails
16 would have been sent?

17 A January 2014 to present.

18 Q So has that been an ongoing discussion then? You
19 said January 14th to the present. I think it's November --

20 A Yeah.

21 Q -- of 2015.

22 A Yeah. It is almost two years.

23 Q So those -- has it been an iterative process then
24 with John, Tom, and Caren?

25 A No. I would provide recommendations to John, he

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1 would relay those recommendations to either Caren Trgovcich
2 or Tom Howard. If they had comments, those -- either Tom
3 Howard or Caren Trgovcich would reply with comments directly
4 back to John, occasionally CCing me, but not consistently.

5 Q Do you know whether any of those recommendations
6 were run by board members?

7 A I believe they were, but I can't identify which
8 ones.

9 Q Were those board members copied on emails, do you
10 know?

11 MS. TEMPLE: Objection. Calls for speculation.

12 THE WITNESS: I don't know.

13 Q BY MR. KELLY: In 2014, do you know if you ever
14 presented to the State Water Board on curtailments or water
15 availability?

16 A I presented a workshop on a brief description of the
17 supply and demand analysis and what we were undertaking with
18 the U.C. Davis group in May.

19 Q In May of?

20 A 2014.

21 Q 2014?

22 A Uh-huh.

23 Q Was that individual or were you part of a panel?

24 A It was myself, John O'Hagan was present, and then
25 there were numerous stakeholders present.

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1 Q BY MR. KELLY: Exhibit 17.

2 (Whereupon, Exhibit No. 17 was
3 marked for identification.)

4 Q BY MR. KELLY: Mr. Coats, have you ever seen
5 Exhibit 17 before?

6 A Not recently, but it appears since I was sent it in
7 2014, I was.

8 Q And what is Exhibit 17?

9 A It is an email summary produced by John O'Hagan
10 directed to both myself, Kathy Mrowka, and Barbara, CCing
11 Tom Howard asking for or a -- or just referencing a summary
12 of different flows using -- referencing CDEC watershed
13 websites, and then some reference to the Eel River,
14 Sacramento, and the Delta.

15 Q And this email -- this email was -- well, I don't
16 know. Andrew Tauriainen, his name appears at the top, but
17 he's not on the "from, to, or CC lines"?

18 A Uh-huh.

19 Q Do you know whether this is a BCC or whether or not
20 it just shows Mr. Tauriainen's name because it is printed by
21 him?

22 A I don't know.

23 MR. TAURIAINEN: I can explain that.

24 MR. KELLY: Sure.

25 MR. TAURIAINEN: My name comes up because I printed

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1 these.

2 MR. KELLY: Fair enough.

3 MR. TAURIAINEN: I did the PRA review and generated
4 the pdf documents by printing the emails to pdf.

5 MR. KELLY: Thank you.

6 MR. TAURIAINEN: So my name will be at the top of
7 every individual email that he received.

8 Q BY MR. KELLY: Got it. Thank you.

9 The top line of the email says, "If you're
10 interested, the following is a good summary of flows of
11 different watershed locations."

12 A Okay.

13 Q Right? Do you know why Mr. O'Hagan sent this to you
14 all?

15 A No.

16 Q Was this -- was this information or data from these
17 websites, was that used as part of your analysis?

18 A No. This appears just to be a good bookmarked
19 location for some websites.

20 Q Useful for anything as it relates to curtailments?

21 A Potentially.

22 Q Was it -- were any of these links used at part of
23 that curtailment analysis?

24 A No.

25 Q Okay. Exhibit 18.

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1 (Whereupon, Exhibit No. 18 was
2 marked for identification.)

3 Q BY MR. KELLY: Mr. Coats, I gave you my copy of
4 Exhibit 18, so there's a handwritten 18 with a circle on it,
5 I believe, in the upper right-hand corner.

6 A Uh-huh.

7 Q That's my notation. The rest of the email -- the
8 exhibit is unmarked.

9 A Uh-huh.

10 Q Are you familiar with -- have you seen this before?

11 A Back in April of 2015.

12 Q And it says -- it's an email from you to John
13 O'Hagan copying Kathy Mrowka?

14 A Uh-huh.

15 Q And it says, "Here are the number of pre-14s in the
16 San Joaquin tribs that would be subject to curtailment."

17 A Uh-huh.

18 Q And that's information that Jeff Yeazell provided to
19 you?

20 A Correct.

21 Q Why were the number of water rights that were going
22 to be curtailed important?

23 A We had performed an analysis of the San Joaquin
24 global watershed, and the -- at the time of the email, I
25 believe we were looking at a curtailment potentially to an

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1 1857 priority based on the supply and demand just for the
2 San Joaquin, and we identified which ones -- it appears
3 below that Jeff had identified which ones were subject to
4 that.

5 Q And did you all ever take into account the sheer
6 number of water rights that would be curtailed if you picked
7 a particular date?

8 A If we picked a particular date, no.

9 Q So was the decision to curtail based solely on the
10 full natural flow numbers?

11 A The full natural flow numbers in comparison to along
12 with the B120 forecasts, the demands.

13 Q Did the identity of the water right holder that
14 would be curtailed ever come into play?

15 A No.

16 Q So given -- given your testimony that the
17 curtailments were based on a comparison between the
18 availability of full natural flow and the quantity of
19 demand --

20 A Uh-huh.

21 Q -- do you have any opinion on what a water right
22 holder needs to do prior to diverting water?

23 A No opinion.

24 Q And so if the full natural flow was at zero --

25 A Uh-huh.

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1 Q -- but there was 100 CFS coming by my point of
2 diversion --

3 A Uh-huh.

4 Q -- and I had a right to it, is it the State Water
5 Board's position that I couldn't pick it up?

6 MS. TEMPLE: Objection. Calls for speculation.
7 Incomplete hypothetical.

8 THE WITNESS: I don't know.

9 Q BY MR. KELLY: Did your curtailment analysis -- or
10 did your water availability analysis at all look at the
11 actual water that was available in the Delta?

12 MS. TEMPLE: Objection. Vague and ambiguous.

13 THE WITNESS: No.

14 Q BY MR. KELLY: Do you know what the Delta is?

15 A It's a meeting point for the Sacramento River, San
16 Joaquin River, east side tributaries that eventually
17 connects to the ocean.

18 Q And you're aware there's a legally-defined area?

19 A Yes.

20 Q Based on your analysis, did water become unavailable
21 in Redding the same day it became unavailable in Antioch?

22 A If Antioch is within the Sacramento Delta Watershed
23 boundaries for a particular priority of right, yes.

24 Q Is there travel time for water?

25 A Yes.

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1 Q Do you know what the travel time for water is?

2 A The amount of time it takes water being at one
3 location to reach another location.

4 Q Do you know how long it takes water to get from the
5 City of Redding on the Sacramento River to the I Street
6 Bridge?

7 MS. TEMPLE: Objection. Calls for speculation.

8 Q BY MR. KELLY: I'm asking if you know.

9 A No. It depends on velocity.

10 Q Could it ever be zero seconds?

11 A Not with current technology.

12 Q Did your analysis -- in undertaking your analysis,
13 did you do anything to account for accretions that occurred
14 to the Sacramento and San Joaquin Rivers prior to them
15 reaching the Delta?

16 A There's additional accretions referenced in the DWR
17 report that we added for the respective areas, then we
18 accounted for it.

19 Q How about discharges in the Delta?

20 MS. TEMPLE: Objection. Vague and ambiguous.

21 THE WITNESS: Explain discharges.

22 Q BY MR. KELLY: Sacramento Regional County Sanitation
23 Treatment Plant. Do you know where that's located?

24 A Not specifically, no.

25 Q Do you know, generally, where it's located?

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1 A On the Sacramento River, I suppose.

2 Q Do you know if it's within the legal Delta or not?

3 A I think it is upstream, but I'm not sure.

4 Q If somebody used groundwater in the Sacramento
5 Valley and discharged the return flows from that
6 groundwater, does that return flow show up in your analysis
7 anywhere?

8 MS. TEMPLE: Objection.

9 THE WITNESS: If it's accounted for in the DWR 2007
10 Report for those referenced areas, yes. If not, no.

11 Q BY MR. KELLY: Do you have any understanding of how
12 the Delta operates from a hydrologic perspective?

13 A Water comes in from the tide and recedes.

14 Q Does water come in from anywhere else but the tide?

15 A Full natural flow sources from the Sacramento, east
16 side streams, and the San Joaquin River.

17 Q Anywhere else? Any other sources?

18 A Potentially seepage sources from the water in the
19 area.

20 Q Anything other than full natural flow?

21 A That would probably be groundwater accretions.

22 Q How about abandoned return flows?

23 A It would make sense, yes.

24 Q And in any given year when full natural flow ceases
25 to exist, is there a pool of fresh water that exists in the

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1 Delta, do you know?

2 A I don't know.

3 Q You don't know?

4 A I don't live there. I'm sorry.

5 Q So in undertaking your analysis, you didn't consider
6 the fact that the Delta is a fresh water pool?

7 MS. TEMPLE: Objection. Assumes facts not in
8 evidence.

9 THE WITNESS: I don't know if I would agree to a
10 fresh water pool.

11 MR. KELLY: Mark that next in line. Exhibit 19.

12 (Whereupon, Exhibit No. 19 was
13 marked for identification.)

14 Q BY MR. KELLY: Have you ever seen this document
15 before?

16 A I've seen it before, yes.

17 Q Where did you see it?

18 A I believe I saw it in the summer of 2013.

19 Q Did anything contained in this document feed in at
20 all to the analysis that you conducted for water
21 availability?

22 MS. TEMPLE: Objection. Vague and ambiguous.

23 THE WITNESS: I haven't reviewed the entire
24 document, but if it wasn't directed to me to include it by
25 management, then I didn't.

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1 Q BY MR. KELLY: Do you know who it was submitted by?

2 A The State Water Contractors, it appears.

3 Q Do you know who the State Water Contractors are?

4 A They're contractors on the Sacramento River that
5 have a contract with the Bureau.

6 Q I want you to look at -- do you know what this
7 document is?

8 A This looks like -- appears to be a complaint.

9 Q It's the complaint. Do you know who the complaint
10 is against?

11 A It appears to be diverters in the Delta located
12 south of the San Joaquin River.

13 Q Have you reviewed this at all?

14 A Not in its entirety, no.

15 Q Why don't you take a look at page 2.

16 A Okay.

17 Q The last sentence of the paragraph before Roman
18 numeral I.

19 A Okay.

20 Q It says, "The salinity criteria and accounts for the
21 relatively fresh conditions that remain in the Delta for a
22 period of time after inflows diminish."

23 A Okay.

24 Q So you're telling me that -- and so this is why the
25 State Water Contractors -- now, if I told you the State

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1 Water Contractors were actually contractors not with the
2 Bureau but with the Department of Water Resources, does that
3 refresh your recollection?

4 A No. I mean, they are the projects. We refer to
5 them as the same.

6 Q And so in here the contractors say that, "The
7 criteria they've used in here accounts for the fresh
8 conditions that remain in the Delta for a period of time
9 after inflows diminish," correct?

10 MS. TEMPLE: Objection. That's hearsay. And, for
11 the record, this is a document an inch thick that he said he
12 hasn't read in its entirety and you haven't given him a
13 chance to review it in its entirety. So if you want him to
14 admit that the sentence says what it says, the document
15 speaks for itself.

16 Q BY MR. KELLY: You said you saw this document
17 before, Mr. Coats, correct?

18 A Saw it but not reviewed it. Two separate.

19 Q Okay. If the Delta was a fresh water pool that, as
20 the State Water Contractor said remained relatively fresh
21 for a period of time after inflows diminished, do you think
22 that that would have been important for you to know in
23 conducting your water availability analysis as it relates to
24 diverters in the Delta?

25 MS. TEMPLE: Objection. Incomplete hypothetical.

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1 THE WITNESS: I don't have a comment on that. I
2 take direction from management.

3 Q BY MR. KELLY: You wouldn't want to know that?

4 A I take direction from management. If they determine
5 that it is a fresh water pool, then that may adjust my
6 evaluation.

7 Q In your experience if it was a fresh water pool,
8 would that have been important?

9 MS. TEMPLE: Objection. Incomplete hypothetical.
10 Vague and ambiguous.

11 THE WITNESS: I don't know.

12 Q BY MR. KELLY: Do you know where the water
13 originates that ends up in the Delta?

14 A It can come from multiple sources.

15 Q Do you know where the water originates that ends up
16 in the South Delta near West Side Irrigation District and
17 BBID?

18 A It can come from multiple sources due to
19 co-mingling.

20 Q And what might those multiple sources be?

21 A Sacramento River water -- well, the actual -- we
22 need to specify whether we're talking about fresh water or
23 salt water.

24 Q Let's say fresh water.

25 A Okay. Fresh water. Sacramento River water comes

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1 from the east side tributaries, Calaveras, Cosumnes,
2 Mokelumne, San Joaquin River water, any other project water
3 that's being diverted there.

4 Q And given the analysis that you conducted this year
5 and the work that you did last year in your work at the
6 Water Board, what do you think happens to that water when it
7 gets into the Delta?

8 A It mixes with whatever water is there.

9 Q Is it gone the same day, does it hang around, do you
10 know what happens to it?

11 A No, I don't.

12 MS. TEMPLE: Objection.

13 Q BY MR. KELLY: Are you familiar with any drought
14 years prior to 1977?

15 A Yes.

16 Q Did you -- what drought years are you familiar with
17 prior to 1977?

18 A The 1922, or something to that effect.

19 Q How about 1931?

20 A Not intimately familiar with it.

21 Q Do you know when the projects were constructed? And
22 when I say "projects," I mean the State Water Project and
23 the Central Valley Project.

24 A I know the Bureau, they have a permit at Shasta with
25 a 1927 priority. And there's some additional department

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1 priorities.

2 Q Do you have any idea when the projects were
3 constructed, when Shasta Dam was constructed?

4 A The actual date, no.

5 Q So if I told you that Shasta Dam was constructed
6 after 1931, would you have any reason to disagree with that?

7 A If that's their claim, no.

8 Q If I were to tell you that 1931 was a year that had
9 similar hydrology to this year --

10 A Uh-huh.

11 Q -- and that BBID diverted all summer long in 1931
12 and there was sufficient water quality for those diversions,
13 do you think that that would be important to know in
14 conducting an analysis for a year like this year?

15 MS. TEMPLE: Objection. Assumes facts not in
16 evidence. Incomplete hypothetical.

17 THE WITNESS: Not right now, no.

18 MR. KELLY: Let's go off the record for a second.

19 (A recess was taken.)

20 Q BY MR. KELLY: Back on the record.

21 Mr. Coats, do you have Exhibit 9? Right there. It
22 is the map right there.

23 A Okay.

24 Q I just have a question about this. As I looked at
25 it, it actually started to raise some questions in my mind.

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1 I see that this map includes the full natural flow
2 stations on it?

3 A Uh-huh.

4 Q And I'm guessing you can't see all of them because
5 of the other dots on here.

6 A Okay.

7 Q Is that correct? Can you see them all?

8 A I can't see all the ones in Sacramento, no.

9 Q Okay. And so that's what I'm interested in is the
10 ones in Sacramento. Do you know, generally, where they
11 locate the CDEC FNF stations?

12 A I know, generally, where they're located, yes.

13 Q And so, generally, where do they locate them?

14 A So the ones we use for the Sacramento River supply
15 were at Bend Bridge on the Sacramento River.

16 Q Okay. Can I stop you there?

17 A Yep.

18 Q So Bend Bridge on the Sacramento River, is that near
19 Redding, do you know?

20 A I'd have to look on a map exactly, but it stands to
21 reason it is located near there.

22 Q Do you know whether it is above or below Shasta Dam?

23 A I believe below.

24 Q Below Shasta Dam?

25 A Uh-huh. It takes in two additional flow.

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1 Q Okay. And are there any others in the Sacramento
2 Valley?

3 A There's the full natural flow at Oroville.

4 Q At Oroville?

5 A And the Feather.

6 Q So, on this map, is there a way to even see where
7 that --

8 A Not without any reference. There's too many points
9 there.

10 Q Okay. You see the word "Susanville" on the
11 right-hand side about two-thirds of the way up the page?

12 A Yes.

13 Q Is Oroville kind of to the left and down from
14 Susanville roughly, do you know?

15 A I'd have to verify on another map. There's too much
16 clutter here.

17 Q Okay. So we have Bend Bridge and we have Oroville.
18 Oroville is probably -- is it below the dam at Oroville, do
19 you know?

20 A I'm not exactly sure where it is on Oroville, which
21 station it is.

22 Q Okay. Any others in the Sacramento Valley?

23 A The Yuba River at Smartville.

24 Q Okay.

25 A And then there's -- on the American/Folsom.

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1 Q And Folsom, do you know?

2 A Folsom Dam.

3 Q It is at Folsom Dam?

4 A I believe so, yes.

5 Q Any others?

6 A And then there's just the unimpaired -- not the CDEC
7 full natural flow stations, no, but there is additional
8 unimpaired flow from that report that we included.

9 Q Okay. And I'm going to tell you what I understand
10 full natural flow to be and you're going to tell me if that
11 is correct or not, okay, instead of me having to explain it?

12 A Uh-huh.

13 Q So full natural flow is a calculated quantity of
14 water in the watershed that would reach that full natural
15 flow station?

16 A Uh-huh.

17 Q Is that correct?

18 A The amount of unimpaired flow that would be up to
19 that particular location, yes.

20 Q So now you say "unimpaired flow." Is unimpaired
21 flow the same thing as full natural flow?

22 A They are used interchangeably, yes.

23 Q Interchangeably. And so if I just looked at the
24 full natural flow station at or around Shasta and at or
25 around Oroville --

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1 A Okay.

2 Q -- it appears as though there are a lot of points of
3 diversion under claimed rights above those CDEC full natural
4 flow stations.

5 A Okay.

6 Q Would that be fair to say?

7 A Depending on where the locations are, I'd have to
8 verify that, but it stands to reason, yes.

9 Q Well, the water rights in the very top right-hand
10 corner of the map, which is the northern bouny of the state
11 of California there's Goose Lake there, right?

12 A Uh-huh.

13 Q And there are a bunch of water rights that you have
14 on this map --

15 A Right.

16 Q -- shown within the Sacramento River Watershed?

17 A Correct.

18 Q Is there any way that those folks are downstream of
19 the CDEC station at Bend Bridge?

20 A No.

21 Q Okay. In conducting the analysis, do you know
22 whether the demand of all the claimed rights upstream of the
23 CDEC stations was removed from the demand analysis?

24 A No.

25 Q You don't know whether it was or it was not?

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1 A You'd have to ask Jeff Yeazell on the spreadsheet.

2 Q Okay. And, very briefly, back to Exhibit 10, which
3 was this one.

4 A Which date?

5 Q 4/29/15 in the bottom right-hand corner. It should
6 be marked Exhibit 10.

7 A Got it.

8 Q The daily full natural flow, that dark blue line --

9 A Uh-huh.

10 Q -- not the dark blue line, the solid blue line.

11 A Right.

12 Q Is that adjusted ever or is that -- it just says
13 "Daily Full Natural Flow."

14 A Right.

15 Q Is it an actual number, is it ever adjusted?

16 A The daily full natural flow is revised for certain
17 stations, notably the Yuba River is frequently as well as
18 the Folsom River -- or frequently revised, but that it's
19 adjusted in the sense that it's revised.

20 Q And when you say that it is revised then, as shown
21 on this chart, is that the revised full natural flow or what
22 am I looking at?

23 A That's the full natural flow we have up that was
24 reported by DWR on their CDEC website up to that date.

25 Q Do you know if it is the revised reported data or is

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1 it just --

2 A They can revise it whenever they want to, so that's
3 just a snapshot of what was reported.

4 Q Okay. A snapshot of what was reported by DWR on
5 CDEC?

6 A By DWR on CDEC, correct.

7 Q Do you know whether -- we talked a little bit about
8 the Delta and that there's fresh water flow and there's
9 title action, and so there's saltwater that actually enters
10 the Delta.

11 Do you know whether the flow on the Delta is one
12 directional or whether water with the tide, the ebb and
13 the -- the flow of the tide, whether or not water moves both
14 ways in the Delta?

15 A Water moves both ways because the tide recedes.

16 Q Do you know whether how far upstream the tidal
17 influence is --

18 A No.

19 Q -- on the Sacramento?

20 A No.

21 Q San Joaquin?

22 A No.

23 Q Calaveras?

24 A No.

25 Q Mokelumne?

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1 A No.

2 Q Cosumnes?

3 A No.

4 Q All right. Can you take a look, please, at
5 Exhibit 14. That's the ACL issue to BBID.

6 A Okay.

7 Q Page 4 of 7, paragraph 24.

8 A Okay.

9 Q It says, "This analysis shows that by June 12th
10 supply was insufficient to meet demands," right?

11 A Okay.

12 Q Is it fair to say then that the analysis doesn't
13 show supply was insufficient to meet demands, but the
14 analysis showed that full natural flow was insufficient to
15 meet demands?

16 A Correct.

17 Q Because you didn't look at supply, you looked at
18 full natural flow?

19 A We looked at full natural flow supply.

20 Q And the "this analysis" referred to in 24 --

21 A Uh-huh.

22 Q -- can you tell me what that refers to? I don't
23 know whether it's just what's in 23, whether it includes
24 what's in paragraph 22. So you just tell me what this
25 analysis means.

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1 A The supply and demand analysis.

2 Q The supply and demand analysis is -- okay. Let's
3 back up.

4 There was an analysis done that we think we
5 identified the spreadsheet that contains that analysis of
6 the supply and the demand, correct?

7 A Correct.

8 Q And then you used -- or somebody used the
9 information that was generated by that spreadsheet to
10 construct this Exhibit 10 chart, correct?

11 A For the May 1st curtailment, yes.

12 Q Okay. And how about for the June 12th curtailment?

13 A We have a separate graph for that.

14 Q It's constructed in the same manner as this is with
15 the riparian, pre-14, post-14 demand and full natural flow
16 numbers?

17 A There are some curves removed, but it's a similar
18 design.

19 Q Okay. And so does the analysis show that there was
20 insufficient full natural flow for diversion or does the
21 graph show or do both show that there was insufficient
22 water?

23 A Well, the supply and demand analysis when we use
24 that, we use that in reference to the chart, that's the
25 production of all the data.

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1 Q Okay. So you consider the chart to be part of the
2 analysis?

3 A Yes.

4 Q Okay. So it is the spreadsheet and the chart?

5 A Yes.

6 Q Okay. Thank you. And that spreadsheet is the same
7 spreadsheet that we looked at on the screen earlier, the one
8 that you took us through the State Water Board's website to
9 get to?

10 A That's the demand data set.

11 Q The demand data set.

12 A The different curves for the supply may be in a
13 different spreadsheet, but the demand is all there to
14 re-create those graphs.

15 Q And the data for the supply came all from DWR?

16 A DWR, so that would be the data full natural flow,
17 the B120 forecasts, as well as the unimpaired flow from that
18 2007 report, yes.

19 Q Did anybody within the State Water Board do anything
20 to adjust the information provided by DWR?

21 A We augmented the data from DWR to account for the
22 return flows in the Delta.

23 Q Okay. Did you have any hand in preparing the
24 June 12th curtailment notice?

25 A Probably.

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1 Q Mark that next, please. Exhibit 20.

2 (Whereupon, Exhibit No. 20 was
3 marked for identification.)

4 Q BY MR. KELLY: Mr. Coats, Exhibit 20 is a copy of
5 what I'm going to call a curtailment notice that was sent to
6 BBID.

7 Does this look familiar to you?

8 A Yes.

9 Q And my understanding is that this notice went out to
10 a number of water right holders that claimed a pre-1914
11 appropriative right between 1903 and 1914; is that your
12 understanding?

13 A Correct.

14 Q Okay. And that this curtailment notice was subject
15 to partial rescission and, for lack of a better term,
16 refinement later as a result of some judicial proceedings.

17 Are you aware of that?

18 A Yes.

19 Q And so what part of this letter did you participate
20 in drafting or preparing?

21 A This was a template letter that we issued in
22 conjunction with a mail merge to all of the known pre-14
23 rights with priority dates that we had identified for
24 curtailment, and then we merged the letters and sent them
25 out.

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1 So as far as the production of the actual document,
2 a number of people had input on it. It may have been
3 something that I drafted up and then upper management
4 revised. And then once a final template was agreed upon, we
5 ended up performing a mail merge.

6 Q And when you say "upper management," are you
7 referring just to Mr. O'Hagan or people other than
8 Mr. O'Hagan?

9 A Up to Mr. O'Hagan.

10 Q Up to Mr. O'Hagan. And I've seen other documents
11 that go through review at the State Water Board and,
12 generally, somewhere on the document there's a space for
13 people to initial. There are initials as they go through.

14 A Surname copy, correct.

15 Q Surname copy. Do you know if there's a version that
16 a surname copy that the State Water Board has? The only
17 copy that I have received is a clean copy. And so is there
18 anything that would show who approved and reviewed the
19 letter, do you know?

20 A It's possible. But the problem since this is a mail
21 merged document, there's no specific -- I mean, I guess it
22 would have been filed with the statement number, but even
23 the statement number we don't have a file for -- a
24 traditional file for.

25 Q Do you know whether or not there was a letter that

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1 was not addressed to any water right holders that was
2 prepared that was the exact same as this? Just a general
3 notice?

4 In other words, there's a template letter posted to
5 the State Water Board's website that reads exactly like this
6 but it doesn't have a water right holder on it?

7 A Exactly.

8 Q Would there be a surname copy of that, do you know?

9 A No.

10 Q Okay. Can you point me to any particular paragraphs
11 or sentences in here that you actually drafted?

12 A Drafting and actually owning what's finally produced
13 are two different things.

14 Q Was it your understanding that this letter was a
15 directive by the State Water Board to folks to stop
16 diverting if they received this letter?

17 A Yes.

18 Q I want you to take a look at on page 2, the
19 "Exceptions to Curtailment." The paragraph that has above
20 it in bold "Exceptions to Curtailment."

21 A Uh-huh.

22 Q Are you familiar with that paragraph?

23 A Yes.

24 Q Were you involved at all in the preparation of that
25 paragraph, the drafting of it?

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1 A It appears to be a copy from a 2014, similarly
2 drafted.

3 Q And can you tell me, generally, what that paragraph
4 provides?

5 A So it says that, "If your diversion is for
6 hydroelectric generation by direct diversion and all the
7 water is returned to the same stream system or, in other
8 words, to non-consumptive use, you may continue to divert
9 under your pre-14 claim of right. And if you previously
10 collected water storage, you may still beneficially use that
11 water." Yeah.

12 Q So let me ask you this question.

13 A Uh-huh.

14 Q So this essentially says, if you were diverting
15 water under your claimed right that would otherwise be
16 curtailed for hydropower, you can keep doing it because it
17 is non-consumptive, right?

18 A Correct.

19 Q Right. Are you aware of the concept of regulatory
20 storage?

21 A Yes.

22 Q What is your understanding of regulatory storage?

23 A For licensing purposes, any water that's collected
24 in a longer time period that would be unable to be diverted
25 in a shorter time period may be collected for up to a 30-day

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1 period provided a regulation -- a regulatory program has
2 been in place that can use that water at a different
3 diversion rate than would have been otherwise available.

4 Q And so is it your understanding that under this
5 exception that if someone has a pre-1914 but post-1903
6 appropriative water right for hydropower at a reservoir,
7 that they could divert water for up to 30 days as it passed
8 through the turbines under this exception?

9 MS. TEMPLE: Objection. Incomplete hypothetical.

10 THE WITNESS: I can't speculate on that.

11 Q BY MR. KELLY: So is it your understanding that this
12 exception mandated that no water be stored, regulatory or
13 otherwise, if the right was curtailed?

14 MS. TEMPLE: Objection. Calls for speculation.

15 THE WITNESS: I can't answer. I don't know.

16 Q BY MR. KELLY: Well, when you conducted your water
17 availability analysis and looked at the available supply --

18 A Uh-huh.

19 Q -- did you consider the fact that everyone who was
20 curtailed that fit within the exception might be able to
21 divert water under a regulatory storage claim for up to
22 30 days and delay the timing of water coming downstream?

23 A No.

24 Q Would that matter, do you think, for a water
25 availability analysis if folks were allowed to divert water

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1 into regulatory storage for up to 30 days upstream?

2 A Provided they had a regulatory program and we
3 verified that they actually had a regulatory operation in
4 place, it may have been an issue.

5 Q When you say "regulatory operation," what do you
6 mean?

7 A People can claim a regulatory collection to storage
8 for up to 30 days. But if they don't actually have an
9 operation and they're just using that as an excuse to store
10 water for a short period, that's different.

11 Q Can a riparian water right holder divert water for
12 up to 30 days under the concept of regulatory storage?

13 MS. MORRIS: Objection. Compound.

14 MR. KELLY: I'm sorry. Are you representing
15 Mr. Coats?

16 MS. TEMPLE: She's --

17 MS. MORRIS: I'm a party. I'm allowed to make
18 objections.

19 Q BY MR. KELLY: Okay. Can a riparian water right
20 holder -- do you know whether a riparian water right holder
21 can divert water to regulatory storage for up to 30 days?

22 A They can't store water.

23 Q Not even for up to 30 days?

24 A Well, they're not licensed, so I don't see how they
25 can do that.

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1 Q If they could, would that have any effect on a water
2 availability analysis?

3 MS. TEMPLE: Objection. Incomplete hypothetical.

4 THE WITNESS: I don't know.

5 Q BY MR. KELLY: Mr. Coats, are you aware of
6 proceedings that were initiated by the West Side Irrigation
7 District to challenge the May 1st curtailment notice?

8 A I heard about them.

9 Q Are you aware or do you have knowledge of a
10 restraining order that was issued by the Sacramento Superior
11 Court with respect --

12 A Not the specifics, but I heard it was denied.

13 Q Exhibit 21 and 22.

14 (Whereupon, Exhibit No. 21-22 were
15 marked for identification.)

16 Q BY MR. KELLY: Mr. Coats, are you familiar with
17 what's been marked as Exhibit 21?

18 A Yes.

19 Q And how about Exhibit 22?

20 A The same document, just the mail merge.

21 Q Right. And so Exhibit 21 is the general template,
22 and then Exhibit 22 is after the mail merge, the one that
23 goes out to the individual water right holders?

24 A Correct.

25 Q Did you have -- did you participate at all in the

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1 preparation of Exhibit No. 21?

2 A I believe so.

3 Q Can you tell me which portions of Exhibit 21 you
4 prepared or assisted in preparing?

5 A Similar to the prior answer to your previous
6 question, I don't own all of the paragraphs within it. The
7 bulleted points, I believe, were done by Kathy Mrowka. The
8 other sections of the paragraphs in the letter may have been
9 drafted by me, but upper management also makes comments
10 which includes Kathy Mrowka and John O'Hagan.

11 Q Do you know why Exhibit 21 was prepared?

12 A In response to the Superior Court decision, use of
13 the word "curtailment" was determined to imply that it was
14 an order when, in fact, they were actually notices, and so
15 the letter was sent out to those affected parties indicating
16 that they were simply notices and not an order.

17 Q Did you meet with anybody at the State Water Board
18 to discuss this letter?

19 A Just my current manager, Kathy Mrowka and John
20 O'Hagan.

21 Q This letter is Exhibit 21, and Exhibit 22 are both
22 signed by Tom Howard?

23 A Uh-huh.

24 Q Were you in any meetings with Mr. Howard with
25 respect to this letter?

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1 A No.

2 Q Did you ever attend any meetings at the State Water
3 Board with respect to the Court's ruling that resulted in
4 this letter?

5 A Not that I can recall, no.

6 Q Is it your opinion that if water is not included in
7 full natural flow, that it's not available for diversion by
8 water right holders?

9 A I don't have an opinion.

10 Q Are you an expert in water rights?

11 MS. TEMPLE: Objection.

12 THE WITNESS: You need to define what an expert is.

13 Q BY MR. KELLY: Do you consider yourself an expert in
14 water rights?

15 A As I said, I need to know what the definition of an
16 expert is before I can define myself as that.

17 Q Do you consider yourself an expert in chemical
18 engineering?

19 A I have a degree in and a license in it, but does
20 that require me to be an expert or am I an expert, that
21 remains to be seen.

22 Q Do you have any formal education in water rights?

23 A Aside from the training that's been provided over
24 the years, on-the-job training, nothing else aside from
25 that.

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1 Q How about in water modeling?

2 MS. TEMPLE: Objection. Vague.

3 THE WITNESS: Please define what modeling you're
4 referring to.

5 Q BY MR. KELLY: CalSIM?

6 A No.

7 Q DSM2?

8 A No.

9 Q Have you ever engaged in any water modeling at all?

10 A In any CalSIM or DSM2 modeling, no. Just the supply
11 and demand analysis from the state.

12 Q How about other than CalSIM or DSM2?

13 A No.

14 Q Are you familiar with the 25 percent voluntary
15 reduction for riparian rights in the Delta this year?

16 MS. TEMPLE: Objection. Assumes facts not in
17 evidence.

18 THE WITNESS: I have seen the agreement that the
19 Delta Water Master prepared, and I'm somewhat familiar with
20 it.

21 Q BY MR. KELLY: What is your understanding about that
22 program?

23 A That the people potentially affected the riparian
24 diverters in exchange for not taking an action, I've noticed
25 unavailability against them. They would agree to reduce

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1 their crops by 25 percent.

2 Q And do you know what the goal of that program was
3 from the Board's perspective?

4 MS. TEMPLE: Objection. Calls for speculation.

5 THE WITNESS: No.

6 Q BY MR. KELLY: Where the demand -- was the demand
7 database adjusted to reflect the 25 percent reduction in
8 riparian use in the Delta?

9 A You'd have to ask Jeff Yeazell on that. I don't
10 know.

11 Q Did you direct him to reduce it?

12 A No.

13 Q Did you do anything to determine who was entitled to
14 that 25 percent of reduced diversion, the water that
15 resulted from that reduced diversion?

16 A No.

17 Q Was there ever any discussion at the State Water
18 Board about imposing curtailments in order to protect water
19 that was in storage?

20 MS. TEMPLE: Objection. Calls for speculation.

21 THE WITNESS: Not that I can recall, no.

22 Q BY MR. KELLY: Who -- who populated the demand
23 database?

24 A The demand database, the raw data was populated from
25 our IT department, forwarded to Jeff Yeazell for quality

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1 control.

2 Q And when people responded to the -- let's back up.

3 If I use the term "informational order" --

4 A Uh-huh.

5 Q -- do you know what I'm talking about?

6 A Which one?

7 Q The 2015 -- well, the information that you got for
8 the demand database, where did that come from?

9 A So the demand database came from the 2010 to 2014
10 reports for certain parties based on their eWRIMS submittals
11 to their permit licences or statements, and then there's
12 also additional demands that came from the February 2015
13 informational order.

14 Q And so when did you -- how did you decide which set
15 of information you were going to -- or which source of
16 information you were going to rely on for conducting the
17 analysis?

18 A It depended on the time that we received it, but
19 anything prior to the deadline date for the February
20 informational order of March 6th, we used the four-year
21 average demand.

22 Q Okay. What, if anything, did you do to verify the
23 claims that were submitted? And when I say "claims," I mean
24 the claimed senior rights. Pre-1914 or riparian.

25 A We made sure that of the 1,063, I believe,

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1 statements that were sent to the pre-1914 or riparian
2 rights, we made sure that they responded to the
3 informational order by submitting a web form of their 2014
4 to 2015 projected use and/or information to the email
5 account.

6 Q And how did you verify the priority date?

7 A We didn't do any -- any actual analysis on all of
8 the submittals.

9 Q How did you verify that a landowner actually had
10 riparian rights?

11 A We haven't had time to sift through all that data.

12 Q And so did the State Water Board just assume all
13 submitted claims were valid for the purpose of the analysis?

14 MS. TEMPLE: Objection. Calls for speculation.

15 THE WITNESS: Whatever we used in response to the
16 informational order that was submitted to us, we accurately
17 transposed into the database.

18 Q BY MR. KELLY: My question is, did you simply accept
19 the claims that were submitted as being correct, as being
20 valid?

21 MS. TEMPLE: Objection. Vague and ambiguous.

22 THE WITNESS: We accepted the data that was
23 submitted. As to whether it's accurate or correct is a
24 different issue.

25 Q BY MR. KELLY: And do you know -- are riparian

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1 rights always senior to pre-1914 water rights?

2 A No.

3 Q Under what circumstances are they not?

4 A Pre-1914 right that has a prior appropriation
5 priority date subject to the date that the riparian parcel
6 was transferred to private ownership may have a seniority.

7 Q So if somebody establishes a pre-1914 right before a
8 patent issued by the federal government?

9 A Before it transferred to private ownership, yes.

10 Q Then the riparian water right would be junior to
11 that appropriator?

12 A Correct.

13 Q Did you do anything to determine whether or not any
14 pre-1914 water right holders were senior to riparians?

15 A Nothing out of just transferring the data to the
16 database.

17 Q When people reported a riparian right, did they
18 report a date of issuance of patent or did they just claim a
19 riparian right, if you know?

20 A Some people reported with an actual priority date on
21 their patent and some people -- whatever was submitted in
22 the electronic database is what we transposed.

23 Q Okay. And earlier you testified that full natural
24 flow or natural flow is available to both appropriators and
25 riparians --

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1 A Uh-huh.

2 Q -- but other flows are not available to riparians?

3 A Correct.

4 Q And that's the reason why you excluded a lot of that
5 other information from the analysis -- a lot of the other
6 source of the flows, return flows and things like that?

7 A We couldn't quantify the actual return flows as
8 to -- since it didn't qualify as a full natural flow, it
9 wasn't included in the analysis.

10 Q Do you know whether any wastewater treatment
11 operators report to the State Water Board on their
12 discharges?

13 A Not offhand, no.

14 Q Did you do anything to see if you could get that
15 information as part of this analysis?

16 A If it wasn't reported to us, no.

17 Q You may have covered this earlier, I'm not sure, so
18 I'm going to ask it.

19 Do you know who the exchange contractors are on the
20 San Joaquin River?

21 A Yes.

22 Q Tell me what you know about the exchange
23 contractors.

24 A The exchange contractors are a group of four
25 entities that claim use of water on the San Joaquin. And in

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1 exchange for resolution of a lawsuit against the
2 construction of Friant, because that would impact their
3 ability to get water on the San Joaquin, in exchange of them
4 not diverting water off the San Joaquin, they take
5 deliveries from the Delta-Mendota pool.

6 Q Do you know where the water comes from that ends up
7 in the Delta-Mendota pool?

8 A The Sacramento side of the system.

9 Q Do you know the source of the supply for the
10 exchange contractors this year?

11 A Storage.

12 Q From where, do you know?

13 A Friant, as I recall.

14 Q Do you know whether the exchange contractors' demand
15 was included in the pre-14 or riparian demand in the
16 analysis?

17 A They were included in the pre-14 and the riparian
18 demand, because they claimed both on their informational
19 order, and after questioning them about that, they indicated
20 they can't separate it out, and so it was all lumped in with
21 their riparian demand.

22 Q So their demand stayed in the riparian demand even
23 though their water supplies were provided from storage?

24 A Yes.

25 Q Would the statement be true for the Sacramento River

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1 settlement contractors? Do you know who the Sacramento
2 River settlement contractors are?

3 A Not specifically actual parties, but it relates to
4 the Shasta Dam construction.

5 Q Do you know whether they get their water supplies
6 from stored water?

7 A I don't know.

8 Q Do you know who the Feather River settlement
9 contractors are?

10 A Not the name specifically.

11 Q Do you know, generally, what they are?

12 A Not exactly, no.

13 Q Do you know who they have settlement contracts with?

14 A I think it is with the Department of Water
15 Resources.

16 Q Do you know -- do you know whether their supply this
17 year came from stored water or from natural flow?

18 A No.

19 Q Do you think that that would be important to know in
20 conducting an analysis of water availability?

21 A Yes.

22 Q If demand outstripped supply on a tributary --

23 A Uh-huh.

24 Q -- in the watershed-wide analysis, was the demand
25 carried over into the whole watershed or did you remove the

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1 demand from the analysis?

2 A Once we got to the tributary level on the San
3 Joaquin, the global San Joaquin boundary analysis was just
4 carried over but it wasn't relied upon for any additional
5 pre-14 levels of curtailment. Those were based on the
6 tributaries.

7 Q So when you did the San Joaquin River Basin
8 analysis --

9 A Uh-huh.

10 Q -- if the -- and I don't know what the demands and
11 supplies are on the Stanislaus River, so I'm going to make
12 it up. If you had 100 -- if you had 10,000 CFS supply on
13 the Stanislaus and the demand was 15,000 CFS, when you did
14 the watershed-wise analysis, what did you do with the extra
15 5,000 CFS in demand? Did you just remove it from the
16 analysis or did it get transferred --

17 A It depends on which analysis you're referring to.

18 Q The analysis that resulted in the curtailments.

19 A Yeah. Which one? Are you talking about the global
20 San Joaquin River analysis or are you talking about the
21 senior-level curtailments that were based on tributaries?

22 Q I'm talking about BBID's curtailment.

23 A Okay. So that would be based on the -- since
24 they're within the Delta, they would be in the Sacramento
25 prorated, and so we didn't remove any additional demands off

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1 of the Yuba or off of the American River.

2 Q So if demand outstrips supply, the demand would get
3 absorbed by the rest of the watershed?

4 A On a global basis, yes.

5 Q Okay. Aside from the exceptions to curtailments we
6 talked a little bit -- a little while ago with respect to
7 hydropower, do you know whether or not there were any other
8 exceptions to curtailments that were issued by or granted by
9 the State Water Board?

10 A Aqua culture.

11 Q Explain that to me, aqua culture.

12 A Anyone that's claiming a use of aqua culture where
13 it is a flow-through operation, there's no net consumptive
14 use of water, it was removed. It was very minor, though.

15 Q Any others?

16 A Direct diversion power was removed, any duplicative
17 water rights with respect to what they reported.

18 Q Anything else?

19 A There was some additional adjustments proffered by
20 MBK in regard to some of the contractors that were offered
21 to us that we had looked at and made those adjustments to
22 the demand.

23 Q In talking about the analysis for the southern --
24 for the South Delta --

25 A Uh-huh.

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1 Q -- I thought I recall that you said that you looked
2 at the San Joaquin flows at Vernalis and the analysis was
3 based on San Joaquin River Watershed flows. Do I recall
4 that correctly?

5 A That was a supporting analysis that was done after
6 issuing the ACL against BBID.

7 Q Are you familiar with the pattern of flows over the
8 course of a year from the different sources that contribute
9 to the Delta?

10 A No.

11 Q So the separate analysis, the later analysis that
12 you did --

13 A Uh-huh.

14 Q -- looked only at San Joaquin River supply into the
15 Delta for the purpose of the BBID ACL?

16 A That was a check against to determine whether or not
17 the prorated amount of Central and the South Delta -- or
18 actually the prorated amount of the demand in the entire
19 Delta that was allocated to the San Joaquin side was
20 sufficient or exceeded the flow at Vernalis.

21 Q Do you have any idea what the source of water is at
22 BBID's point of diversion when they divert water?

23 A Not -- no.

24 Q Why is the flow of the San Joaquin River alone
25 relevant to determining whether there's water available for

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1 BBID?

2 A That was just as a check, just to determine whether
3 or not, from a proximity standpoint, if there was enough to
4 supply that.

5 Q So do you have any idea in June of 2015 --

6 A Uh-huh.

7 Q -- how much Sacramento River water was present in
8 the South Delta?

9 A No.

10 Q Any idea how much Mokelumne River water was present
11 in the South Delta?

12 A No.

13 Q San Joaquin River water?

14 A No.

15 Q I think that you testified earlier that the purpose
16 of the curtailment is to protect downstream senior water
17 right holders?

18 A That was the explanation that was offered by upper
19 management, yes.

20 Q Do you know whether there are any senior water right
21 holders downstream of BBID?

22 A No.

23 MS. TEMPLE: For the record no, you don't know, or
24 no --

25 THE WITNESS: I don't know of the time. I'd have to

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1 review.

2 Q BY MR. KELLY: Do you know -- do you know whether
3 any water right holders claimed injury as a result of BBID's
4 diversion in June of 2015?

5 MS. TEMPLE: Objection. Vague and ambiguous. Calls
6 for speculation.

7 THE WITNESS: I don't know.

8 Q BY MR. KELLY: Did you have anything to do with that
9 portion of the ACL that talks about water needed for
10 downstream senior water right holders?

11 MS. TEMPLE: Objection. Vague and ambiguous.

12 Q BY MR. KELLY: Let's look at it. Exhibit 14.

13 A Uh-huh.

14 Q Did you have anything to do with drafting paragraph
15 18 on page 3 of 7?

16 A Aside from inserting the 1903 date, this appears to
17 be something that we copied from a prior notice.

18 Q Okay. How about paragraph 24 on page 4 of 7. Did
19 you have anything to do with drafting that paragraph or that
20 sentence?

21 A I don't recall.

22 MR. KELLY: Let's take a five-minute break.

23 (A recess was taken.)

24 Q BY MR. KELLY: Back on the record. Okay, Mr. Coats,
25 I have three more questions and then I'm going to turn it

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1 over to somebody else so we can wrap up here.

2 You mentioned a couple times stakeholder meetings
3 that happened. Were there stakeholder meetings on the San
4 Joaquin side and the Sacramento River side?

5 A Just meetings with MBK Engineers, that I can recall,
6 on the Sacramento side.

7 Q It didn't include any -- it didn't include anybody
8 other than MBK?

9 A Not that I can recall, no.

10 Q Was that meeting to discuss the Sacramento and
11 prorated San Joaquin or just the Sacramento Riverside?

12 A Mainly our demands that may need adjustment in our
13 database.

14 Q In the Sacramento River Basin?

15 A Yes.

16 Q Okay. On the San Joaquin side, how did you
17 determine who -- or did you send out the invitation to that
18 stakeholder meeting or did somebody else?

19 A I don't recall if I did or not. I may have been
20 instructed by Kathy to send out the invitations, but you'd
21 have to check the email.

22 Q I don't know if I have the email. I will say that
23 BBID was not invited to that.

24 Do you have any idea why BBID wouldn't have been
25 invited to that meeting?

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1 A No.

2 Q On the spreadsheets --

3 A Uh-huh.

4 Q -- we're going to talk to Jeff Yeazell tomorrow.

5 A Uh-huh.

6 Q You testified that you provided him -- that he
7 generated the spreadsheet and you provided him input --

8 A Uh-huh.

9 Q -- on the data used to conduct the analysis. Is
10 that a fair statement?

11 A Correct.

12 Q Did all of the information that Jeff got come from
13 you or did other people also direct Jeff?

14 A John O'Hagan directed Jeff as well as myself.

15 Q Okay. And were you always aware of the direction
16 that John was giving to Jeff? I mean, were you in the loop
17 with those discussions?

18 A If I wasn't present on one particular day, I was
19 always notified by Jeff of what happened and what was
20 decided on, yes.

21 Q Okay. And hopefully the last, was the combined
22 Sacramento River/San Joaquin River analysis used at all for
23 the determination for either the May 1st or June 12th
24 curtailment?

25 A We checked that in comparison to the Sacramento

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1 River, and it was more severe than the Sacramento with the
2 prorated Delta, so we opted to use the more generous
3 Sacramento River with the prorated analysis.

4 Q So the combined Sacramento River/San Joaquin
5 analysis was not used for the May 1st or June 12th
6 curtailment?

7 A No.

8 MR. KELLY: Okay. That's all I have. Thank you.

9 EXAMINATION BY MR. O'LAUGHLIN

10 Q BY MR. O'LAUGHLIN: Hi, Brian. My name is Tim
11 O'Laughlin. I represent the San Joaquin Tributaries
12 Authority.

13 On the Friant, the exchange contractor Friant issue,
14 how is Friant demand handled in 2015?

15 A Can you clarify what Friant demand you're referring
16 to?

17 Q Yes. The post-14 appropriative demands of Friant to
18 take water out of --

19 A So all the post-14 demands that we would have had on
20 Friant would have been included in the global San Joaquin
21 analysis.

22 Q Okay. And my understanding, though, is that what
23 you said earlier is that the exchange contractors took all
24 the stored water out of Friant this year, correct?

25 A That was my understanding, yes.

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1 Q Okay. But you kept the exchange contractors in and
2 then treated them all as a riparian demand, correct?

3 A Correct.

4 Q And do you have an approximation of how much their
5 demand is?

6 A On a seasonal basis, about 800,000 acre feet, or
7 something like that.

8 Q On a daily basis, do you know how much it is?

9 A No.

10 Q I was confused by a question in regards -- that was
11 answered earlier. So I'm going to use the Merced River as
12 an example. So let's say MID is at Exchequer and there's
13 500 CFS of flow coming in the river and their demand is a
14 thousand.

15 A Uh-huh.

16 Q Okay. So you would calculate -- what would happen
17 to their 500 CFS of demand that's not met? Would that go to
18 the rest of the entire system as demand that was not met?

19 MS. TEMPLE: Objection. Incomplete hypothetical.
20 Vague and ambiguous.

21 THE WITNESS: In the post-14 global analysis, which
22 included all of the tributaries including the Stanislaus,
23 Tuolumne, and Upper San Joaquin, yes.

24 Q BY MR. O'LAUGHLIN: In the Delta, it appeared that
25 you -- the department decided to take riparians and pre-14s

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1 and turn them into all riparians for the analysis; is that
2 correct?

3 MS. MORRIS: Objection. Ambiguous as to
4 "department."

5 MS. TEMPLE: Mischaracterizes earlier testimony.

6 Q BY MR. O'LAUGHLIN: All right. People who were
7 listed as both riparian and pre-14 on their claims forms,
8 how did you treat those in your demand analysis?

9 A So for a people in the Delta, they're called a
10 pre-14 and riparian claim at the request of some of the San
11 Joaquin River stakeholders that indicated that, in the event
12 a pre-14 curtailment was initiated, they would roll that
13 demand into the riparians, we elected for those cases to
14 apply the total demand to riparian.

15 Q And do you know how many cases this involved or how
16 many claims?

17 A Actual parties, no. Jeff Yeazell would answer that.

18 Q Okay. And would Jeff be able to answer as well the
19 demand that was firmed up as to riparian?

20 A The total riparian demand from the spreadsheets,
21 yes.

22 Q Did you, or anybody under you, ever ask your
23 management to reconcile changing pre-14 -- people who were
24 claiming pre-14 and riparians into all riparians given the
25 Delta pool theory?

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1 MS. TEMPLE: Objection. Vague and ambiguous.

2 THE WITNESS: No.

3 Q BY MR. O'LAUGHLIN: Sure. No -- okay. Did you do
4 any analysis of any prescriptive rights by pre-14 water
5 right holders in the San Joaquin River vis-a-vis riparians
6 in the Delta?

7 A No.

8 Q It's interesting in the footnotes that you put up,
9 did the demand in the South Delta start at Mossdale or did
10 it start at Vernalis?

11 A The upper management, in this case is John O'Hagan,
12 had indicated for this year that any demand south of
13 Mossdale, which is upstream, was to be included in the San
14 Joaquin due to the limit of the title flow reach in that
15 location.

16 Q So if you were -- if you were immediately downstream
17 of Vernalis and in the legal Delta, you would have been
18 excluded from the South Delta demand, correct?

19 A You would have been -- that demand would have been
20 included in the San Joaquin River global.

21 Q Global, thank you. So did you -- my understanding
22 is this is kind of a spreadsheet analysis. Did you actually
23 go out to any of the tributaries and try to ascertain what
24 the flow in the river was and what was being diverted by the
25 water right holders at any given time?

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1 A No.

2 Q So let me give you -- I'm going to give you a
3 hypothetical, and I'm going to use the Stanislaus just as an
4 example.

5 So let's say it is May 1st and you're using FNF at
6 Goodwin, right?

7 A Uh-huh.

8 Q Okay. And let's say that Goodwin FNF is 800 CFS.

9 A Uh-huh.

10 Q And on May 1st, my understanding is the pre-14
11 rights were not curtailed yet, correct?

12 A Uh-huh.

13 Q And folks in South San Joaquin have a right to
14 1816.6 CFS, and they diverted the whole 800 CFS that was at
15 Goodwin --

16 A Correct.

17 Q -- on May 1st. So with that in mind, how did you --
18 how did your office then treat the 250 CFS of water being
19 released below Goodwin for instream flows?

20 A Since that wasn't a full natural flow source, we
21 didn't account for that.

22 Q But if that water is coming from storage, would your
23 analysis be that that water would only be subject to a
24 pre-14 or post-14 appropriative diversion and not a riparian
25 diversion?

DEPOSITION OF BRIAN COATS

1 MS. TEMPLE: Objection. Incomplete hypothetical.

2 THE WITNESS: We didn't take into account any
3 storage releases as pertains to water availability.

4 Q BY MR. O'LAUGHLIN: Okay. Did you -- you relied on
5 DWR data, and then you made an interesting statement, I
6 thought, that you didn't rely on -- why didn't the State
7 Board ask DWR for a particle tracking model or DSM or
8 whatever else? Is there a reason why you didn't ask for
9 additional modeling in the Delta?

10 MS. TEMPLE: Objection. Compound. Vague and
11 ambiguous. Calls for speculation.

12 THE WITNESS: I wasn't directed to.

13 Q BY MR. O'LAUGHLIN: You're aware of those models,
14 right?

15 A I think I've heard of the names, but I'm not
16 familiar with how they work.

17 Q When you were in the -- are you aware of the CDP
18 diversion facility in the South Delta at Banks?

19 A Banks Pumping Plant, yes.

20 Q Jones. I always say Banks. Jones.

21 Do you know if the United States Bureau of
22 Reclamation has a water right permit to divert San Joaquin
23 River flow at Jones?

24 A Not offhand, no.

25 Q Okay. Do you know if at Jones the right to divert

DEPOSITION OF BRIAN COATS

1 when the Delta -- when there's not sufficient flow is only a
2 right to re-divert Sacramento River water?

3 A No.

4 MS. TEMPLE: You don't know or no?

5 THE WITNESS: I don't know at the time.

6 Q BY MR. O'LAUGHLIN: In the Delta this past year,
7 there were releases being made to maintain X2 and Delta
8 outflow. Are you familiar with those?

9 MS. TEMPLE: Objection. Assumes facts not in
10 evidence.

11 THE WITNESS: I don't know what X2 you're referring
12 to.

13 Q BY MR. O'LAUGHLIN: Okay. Are you familiar with
14 Delta outflow?

15 A The flows released from the projects in order to
16 meet water quality requirements in the Delta.

17 Q Okay. So in your analysis when you were looking at
18 the Delta and trying to ascertain what water was available
19 for diversions, how did you treat the water that was -- not
20 the water that was going to the pumps for re-diversions for
21 the projects, but the water that was being used to meet that
22 water quality objective?

23 MS. TEMPLE: Objection. Been asked and answered.
24 Go ahead.

25 THE WITNESS: If it was not full natural flow, we

DEPOSITION OF BRIAN COATS

1 didn't consider it.

2 Q BY MR. O'LAUGHLIN: Would you agree with the general
3 premise that if stored water is released and abandoned, that
4 downstream pre-14 and appropriative rights could divert such
5 water given their priority?

6 MS. TEMPLE: Objection. Calls for a legal
7 conclusion.

8 THE WITNESS: If it is, in fact, abandoned water,
9 then appropriative water rights downstream have a right to
10 divert them.

11 Q BY MR. O'LAUGHLIN: Do you know if the State Board
12 has ever made any determination as to whether or not the
13 water release pursuant to D1641 to meet Delta flow is or
14 isn't abandoned in the Delta?

15 THE WITNESS: No, I don't.

16 MS. TEMPLE: Objection. Calls for a legal opinion.

17 Q BY MR. KELLY: Do you know if the State Board has
18 made a determination to protect such water in order to meet
19 the requirement of the water quality objective?

20 MS. TEMPLE: Objection. Calls for speculation.

21 THE WITNESS: I don't know.

22 Q BY MR. O'LAUGHLIN: Okay. Did you make any
23 comparisons between and look at whether or not upstream
24 adjudications or State Board orders, in fact, depleted the
25 amount of water in the streams to zero?

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1 MS. TEMPLE: Objection. Vague and ambiguous.
2 Compound.

3 THE WITNESS: No.

4 Q BY MR. O'LAUGHLIN: Oh, I have one more. How did
5 you -- did your analysis include any -- trying to ascertain
6 the effects or impacts of the ag barriers in the Delta on
7 diversions in the South Delta?

8 MS. TEMPLE: Objection. Assumes facts not in
9 evidence. Vague and ambiguous.

10 THE WITNESS: No.

11 Q BY MR. O'LAUGHLIN: On the amount of water available
12 and subject to diversion in the South Delta?

13 MS. TEMPLE: Same objections.

14 THE WITNESS: No.

15 BY MR. O'LAUGHLIN: Great. Thank you very much,
16 Mr. Coats. I appreciate it.

17 MR. KELLY: I think we're done.

18 (The deposition concluded at 4:14 p.m.)

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THE WITNESS

DATE SIGNED

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REPORTER'S CERTIFICATE

State of California)
) ss.
County of Sacramento)

I certify that the witness in the foregoing deposition,

BRIAN COATS,

was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness 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 deposition, nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this day of November 17, 2015.

THRESHA SPENCER
Certified Shorthand Reporter
Certificate No. 11788

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DISPOSITION OF ORIGINAL TRANSCRIPT

Date _____

Check One

_____ Signature waived.

_____ I certify that the witness was given the statutory allowable time within which to read and sign the deposition, and the witness failed to appear for such reading and signing.

_____ I certify that the witness has read and signed the deposition and has made any changes indicated therein.

By _____
KATHRYN DAVIS & ASSOCIATES

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KATHRYN DAVIS & ASSOCIATES
Certified Shorthand Reporters
555 University Avenue, Suite 160
Sacramento, California 95825
(916) 567-4211

November 17, 2015

BRIAN COATS, Witness
Department of Justice, Office of the Attorney General
Attn: Jennifer Kalnins Temple, Attorney
300 S. Spring Street, Suite 1702
Los Angeles, California 90013

Re: West Side Irrigation District Cease and Desist Order
and Byron-Bethany Irrigation District Civil Hearing

Date Taken: November 12, 2015

Dear Mr. Coats:

Your deposition transcript is now available for review
and signature, and will be available for the next 30 days.
This review is optional. An appointment is required to
review your transcript. Please bring this letter with you.

You may wish to discuss with your attorney whether he/she
requires that it be read, corrected, and signed, before it
is filed with the Court.

If you are represented by an attorney, you may read his or
her copy of the transcript. If you read your attorney's
copy of the transcript, please send us a photocopy of the
Signature Line and Deponent's Change Sheet.

If you choose not to read your deposition, please sign here
and return this letter to our office.

Signature

Date

Sincerely,

THRESHA SPENCER, CSR No. 11788

cc: Ms. Spaletta; Mr. Vergara; Ms. Zolezzi; Ms. Akroyd;
Mr. Williams; Mr. O'Laughlin; Mr. Tauriainen;
Mr. Prager; Ms. McGinnis; Ms. Morris

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