

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

)
Public Hearings to Determine)
Whether to Adopt Cease and Desist)
Orders against:)
)
Mark and Valla Dunkel, Middle River)
in San Joaquin County;)
)
Yong Pak and Sun Young (Pak/Young),)
Duck Slough in San Joaquin County;)
)
Rudy Mussi, Toni Mussi and Lory C.)
Mussi Investment LP (Mussi et al.),)
Middle River in San Joaquin County)
~~~~~ )

JOE SERNA JR./CALEPA BUILDING

1001 I STREET

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

VOLUME II

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1 P R O C E E D I N G S

2 --o0o--

3 CO-HEARING OFFICER BAGGETT: Good morning.

4 We're here today to continue the May 5th Yong Pak and  
5 Sun Young CDO hearing and to conduct the Rudy Mussi,  
6 Toni Mussi, and Lory C. Mussi Investment LP CDO hearing.

7 I'm Art Baggett, Member of the State Board.

8 And acting as my Co-Hearing Officer today is Chair  
9 Charlie Hoppin.

10 Also present are staff counsel Dana Heinrich  
11 and engineer Ernie Mona.

12 Before we get started, you know the evacuation  
13 drill, down the stairs, out across to the park. I  
14 think -- looks like everybody was here before, so we  
15 won't have to go through that.

16 This hearing is webcast. It's audio and video  
17 both. We have a court reporter preparing us a  
18 transcript, and as always anyone who wants a copy can  
19 make separate arrangements.

20 So let's begin.

21 This is the time and the place for the  
22 continuation of the May 5th hearing to receive evidence  
23 relevant to determine whether to adopt with or without  
24 revision a Draft CDO issued against Yong Pak and Sun  
25 Young.



1           During the May 5th hearing, we completed the  
2 Prosecution Team's case-in-chief, began the  
3 case-in-chief for Pak/Young, and we concluded the direct  
4 testimony and cross-examination of the witnesses Pankey,  
5 Lajoie and Moore.

6           The parties agreed without objection the  
7 testimony and cross-examination of these three witnesses  
8 will be used in both this proceeding and the Mussi  
9 hearing which follows to be conducted after this  
10 hearing.

11           Are there any other procedural issues before we  
12 begin from any of the parties?

13           MR. O'LAUGHLIN: Yes, one. Tim O'Laughlin  
14 representing Modesto Irrigation District.

15           Is Dunkel going to be -- are we going to  
16 address the Dunkel motion separately at a later date and  
17 time, or are we going to address that today, or are we  
18 going to schedule that?

19           CO-HEARING OFFICER BAGGETT: Since I just  
20 received it 30 minutes ago, I would prefer to at least  
21 read it and contemplate it for a few minutes.

22           So we'll send something out in writing. I  
23 don't think there is any great urgency to make that  
24 decision before -- unless, Mr. Herrick -- to make the  
25 decision before today. I see you're nodding no.

1 MR. HERRICK: No.

2 CO-HEARING OFFICER BAGGETT: So we will get  
3 something out in writing in the near future.

4 With that, Mr. Herrick, you're up for direct.

5 (Discussion off the record)

6 --o0o--

7 DANTE JOHN NOME LLINI

8 Called by RUDY MUSSI, TONI MUSSI AND LORY C. MUSSI

9 INVESTMENT LP; YONG PAK AND SUN YOUNG

10 DIRECT EXAMINATION BY MR. HERRICK

11 --o0o--

12 MR. HERRICK: Thank you, Hearing Officers, John  
13 Herrick for Pak and Young. Mr. Nomellini's testimony  
14 will be for both the Pak and Young and the Mussi  
15 proceeding.

16 Most of the testimony hereinafter will be that  
17 way, although I understand that opposing parties would  
18 like to treat Mr. Neudeck separately because there are  
19 differences, and so we'll probably have two  
20 presentations and two sets of cross on that.

21 The next witness we'll bring then is Dante John  
22 Nomellini.

23 And Mr. Nomellini, if you'll just identify  
24 yourself for the record and give your business address.

25 MR. NOME LLINI: Dante John Nomellini, 235 East

1 Weber Avenue, Stockton, California 95 --

2 MR. O'LAUGHLIN: Mr. Baggett -- oops, sorry.

3 MR. NOME LLINI: -- 202.

4 MR. O'LAUGHLIN: Go ahead, finish. Sorry.

5 Yeah, I want to make objections before -- after  
6 he states his name and puts it into the record for the  
7 admissibility of the testimony.

8 CO-HEARING OFFICER BAGGETT: Do you want to  
9 continue, Mr. Nomellini? Sorry for the interruption.

10 MR. NOME LLINI: I stated my name and address.

11 CO-HEARING OFFICER BAGGETT: Object away.

12 MR. O'LAUGHLIN: In the testimony proffered by  
13 Mr. Nomellini in regards to these two matters, there are  
14 legal conclusions and opinions that are offered where  
15 under the Evidence Code none would be required.

16 Also, there are numerous citations to other  
17 documents.

18 And then the other thing is while there is a  
19 general description -- while there is a general  
20 description related to Roberts Island, there is nothing  
21 specific to either of the parcels in the testimony.

22 So therefore, all the testimony should be  
23 stricken because it's irrelevant because it only states  
24 a general statement about what's happening on Roberts  
25 Island and is not specific to either Pak, Young slash or

1 Mr. Mussi.

2 CO-HEARING OFFICER BAGGETT: Mr. Herrick?

3 MR. HERRICK: Mr. Nomellini's testimony is  
4 certainly capable of having conclusions, both legal and  
5 nonlegal. We've had testimony already where witnesses  
6 have made legal conclusions about riparian status.

7 With regard to the specifics in his testimony,  
8 Mr. Nomellini is providing evidence, conclusions, and  
9 information regarding his conclusion and that of the  
10 parties which will be that the lands subject to this  
11 hearing are riparian for reasons other than a current  
12 physical surface connection.

13 And whether or not his background is too broad  
14 for anybody's liking, I believe it's perfectly  
15 appropriate for him to explain the underlying reasons  
16 why he has reached these conclusions.

17 CO-HEARING OFFICER BAGGETT: Overrule the  
18 objection, and the objection is noted for the record.

19 So continue.

20 MR. HERRICK: Mr. Nomellini, your -- excuse me.  
21 Exhibit No. 10 in both these proceedings is a statement  
22 of qualifications; is that correct?

23 MR. NOMELLINI: If that's the exhibit number.  
24 I thought I had 9.

25 MR. HERRICK: And that's a true and correct

1 copy of your qualifications?

2 MR. NOMELLINI: Okay. Yes, that is true and  
3 correct.

4 MR. HERRICK: And do you have a copy before you  
5 of Exhibit 9 and attachments?

6 MR. NOMELLINI: My testimony? Yes.

7 MR. HERRICK: And that is a true and correct  
8 copy of your testimony for these proceedings?

9 MR. NOMELLINI: Yes, it is.

10 MR. HERRICK: Would you please summarize your  
11 testimony for the Board, please.

12 MR. NOMELLINI: First of all, I am Dante John  
13 Nomellini, as I stated, and I graduated as a civil  
14 engineer. I am a practicing lawyer.

15 I've farmed in this area. My family has farmed  
16 in this area. And I serve as the secretary and counsel  
17 to a number of the reclamation districts surrounding  
18 this area -- Lower Roberts, District 17 on the east side  
19 of the San Joaquin, Victoria Island.

20 And I am familiar with these particular  
21 properties, and I have directed my testimony  
22 specifically to those.

23 One of the things that I think is important to  
24 state is that the basic investigation associated with  
25 these parcels has focused on flowing streams, rivers,

1 sloughs, and that the Delta itself is not only an area  
2 of flowing streams and sloughs but is also like a lake  
3 or a pool.

4           And I realize that may be a little bit  
5 different than what is the typical situation. It is  
6 clear in the law that you can be riparian to a lake, you  
7 can be riparian to a pond, and you can be riparian to a  
8 pool.

9           I realize that's probably going to be  
10 controversial, but I think it's important that the Board  
11 understand from our view that this investigation, which  
12 is not an adjudication of the water rights, should look  
13 for a prima facie case as to the legitimacy of the  
14 diversions, and then it should be left to those of us  
15 who fight the water rights battles to have the  
16 adjudication on the stream system if that's where we're  
17 headed.

18           The Delta lands that we're dealing with here  
19 are all swamp and overflow lands that were patented by  
20 the State of California, granted to the State by the  
21 federal government under the Arkansas Act of 1850. I  
22 think the actual name was the Swamp Land Act of 1850.

23           That provided that the states could take title  
24 and convey the land with the obligation that they would  
25 in good faith proceed to reclaim it.

1           These were swamp and overflow lands. These  
2 lands were slightly above the mean high tide. Not  
3 greatly. There's no mountains out there. They look  
4 like mountains now because the organic soils have  
5 oxidized, and there's quite a bit of difference in the  
6 terrain. But when it started, pretty flat.

7           The Arkansas Act -- and there's a case I cited  
8 in my testimony where the Supreme Court found that the  
9 State has a good faith obligation to carry out the  
10 reclamation, and that was to put this land into  
11 productive use.

12           Productive use, I would submit, involves  
13 irrigation. Because once you put the levees around it  
14 and drain it, then in order to produce crops you have to  
15 control the water, and of course crop production depends  
16 greatly on application and control of water.

17           So I find it that the State -- improper for the  
18 State to take a role in trying to create a  
19 disqualification of riparian water use in the Delta  
20 without going after waste or unreasonable use because I  
21 think the policy is that the State has to support the  
22 continued cultivation and productive use of the Delta.

23           And that would go to an estoppel question with  
24 regard to the cease and desist process. Not to the  
25 adjudication of the water rights, but to the role of the

1 State Board.

2 And I understand what you're trying to do.  
3 You're trying to get a handle on these things. And we  
4 are going to continue to try and get our people to file  
5 and let you know who they are, where they divert, and  
6 give you that information.

7 Now, the second point I want to make is that  
8 the use of these various channels -- I mean, it's quite  
9 obvious that the Delta was full of sloughs and channels.

10 I think the evidence ought to be crystal clear  
11 after this hearing for sure and based on the mapping  
12 that we've seen. You can look at current aerials and  
13 see traces of lighter-colored soil which are mineral  
14 soils which reflect historic channels in the past.

15 And I have in here -- if we can put one of the  
16 slides up.

17 STAFF MEMBER LINDSAY: This is from your Power  
18 Point?

19 MR. NOMELLINI: The first one, yeah. We don't  
20 have to advertise my name again, but the next one, the  
21 second one.

22 This is from my Exhibit 9B, and it's a history  
23 of San Joaquin County written in 1879, and it was  
24 republished. And I think it sheds some light on the  
25 situation that we have out there from the viewpoint in



1 1879. And what I'd like to just call to your attention,  
2 it says:

3 The numerous creeks or sloughs running  
4 from the main rivers into the interior,  
5 though necessitating expected treatment  
6 to dam them effectually at or near their  
7 outlets --

8 They're talking about the levees, when the  
9 levees cross these sloughs.

10 -- are admittedly beneficial features of  
11 the land, constituting as they do main  
12 arteries for drainage, irrigation, and  
13 navigation.

14 So when the pioneers first went out there to  
15 reclaim, they used these sloughs to get to the  
16 properties. And there weren't any roads. You know,  
17 there weren't any highways or anything like that.

18 So they served the opportunity of access as  
19 well as drainage and irrigation. And this is written in  
20 1879. And it says:

21 Ingeniously contrived tidal gates as an  
22 adjunct to the dams regulate and control  
23 the egress or ingress of water from or to  
24 the lands according as draining or  
25 irrigation is temporarily desired.

1           My experience -- and I was involved -- I  
2 actually bought an interest in a small piece of property  
3 that was reclaimed in the late '50s right to the west of  
4 these properties that we're talking about, right on the  
5 edge of Honker Lake. And my experience confirms that.

6           We had a tide gate, which I'm going to show you  
7 pictures of over -- and we call it either Trapper or  
8 Whiskey Slough.

9           And when the flap gate was working on the  
10 inside, we'd be able to maintain a higher water level.  
11 So when we wanted to irrigate the land, which we did  
12 through a floodgate, which I pushed the pipe through the  
13 levee to irrigate this small piece of ground.

14           And then when we wanted better drainage, we  
15 worked the flap gate on the outside. In other words,  
16 the water would go out as the tide drops and it would  
17 close.

18           And I found that this fits in 1879. They're  
19 talking about same kind of thing I experienced in the  
20 '50s and '60s.

21           Now, in addition -- let's go to the second  
22 slide, or the next slide.

23           The settlement geography of the Delta -- and  
24 we've provided -- I think we've got it all over the  
25 records of the State Board -- a complete copy of that

1 document. I remember Mr. O'Laughlin putting it in in  
2 the Phelps case as well, so we've got it. But here's an  
3 extract from it, and that's the Exhibit 3J.

4 It talks about the history of irrigation in the  
5 Delta. And they say there wasn't much done prior to the  
6 1870s. It was probably pretty wet out there.

7 Then:

8 Subirrigation prior to plowing and  
9 planting dates from the same decade. It  
10 was originally used for beans and  
11 potatoes or to encourage growth of a  
12 volunteer hay crop. Since then,  
13 subirrigation has been used on all  
14 growing crops.

15 Irrigation water was delivered to the  
16 backswamp through tidal gates and  
17 drainage ditches in the 1870s. Filled  
18 mains backed water into field ditches of  
19 2 to 4 feet in depth. From these the  
20 water spread along the 6-inch to 2-foot  
21 deep laterals, spud ditches, which were  
22 spaced at intervals of 65 to 85 feet.  
23 Seepage occurred in the peat soils.  
24 Water levels were controlled with dams  
25 across ditches.

1           I irrigated like that when I worked on the farm  
2 which was a family farm. I did it on Venice Island. We  
3 turned the irrigation pumps -- I mean the drainage pumps  
4 off and brought the water level up. We dammed the  
5 ditches.

6           Now, there were only two major owners on the  
7 islands, so it wasn't a problem of coordination. If you  
8 have different crops, of course, some crops like to be  
9 dry at certain times than others.

10           So those fluctuate depending upon the crops.  
11 The more owners you have, the greater the opportunity  
12 for conflict, and therefore the practice is today more  
13 varied than it was historically because we have more  
14 separate land ownership.

15           (Reading:)

16           Water delivery systems independent of  
17 drainage ditches were in use by the  
18 latter 1870s. These systems were  
19 maintained by the farmer, only the  
20 drainage system being the responsibility  
21 of the reclamation district.

22           Waterwheels, windmills and low-head pumps  
23 were used on the higher alluvial banks  
24 where furrow and check irrigation were  
25 the rule.

1           Now, what happened in the Delta is, of  
2 course -- and I don't think this is in any form  
3 debated -- is that along the major sloughs there were  
4 depositions of the heavier sediments, the clays and  
5 sands and things like that.

6           So there were natural banks along the main  
7 rivers and, of course, along these major sloughs. And  
8 they show up as lighter soil and a lighter color on most  
9 of these maps.

10           The organics were these tule swamps. They  
11 called them the backswamps.

12           When they went out there to reclaim them, they  
13 started on this higher ground because it was less  
14 susceptible to being flooded, which makes sense, and  
15 they used different devices to get water on top of that  
16 ground.

17           Pumps were used starting in the 1870s,  
18 steam-driven pumps. Waterwheels, of course, and some of  
19 the traditional-type, windmills, things of that type  
20 were used.

21           In the organic soils, which is still the  
22 practice today where we have organics of significant  
23 depth, the subirrigation was the method.

24           Partially because you can't keep the organics  
25 level, so you can't run water down the furrow; plus

1 they're more permeable. You can move the soil -- I mean  
2 the water horizontally.

3 My experience was we were about 40 feet apart  
4 on the spud ditches instead of the 65 to 85 that they  
5 talk about in here.

6 But that is the method that's still used today  
7 in a lot of the particular area.

8 On the particular parcels we're talking about  
9 today, the Pak and Young and the Mussi parcels, those  
10 are not being subirrigated like the organic soils.

11 They were probably subirrigated in the early  
12 days. And there's quite a bit of substantiation that  
13 when you run water down an unlined ditch, it seeps out  
14 and subs into the adjoining properties and soils.

15 And there's some evidence of litigation over  
16 that involving the conduits that serve these particular  
17 properties.

18 So anyway, let's go to the next one.

19 This is the floodgate that I worked with. It's  
20 still out there. And if Board Members are at all  
21 inclined to go out in the field, it might not be a bad  
22 idea for us to take a field trip, at least offer one to  
23 you, to do it with counsel from the other side and  
24 whoever their contingent might be, to actually go see  
25 these things, because they're still in place.

1           This is the flap gate on the inside of the one  
2 I was talking about.

3           This is located at the railroad tracks where --  
4 I guess we'd call it the end of Whiskey Slough. We  
5 argued about where the beginning of the sloughs are,  
6 historically.

7           But anyway, this gate is still there. It's a  
8 wooden box. And on the other side of this, if we can go  
9 to the next slide, the gate is now gone.

10           When I farmed out there, there was a gate on  
11 both sides. It was just like the other one. You could  
12 crank it up with a little hand winch and then hold it  
13 out where you can let it work.

14           All right. Let's go to the next slide.

15           And these aren't the greatest pictures to  
16 depict what's going on, but this is what we call  
17 Trapper's Slough at Middle River which is near the same  
18 area but downstream.

19           And a screw gate has been put on the end of the  
20 pipe. Used to be a floodgate, just a flapper gate, but  
21 now they use the screw gate. So when they want to fill  
22 Trapper Slough, they go out there during the high tides,  
23 open this gate, bring the water in, and then they close  
24 the gate.

25           But they also have a flap on the inside, which

1 is the next slide -- and that sign is somebody's attempt  
2 to say no fishing. It didn't turn out too well.

3 But there is a flap gate on the end of that  
4 that keeps water coming out. So the screw gate on the  
5 water side can be operated to control the water. It's  
6 probably there primarily to make sure during flood times  
7 we can control the water in Trapper Slough; and in flood  
8 times or when they're not using it for irrigation, they  
9 close it.

10 All right. The various sloughs that we're  
11 talking about that go to -- and other people have  
12 testified as to the maps that show the historic sloughs  
13 that run to this area of Pak and Young and the Mussi  
14 property, and they have been called by at least the  
15 people on our side Duck Slough.

16 There is historical -- and I cite it in here --  
17 information about putting a Samson dredge -- if we can  
18 go to the next slide -- and one of the first jobs of  
19 this dredge was to excavate into the Duck Slough from  
20 Burns Cutoff.

21 Now, Duck Slough, in our estimation, extended  
22 all the way from Burns Cutoff to Middle River. So this  
23 is the downstream side.

24 And the significant part of this is that this  
25 machine, according to the settlement geography of the



1 Delta and the history, needed a 30-foot by 7-foot water  
2 area to float it.

3 Now, we don't know how far along Duck Slough it  
4 went, but the probability is that it excavated a channel  
5 and constructed a levee on both sides.

6 There is what we call High Ridge Levee. When  
7 you leave Burns Cutoff and head, I'd say, uphill towards  
8 these parcels, it intersects what is commonly referred  
9 to as the High Ridge Levee.

10 And therefore we know that there was a slough.  
11 We have lots of maps that show it. The other experts  
12 have put that forth, to indicate where that slough is.

13 Now, I went over, and you can come as well, and  
14 look at the Middle River which is the upper level. The  
15 land falls to the north and a little bit to the west, so  
16 the intake to Duck Slough on Middle River is at a higher  
17 elevation than where the old Duck Slough intersected  
18 Burns Cutoff. The fall is down.

19 So if you go up to the upper end, there's a  
20 pumping plant there that the testimony will show was put  
21 in in about 1925.

22 But if you look at that site, you can see the  
23 pilings and what appears to be the headworks of a  
24 floodgate.

25 Now, we haven't excavated the site, and maybe

1 the floodgate isn't there anymore, but there is evidence  
2 of other features at that location that would have put  
3 water into what we've been calling a slough, Duck  
4 Slough, that intersected Middle River.

5           There are also areas that are subsequent to my  
6 testimony that if you came out we have located other  
7 floodgates in that immediate vicinity that we can show  
8 you that could have also fed that Duck Slough complex.

9           Because it isn't just one meander of  
10 light-colored -- I call it heavy soil. It's heavier  
11 than peat. But there isn't just one meander there that  
12 might be helpful to look at.

13           Let's go to the next slide.

14           We don't have a map like this for Middle  
15 Roberts where these two parcels are, but this is the one  
16 for Lower Roberts. This is the reclamation district  
17 I've represented since 1979.

18           We have this 1927 map, and there are 30  
19 floodgates located on this. And I merely present this  
20 to show what was the typical method in this particular  
21 area.

22           And since the '30s, 1930s, and more recently  
23 since the 1980s, those of us involved in flood  
24 protection, we've been trying to get all these  
25 floodgates out of the levee because we worry about them

1 during flood times because you've got an intake, an  
2 archaic one, buried in the levee right down at the low  
3 water surface.

4           So we are trying to get farmers to put in  
5 siphons or pumps where the conduit goes through the  
6 levee above the hundred-year floodplain.

7           So we've been expending that. They're  
8 obviously not all out because if you go out in the field  
9 there are a lot of them still there.

10           The one over near Whiskey Slough and Trapper  
11 Slough is not in a critical section of the levee. That  
12 piece under the railroad can stay there forever because  
13 we've got levees on both sides.

14           But these are almost entirely in critical parts  
15 of the levee, and we've been trying to get these out.  
16 And a lot of them are out, and there are still a few  
17 left.

18           And some we don't know where they're located  
19 for sure, and we're trying to use electrical  
20 conductivity and those kinds of testing to locate them  
21 so we can take them out.

22           But there is no question that the practice was  
23 to use these sloughs, put the floodgates in them and use  
24 them to help irrigate the properties.

25           And right at first when the organics were still

1 up at mean high tide, subirrigation was really  
2 important. But what these guys did when they reclaimed  
3 these tule marshes, they burned them. They lit a match  
4 to it and burned it, and the organic soils burned as  
5 well.

6           So part of the loss of the peat soils in the  
7 Delta, we can call it oxidation, but it's because it  
8 oxidized because they lit a match to it.

9           And then later on when they grew potatoes, in  
10 order to get a nice clean potato with no blemish in it,  
11 they burned the top 12 inches of the soil so they could  
12 grow a clean potato.

13           And I was involved -- my father was the farmer,  
14 but I was the kid out there with him, where we had a  
15 subtenant who grew the potatoes. And I worked in the  
16 summer taking the hog feed off the end of the belt which  
17 is now those small potatoes that people like as peewees.

18           But they burned that ground intentionally. So  
19 the top 12 inches became ash. And after the potato  
20 crop, when that ash was exposed to the wind, it blew  
21 away.

22           And what I'm telling you is that the organic  
23 soils dropped rapidly when they started burning them.  
24 So we had fall away from the natural levees down into  
25 the backswamps, and irrigation was easy to do because of

1 the change in elevation.

2 Now, what's going to happen? We argue that the  
3 act of reclamation, putting levees, putting drains in,  
4 which was done pursuant to agreement with the State --  
5 in fact, landowners had to do it. The State was  
6 obligated, the federal government, to get the  
7 reclamation done.

8 That building those levees, constructing those  
9 drains, isolating these channels, is not an act of  
10 severance. It should not be.

11 And when we look at the cases, we think the  
12 underlying case law focuses on the intent of the  
13 parties. In other words, when somebody conveys a parcel  
14 that's no longer attached to the river, it's  
15 presuming -- the argument from the other side is it's  
16 presumed unless you say riparian it's detached, and  
17 you've got to prove the intent the other way.

18 Well, for the Delta swamp and overflow lands  
19 that are reclaimed because of the Arkansas Act grant to  
20 the State, we think the presumption ought to be the  
21 other way.

22 But even if the presumption is not the other  
23 way, the intent is clear that they were trying to keep  
24 these lands productive.

25 So unless there is some kind of document that

1 says I'm keeping the riparian right and I'm severing  
2 it -- which I don't know whether you could do as a  
3 matter of policy because of the commitment of the State  
4 to the federal government -- that would be the only way  
5 I would suggest that there's a proper argument of  
6 severance.

7 Now, what happens if the levees go away or our  
8 farmers stop draining and maintaining these levees?

9 If we go to the next slide -- let's skip this  
10 one. Let's go to the next one.

11 The Delta will become a water body, and in the  
12 shallower parts it will become a tule swamp. That's  
13 what's going to happen if we can't do it.

14 Now, there's a little bit of a play in between.  
15 We knock one guy out with 40 acres, the rest of the guys  
16 stay in business. You know, it isn't going to happen  
17 that way.

18 But that one piece of land that goes fallow is  
19 going to turn into some type of vegetative area that is  
20 going to consume water.

21 These pictures show what happens when Upper  
22 Jones Tract flooded. Even though the river is there all  
23 the time, the fact we had more land flooded, we started  
24 to see new seepage areas coming up in the adjoining  
25 lands.

1           So there will be a rewatering of the Delta if  
2 we do not keep the lands reclaimed and drained. And in  
3 order to keep them reclaimed and drained, we've got to  
4 have viable agriculture, and viable agriculture needs  
5 irrigation.

6           So the intent -- the policy, we think -- should  
7 be of the State to keep those going.

8           All right. There are a number of studies that  
9 I've attached to my testimony that were done by the  
10 State that show what happens with the  
11 evapotranspiration.

12           If we can go to the -- let's go to the next --  
13 the next one after this one. Go one more.

14           Now, these show -- this is from the Delta  
15 Lowlands Service Area Investigation DL9. There were  
16 investigations done by the Department of Water Resources  
17 and the Bureau of Reclamation of water rights in the  
18 Delta.

19           While it's true it's not a definitive  
20 adjudication of water rights by any means, but they  
21 analyzed it, and they categorized water use in the  
22 lowlands.

23           All of these lands that we're dealing with  
24 today, all of the Woods Irrigation lands, are in the  
25 Delta lowlands in those studies. And they used the

1 criteria of all lands below 5 feet above mean sea level  
2 they treated as lowlands, and they made an assumption in  
3 their studies that these lands were riparian.

4 That doesn't bind you, I realize that. It's  
5 not an adjudication. I'm just giving you the  
6 information, pointing you to the studies. And they  
7 analyzed what happens out there.

8 And if you look at this exhibit, you will see  
9 that tule and swamp uses 5.82 acre feet per acre of  
10 freshwater. In other words, that's the  
11 evapotranspiration rate.

12 If you go to corn or milo, you have 2.51 acre  
13 feet per acre. So as we turn this land into nonfarmable  
14 land, or we let the reclamation and drainage go away, we  
15 are going to consume more water than what we have with  
16 the farmers farming.

17 Now, that study has been corroborated. Even  
18 the State Board has got some recent stuff that was done  
19 in connection with water transfers between the Delta  
20 wetlands projects and Metropolitan Water District of  
21 Southern California.

22 Anyway, if we go to the next slide, this is the  
23 result of studies done by the Department of Water  
24 Resources in 1995.

25 And it shows riparian vegetation at 55.4



1 inches. Of course this is inches per acre rather than  
2 acre feet per acre. But you can compare that to like  
3 field corn up here at 30.8 inches. Same thing.

4 Clear evidence that when we let this land go,  
5 because of the proximity of the water table -- even if  
6 we had the levees and drains working, it's still high  
7 water table -- we're going to vegetate.

8 Unless we can force the farmer to go out there  
9 keep it all disced, clean and free of weeds, we're going  
10 to use more water than if we farm.

11 So we think there's good reason to be careful  
12 in what we do as a matter of policy for this Board to  
13 interject itself, unless there is a wasteful use of  
14 water, to interject itself into what is basically a  
15 water rights fight between export contractors and in  
16 this case Modesto Irrigation District, an upstream water  
17 user, and the Delta.

18 All right. I think that summarizes the high  
19 points of my testimony, Mr. Chairman, and I thank you  
20 for the opportunity.

21 CO-HEARING OFFICER BAGGETT: Thank you. Do you  
22 want to do cross? Prosecution have any cross?

23 MR. ROSE: The Prosecution Team does not have  
24 any cross.

25 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin,

1 you're up.

2 --o0o--

3 CROSS-EXAMINATION BY MR. O'LAUGHLIN

4 FOR MODESTO IRRIGATION DISTRICT

5 --o0o--

6 MR. O'LAUGHLIN: Good morning, Mr. Nomellini,  
7 Sr. My name is Tim O'Laughlin. I represent the Modesto  
8 Irrigation District. I never thought I'd get this day.  
9 This is wonderful.

10 MR. NOMELLINI: Pleasure to see you, Tim.

11 We actually are friends.

12 MR. O'LAUGHLIN: I want to start kind of at the  
13 end of your testimony, maybe, then there are some points  
14 that you raised.

15 You mentioned briefly in your testimony that  
16 under the Arkansas Act that you believe that the  
17 presumption should be the other way. Can you cite me to  
18 a case that supports your belief or position?

19 MR. NOMELLINI: Not yet.

20 MR. O'LAUGHLIN: Not yet, in that you can't --  
21 you're looking for a case, or you're hoping to make new  
22 law?

23 MR. NOMELLINI: We're hoping to make new law.  
24 And I haven't exhausted a search to see whether there is  
25 such a case dealing with it.

1           The Arkansas Act, of course, applied  
2 nationwide. I have not done that review to see whether  
3 there's a comparable case.

4           MR. O'LAUGHLIN: And would you say -- I'm  
5 confused as to your testimony that you're being  
6 proffered for today.

7           Are you being proffered as an expert witness in  
8 regards to water rights? Or are you being proffered as  
9 a percipient witness of what is occurring on Roberts  
10 Island?

11          MR. NOMELLINI: I kind of think both.

12          MR. O'LAUGHLIN: Okay. So then you're aware  
13 that, as well, that your belief in regards to severance  
14 of swamp and overflow land runs counter to California  
15 case law, correct?

16          MR. NOMELLINI: No. I'm not sure that's the  
17 case. I --

18          MR. O'LAUGHLIN: Okay. I'm sorry.

19          MR. NOMELLINI: Anyway, go ahead. I'm not sure  
20 that's the case. That's my answer.

21          MR. O'LAUGHLIN: And in that regard, did you  
22 read the prior decision that was done by this Board in  
23 the matter of State Water Resources Control Board,  
24 order -- Water Right Order 2004-004 in the matter of the  
25 civil liability complaints for Phelps, Ratto, Conn, and

1 Silva. It states in there at page 11:

2 The California Supreme Court reasoned  
3 that an owner of swamp and overflow land  
4 would not have a riparian right if either  
5 there was no watercourse -- i.e., no  
6 channel to which a riparian right could  
7 attach -- or the land was on the bottom  
8 of or not adjacent to the stream.

9 So your testimony, you would disagree with that  
10 statement, correct?

11 MR. NOMELLINI: You've got to speak up. I've  
12 got one hearing aid that works, and the other one --  
13 could you repeat that?

14 MR. O'LAUGHLIN: Yes, I'd be happy to.

15 MR. HERRICK: If you could provide him with a  
16 copy to read, that may help.

17 MR. O'LAUGHLIN: No.

18 MR. NOMELLINI: That's all right.

19 MR. O'LAUGHLIN: Yeah, you can hear me. And if  
20 you --

21 MR. NOMELLINI: I haven't reviewed that case  
22 recently, but I'm generally aware of it.

23 If you're suggesting that that's a  
24 determination that the swamp and overflow lands that  
25 we're talking about here are not capable of being

1 riparian to the Delta pool, then I disagree with that  
2 interpretation.

3 That case, you know, focused on the Term 91,  
4 and I don't think that's determinative of what this  
5 issue would be today. And we're going to argue about  
6 that obviously, but.

7 MR. O'LAUGHLIN: So if I understand your  
8 testimony correctly then, your view of the determination  
9 that was done in the Phelps, Conn, Ratto and Silva  
10 matters regarding the riparian status of those  
11 properties in the determination of the law in that case  
12 is not applicable to this case due to the nature of that  
13 being a Term 91 case and this being the nature of a  
14 cease and desist order case?

15 MR. NOMELLINI: Well, both.

16 The facts that were before the court in that  
17 case, of course, determine what the legal determinations  
18 are.

19 So the findings of fact which are based on the  
20 evidence presented to the State Board, and that was the  
21 hearing record, that evidence is limited as to what was  
22 in the record. And so the decisions are based on that  
23 evidence.

24 If you're suggesting that the law is that land  
25 in a submerged condition in a waterway cannot be

1 riparian, then I disagree. That's not the law.

2 MR. O'LAUGHLIN: Would you be in agreement that  
3 a rancho, a grant of a rancho is much like the grant of  
4 a swamp and overflow or a CP?

5 MR. NOME LLINI: You mean a Mexican rancho  
6 grant?

7 MR. O'LAUGHLIN: Yes.

8 MR. NOME LLINI: No. I think swamp and overflow  
9 has this obligation that the State assumed when it took  
10 title from the federal government that creates a  
11 different policy.

12 MR. O'LAUGHLIN: Okay. In your report on  
13 number 3, it says -- you talk about --

14 MR. NOME LLINI: What page? I apologize. I  
15 didn't get the page number. Does it matter?

16 MR. O'LAUGHLIN: No. I'm just going to read it  
17 to you very shortly.

18 The Delta lowlands report including the  
19 projects -- the subject parcels as enjoying riparian  
20 water rights: Do you assert that as an estoppel  
21 argument --

22 MR. NOME LLINI: No.

23 MR. O'LAUGHLIN: -- or are you asserting that  
24 as a basis for a water right?

25 MR. NOME LLINI: No. Neither.

1 I'm just showing -- putting that into evidence  
2 that one group of people who looked at the situation --  
3 and they're not necessarily, you know, on the Delta  
4 side; they were competing water users -- evaluated it  
5 and decided that they would treat it as riparian.

6 That is not an estoppel on the part of the  
7 State. It's not in a binding adjudication.

8 The estoppel area, I believe, is in the area  
9 with the swamp and overflow grant and the obligation of  
10 the State to keep these lands reclaimed.

11 MR. O'LAUGHLIN: Are you familiar with the  
12 Court of Appeals case Phelps, et al., vs. State Water  
13 Resources Control Board?

14 MR. NOME LLINI: I'm generally familiar. I  
15 mean, I have a recollection of what happened --

16 MR. O'LAUGHLIN: Okay. In footnote --

17 MR. NOME LLINI: -- a number of years ago.

18 MR. O'LAUGHLIN: Footnote 16 references the  
19 Delta lowlands, and riparian rights are found -- are  
20 found in a 1950 study prepared by the United States  
21 Bureau of Reclamation and used by the Board in projects  
22 to estimate water availability:

23 The Board noted in Water Right Order  
24 2004-4 that agencies other than the Board  
25 made the assumptions in the report, and

1           they did not make the assumptions for the  
2           purpose of determining actual water  
3           rights but instead for estimating water  
4           use.

5           MR. NOMELLINI:   What's that?

6           MR. O'LAUGHLIN:   But instead for estimating  
7           water use.

8           The Board concluded the reports do not  
9           provide evidentiary support for an  
10          estoppel argument, and we agree with that  
11          assessment.

12          MR. NOMELLINI:   I agree.

13          MR. O'LAUGHLIN:   Would you concur with that?

14          MR. NOMELLINI:   Yes.

15          MR. O'LAUGHLIN:   Thank you.

16          Is there any support in California law for  
17          your -- or a case that you can point me to for your  
18          assertion that if land is under irrigation, even though  
19          it may not have a water right, that you shouldn't take  
20          the water right away because it may revert to tules and  
21          therefore use more water?

22                 Can you cite me to a case or --

23          MR. NOMELLINI:   Your hypothetical is it doesn't  
24          have a water right?

25          MR. O'LAUGHLIN:   Yeah.   My assumption is that



1 the parcel doesn't have a water right, and no water is  
2 going to -- the State Board makes a determination that  
3 they have no right, and then the land reverts to tule.  
4 Just because it reverts to tule, what cases cite --

5 MR. NOMESELLINI: I don't think.

6 MR. O'LAUGHLIN: -- that would confer a right?

7 MR. NOMESELLINI: If you don't have a water  
8 right, I don't think just because it turns into tules  
9 you get one.

10 MR. O'LAUGHLIN: Okay. So then what --

11 MR. NOMESELLINI: Let me explain though.

12 MR. O'LAUGHLIN: -- what's the tule testimony,  
13 then?

14 MR. NOMESELLINI: The tule testimony indicates  
15 that there is no physical severance of the land from the  
16 waterway by reason of the reclamation and drainage and  
17 modifications pursuant to reclaiming the land in the  
18 Swamp and Overflow Act.

19 In other words, you're going to use more water  
20 than --

21 MR. O'LAUGHLIN: But using more water --

22 MR. NOMESELLINI: -- the other way.

23 It goes to intent. Why would somebody take the  
24 water right away from land in the Delta when you're  
25 going to consume more water?

1           And I think intent is behind the issue as to  
2 how you interpret the deeds and how you deal with legal  
3 severance with regard to riparian rights.

4           MR. O'LAUGHLIN: Have you reviewed any  
5 historical documents to determine what the intent of  
6 either Mr. Whitney was or Mr. Stewart or Mr. Woods was  
7 in regards to the development of Roberts Island?

8           MR. NOMELLINI: Well, yeah. There's a lot of  
9 history. These guys spent a lot of money out there  
10 putting the levees up, trying to drain them and trying  
11 to grow crops.

12          MR. O'LAUGHLIN: But is there anything in your  
13 review of the historical documents that lead you to  
14 believe that there was, in their discussion, maybe they  
15 were land speculators?

16          MR. NOMELLINI: They were land speculators.  
17 But money was driving this thing. In order to get the  
18 crops, you had to control the water.

19                 And in order to -- if you try to grow  
20 something, which I know you do -- or at least your wife  
21 does around your house -- you don't have much of a  
22 garden if you don't irrigate.

23                 And the same thing for farmers. I mean,  
24 there's some dry farming, a little bit of this and that.  
25 But if you want production, you've got to irrigate.

1           MR. O'LAUGHLIN:  Would you say -- in regards to  
2 your testimony, would you say that prior to 1937 that  
3 most of Roberts Island was under irrigation, or do you  
4 think it was dry land farmed.

5           MR. NOMELLINI:  I think there was -- when you  
6 say dry land farming, you mean like pasture or something  
7 like that, not direct surface irrigation?

8           MR. O'LAUGHLIN:  Yeah.  Winter wheat crops,  
9 that kind of stuff.

10          MR. NOMELLINI:  Yeah.  I think -- you know,  
11 there's parcels that were subirrigated.  I think even  
12 those pasture areas, the farmer, the dairyman, whoever  
13 he was, he wanted to get some moisture up there to get  
14 some feed.

15          Now, he probably didn't put water over the top  
16 of it in some cases.  He probably just controlled what  
17 the water was in the drainage ditch.  So yes, if you're  
18 saying nontop-irrigated, I'd say yes.  There might even  
19 be some today.

20          MR. O'LAUGHLIN:  Okay.  Specifically --

21          MR. NOMELLINI:  I haven't gone out and looked  
22 at every parcel.

23          MR. O'LAUGHLIN:  Okay.  I've gone through your  
24 testimony in preparation for today.  Do you have any  
25 specific testimony to the Pak parcel?  I'm just going to

1 call it Pak.

2 MR. NOMELLINI: Yes.

3 MR. O'LAUGHLIN: Okay. What is the specific --  
4 in your --

5 MR. NOMELLINI: In here?

6 MR. O'LAUGHLIN: Yes.

7 MR. NOMELLINI: I think it's riparian.

8 MR. O'LAUGHLIN: Okay. And what is the basis  
9 for your determination that it's riparian?

10 MR. NOMELLINI: Well, there's two.

11 One, I think it's swamp and overflow lands, and  
12 it was only separated because of the reclamation from  
13 the main channels, and it would continue to have its  
14 right unless there was something specific in a document  
15 where somebody tried to go ahead and sever it and  
16 transfer it, which I'm not sure you can do as a matter  
17 of policy.

18 The second thing is its location is along the  
19 line of where I believe there was Duck Slough. And I  
20 think that Duck Slough was either there or connections  
21 to it, ditches or canals, connecting those parcels to  
22 it.

23 So even under the rigorous theory of flowing  
24 streams that it retains its riparian connection.

25 MR. O'LAUGHLIN: Okay. Do you have a

1 definition for what a slough is?

2 MR. NOMELLINI: I've seen it. I don't know if  
3 I can remember it. But I mean I'd say it's a water body  
4 that has some defined sides and some depth.

5 MR. O'LAUGHLIN: Okay. Do you know what the  
6 carrying capacity of Duck Slough was prior to 1914?

7 MR. NOMELLINI: No. Except in the end where  
8 they put that barge that was 30 feet by 7 feet to float  
9 it, that was big. But I don't know how far that thing  
10 went at that size.

11 Now, those 1937 aerials show the remnants of  
12 Duck Slough coming along what we call the High Ridge  
13 Levee -- or you guys like to call it the High Ridge  
14 Levee, I see it on maps as High Ridge Levee -- comes all  
15 the way down along there.

16 And that looks to me like it might be something  
17 on the order of 30 or 40 feet across the top. How deep,  
18 I can't tell you. And what the carrying capacity is, I  
19 don't know. But that's a pretty large channel.

20 MR. O'LAUGHLIN: Okay. And were you present on  
21 Monday when Mr. Woods testified?

22 MR. NOMELLINI: Mr. Woods?

23 MR. O'LAUGHLIN: The aerial photography guy.  
24 What's his name?

25 MR. HERRICK: Mr. Moore?

1 MR. NOME LLINI: Oh, Don Moore?

2 MR. O'LAUGHLIN: Moore. Mr. Moore. Sorry.

3 Mr. Moore.

4 MR. NOME LLINI: Yes, I was.

5 MR. O'LAUGHLIN: Sorry.

6 Mr. Moore opined that in looking at the 1937

7 aerial photos that it appeared to him that the remnants

8 of Duck Slough were east of the High Ridge Levee. Would

9 you agree with that?

10 MR. NOME LLINI: The '37 photo shows that canal

11 I'm talking about on the east side of Inland Drive, yes.

12 MR. O'LAUGHLIN: So Inland --

13 MR. NOME LLINI: I'm assuming Inland Drive is

14 what High Ridge Levee was back then.

15 MR. O'LAUGHLIN: Okay. All right.

16 Now, you put in the photo of the excavator, of

17 this Samson excavator. Do you know how long the Samson

18 excavator was out in Duck Slough, working?

19 MR. NOME LLINI: No idea.

20 MR. O'LAUGHLIN: Now, you opined that the

21 excavator put levees up on both sides of Duck Slough; is

22 that correct?

23 MR. NOME LLINI: Yes. That's what I would have

24 done with the excavator had I was there.

25 MR. O'LAUGHLIN: Okay.

1           MR. NOMELLINI: And let me give you a reason.  
2 Because there are people on both sides that don't want  
3 to be flooded.

4           So you put that excavator in there, and you  
5 just put a bank on one side and create an open body  
6 exposing the other side, it wouldn't work. They'd shoot  
7 each other.

8           MR. O'LAUGHLIN: Okay. Do you know...

9           After the excavation was done, have you seen  
10 any document, whether a map or otherwise, denoting a  
11 levee on the north side of Duck Slough or on the  
12 westerly side of Duck Slough?

13           I've got the High Ridge Levee running down,  
14 I've got Duck Slough remnants on the east side of the  
15 High Ridge Levee. Is there -- can you point to a map or  
16 a document showing a remnant of what would be the  
17 northerly or northwest levee if this excavator dumped  
18 remains on each side?

19           MR. NOMELLINI: Well, today there is only kind  
20 of a single embankment, you know. And there is a little  
21 bit of parallel with the railroad track that goes  
22 through like up like near Burns Cutoff. So the railroad  
23 is an embankment as well.

24           So other than that -- and then when you come  
25 down from Burns Cutoff with Duck Slough and you

1 intersect -- I'll call it High Ridge Levee or the Honker  
2 Lake Levee -- you end up with two levees. You know,  
3 there's two there.

4 Now, other than that, I don't -- I haven't seen  
5 a map that shows that.

6 MR. O'LAUGHLIN: Okay.

7 MR. NOMELLINI: But --

8 MR. O'LAUGHLIN: All right. Did you have --

9 MR. NOMELLINI: It's possible. You know.  
10 We're talking about what happened way back there.

11 MR. O'LAUGHLIN: Right. Have you run across  
12 any topographic maps of early Roberts Island prior to  
13 1914, 1920?

14 MR. NOMELLINI: Yeah, there's that one I call  
15 the 1911 map. It was published in 1913, but the surveys  
16 were done in 1911. Yeah.

17 MR. O'LAUGHLIN: With actual elevations on the  
18 map?

19 MR. NOMELLINI: There are elevations. There's  
20 some lines on there, yeah.

21 MR. O'LAUGHLIN: Okay. When -- are you of the  
22 opinion --

23 MR. NOMELLINI: Let me go back.

24 I don't know if those are actual elevations.  
25 Somebody put lines on the topographic map, somebody from



1 USGS that was sent out there in the field, and put some  
2 lines and put some elevations on there.

3 MR. O'LAUGHLIN: Okay.

4 MR. NOMELLINI: Accurate? I don't know.

5 MR. O'LAUGHLIN: Are you of an opinion that at  
6 some point in time Duck Slough where it enters into  
7 Burns Cutoff was severed from Burns Cutoff by a levee?

8 MR. NOMELLINI: Oh, yeah. It's not -- it's not  
9 connected now.

10 MR. O'LAUGHLIN: Okay. Do you know when that  
11 severance from Burns Cutoff to Duck Slough occurred?

12 MR. NOMELLINI: I don't know, but there are  
13 floodgates there.

14 MR. O'LAUGHLIN: Okay. Now, I'm curious about  
15 these floodgates. Are you of the opinion, if I  
16 understood your testimony correctly, that the floodgates  
17 at Burns Cutoff operated in both directions?

18 MR. NOMELLINI: I think there they would have,  
19 yeah.

20 MR. O'LAUGHLIN: Okay. So basically when the  
21 drainage water got high enough in Duck Slough and you  
22 wanted to excavate it, once the river dropped down you  
23 would open a valve, the water would go back into the  
24 river --

25 CO-HEARING OFFICER HOPPIN: It wasn't anything

1 you said.

2 MR. O'LAUGHLIN: PG&E didn't like your vote  
3 yesterday.

4 MR. NOMELLINI: I haven't seen a drawing or  
5 anything like that. But because of its location, if  
6 there was excessive water in Middle Roberts Island,  
7 rather than flap gate it for drainage out in the Middle  
8 River, it would have been logical to move it out in the  
9 Burns Cutoff.

10 MR. O'LAUGHLIN: Okay.

11 MR. NOMELLINI: So therefore I conclude it  
12 would have been used for that purpose.

13 MR. O'LAUGHLIN: Now, given the general fall of  
14 land that you described earlier, are you of an opinion  
15 that irrigation water was being taken from Burns Cutoff  
16 and down Duck Slough in a southwesterly direction?

17 MR. NOMELLINI: Yeah. I think it was going  
18 both ways in Duck Slough. But yes, some of the water  
19 would be moved back that way, and of course it depends  
20 on the depth of the channel. But a good part of that  
21 area is irrigated today, you know, from the Burns Cutoff  
22 side.

23 MR. O'LAUGHLIN: Well, help me with this. I'm  
24 perplexed with the hydraulics.

25 MR. NOMELLINI: Water doesn't run uphill. We

1 know that. I'm not going to tell you that.

2 MR. O'LAUGHLIN: I would have believed it.

3 MR. NOME LLINI: Okay.

4 MR. O'LAUGHLIN: So let's talk about how water  
5 moves on Duck Slough. You said the water moves both  
6 ways. I understand that drain water can move out on  
7 Duck Slough at certain times of the year --

8 MR. NOME LLINI: Correct.

9 MR. O'LAUGHLIN: -- when it's higher.

10 And then when irrigation water wants to come  
11 in, you can move irrigation water in.

12 MR. NOME LLINI: Correct.

13 MR. O'LAUGHLIN: Okay. But let's focus on the  
14 irrigation side of the aisle.

15 MR. NOME LLINI: I'm sorry. You said irrigation  
16 side of the aisle?

17 MR. O'LAUGHLIN: Yeah. I'm just going to talk  
18 about irrigation now.

19 MR. NOME LLINI: Okay.

20 MR. O'LAUGHLIN: My understanding is Duck  
21 Slough, according to your opinion, runs all the way from  
22 Burns Cutoff to Middle River, correct?

23 MR. NOME LLINI: Correct.

24 MR. O'LAUGHLIN: Okay. And that irrigation  
25 water was supplied through Duck Slough, correct?

1 MR. NOMELLINI: To some of the area, yes.

2 MR. O'LAUGHLIN: Okay.

3 MR. NOMELLINI: From Burns Cutoff, yeah.

4 MR. O'LAUGHLIN: Well, was it supplied from  
5 Middle River?

6 MR. NOMELLINI: Yeah, I believe it was also  
7 from Middle River which is the high side.

8 MR. O'LAUGHLIN: Okay. Well, here's my  
9 question, though: Given hydraulics, how far did water  
10 from Burns Cutoff go to irrigate as opposed to how far  
11 did water from Middle River go to irrigate?

12 MR. NOMELLINI: All right. The tide, the mean  
13 tide, is probably around 3 1/2 to 4 feet. So if you  
14 wanted to go and put water on land by gravity without  
15 any pumps or anything like that, you'd have to put it on  
16 the land.

17 If you want to put it on top, you'd have to put  
18 it on land that's less than the elevation of the water.  
19 So it would be on those lands that were less than 3 1/2  
20 to 4 feet above sea level.

21 If you wanted to subirrigate --

22 MR. O'LAUGHLIN: No.

23 MR. NOMELLINI: -- you could irrigate lands  
24 that were high as long as the water table you wanted to  
25 maintain was somewhere near what you could get out of

1 the channel.

2           You're not going to get greater height without  
3 pumping, and therefore that would limit how far it goes.

4           Now, we don't know the depth of the channel.  
5 If the channel was deep enough, you could run it farther  
6 towards Middle River from Burns Cutoff up gradient on  
7 the land.

8           MR. O'LAUGHLIN: But in regards -- I want to  
9 focus on this canal, though. Or I'm sorry, slough.  
10 Slough. If the hydraulic -- you said earlier that the  
11 hydraulic gradient was from Middle River to Burns  
12 Cutoff.

13           MR. NOMELLINI: The land falls from Middle  
14 River to Burns Cutoff.

15           MR. O'LAUGHLIN: Okay.

16           MR. NOMELLINI: The hydraulic gradient during  
17 -- when there's river flow of some significance, the  
18 river level is higher on the Middle River side than it  
19 would be at Burns Cutoff. Let's say during the spring  
20 flow.

21           If we have -- not since Modesto Irrigation  
22 District has been operating, but if we have water  
23 flowing in the channels, you gain elevation from the  
24 upstream side. It's not just tidal. We have stream  
25 flow on top of the tide water.

1           MR. O'LAUGHLIN: I understand that. But that  
2 would also occur at Burns Cutoff, wouldn't it, if flow  
3 was coming down? That would also occur at Burns Cutoff,  
4 wouldn't it?

5           MR. NOMELLINI: Yeah, but it's higher on Middle  
6 River.

7           MR. O'LAUGHLIN: How is it higher on Middle  
8 River?

9           MR. NOMELLINI: Just the hydraulics of the  
10 situation. The channel capacity on the San Joaquin  
11 side, when you're dropping elevation from let's say  
12 Mossdale, results in a lower flood elevation at Burns  
13 Cutoff than in Middle River where the intake would be  
14 for Duck Slough.

15           MR. O'LAUGHLIN: This is the point I'm driving  
16 at. If the hydraulics are higher on Middle River and  
17 the land is higher on Middle River and the slope of the  
18 land goes from the southwest to the northeast, how is it  
19 that hydraulically water from Burns Cutoff goes to  
20 Middle River?

21           MR. NOMELLINI: I explained that, and that's if  
22 the channel depth was adequate.

23           MR. O'LAUGHLIN: If the channel depth.

24           MR. NOMELLINI: Yeah. I mean --

25           MR. O'LAUGHLIN: Let me ask you another

1 question on that.

2 MR. NOMELLINI: Go ahead.

3 MR. O'LAUGHLIN: Even if the channel depth was  
4 adequate -- let's say you had 10 feet of channel at  
5 Burns Cutoff. If Burns Cutoff's elevation was still  
6 higher than Middle River, water wouldn't flow all the  
7 way to Middle River, correct?

8 MR. NOMELLINI: Burns Cutoff isn't higher than  
9 Middle River.

10 MR. O'LAUGHLIN: It isn't? It's lower?

11 MR. NOMELLINI: Yeah. Burns Cutoff is lower  
12 than Middle River. I think you just misspoke.

13 MR. O'LAUGHLIN: Well, if Burns Cutoff is  
14 lower -- Burns Cutoff is lower than Middle River?

15 MR. NOMELLINI: Right.

16 MR. O'LAUGHLIN: So let's say if it's lower,  
17 then how do you push water from Burns Cutoff uphill to  
18 Middle River?

19 MR. NOMELLINI: Okay. You don't push the water  
20 up. It would flow in there through -- there are  
21 floodgates along Burns Cutoff. We know that. The  
22 history is there. That map I gave you shows a floodgate  
23 right on the north side of that levee, whether you call  
24 it Duck Slough or whatever.

25 MR. O'LAUGHLIN: Okay.

1           MR. NOMELLINI: So floodgates work. Floodgates  
2 will irrigate some of that land.

3           As far as you want to go would depend on the  
4 depth of the channel. There is no question in my mind  
5 that you could get water from Burns Cutoff in the  
6 channel of Duck Slough to the Pak and Young and the  
7 Mussi property. No question in my mind.

8           MR. O'LAUGHLIN: Okay.

9           MR. NOMELLINI: Now the other side, I think  
10 it's easier to get the water from the Middle River side.  
11 You can bring it in at a higher elevation.

12           MR. O'LAUGHLIN: Okay. But without actually  
13 knowing the hydraulic gradient of the channel, you  
14 can't -- you may believe that, you may assume that, but  
15 you don't know for sure. Is that correct?

16           MR. NOMELLINI: Look, these guys were farmers.  
17 They had pumps in those days. They would have  
18 irrigated. So they got water from someplace.

19           MR. O'LAUGHLIN: But you as an engineer could  
20 not testify that without knowing the hydraulic gradient  
21 you would not know which way the water would run in Duck  
22 Slough; is that correct?

23           MR. NOMELLINI: I know which way it would run.

24           The question that I don't have the absolute  
25 answer to is the depth of the channel that was there at



1 the time.

2 MR. O'LAUGHLIN: Well, how do you know which  
3 way water runs if you don't know the elevation and/or  
4 gradient of the channel?

5 MR. NOMELLINI: I can tell from the -- well,  
6 which way the water would run?

7 MR. O'LAUGHLIN: Yeah. You as an engineer.

8 MR. NOMELLINI: If nobody pumped out of it and  
9 there was no evaporation, there wouldn't be any water  
10 movement once you filled the -- the tide would fill it.  
11 When the tide would go out, it would go out the other  
12 way a little bit. So there's movement back and forth  
13 with the tide.

14 MR. O'LAUGHLIN: Okay. But for irrigation  
15 purposes for delivering water all the way from Burns  
16 Cutoff to Middle River, other than the tide pushing it,  
17 what other gradient is there?

18 You don't know.

19 MR. NOMELLINI: Gradient-wise?

20 MR. O'LAUGHLIN: Yeah. You don't know.

21 MR. NOMELLINI: None. It would be pumping that  
22 would have to --

23 MR. O'LAUGHLIN: Okay.

24 MR. NOMELLINI: -- enter into the play.

25 MR. O'LAUGHLIN: Pumping. Prior to 1925, were

1 there any pumps located on Duck Slough?

2 MR. NOME LLINI: I would assume there were pumps  
3 all over heck.

4 MR. O'LAUGHLIN: No, wait. I'm asking you a  
5 specific question. That's an assumption.

6 MR. NOME LLINI: Do I know? Did I see a pump  
7 there in 1925? No.

8 MR. O'LAUGHLIN: No. Are you aware of any  
9 evidence --

10 MR. NOME LLINI: I am aware --

11 MR. O'LAUGHLIN: Wait. Let me finish. I know  
12 we're getting in a conversational tone.

13 Are you aware of any evidence, document, or  
14 photo depicting pumps on Duck Slough prior to 1925?

15 MR. NOME LLINI: I have included the quote from  
16 the 1879 history of San Joaquin County that speaks  
17 generally about the practice and that I had up on the  
18 Board. But it talks about the use of waterwheels and  
19 pumps. Okay, that's in the settlement geography of the  
20 Delta. It talks about -- yeah:

21 Water delivery systems independent of  
22 drainage ditches were in use by the  
23 latter 1870s. These systems were  
24 maintained by the farmer, only the  
25 drainage system being the responsibility

1           of the reclamation district.  
2           Waterwheels, windmills and low-head pumps  
3           were used on the higher alluvial banks  
4           where furrow and check irrigation were  
5           the rule.

6           That is one piece of evidence. The second  
7 piece of evidence is from the 1879 document.

8           MR. O'LAUGHLIN: Right. And --

9           MR. NOMELLINI: And that -- well, let me  
10 finish. You asked if there were any documents. I'm  
11 giving them to you.

12          MR. O'LAUGHLIN: Okay.

13          MR. NOMELLINI: It says:

14                 Ingeniously contrived tidal gates as an  
15                 adjunct to the dams regulate and control  
16                 the egress or ingress of water from or to  
17                 the lands according as draining or  
18                 irrigation is temporarily desired.

19          Okay. That didn't talk about pumps. Anyway,  
20 that one article.

21          MR. O'LAUGHLIN: Okay. Does that article  
22 mention Duck Slough?

23          MR. NOMELLINI: I didn't see Duck Slough in it,  
24 but it references some other -- you know, if you go to  
25 that publication it's got a citation for it.

1           MR. O'LAUGHLIN: Did you review the citation to  
2 see if there was any collaborating evidence that in fact  
3 pumps were being used on Duck Slough to move irrigation  
4 water onto either the Pak property or the Mussi  
5 property?

6           MR. NOMESELLINI: I did not look -- well, I  
7 probably looked at something like that years ago, but I  
8 don't remember looking for Duck Slough in it, no.

9           MR. O'LAUGHLIN: Are you of the opinion that in  
10 the area of Middle River adjacent to Duck Slough that  
11 the water was always fresh and that there was no  
12 seawater intrusion?

13          MR. NOMESELLINI: No.

14          MR. O'LAUGHLIN: In fact, I'm reading these  
15 minutes from the special board meeting of the board of  
16 directors, January 25th, 1940, of Woods Irrigation  
17 Company. Do you represent in some capacity Woods  
18 Irrigation Company?

19          MR. NOMESELLINI: No.

20          MR. O'LAUGHLIN: Have you worked for them  
21 before?

22          MR. NOMESELLINI: No. Not that I recall.

23          MR. O'LAUGHLIN: It's very interesting. These  
24 minutes are from 1940, and they say in here:

25                    If and when the water in Middle River at

1           the point of the diversion of water  
2           therefrom...

3           Do you know where Woods Irrigation Company's  
4 diversions were back in 1940 on Middle River?

5           MR. NOMELLINI: I'm pretty confident where they  
6 were.

7           MR. O'LAUGHLIN: Okay. Where were they?

8           MR. NOMELLINI: Because there's tide gates.  
9 There's two tide gates, evidence of two tide gates. One  
10 is very clear. It's a tunnel. Right there on Middle  
11 River near where Howard Road intersects Middle River.  
12 What is it. It's a little bit east of that  
13 intersection.

14          MR. O'LAUGHLIN: Okay.

15          CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin, is  
16 this document in the record, or are you using it in a  
17 hypothetical or...

18          MR. O'LAUGHLIN: No, I'm just reading from it.

19          CO-HEARING OFFICER BAGGETT: Is it in the  
20 record?

21          MR. O'LAUGHLIN: Not yet.

22          CO-HEARING OFFICER BAGGETT: Okay. So you do  
23 intend to introduce it? Thank you.

24          MR. O'LAUGHLIN: On rebuttal. We'll have  
25 somebody enter it on rebuttal.

1 MR. HERRICK: Mr. Chairman, it's typical when  
2 you're asking somebody a question about a document you  
3 let them read it, not just pretend to quote it.

4 MR. O'LAUGHLIN: No. That's not the rule.

5 I'm asking him a question from a document, and  
6 I'm just -- and if I want to use the document later, I  
7 can enter it; if I don't want to enter it, I don't have  
8 to.

9 I can ask him about the truth and veracity of  
10 the statement therein, but there is no necessity for me  
11 to actually enter the document into the record.

12 MR. NOME LLINI: Well, it would be helpful. I  
13 trust you, but it would be helpful to know whether  
14 you're reading it correctly.

15 MR. HERRICK: If the party being questioned  
16 requests a copy to look at so that we can see if he's  
17 actually quoting it correctly, and giving the witness  
18 the opportunity, I think that's only polite.

19 MR. O'LAUGHLIN: There you go. Read rule  
20 number 13.

21 MR. NOME LLINI: You want me to read it aloud?

22 MR. O'LAUGHLIN: No, just to yourself.

23 MR. NOME LLINI: Okay.

24 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin,  
25 how much longer do you anticipate? 28 minutes?

1           MR. O'LAUGHLIN: Probably not, but we can take  
2 a break if you like. If you want to take a break, now  
3 would be a good time for a break if you like, a short  
4 five-minute break.

5           CO-HEARING OFFICER BAGGETT: Yeah. Let's take  
6 ten minutes. Recess.

7           (Recess)

8           CO-HEARING OFFICER BAGGETT: Let's go back on  
9 the record. Mr. O'Laughlin, continue.

10          MR. O'LAUGHLIN: I got sidetracked for a  
11 minute. Let me go back to a couple follow-up questions  
12 so I don't forget.

13          Have you read Mr. Neudeck's testimony in this  
14 case?

15          MR. NOMELLINI: I did at one time.

16          MR. O'LAUGHLIN: Okay. It appears to me that  
17 Mr. Neudeck opined that this Samson dredger that we were  
18 looking at entered Duck Slough and went from Burns  
19 Cutoff all the way to Middle River.

20          Would you agree with that assertion?

21          MR. NOMELLINI: I don't know how far it went.  
22 Looking at some of the history, I got the impression  
23 that it may have gone up to the High Ridge Levee.

24          I didn't get any impression it went all the way  
25 to Middle River, but I really don't know how far it

1 went. Didn't look like a great dredger to me.

2 MR. O'LAUGHLIN: Earlier you had stated that  
3 you had looked at maps depicting Duck Slough. Are those  
4 maps in either -- are those in your testimony or are  
5 these in Mr. Neudeck's testimony?

6 MR. NOMELLINI: I think they're the same ones  
7 that Neudeck's got.

8 MR. O'LAUGHLIN: Now, do you have any maps  
9 depicting a slough -- I don't know if you want call it  
10 the headwaters or the end of Duck Slough where it enters  
11 Middle River. Do you have any map depicting a slough in  
12 that area?

13 MR. NOMELLINI: There is a map that shows a  
14 finger coming up there.

15 MR. O'LAUGHLIN: What map is that?

16 MR. NOMELLINI: Oh.

17 MR. O'LAUGHLIN: Do you have an exhibit number?

18 MR. NOMELLINI: I don't know. Maybe you can  
19 call me back when one of these other guys puts it up.

20 But there is a navigational map type of thing  
21 that had a channel coming up in that area. You know,  
22 could have been right where the Duck Slough is now. It  
23 could have been farther to the west.

24 You know, that pocket area has -- I don't know  
25 if you're familiar with it, but all those things kind of



1 go together near Mr. Kingston School.

2 MR. ROSE: Can I ask briefly if that's  
3 Exhibit 3Q or R, 1921 map of California Delta? Is that  
4 what you're talking about, for my own reference?

5 MR. NOMELLINI: Maybe you can show me the map.

6 MR. HERRICK: I believe it's the Weathers,  
7 Captain Weathers map from 1922 attached to Mr. Neudeck's  
8 testimony. Yes.

9 MR. O'LAUGHLIN: Can we throw that up on the  
10 screen?

11 (Discussion off the record)

12 MR. HERRICK: That's it. Pan down. Find where  
13 Middle River turns and zoom in. Right where it says  
14 Drexler Tract almost -- a little below the cursor. A  
15 little farther below.

16 MR. NOMELLINI: Yeah, right. That looks like  
17 the map that I'm recalling, yes.

18 MR. O'LAUGHLIN: Can you enlarge that area of  
19 the map, please?

20 MR. HERRICK: Bring it back down a little bit.  
21 No, the other way. Now pan it to the right or move it  
22 to the right. Right there, the centerish. Right by the  
23 words "the pocket is" is what Mr. Nomellini is talking  
24 about. Middle River and then the pocket in between  
25 there at a diagonal.

1           MR. O'LAUGHLIN:  If you have a pointer,  
2  Mr. Nomellini, it might be helpful if you would denote  
3  where on that map you see a finger coming into Middle  
4  River at or near where you believe Duck Slough either  
5  started or ended.

6           MR. NOMELLINI:  You see where the word "the" is  
7  near the word "pocket" and just to the left of the T on  
8  "the".  That's what I've seen on a map that I recall.

9           MR. O'LAUGHLIN:  Okay.  Are you aware of any  
10 other map depicting a slough in that area other than  
11 this map?

12          MR. NOMELLINI:  Well, the topographic map from  
13 that 1911 one I think shows -- yeah.  Yes.

14          MR. O'LAUGHLIN:  Okay.

15          MR. NOMELLINI:  Not like that, but I mean, I  
16 think I've seen other indications.

17          MR. O'LAUGHLIN:  Okay.  What other map would  
18 that be?

19          MR. NOMELLINI:  I think that 1911, which was  
20 published in 1913, topographic map shows indications of  
21 soil conditions there that would reflect a slough,  
22 possible slough.

23          MR. O'LAUGHLIN:  In your testimony you don't  
24 opine as to -- anywhere in here as to when Pak/Young  
25 started diverting water on their property, do you?

1 MR. NOMESELLINI: No, I don't think so. But I --

2 MR. O'LAUGHLIN: Okay. Do you have any  
3 evidence of when Pak and Young commenced to apply  
4 irrigation water to their property?

5 MR. NOMESELLINI: I think they started in the  
6 1870s. It wouldn't be them, but it would be their  
7 predecessors.

8 MR. O'LAUGHLIN: Okay. And what specific piece  
9 of evidence should we look at to support the fact that  
10 Pak and Young's predecessors were applying water to this  
11 property prior to 1900?

12 MR. NOMESELLINI: Well, I got the biography of  
13 the Woods in here.

14 MR. O'LAUGHLIN: Right.

15 MR. NOMESELLINI: And they started getting  
16 property in the late 1800s. And it talks about the  
17 flood of 1893 --

18 MR. O'LAUGHLIN: Okay.

19 MR. NOMESELLINI: -- wiping them out.

20 And that a year or two later, I think it was  
21 1896, they were able to produce the crops and pay off  
22 the debt.

23 So there's evidence of the farming there, and  
24 it would be logical to me that they would be out there  
25 growing crops. And if they're growing crops, they're

1 going to be irrigating to some extent. So I would say  
2 1870s.

3 Also that deed from Glasgow or Fisher to  
4 Glasgow where they contracted back to Fisher to  
5 cultivate and get ready for seeding 25,000 of 30,000  
6 acres. To me, that's clear indication of what they  
7 should have been doing, and they were doing it.

8 MR. O'LAUGHLIN: Okay. A question in regards  
9 to that. You said to some extent. Do you know the  
10 scope of the extent? And I'm going to be specific here.  
11 Do you know the season to which the water was put to  
12 beneficial use, the time of year?

13 MR. NOMELLINI: Depends on the crop and when  
14 the crop needs it.

15 MR. O'LAUGHLIN: Okay. And do you know what  
16 crops were being grown specifically on the Pak property  
17 and the time of year?

18 MR. NOMELLINI: Not specifically. But the  
19 Woods brothers, if you look at their documents, they  
20 were in the grain and alfalfa for sure.

21 So alfalfa, you'd want to water during the late  
22 spring and summer months. It depends on the, you know,  
23 the hydrology of the year. If you get late rains, you  
24 wouldn't add more water.

25 In grain crops, depending on when they planted

1 them, would probably be irrigated maybe May, even in  
2 April in a dryer year.

3 So you can tell from the crops when they were  
4 doing it, but I'm pretty confident they were doing it.

5 MR. O'LAUGHLIN: Okay. Would it be safe to say  
6 that if grain crops were being grown on the property  
7 that the irrigation for the grain crop would probably  
8 end prior to June 1st of any given year?

9 MR. NOMELLINI: Yeah. I think if it was a  
10 wheat crop -- I mean, my familiarity with crop  
11 irrigation is like what we're doing today. And  
12 generally the water is pulled off of the wheat. You  
13 might go into early June on some. Depends on when you  
14 planted it.

15 MR. O'LAUGHLIN: Okay. In this matter, is  
16 Pak/Young asserting a pre-1914 right?

17 MR. NOMELLINI: I think so.

18 MR. O'LAUGHLIN: Okay. So in regards -- if Pak  
19 and Young's property is planted in a wheat crop and they  
20 only plant wheat -- this is a hypothetical -- and the  
21 irrigation never goes past June of any year, would their  
22 season of use then run from March through June 1?

23 MR. NOMELLINI: You know, I heard your -- what  
24 went on yesterday -- was it yesterday or day before?

25 MR. O'LAUGHLIN: Monday.

1 MR. NOME LLINI: Yeah, Monday.

2 MR. O'LAUGHLIN: Sure.

3 CO-HEARING OFFICER BAGGETT: Excuse me. None  
4 of us, at least --

5 MR. NOME LLINI: It's not relevant.

6 CO-HEARING OFFICER BAGGETT: The Hearing  
7 Officers didn't.

8 MR. NOME LLINI: I'll strike that. You can  
9 strike it, and I'll withdraw it, how about that?

10 I don't think the season of use is part of that  
11 pre-1914 appropriative limitation.

12 MR. O'LAUGHLIN: Okay. So in your mind a  
13 pre-1914 right is not limited by the season of use,  
14 correct?

15 MR. NOME LLINI: Correct.

16 (Interruption for technical difficulties)

17 MR. O'LAUGHLIN: Mr. Nomellini, would your  
18 answer in regards to Pak -- is Mr. Mussi asserting a  
19 pre-1914 right in this matter?

20 MR. NOME LLINI: I believe so.

21 MR. O'LAUGHLIN: Okay. And would your  
22 statement be the same for Mr. Mussi, that there is no  
23 season of use applicable to a pre-1914 right?

24 MR. NOME LLINI: Generally.

25 MR. O'LAUGHLIN: Okay. Well, I know generally.

1 But specifically as to --

2 MR. NOMESELLINI: Yeah, I haven't exhaustively  
3 researched it, but it seems to me that that would be an  
4 artificial limitation.

5 We'd look at the use that's consistent with  
6 what -- you know, if you change crops, if you had a  
7 season of use and it was -- you started in 1910 with  
8 wheat and you went to another crop in 1912 or whatever,  
9 I think there's more flexibility in that.

10 MR. O'LAUGHLIN: Okay. Can you tell me a date?  
11 Did either -- did Mr. -- sorry. Did Pak's predecessor  
12 file pursuant to the Civil Code for a pre-1914 right?

13 MR. NOMESELLINI: I don't know of any filings by  
14 these parties.

15 MR. O'LAUGHLIN: Okay. No Civil Code filing.

16 Now, do you know the date upon which they first  
17 started to appropriate water?

18 MR. NOMESELLINI: Like I said, I believe it's in  
19 the 1870s, somebody started applying water to those  
20 properties.

21 MR. O'LAUGHLIN: Do you have a specific date?

22 MR. NOMESELLINI: No.

23 MR. O'LAUGHLIN: Okay. Do you know when -- or  
24 let's work with Pak first.

25 What is the rate of diversion upon which Pak

1 has fully put water to beneficial use?

2 MR. NOMELLINI: The exact amount, I don't know.  
3 But I'd look at what the cropping would have been and  
4 the acreage and use just like those evapotranspiration  
5 charts that I have. I think they're representative of  
6 what would have occurred back at that time as well.

7 MR. O'LAUGHLIN: Okay. Is that answer the same  
8 for Mr. Mussi as well?

9 MR. NOMELLINI: Yes.

10 MR. O'LAUGHLIN: Do you know if there is a  
11 claim by either Pak or Mussi in regards to the  
12 development of their pre-1914 right relating back to  
13 1870, the relationship back doctrine?

14 MR. NOMELLINI: I don't --

15 MR. O'LAUGHLIN: Let me --

16 MR. NOMELLINI: I don't understand.

17 I mean -- you mean -- because there's no filing  
18 that I know of. Is that what you're asking me?

19 MR. O'LAUGHLIN: No. I'm going to rephrase it.  
20 It will probably be easier.

21 At what point in time did Mussi or Pak perfect  
22 their pre-1914 appropriation?

23 MR. NOMELLINI: I think it was in the 1870s.  
24 And it wasn't them, of course, it was the predecessors.

25 MR. O'LAUGHLIN: Their predecessors, yes, I



1 understood that.

2 Now, where, and from your opinion, in 1870 was  
3 Pak -- where was Pak appropriating water from?

4 MR. NOMELLINI: I think Duck Slough.

5 MR. O'LAUGHLIN: And Mr. Mussi?

6 MR. NOMELLINI: Same thing. And of course Duck  
7 Slough is connected to the San Joaquin River and what we  
8 call Middle River.

9 MR. O'LAUGHLIN: Okay.

10 MR. NOMELLINI: Sometimes they refer to it as  
11 Middle San Joaquin.

12 MR. O'LAUGHLIN: Do you know how many other  
13 people were on Duck Slough taking water in 1870?

14 MR. NOMELLINI: I think everybody along there.  
15 That was one of those natural levee areas.

16 MR. O'LAUGHLIN: Okay. What was -- do you know  
17 what the, in your understanding, what the total amount  
18 of the diversions would equal during a summer prior to  
19 1915 on Duck Slough?

20 MR. NOMELLINI: The way I would approach it  
21 would be to take, you know, a reasonable  
22 evapotranspiration rate and the acreage and apply it.

23 MR. O'LAUGHLIN: Okay. Then is your statement  
24 then that you're assuming that prior to 1915 that there  
25 was always water in Duck Slough subject to

1 appropriation?

2 MR. NOMELLINI: Prior to 1915?

3 MR. O'LAUGHLIN: Yes.

4 MR. NOMELLINI: I don't know what the quality  
5 was.

6 MR. O'LAUGHLIN: But just in Duck Slough, was  
7 there always water subject to --

8 MR. NOMELLINI: If it was really salty, I don't  
9 think somebody would apply it to their land.

10 MR. O'LAUGHLIN: Okay. But do you know the  
11 quantity of water that would be available in Duck Slough  
12 in any given month during the year?

13 MR. NOMELLINI: Exactly, no.

14 MR. O'LAUGHLIN: Okay. Do you know -- I think  
15 I asked this, and just beg my indulgence. I'm almost  
16 done, but I just want to make sure so I don't have to go  
17 back and read my notes.

18 Do you know what the carrying capacity of Duck  
19 Slough was prior to 1914 adjacent to the Pak or Mussi  
20 properties?

21 MR. NOMELLINI: No, but the people at the time  
22 would have -- they were building things like that. They  
23 were building facilities. They had machinery. And I  
24 would think that they would have built facilities  
25 capable of delivering the water they wanted to utilize.

1 MR. O'LAUGHLIN: Do you know -- have you seen a  
2 document that depicts a building of a canal along the  
3 east side of High Ridge Levee that's proposed in 1927  
4 for a canal? Have you seen that document?

5 MR. NOMELLINI: Maybe I'm missing something.  
6 1925? A document?

7 MR. O'LAUGHLIN: Yes.

8 MR. NOMELLINI: Was that that document you  
9 handed us the other day?

10 MR. O'LAUGHLIN: Yeah.

11 MR. NOMELLINI: Well, yeah, I've seen a  
12 document then.

13 MR. O'LAUGHLIN: Okay. If Pak and Mussi -- I'm  
14 almost done.

15 In your testimony you state that the inference  
16 that a parcel in the Delta no longer abutting a major  
17 channel is severed from the water in the channel is an  
18 artificial construct with no real benefit.

19 Is that your opinion?

20 MR. NOMELLINI: That's my opinion, and that's  
21 what I see as a percipient witness of the way water  
22 moves in the Delta.

23 MR. O'LAUGHLIN: Is that a legal statement or a  
24 political statement or a policy statement?

25 MR. NOMELLINI: It's a factual statement. It's

1 a legal statement. And I don't know; if you want to put  
2 a political term on it, I guess you could, too.

3 MR. O'LAUGHLIN: Almost done.

4 Previously I showed you the Board minutes from  
5 the Woods Irrigation Company and rule number 13. It  
6 says:

7 At the point of diversion therefrom by  
8 the company, has a -- Middle River has a  
9 salinity content which the board of  
10 directors of this company deem  
11 detrimental to its lands or crop, said  
12 company may, by resolution of the board  
13 of directors, cease all irrigation.

14 Are you aware of Woods ever having that rule?

15 MR. NOME LLINI: I've seen the rule before.

16 MR. O'LAUGHLIN: Okay. So here's my question.  
17 Would this also be applicable to salinity reaching Duck  
18 Slough in Middle River as well if it would be applicable  
19 to the Woods Irrigation Company facility; do you think?

20 MR. NOME LLINI: I don't think Duck Slough was  
21 part of the Woods Irrigation system.

22 MR. O'LAUGHLIN: Yeah, but what I'm asking is  
23 that my understanding is Woods Irrigation Company's  
24 facilities is just slightly downstream from Duck Slough.  
25 Correct -- or upstream. Sorry, it's upstream. I always

1 get confused. Slightly upstream from Duck Slough,  
2 correct?

3 MR. NOMELLINI: Yeah.

4 MR. O'LAUGHLIN: So if water was flowing in  
5 from the San Joaquin River, Woods Irrigation Company's  
6 water quality would generally be better than the water  
7 quality at Duck Slough which is more toward the west and  
8 more seaward, correct?

9 MR. NOMELLINI: I don't know that's true.

10 There's drainage facilities, you know, in the  
11 area and stuff like that. But I mean generally from  
12 seawater intrusion, I think the farther inland you'd be,  
13 you'd get the salt later.

14 MR. O'LAUGHLIN: Right. Okay.

15 So if Woods has this rule, would you have any  
16 idea of when salinity would be at -- would salinity  
17 generally show up -- seawater intrusion show up at Duck  
18 Slough before it got to Woods Irrigation Company?

19 MR. NOMELLINI: Yeah, I would expect ocean  
20 salinity, pre Project, would arrive and move from the  
21 ocean inland.

22 Salinity now, of course, with alterations in  
23 the system, it could be much saltier coming down the San  
24 Joaquin.

25 But this is a rule, not necessarily the event.

1           MR. O'LAUGHLIN:  And I'm assuming that the --  
2 one last question -- that the photos that you show in  
3 your photo 1 and photo 3 you deemed to be representative  
4 of water facilities that would have been on Roberts  
5 Island; is that correct?

6           MR. NOMELLINI:  These are a couple of them.  
7 There's a variety.  You know, I have some pictures that  
8 I put in on the Woods thing that show the more specific  
9 ones.

10           There's differences.  Some of them are brick.  
11 These happen to be -- the one in particular here was  
12 made out of wood.

13           So there's different materials, little  
14 different designs.  They're not all uniform.

15           MR. O'LAUGHLIN:  Okay.  Now, do you have an  
16 understanding of which one of these was installed at  
17 Burns Cutoff on Duck Slough?

18           MR. NOMELLINI:  Which I depicted?  Those photos  
19 don't show what's at Burns Cutoff.  The one that's  
20 immediately to the north that I know was removed was a  
21 brick facility, so it would not have matched these  
22 two --

23           MR. O'LAUGHLIN:  Okay.

24           MR. NOMELLINI:  -- that I showed you.

25           MR. O'LAUGHLIN:  Now, where Duck Slough entered

1 into Middle River, which one of these photos would be  
2 representative of what was installed at Middle River  
3 where Duck Slough entered?

4 MR. NOME LLINI: There's some other ones along  
5 there that are made out of brick.

6 MR. O'LAUGHLIN: Okay. But at Duck Slough.  
7 I'm talking about Duck Slough.

8 MR. NOME LLINI: I'm talking about Duck Slough  
9 at Middle River.

10 MR. O'LAUGHLIN: Okay.

11 MR. NOME LLINI: There are others in that  
12 immediate vicinity made out of brick, so I would think  
13 the chances are the one at Duck Slough was brick.

14 MR. O'LAUGHLIN: Thank you for your time. I  
15 have no further questions.

16 CO-HEARING OFFICER BAGGETT: Thank you. Two  
17 other parties. Have they got some cross?

18 --o0o--

19 CROSS-EXAMINATION BY MS. KINCAID

20 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

21 --o0o--

22 EXAMINATION

23 MS. KINCAID: Valerie Kincaid for San Luis &  
24 Delta-Mendota Water Authority.

25 Good morning, Mr. Nomellini. I just have a few

1 follow-up questions.

2 In your written testimony which has been  
3 marked, I believe, Exhibit 9, on page 4 you discuss your  
4 experience in Venice Island; is that correct?

5 MR. NOMESELLINI: That's correct.

6 MS. KINCAID: And do you have any direct  
7 experience with irrigation systems on Roberts Island?

8 MR. NOMESELLINI: Yes.

9 MS. KINCAID: Yes?

10 MR. NOMESELLINI: Yes.

11 MS. KINCAID: But that's not the experience  
12 depicted on page 4; is that correct?

13 MR. NOMESELLINI: Well, I tried to describe in  
14 my -- let's see.

15 MS. KINCAID: It starts with the top of page 4,  
16 in the late '50s.

17 MR. NOMESELLINI: I'm looking at it now.

18 Well, the top of the page, no. The description  
19 of the dam at Black Slough is on Roberts Island. And  
20 then of course the photo right there at the -- where  
21 Whiskey Slough crosses the railroad track.

22 MS. KINCAID: Right.

23 MR. NOMESELLINI: I consider that Roberts Island.

24 MS. KINCAID: You consider that Roberts Island?

25 MR. NOMESELLINI: Yes. It's right -- you know,



1 it's the line between the levee on Jones Tract and the  
2 Lower Roberts Island.

3 MS. KINCAID: Okay. And your testimony  
4 explains what your experience is in the 1950s?

5 MR. NOMESELLINI: Correct.

6 MS. KINCAID: And --

7 MR. NOMESELLINI: 1950s and '60s.

8 MS. KINCAID: And I don't mean any disrespect  
9 with this next question, I just want to make sure the  
10 record is clear that you don't have any hands-on  
11 experience with irrigation systems before 1914? Is that  
12 correct?

13 MR. NOMESELLINI: That's true.

14 MS. KINCAID: Okay. Turning to the photos, you  
15 just explained that photo 1 you think is in Roberts  
16 Island, Lower Roberts Island, right between Middle  
17 Island -- Union Island and Roberts; is that correct?

18 MR. NOMESELLINI: Yeah, the location is right  
19 where Honker Lake, Lower Roberts, Reclamation District  
20 684 and Lower Jones Tract levees come together.

21 MS. KINCAID: Okay. And are any of the photos  
22 you entered in Exhibit 9 actual photos of irrigation  
23 facilities that would deliver water to the Mussi or Pak  
24 parcels?

25 MR. NOMESELLINI: Photo 9? Oh, Exhibit 9?

1 MS. KINCAID: Yes. You entered --

2 MR. NOMELLINI: Oh, my testimony. No, they are

3 not.

4 MS. KINCAID: No. Okay. And what are the

5 dates, generally, of these photos?

6 MR. NOMELLINI: They're within the last three

7 months, two months.

8 MS. KINCAID: So it's fair to say none of these

9 photos depict pre-1914 conditions?

10 MR. NOMELLINI: That's right. Well, if you

11 look at this floodgate underneath this railroad, this

12 railroad went in there in 1898. So photo number 1 and

13 photo number 2, they could be what was there in 1898.

14 MS. KINCAID: They could be, but the pictures

15 are not --

16 MR. NOMELLINI: No, I didn't take --

17 MS. KINCAID: -- taken in 1914.

18 THE WITNESS: -- the picture. I took the

19 picture a few months ago.

20 MS. KINCAID: Great. Okay. And we discussed

21 earlier the highlighted portion of your testimony which

22 is 9B. You read portions which were highlighted from

23 the packet you provided today?

24 MR. NOMELLINI: Yes.

25 MS. KINCAID: And can you identify the

1 highlighted portions, can you identify which island  
2 those portions are talking about?

3 MR. NOMESELLINI: Well, I think the -- 9B?

4 MS. KINCAID: Yes.

5 MR. NOMESELLINI: Was a very generic one. But  
6 the focus of reclamation and farming at the earlier  
7 stages, as I understand it, started on the Roberts  
8 Island area, at least in this area, and so it would have  
9 been some of the first to be recognized. So I think it  
10 is very relevant to what we're concerned about today.

11 MS. KINCAID: Okay. All right. To make sure  
12 the record's clear, I'm talking about it looks like page  
13 43 of what is labeled History of San Joaquin County  
14 California. It's Mussi 9B.

15 And if you -- Mr. Lindsay, I don't know if you  
16 can pan out at all to get the total picture.

17 STAFF MEMBER LINDSAY: Sure.

18 MS. KINCAID: Thank you.

19 It looks like the highlighted portion is from a  
20 section above Union island, and you'll see in the  
21 middle section there it says Roberts Island.

22 MR. NOMESELLINI: I think if we go back -- we'd  
23 have to look at the prior page. I think this section  
24 was the generic section. Yes.

25 MS. KINCAID: You think that's the general

1 section, not specific to Roberts Island?

2 MR. NOME LLINI: Yeah, if we looked at page 42  
3 we'd know exactly. I think -- that's my recollection.  
4 It was the generic one.

5 MS. KINCAID: Okay. And just one last  
6 follow-up question for the record.

7 The picture of the Samson-type dredge, that  
8 picture, do you know the water body that is actually  
9 depicted in that photo?

10 MR. NOME LLINI: No, but I think it's correctly  
11 reported on either the diagram or the article that that  
12 is not in Duck Slough. That picture is not in Duck  
13 Slough, but the article talks about that same machine  
14 working in Duck Slough.

15 MS. KINCAID: Sure. But just to be clear, this  
16 picture is not --

17 MR. NOME LLINI: That picture is not of Duck  
18 Slough, as far as I know.

19 MS. KINCAID: Thanks, Mr. Nomellini.

20 CO-HEARING OFFICER BAGGETT: San Joaquin?

21 --o0o--

22 CROSS-EXAMINATION BY MS. GILLICK  
23 FOR COUNTY OF SAN JOAQUIN and SAN JOAQUIN COUNTY FLOOD  
24 CONTROL & WATER CONSERVATION DISTRICT

25 --o0o--

1 MS. GILLICK: Hi. DeeAnne Gillick on behalf of  
2 County of San Joaquin and San Joaquin County Flood  
3 Control & Water Conservation District.

4 Does a riparian water right have to be used in  
5 order for it to be valid in an existing water right?

6 MR. NOMELLINI: No.

7 MS. GILLICK: Is it possible that -- when you  
8 have a riparian water right, that's because the property  
9 is along a watercourse; is that correct?

10 MR. NOMELLINI: That's where it's derived,  
11 yeah.

12 MS. GILLICK: That's one of the principles,  
13 that this property needs to be along a watercourse?

14 MR. NOMELLINI: I'd say a water body.

15 MS. GILLICK: Is it also necessary that the  
16 point of actual diversion is at the point that the  
17 property touches or is along the water body?

18 MR. NOMELLINI: That's not my understanding.

19 MS. GILLICK: Is it possible for the point of  
20 diversion of a riparian water right to be at a different  
21 location than where the property touches the water?

22 MR. NOMELLINI: Yeah. I think the rule is as  
23 long as there's no significant injury to other users  
24 that the point of diversion could be relocated.

25 MS. GILLICK: Okay. Or it could either be

1 relocated, or initially it could be at a point not on  
2 the actual property touching the watercourse that the  
3 person owns?

4 MR. NOMELLINI: I think we start with the  
5 larger parcels and what was contacted by the larger  
6 parcel as setting the bounds. But I'm not absolutely  
7 sure you couldn't move it.

8 MS. GILLICK: Okay. Is it your understanding  
9 that the parcels at issue, both the Mussi parcel as well  
10 as the Pak/Young parcel, were originally a part of a  
11 larger parcel that was riparian?

12 MR. NOMELLINI: Clearly, yes.

13 MS. GILLICK: Okay. That was clearly riparian?

14 MR. NOMELLINI: They're part of that Whitney  
15 patent from the State of California that included a much  
16 larger area that touched the San Joaquin, Middle River,  
17 and I'll say Whiskey Slough, Trapper Slough.

18 MS. GILLICK: So could the diversion points  
19 that served this property, was it necessary for those  
20 diversion points to be from Duck Slough?

21 MR. NOMELLINI: No.

22 MS. GILLICK: Was it possible then for those  
23 actual diversion points that served this property to be  
24 located on other channels within the Delta?

25 MR. NOMELLINI: I believe so, yeah, within the

1 scope of that Whitney patent.

2 MS. GILLICK: In your opinion, does it make a  
3 difference in the Delta if a diversion point is on, for  
4 instance, Middle River or Duck Slough?

5 MR. NOMELLINI: The Delta, you know, acts  
6 primarily as a pool in this portion. I see no  
7 difference with regard to these particular parcels.

8 MS. GILLICK: And you mentioned the Delta is a  
9 pool. Can you explain to me what you mean by the Delta  
10 is a pool, why it makes any difference?

11 MR. NOMELLINI: Well, the Delta is defined in  
12 the Water Code as a pretty broad area. It goes all the  
13 way from Vernalis in the south to West Sacramento in the  
14 north.

15 So I kind of think the Delta pool area is  
16 not -- is probably easily described by that 5 foot above  
17 sea level that the water supervisors and others were  
18 using in their reports. It would be a little different.

19 Let's say you went to Vernalis on the San  
20 Joaquin. I think the considerations might be different.

21 MS. GILLICK: For a riparian water right, does  
22 the season of use of any prior uses matter?

23 MR. NOMELLINI: No.

24 MS. GILLICK: Is it possible for a riparian  
25 water right to change the crops that are planted on that

1 property or to change the season of use of diversions on  
2 that property?

3 MR. NOMELLINI: Yes, sure.

4 MS. GILLICK: In your experience or your  
5 knowledge, is it necessary to have a pre-1914 water  
6 right for there to be a filing pursuant to the Civil  
7 Code?

8 MR. NOMELLINI: My understanding is you file --  
9 pre-1914, you filed under the Civil Code in order to  
10 establish a date of preference, and it was a notice of  
11 intent. So if you did use the water subsequent to  
12 filing that notice, it would relate back to that date of  
13 the filing.

14 MS. GILLICK: So is it the actual use of the  
15 water that --

16 MR. NOMELLINI: That creates the right.

17 MS. GILLICK: -- that would create the right,  
18 not necessarily the Civil Code filing?

19 MR. NOMELLINI: Correct. That's my  
20 understanding.

21 MS. GILLICK: That's all I have. Thank you.

22 CO-HEARING OFFICER BAGGETT: Thank you. Any  
23 questions from -- I think that's all the parties. And I  
24 know that Charlie has one.

25 Want to start with Ernie?



1 WATER RESOURCE CONTROL ENGINEER MONA:

2 Mr. Nomellini, this is Ernie Mona. I believe  
3 you testified that the pumping from the Middle River  
4 into Duck Slough didn't begin until 1925; is that  
5 correct?

6 MR. NOME LLINI: Oh, no. No. I think pumping  
7 probably started in the 1870s. In 1925 there was an  
8 installation of that Woods Robinson Vasquez system,  
9 which is a different system than the Duck Slough system  
10 that I was talking about, about when I thought  
11 irrigation started and when I thought they used pumps.

12 WATER RESOURCE CONTROL ENGINEER MONA: Is that  
13 the current system that is presently delivering water to  
14 the Pak/Mussi properties?

15 MR. NOME LLINI: No. The present system --  
16 excuse me, go ahead. Did I misunderstand?

17 MR. HERRICK: He asked you if Woods Robinson --

18 MR. NOME LLINI: Oh, yeah.

19 MR. HERRICK: -- was one presently delivering.

20 MR. NOME LLINI: Excuse me for not hearing  
21 correctly.

22 The Woods Robinson Vasquez is the system that I  
23 think went in in 1925 that presently serves those  
24 parcels, yes.

25 WATER RESOURCE CONTROL ENGINEER MONA: Is there

1 currently a natural channel that delivers that water  
2 from which water can be delivered to the Pak/Young/Mussi  
3 properties?

4 MR. NOME LLINI: There is a concrete-lined ditch  
5 out there today that delivers the water from the pumping  
6 plant at Middle River to those two parcels.

7 WATER RESOURCE CONTROL ENGINEER MONA: And  
8 that's -- the concrete-lined ditch is the ditch that was  
9 developed by the Woods Robinson Vasquez as part of the  
10 Woods Robinson Vasquez water system, correct?

11 MR. NOME LLINI: That's my understanding, yeah.

12 WATER RESOURCE CONTROL ENGINEER MONA: Okay.

13 Thank you.

14 CO-HEARING OFFICER HOPPIN: Mr. Nomellini, I  
15 have a brief question for you.

16 We talked a lot in your -- and Mr. O'Laughlin,  
17 I will say, talked a great deal about severance on a  
18 riparian parcel based on the filing or reclamation of an  
19 old slough or natural corridor.

20 Both today and during our previous hearing on  
21 this issue, you talked a bit about your concept of the  
22 Delta pool, if you will.

23 MR. NOME LLINI: Correct.

24 CO-HEARING OFFICER HOPPIN: Under many  
25 conditions, riparian parcels have been severed through

1 the sale of lands. And I'm not talking about the Delta;  
2 I'm talking about anywhere. If somebody severs a parcel  
3 and creates a new parcel number, the portion that isn't  
4 contiguous with the watercourse, generally speaking, is  
5 severed from a riparian right.

6 But am I hearing you say that under your Delta  
7 pool theory that no parcel would be severed under that  
8 circumstance because the riparian contact is an  
9 underlying --

10 MR. NOMEILLINI: Yes, that's correct.

11 I think it can't be physically severed because  
12 of the interconnection of the water that's beneath the  
13 land and the surface waters, and it would continue to  
14 use the water anyway, and that the construct of  
15 severance is based on intent.

16 You know, the intent is that when somebody  
17 sells the land that's not near the river, the argument  
18 is that therefore there's some benefit to that party.  
19 You know, you can get rid of a competitor on the river  
20 system. So it makes some sense in upper river areas.  
21 In the Delta, to me, it does not.

22 It's just like there's no avulsive act that's  
23 separating -- you know, if you had an avulsive act, a  
24 stream moved, you can go back as a riparian and hook it  
25 up and in a reasonable period of time you maintain your

1 riparian right.

2           The construct of the levees and the reclamation  
3 is pursuant to the state and federal plan. It was a  
4 condition that came along with the patent. So that, to  
5 me, cannot serve as a basis for the severance.

6           Once the property is leveed off or whatever, it  
7 remains the contact, I would say there should be --  
8 there might be a possibility of somebody explicitly  
9 saying, hey, I'm withholding it.

10           But I think that would run against the policy  
11 that should go with swamp and overflow lands.

12           CO-HEARING OFFICER HOPPIN: Thank you,  
13 Mr. Nomellini.

14           CO-HEARING OFFICER BAGGETT: Since I guess  
15 we've allowed this to turn into, let me see, policy,  
16 legal closing arguments, and engineering and ag  
17 arguments all in one witness, I will try to still  
18 maintain this is not legal arguments.

19           I think in the Phelps decision we pretty  
20 clearly talking about swamp and overflow. That's  
21 already been litigated. I think some of those issues  
22 have been resolved.

23           It seems to me, though, that I guess as an  
24 engineer the question would be -- or hydrologist -- if  
25 you take a stream or a slough or river and channelize

1 it, does it still maintain a stream, the characters of a  
2 stream or slough or river?

3 As an engineering definition, I guess, or  
4 hydrologist, do you have an opinion?

5 MR. NOMESELLINI: Well, I know your focus is on  
6 stream flow. And I think --

7 CO-HEARING OFFICER BAGGETT: I said slough,  
8 also.

9 MR. NOMESELLINI: Or slough. But I think the  
10 focus should be also on riparian to lake bodies, because  
11 the Delta acts as a pool.

12 CO-HEARING OFFICER BAGGETT: This is a very  
13 much narrower question I guess I have. I'm just trying  
14 to understand what your opinion is as an engineer, not a  
15 lawyer. Let's not argue about Delta pools.

16 But as an engineer and a hydrologist and a  
17 farmer, if you take a stream or a slough or river and  
18 channelize it, does it still maintain that character, in  
19 your opinion?

20 MR. NOMESELLINI: Yeah, I think just by the mere  
21 fact of leveeing a channel, I think it's clear that that  
22 does not constitute a severance. The court would look  
23 at the intent, you know.

24 CO-HEARING OFFICER BAGGETT: I'm trying to  
25 avoid intent. I'm just trying --

1 MR. NOME LLINI: Just physically?

2 CO-HEARING OFFICER BAGGETT: -- to look at  
3 engineering. Physically.

4 MR. NOME LLINI: Physically. All right. We  
5 narrow the channel. We're not going to cease the  
6 riparian nature. The question then becomes the  
7 connection.

8 CO-HEARING OFFICER BAGGETT: So if it becomes a  
9 canal, it still maintains that original character.

10 MR. NOME LLINI: Yeah.

11 CO-HEARING OFFICER BAGGETT: Okay.

12 MR. NOME LLINI: To me, whether it's a natural  
13 channel or an artificial channel, if that's what you're  
14 getting at, it doesn't make any difference as long as  
15 that connectivity is established even under the  
16 traditional, you know, upstream action.

17 And here you can't -- you can't stop it. You  
18 can't stop it unless you encapsulate it. So as a  
19 practical matter there is no disconnect.

20 I don't care what we do legally or whatever,  
21 the decisions and all that. What's going to happen if  
22 these guys don't farm, they're going to evaporate more  
23 water off that land than farming, period.

24 CO-HEARING OFFICER BAGGETT: I appreciate that.

25 MR. NOME LLINI: And that's the problem I'm

1 dealing with. I think the law ought to recognize -- I  
2 recognize you didn't see it that way before. And that's  
3 okay; we're hopeful that you'll look at it again.

4 CO-HEARING OFFICER BAGGETT: That's why I'm  
5 asking you a very specific question, trying to get it --  
6 I'm trying to understand a technical difference here,  
7 not a legal difference.

8 Okay. Any other questions? Do you have any  
9 recross?

10 MR. HERRICK: Yes, I do.

11 --o0o--

12 REDIRECT EXAMINATION BY MR. HERRICK

13 FOR RUDY MUSSI, TONI MUSSI AND LORY C. MUSSI INVESTMENT  
14 LP; YONG PAK AND SUN YOUNG

15 --o0o--

16 MR. HERRICK: Could we pull up -- how about  
17 Exhibit, I think it's O or P, on Mr. Neudeck's  
18 testimony, please.

19 Looking for 1941 map of Woods. I'm sorry, S.

20 MR. O'LAUGHLIN: That says 1913.

21 MR. HERRICK: Yeah, I was looking for the 1941  
22 Woods map.

23 MS. GILLICK: Yeah, its P. P is Woods map.

24 MR. HERRICK: Thank you.

25 MR. ROSE: I believe 3R is what you're looking

1 for. They're labeled differently for Mussi and Pak and  
2 Young, which is probably some of the confusion, But I  
3 believe 3R is the 1941 map.

4 MR. HERRICK: Thank you. If you could rotate  
5 that to the right. Only one way to go. Did I say that  
6 wrong? Thank you.

7 Mr. Nomellini, I want to make sure the record  
8 is clear based on some of the questions about flow of  
9 water.

10 Here we have the 1941 map of Woods Irrigation  
11 District which is Exhibit R to Mr. Neudeck's testimony.  
12 And there is a waterway on the upper right-hand corner  
13 which includes Burns Cutoff off of the San Joaquin  
14 River. Do you see that?

15 MR. NOMELLINI: Yes.

16 MR. HERRICK: And then at the other corner we  
17 can see -- excuse me. At the other corner, we see a  
18 heavy dotted line that partially goes along a meandering  
19 line. Do you see that?

20 MR. NOMELLINI: Yes.

21 MR. HERRICK: Do you recognize that portion in  
22 the far left corner is touching the Mussi property at  
23 issue here?

24 MR. NOMELLINI: Yeah, I recognize.

25 MR. HERRICK: And the curvy line, I'll say --



1 excuse my language -- but the sinuous line running from  
2 that property in a northeasterly direction up to Burns  
3 Cutoff is the line that's being described as either Duck  
4 Slough or High Ridge Levee; is that correct?

5 MR. NOMELLINI: That and the remainder that  
6 goes down to the south.

7 MR. HERRICK: And if we could pan down a little  
8 bit so we can see the remainder in the south. There you  
9 go.

10 That line, according to this map anyway, the  
11 line goes down and touches Middle River; is that  
12 correct?

13 MR. NOMELLINI: Correct.

14 MR. HERRICK: Now, when you have a floodgate on  
15 Middle River feeding a channel along that line, that  
16 floodgate can be operated in two different manners; is  
17 that correct?

18 MR. NOMELLINI: In other words, it could allow  
19 tide water to come in, or you might operate it to not  
20 allow tide waters to go in; is that correct?

21 MR. NOMELLINI: Sure.

22 MR. HERRICK: And when the tide goes out, you  
23 could operate it to open so that water flows out of the  
24 Duck Slough into Middle River rather than the other way,  
25 correct?

1 MR. NOMELLINI: It could.

2 MR. HERRICK: And you could do that same thing  
3 at the other end at Burns Cutoff; is that correct?

4 MR. NOMELLINI: That's correct.

5 MR. HERRICK: So depending upon whether you  
6 were trying to irrigate or drain and where you're  
7 located along Duck Slough would determine how the flap  
8 gates would be operated at either of those two ends,  
9 correct?

10 MR. NOMELLINI: If there were flap gates, yes,  
11 or screw gates.

12 MR. HERRICK: Or screw gates, some control  
13 mechanism.

14 MR. NOMELLINI: Correct.

15 MR. HERRICK: So let's just assume for a second  
16 that the flap gate on Duck Slough at Middle River is  
17 closed. It's not operating, it's just closed, it's  
18 shut. You could operate the flap gate on Burns Cutoff  
19 such to allow tide waters to run in Duck Slough; is that  
20 correct?

21 MR. NOMELLINI: Yeah.

22 MR. HERRICK: And the --

23 MR. NOMELLINI: You could put tide water in  
24 part of Duck Slough depending on the depth.

25 MR. HERRICK: Right. The distance which that

1 tide water would flow depends on the depth of the  
2 channel, correct?

3 MR. NOMELLINI: Correct.

4 MR. HERRICK: And so farmers along that area,  
5 in your opinion, did those very same operations to  
6 either maximize irrigation water when they needed it or  
7 to drain when they needed it; is that correct?

8 MR. NOMELLINI: Yeah, I think they fed that  
9 Duck Slough area from both ends.

10 MR. HERRICK: And you recall Mr. Lajoie's  
11 testimony, don't you, given back on May 5th?

12 MR. NOMELLINI: I'm not sure I recall all, but  
13 I remember him testifying.

14 MR. HERRICK: You remember his presentation  
15 that based on the soils that Duck Slough is a major  
16 distributary off of Middle River?

17 MR. NOMELLINI: Yeah. Even without his  
18 testimony, it's just absolutely clear to me it was a  
19 major channel that carried the what I call heavier soil  
20 into the area from south to north.

21 MR. HERRICK: Then you recall from Mr. Lajoie's  
22 testimony that there were also indications of old  
23 waterways that did not have those same soils indicating  
24 flow from the Burns Cutoff direction, do you not?

25 MR. NOMELLINI: Yeah. I think those too still

1 had some heavier soil in them, but yes.

2 MR. HERRICK: And I believe he labeled them  
3 either distributary or tributary channels off those main  
4 channels.

5 MR. NOMELLINI: The smaller channels, some of  
6 them drained interior areas but connected as  
7 tributaries, and lots of them were branches all over,  
8 which we would expect in a swamp.

9 MR. HERRICK: So the historic geologic  
10 information about water flowing in from both ends of  
11 this corresponds to your description of man manipulating  
12 water in the system for agriculture; is that correct?

13 MR. NOMELLINI: Yeah. You could move water  
14 from both sides.

15 MR. HERRICK: And --

16 MR. NOMELLINI: And from the west. And east as  
17 well.

18 MR. HERRICK: And the fall of land from Middle  
19 River where Duck Slough intersects it to Burns Cutoff  
20 where Duck Slough intersects it is only a few feet;  
21 isn't that correct?

22 MR. NOMELLINI: No, I think it's more than  
23 that.

24 MR. HERRICK: Well, how many feet would you say  
25 it is, do you believe it is?

1           MR. NOMELLINI: I think it's in the range of 5  
2 feet.

3           MR. HERRICK: Okay. But that difference of  
4 elevation doesn't affect your testimony about getting  
5 water back and forth in two directions, does it?

6           MR. NOMELLINI: No, it doesn't.

7           But if I was going to irrigate the upper end, I  
8 would irrigate it from Middle River rather than Burns  
9 Cutoff. Now, irrigating the Pak and Young and the Mussi  
10 property, I think it's a toss-up.

11           Today they're irrigating it from Middle River.  
12 So maybe that's the preferred way. But you certainly  
13 could get the water the other way without too much  
14 trouble.

15           MR. HERRICK: And remember, I'm on your side.

16           MR. NOMELLINI: I don't know about that.

17           MR. HERRICK: The 1911 quad map that you  
18 referred to in questions from Mr. O'Laughlin, as you  
19 stated, gives some elevation lines; is that correct?

20           MR. NOMELLINI: Yes.

21           MR. HERRICK: And those elevation lines around  
22 the Mussi and Pak and Young property indicate that those  
23 properties are somewhere around the sea level line per  
24 that map?

25           MR. NOMELLINI: I think that's correct, but

1 maybe we ought to let the map speak for itself, whatever  
2 the --

3 MR. HERRICK: Okay. It was one of those we  
4 just looked at, if you don't mind. Just go back to the  
5 list.

6 MS. GILLICK: I believe it's 3P.

7 MR. HERRICK: Right there. I don't know if we  
8 can see that, but if you can zoom in. There you go.

9 Mr. Nomellini, we're looking at the 1911,  
10 published 1913, USGS Quad map for Holt.

11 MR. NOME LLINI: That's the one I was talking  
12 about as also showing indications of the slough, the  
13 Duck Slough coming all the way down to Middle River.

14 MR. HERRICK: But as we see from this, there's  
15 a -- on this map anyway, there is a faint line sort of  
16 paralleling the old Duck Slough line near the Mussi  
17 property. Do you see that?

18 MR. NOME LLINI: Yeah, I see it.

19 MR. HERRICK: And that's the sea level line,  
20 isn't it?

21 MR. NOME LLINI: I think you're right. I think  
22 it says sea level right up there at the Mussi property  
23 where it goes off in a northeast --

24 CO-HEARING OFFICER BAGGETT: Where are you?  
25 I'm confused. Where is the Mussi property?

1           MR. HERRICK:  You see the words "the pocket" on  
2 map?  The right-hand side of the pocket at the north  
3 part of the pocket is the Mussi property, that little  
4 hook.

5           MR. NOMELLINI:  If you go up where Kingston  
6 School is, where that straight line --

7           MR. HERRICK:  Right there.

8           MR. NOMELLINI:  -- comes -- right there.  To  
9 the right --

10          MR. HERRICK:  Is Mussi.

11          MR. NOMELLINI:  -- is Mussi.  And right up  
12 above that, north of that, is Pak and Young.

13          MR. HERRICK:  Pak and Young.  Little farther  
14 right.  Now up.  There's --

15          MR. NOMELLINI:  Right there.

16          MR. HERRICK:  -- Pak and Young.

17          CO-HEARING OFFICER BAGGETT:  Okay.

18          MR. HERRICK:  So anyway, Mr. Nomellini, the  
19 fact that we have sea level on or equal to the land  
20 level there, doesn't that affect the amount of water  
21 that might be in Duck Slough?

22          MR. NOMELLINI:  Yeah.  You could put water from  
23 Burns Cutoff to sea level without too much trouble  
24 because the tide range gets up -- you know, the regular  
25 mean tide is 3 1/2 to 4 feet above sea level.  So you

1 can move it over there without too much trouble and put  
2 it on top of the sea level ground.

3 MR. HERRICK: Now, Mr. Nomellini, let me just  
4 walk you through this once again, which has already been  
5 covered, but I want to make sure it's absolutely clear  
6 because there was some confusion, I believe, on cross.

7 It's your testimony that absent farming on the  
8 property natural vegetation will reestablish itself and  
9 consume an amount of water, correct?

10 MR. NOME LLINI: Absolutely.

11 MR. HERRICK: Now, is that water it's consuming  
12 rainfall water?

13 MR. NOME LLINI: In part.

14 MR. HERRICK: It could be rainfall, could it  
15 not?

16 MR. NOME LLINI: Yes.

17 MR. HERRICK: But it also consumes water that  
18 seeps in from the ground, is in the ground, seeping?

19 MR. NOME LLINI: Correct.

20 MR. HERRICK: And is that seepage water  
21 connected to the surrounding streams?

22 MR. NOME LLINI: Yes.

23 MR. HERRICK: So if somebody deeds a piece of  
24 property in the middle of Roberts Island or in this area  
25 of Roberts Island such that it doesn't have a surface



1 connection to a river, would that land under natural  
2 conditions still use water from the river?

3 MR. NOMELLINI: Yeah.

4 And I testified that it's going to use more  
5 water than is used by the crops in the farming based on  
6 those two exhibits that we have that were prepared by --  
7 one by DWR and the other by the Bureau of Reclamation.  
8 I think that's crystal clear.

9 MR. HERRICK: So your point in making that is  
10 not just that shutting down ag on the lands would be a  
11 bad policy decision because it would result in less  
12 water in the Delta, but also that the use of that water  
13 under natural conditions absolutely shows that the land  
14 cannot be severed from the Delta pool and waterways.

15 MR. NOMELLINI: That's what I'm saying. You  
16 can't physically separate it.

17 MR. HERRICK: There is no way to do that unless  
18 you made some impermeable barrier somewhere.

19 MR. NOMELLINI: There is not anything that I  
20 know of.

21 MR. HERRICK: And you have a similar line of  
22 reasoning with regards to levees about the surface water  
23 touching or abutting the property; is that correct?

24 MR. NOMELLINI: Yeah. I testified and I think  
25 it's clear that putting those levees and drainage

1 systems in there do not constitute a severance.

2 MR. HERRICK: One of the questions you were  
3 asked dealt with when Duck Slough was, quote, severed,  
4 closed quote, from Burns Cutoff. You don't believe it  
5 was severed from Burns Cutoff, do you?

6 MR. NOME LLINI: I don't remember the question,  
7 but no, I don't think it was severed from Burns Cutoff.

8 MR. HERRICK: So if somebody had a --

9 MR. NOME LLINI: I thought the question was  
10 whether or not it was leveed off.

11 MR. HERRICK: And even if were leveed off, does  
12 that interrupt or sever the connection between the  
13 slough and the waterway?

14 MR. NOME LLINI: Well, there are floodgates  
15 there, so it does not in even the traditional sense.  
16 But as a practical matter, it won't separate the water  
17 that's being consumed on the land from the river.

18 MR. HERRICK: And the channel itself of Duck  
19 Slough, even if it's leveed off from the main channel,  
20 would not that channel of Duck Slough still have water  
21 that seeps in from the river?

22 MR. NOME LLINI: Absolutely.

23 MR. HERRICK: So again, even if you physically  
24 create a barrier to block a surface connection between  
25 Duck Slough and Burns Cutoff, they're still connected?

1           MR. NOMELLINI: In my opinion they are, yeah.

2           MR. HERRICK: Mr. Nomellini, you were asked  
3 questions about whether or not people used Duck Slough  
4 for irrigation. You reviewed a large number of  
5 historical documents in preparation for your testimony;  
6 is that correct?

7           MR. NOMELLINI: I looked at as many as I could  
8 that we put on the 40 disks that we accumulated, but I  
9 haven't looked at every one of them.

10          MR. HERRICK: In your opinion, is it reasonable  
11 to conclude that the purchase and sale of these lands,  
12 including the lands at issue here on these islands, was  
13 for farming practices?

14          MR. NOMELLINI: Yeah. They were -- they wanted  
15 to make it productive. Now some of these lands were  
16 farmed. There was some industrial use in those early  
17 days. There's a brick kiln on the property that I have  
18 that's 1893. So they were using it to take and reclaim  
19 swamp and make it productive.

20          But basically, the bulk of this was to be  
21 cultivated, and they talked about cultivation in  
22 connection with that Arkansas Act.

23          MR. HERRICK: And given the activities back  
24 then pursuant to your research, is it reasonable to  
25 conclude that they were farming these lands, or is it

1 reasonable to conclude they were doing something else  
2 with them when they were buying and selling?

3 MR. NOME LLINI: There's no question in my mind  
4 that they were farming the lands, and I cited those  
5 documents that I think give further support, the farming  
6 agreement between Glasgow and Fisher.

7 And then if you look at the history of the  
8 Woods brothers, I mean, it's clear they farmed the land.  
9 They've got the farm equipment. If you look at that  
10 decree of distribution in the Woods case, they've got  
11 all the farm equipment and they were farming.

12 MR. HERRICK: Is there some other use you know  
13 of for that land in the late 1800s and early 1900s?

14 MR. NOME LLINI: No. I mean, small parts of it.  
15 You know, they had like a cannery and different things  
16 like that, beet dumps. There was a little town at Holt,  
17 you know, where they had a saloon.

18 MR. HERRICK: But those were all associated  
19 with the agricultural use of the land.

20 MR. NOME LLINI: Well, I think so. The Chinese  
21 were persecuted in Stockton, and a lot of them moved out  
22 there so they could, you know, avoid this  
23 discrimination. So whether they all worked on the farm  
24 or not, I don't know.

25 MR. HERRICK: Mr. Nomellini, you were asked to

1 read Rule 13 from the minutes of the Woods Irrigation  
2 District, do you recall that?

3 MR. NOMELLINI: I read it.

4 MR. HERRICK: And it talked about a provision  
5 that would allow the company to, under certain  
6 conditions, not provide water; is that correct?

7 MR. NOMELLINI: Correct.

8 MR. HERRICK: Those conditions were if the  
9 quality of water was such that it was adverse to  
10 agricultural use; is that correct?

11 MR. NOMELLINI: If the board of directors  
12 determined that it was unsatisfactory quality, they  
13 could stop diverting. That's what it said.

14 MR. HERRICK: And you are familiar with the  
15 history of the Central Valley and State Water Projects,  
16 are you not?

17 MR. NOMELLINI: A little bit, yes.

18 MR. HERRICK: And prior to the operation of  
19 those projects, was there ever a time when the San  
20 Joaquin River water quality was bad?

21 MR. NOMELLINI: Yes.

22 MR. HERRICK: No, the San Joaquin River water  
23 coming down the river.

24 MR. O'LAUGHLIN: No?

25 MS. GILLICK: Asked and answered.

1           MR. O'LAUGHLIN: Object. Tim O'Laughlin.  
2 Wait, wait.  
3           MR. NOMELLINI: Yeah, all right.  
4           MR. O'LAUGHLIN: Wait, wait.  
5           (Laughter)  
6           MR. NOMELLINI: What was the question now? I  
7 can see I'm not hearing you right.  
8           MR. HERRICK: I can ask for clarification.  
9           MR. O'LAUGHLIN: Well, no, I know. I'll object  
10 that it's been asked and answered.  
11           MR. NOMELLINI: Do I know if the San --  
12           MR. HERRICK: That's it. We're done because he  
13 said the wrong thing. Let's go home.  
14           MR. NOMELLINI: Do I know if the San Joaquin  
15 River has bad water quality? Yes.  
16           Historically, it had good water quality.  
17           MR. HERRICK: Thank you.  
18           MR. NOMELLINI: Pre Project.  
19           MR. HERRICK: Pre Project.  
20           Now, historically in the Delta, were there  
21 times when drought conditions resulted in sea water  
22 intrusion which worsened water quality.  
23           MR. NOMELLINI: Yes.  
24           MR. HERRICK: And was that a common occurrence  
25 or a rare occurrence?

1           MR. NOMELLINI:  It wasn't common, in my  
2 opinion.  The worst one was in 1931 in September.  I  
3 mean -- but there were natural occurrences.

4           And the Central Valley Project, which is a  
5 federal project, was to provide salinity control to  
6 avoid those problems thereafter.  And we're still  
7 looking forward to their compliance.

8           MR. HERRICK:  And those water quality problems  
9 under normal conditions arose later in the summer or in  
10 fall; is that correct?

11          MR. NOMELLINI:  They were in like August and  
12 September.

13          MR. HERRICK:  Okay.  And so if Woods Irrigation  
14 District minutes from 1940 talk about the possibility of  
15 not providing water due to bad water quality, that would  
16 be a contingency to address a bad drought situation; is  
17 that correct?

18          MR. NOMELLINI:  That would be my expectation,  
19 yes.

20          MR. HERRICK:  It wouldn't have anything to do  
21 whether or not there's water available in the channel,  
22 would it?

23          MR. NOMELLINI:  No, it talks about salinity.  I  
24 mean, it talks about quality.

25          MR. HERRICK:  And in 1940 or before that, is

1 there any issue that you know of that would have  
2 impacted water availability in the channels of the  
3 Delta?

4 MR. NOMELLINI: No, because it's connected to  
5 the ocean, and basically the ocean tides would dominant  
6 the elevation. And then the rest of the year when we've  
7 got flows coming from up river, at that time we had more  
8 than we have today.

9 MR. HERRICK: Right. But generally speaking,  
10 except for whatever the sea level rise may have been  
11 over the last hundred years, doesn't the -- aren't the  
12 water levels in the Delta determined by tides rather  
13 than flow?

14 MR. NOMELLINI: Yes.

15 MR. HERRICK: Okay. Let me briefly follow up  
16 on that.

17 So under natural conditions, adverse water  
18 quality under drought conditions would come from west to  
19 east, not from east to west; is that correct?

20 MR. NOMELLINI: Yes, I think that's basically  
21 true.

22 MR. HERRICK: And you were asked by Ms. Kincaid  
23 about some photographs. And actually you believe --  
24 don't you believe that photograph 1 indicates the  
25 remnants of a floodgate structure that dates before



1 1900?

2 MR. NOMELLINI: Yeah, I think probably when the  
3 railroad went in in the 1890s. I think it was like  
4 1898.

5 MR. HERRICK: You're familiar with the  
6 railroad. How difficult would it be to ask them to put  
7 a floodgate in after they built it?

8 MR. NOMELLINI: They're like phantoms. You  
9 can't even find them to talk to them.

10 MR. HERRICK: That was sort of nonproductive.  
11 I'm sorry. So anyway --

12 MR. NOMELLINI: It's hard. It's hard to  
13 communicate with the railroad.

14 MR. HERRICK: Although the floodgates that  
15 would feed Duck Slough that we've talked about have  
16 apparently been removed, you've actually identified  
17 pre-1900 floodgates in the area; is that correct?

18 MR. NOMELLINI: Yes.

19 MR. HERRICK: And you've identified other  
20 floodgates along Middle River near the Duck Slough  
21 intersection?

22 MR. NOMELLINI: That's correct. And I think we  
23 ought to all go out there and look at them.

24 MR. HERRICK: And in your opinion, those  
25 floodgates predate 1914, don't they?

1 MR. NOME LLINI: In my opinion, because of the  
2 construction with the brick, that they predate 1914,  
3 yes.

4 MR. HERRICK: That's all I have.

5 CO-HEARING OFFICER BAGGETT: Prosecution?

6 MR. ROSE: We do have some recross.

7 --o0o--

8 CROSS-EXAMINATION BY MR. ROSE

9 FOR PROSECUTION TEAM

10 --o0o--

11 MR. ROSE: Could you please put up -- I think  
12 it's 3R, the 1941 map.

13 I guess I should say good morning,  
14 Mr. Nomellini, since I wasn't up here before.

15 You discussed this map briefly and used it in  
16 describing flow of water from Burns Cutoff or from  
17 Middle River along what we've been referring to as Duck  
18 Slough; is that correct?

19 MR. NOME LLINI: I think it was this map and  
20 other maps, yeah.

21 MR. ROSE: Right. In the redirect  
22 specifically --

23 MR. NOME LLINI: Okay.

24 MR. ROSE: -- you used this map to -- as a --

25 MR. NOME LLINI: We'll use this map.

1           MR. ROSE:   Okay.   Can you show me on the legend  
2 what is -- how a canal is delineated?   Or irrigation  
3 ditch or drainage ditch, I believe, would be the terms  
4 that they used there.

5           MR. NOMELLINI:   Well, I can't read it, but I  
6 think the map has a distinction.

7           MR. ROSE:   If it's helpful, I do have some  
8 copies that are cleaner, if you want to look at that.

9           MR. NOMELLINI:   That would be better.   I see  
10 the word drainage ditch, and I see irrigation ditch on  
11 the legend, so there is a distinction.

12           CO-HEARING OFFICER HOPPIN:   Is that more  
13 distinct than what we've got in front of us?

14           MR. ROSE:   It's up to you.

15           Obviously, this is still fairly small, but I  
16 wanted first for you to confirm that you think this is  
17 the same map, just so we're not dealing with anything  
18 different here.

19           MR. NOMELLINI:   It looks like the same map to  
20 me, but I'm not sure I can help you on the --

21           MR. ROSE:   Okay.   You can't --

22           MR. NOMELLINI:   -- legend application from what  
23 we've got in front of us.

24           MR. ROSE:   Okay, but it looks like the same  
25 map?   We can go more into detail if we need to.   I did

1 zoom in and print out a copy of the legend, so I'll give  
2 you that if that would help you as well.

3 MR. NOMELLINI: I can read the legend. Are we  
4 going to talk about drainage ditches and irrigation  
5 ditches? Okay.

6 CO-HEARING OFFICER BAGGETT: The solid black  
7 line is an irrigation ditch. It's pretty  
8 straightforward.

9 MR. ROSE: Again, just to be clear, does this  
10 look to you to have been just a blown-up version of what  
11 I previously gave you and representing the same map?

12 MR. NOMELLINI: Yeah. It looks the same to me.

13 MR. ROSE: I just want to make sure that you  
14 don't think that I'm giving you something different than  
15 what's here, than what you previously had as Exhibit 3R  
16 and I believe 3S for the other proceeding.

17 MR. NOMELLINI: All right.

18 MR. ROSE: So looking at this legend, obviously  
19 this is black and white. It doesn't show green or red.  
20 But how is an irrigation ditch delineated?

21 MR. NOMELLINI: The irrigation ditch looks like  
22 a solid line.

23 MR. ROSE: And drainage ditch?

24 MR. NOMELLINI: And the drainage ditch looks  
25 like it's got a white break periodically in it.

1           MR. ROSE:   Okay.  Now, tracing along the course  
2 of what we've been discussing as Duck Slough starting at  
3 Middle River, do you see anything that is shown as  
4 either a -- labeled as either an irrigation ditch or a  
5 drainage ditch there?

6           MR. NOMESELLINI:  Yeah.

7           MR. ROSE:  Tracing from Middle River northward?

8           MR. NOMESELLINI:  Correct.  I see an irrigation  
9 ditch extending from the word "pumps" on Middle River on  
10 up to the line that runs east and west by the words  
11 "Kingston School."

12           MR. ROSE:  Do you see anything labeled  
13 irrigation ditch heading northward from there to Burns  
14 Cutoff?

15           MR. NOMESELLINI:  I do not.

16           MR. ROSE:  Do you see anything labeled drainage  
17 ditch in that same location?

18           MR. NOMESELLINI:  In the same location?  I see  
19 off to the right.  Is that what you're talking about?

20           MR. ROSE:  I'm talking about what we've been  
21 calling a continuation of Duck Slough from the Kingston  
22 Road that you just described northward along High Ridge  
23 Levee as is labeled on this map up towards Burns Cutoff.

24           Do you see anything labeled an irrigation ditch  
25 or a drainage ditch?

1 MR. NOMESELLINI: No, I do not.

2 MR. ROSE: Okay. Can you look to the left or  
3 east of what we have just been discussing as what we had  
4 previously been calling Duck Slough or along High Ridge  
5 Levee.

6 MR. NOMESELLINI: To the left is west.

7 MR. ROSE: I'm sorry. To the left or west. Do  
8 you see something there labeled slough?

9 MR. NOMESELLINI: Yes.

10 MR. ROSE: Is that slough delineated in the  
11 same way as anything that you see running along the Duck  
12 Slough line that we were just discussing?

13 MR. NOMESELLINI: No.

14 MR. ROSE: Looking at the legend, along the  
15 High Ridge Levee that we previously have been discussing  
16 in the area of Duck Slough, what do you see as labeled  
17 on the legend along that course?

18 If you'd like, I can ask you more specifically.

19 MR. NOMESELLINI: Yeah, I really didn't  
20 understand. I see the words High Ridge up here near the  
21 top. Is that what you want?

22 MR. ROSE: Let me ask more specifically. You  
23 previously said that you saw an irrigation ditch labeled  
24 from Middle River to the Kingston area along the High  
25 Ridge Levee. Heading northward from there, can you

1 describe what the legend says runs northward along the  
2 High Ridge Levee from that Kingston School area to the  
3 Burns Cutoff?

4 MR. NOMELLINI: It looks like levee indication.

5 MR. ROSE: It looks like levee indication?

6 MR. NOMELLINI: Yes.

7 MR. ROSE: And there is also a solid line  
8 there, is that correct, in addition to the hatched lines  
9 that indicate levee? There's hatched lines as well a  
10 solid course?

11 MR. NOMELLINI: A see a solid line with it.  
12 Where does that say -- I don't see where that says  
13 levee. The hatched line says levee.

14 MR. ROSE: The hatched line says levee.

15 MR. NOMELLINI: I think so. I guess that other  
16 one -- oh, that's public road.

17 MR. ROSE: That's public road.

18 And if it helps to figure that out, you can  
19 follow that to the south and east and see that it does  
20 attach to a specific road.

21 So are those the only two items as delineated  
22 on the legend that you see heading along the High Ridge  
23 Levee from Kingston Road the Burns Cutoff?

24 MR. NOMELLINI: All right. The blow-up stops.

25 MR. ROSE: On either. I mean, that's simply to

1 blow up the legend. But you can look at the map.

2 And do you see anything other than what's  
3 labeled as levee or road heading from the Kingston  
4 School area that you had described, that east-westerly  
5 road north to Burns Cutoff? Do you see anything labeled  
6 differently?

7 MR. HERRICK: I don't mean to interrupt, but  
8 would you like to just ask him if he sees anything that  
9 says slough in 1941? Is that what we're -- I don't  
10 understand what we're trying to do.

11 MR. ROSE: I'm asking if there is only, as  
12 labeled on this map, levees and roads in that area.

13 If that question is easier, you can answer that  
14 question: Do you only see levees and roads labeled in  
15 that area we've just been talking about?

16 MR. NOMELLINI: Yeah. You know, other than the  
17 intersecting lines.

18 MR. ROSE: Right.

19 MR. NOMELLINI: It looks like it doesn't show  
20 any legend slough, along that levee line.

21 MR. ROSE: It doesn't show any slough, it  
22 doesn't show any irrigation ditch --

23 MR. NOMELLINI: That's --

24 MR. ROSE: -- or any drainage ditch?

25 MR. NOMELLINI: That's correct.



1 MR. ROSE: So when --

2 MR. NOME LLINI: Except where they get  
3 intersected by these other lines.

4 MR. ROSE: That's fine.

5 So when you were discussing what water could  
6 have come from Middle River or Burns Cutoff, were you  
7 just using this 1941 map as a guide, or were you  
8 specifying that in 1941, when this map was drawn, water  
9 could have come up from Burns Cutoff or from Middle  
10 River and headed along the entire course in either  
11 direction?

12 MR. NOME LLINI: I didn't pick the map.  
13 Somebody else did and asked me some general questions of  
14 the fall of which way it could go.

15 MR. ROSE: So you weren't saying that at the  
16 time this map was created, let's call it 1941, that  
17 water could have come up naturally from either Burns  
18 Cutoff or Middle River and gone along the entire course  
19 between the two?

20 MR. NOME LLINI: Oh, I think it probably did.

21 MR. ROSE: You can't say that based on this  
22 map?

23 MR. NOME LLINI: No, I can't say it based on  
24 this map. But there is a 1937 aerial that shows the  
25 canal still in place along this very area where this map

1 doesn't show.

2 MR. ROSE: I just wanted to be clear that you  
3 weren't using this map.

4 MR. NOMESELLINI: I wasn't using this map, no. I  
5 think this is a Woods Irrigation System map.

6 MR. ROSE: I have no further questions.

7 (Interruption for technical difficulties)

8 CO-HEARING OFFICER BAGGETT: Let's go back on  
9 the record. Mr. O'Laughlin.

10 --o0o--

11 RE-CROSS-EXAMINATION BY MR. O'LAUGHLIN

12 FOR MODESTO IRRIGATION DISTRICT

13 --o0o--

14 MR. O'LAUGHLIN: Thank you.

15 Mr. Nomellini, I'm going to ask you a series of  
16 questions regarding Duck Slough, and these questions are  
17 twofold.

18 One is whether or not you would need to know a  
19 number in order to determine a quantity of water moving  
20 in Duck Slough; and then two, whether or not you know  
21 the quantity of water.

22 Do you know the elevation of the invert of the  
23 channel bottom at Duck Slough at Burns Cutoff? Yes or  
24 no.

25 MR. NOMESELLINI: At the time it was in place? I

1 don't know.

2 MR. O'LAUGHLIN: And do you know what the  
3 elevation --

4 MR. NOMELLINI: Well, let me tell you. It was  
5 below the water level because it had water in it and it  
6 was a slough, so it would be below the high tide, for  
7 sure.

8 MR. O'LAUGHLIN: I'm going to ask specific  
9 questions. I want to know if you know specific  
10 responses. Specific elevations.

11 So do you know a specific elevation of the  
12 invert of the channel bottom of Duck Slough where it  
13 entered Burns Cutoff?

14 MR. NOMELLINI: At least less than 3.5 feet  
15 above mean sea level.

16 MR. O'LAUGHLIN: Okay. And what was the  
17 elevation of the invert of the channel bottom of Duck  
18 Slough where it entered Middle River?

19 MR. NOMELLINI: I'd say again at least less  
20 than 3.5 feet above mean sea level.

21 MR. O'LAUGHLIN: Okay. But do you have a  
22 specific number for either Burns or Middle River where  
23 the channel bottoms entered the respective watercourses?

24 MR. NOMELLINI: No, I do not.

25 MR. O'LAUGHLIN: Thank you. Do you know

1 what -- at any particular time of year, would water  
2 surface elevations in Middle River be a determining  
3 factor as to the amount of water that could be moved  
4 into Duck Slough? Mr. Nomellini, is the water  
5 surface --

6 MR. NOME LLINI: Well, the water -- the flow  
7 will increase as the water surface rises and decrease as  
8 it goes down.

9 MR. O'LAUGHLIN: Okay.

10 MR. NOME LLINI: But it's connected to the  
11 ocean.

12 MR. O'LAUGHLIN: We'll get to that in a minute.

13 So over time, the elevation of the water  
14 surface elevation in Middle River changes due to the  
15 tides; is that correct?

16 MR. NOME LLINI: Yeah. Before the pumping.  
17 There's some pumping influence in that area from the  
18 Projects, but --

19 MR. O'LAUGHLIN: No, before that.

20 MR. NOME LLINI: -- before that time it was  
21 tide. And then river flow from upstream would cause it  
22 to rise, which was typically in the --

23 MR. O'LAUGHLIN: Wait. We can get through this  
24 a lot quicker if you just answer my specific questions.

25 MR. NOME LLINI: All right.

1           MR. O'LAUGHLIN: We'll get through it a lot  
2 quicker. Okay.

3           So tidal action is a determining factor in how  
4 much water would enter Middle River through Duck Slough,  
5 correct?

6           MR. NOME LLINI: It was one of the factors.

7           MR. O'LAUGHLIN: One of the factors, okay. And  
8 tidal action changes how many times a day?

9           MR. NOME LLINI: About twice a day.

10          MR. O'LAUGHLIN: Okay. And then that would  
11 also change based on the seasonality of the year and the  
12 station of the moon and the tides and everything else,  
13 correct?

14          MR. NOME LLINI: Somewhat.

15          MR. O'LAUGHLIN: Goes up and down, correct?

16          MR. NOME LLINI: A little bit, yes.

17          MR. O'LAUGHLIN: Okay. And then also would  
18 your answer be the same to the tidal action at Burns  
19 Cutoff where Duck Slough entered?

20          MR. NOME LLINI: Just pure tide, we're talking  
21 about. Yes, it would be.

22          MR. O'LAUGHLIN: Now, if you have flow in the  
23 San Joaquin River, the higher the flow, I would imagine  
24 that the higher the stage elevation would be at Burns  
25 Cutoff; is that correct?

1 MR. NOME LLINI: Generally true, yes.

2 MR. O'LAUGHLIN: Okay. Then as it drops, it  
3 would lower the stage, and then less water would get  
4 into Duck Slough, correct?

5 MR. NOME LLINI: Correct.

6 MR. O'LAUGHLIN: Okay. Do you know what the  
7 width of the channel was of Duck Slough where it entered  
8 Burns Cutoff prior to 1915?

9 MR. NOME LLINI: The only thing, if they had to  
10 float that dredge in there like the history says, it  
11 says you needed 30 feet by 7 foot in order to float the  
12 dredge.

13 MR. O'LAUGHLIN: Okay. And would that be your  
14 same answer for the width of the channel where Duck  
15 Slough entered into Middle River?

16 MR. NOME LLINI: I don't think the dredge was  
17 there, but --

18 MR. O'LAUGHLIN: Okay.

19 MR. NOME LLINI: -- no, it wouldn't be exactly  
20 the same because I don't -- I don't know that it was  
21 there.

22 MR. O'LAUGHLIN: Okay. Do you know the width  
23 of the channel, though, as Duck Slough entered into  
24 Middle River?

25 MR. NOME LLINI: No.

1           MR. O'LAUGHLIN:   Okay.  Do you know the depth  
2 of the channel when Duck Slough entered into Middle  
3 River?  
4           MR. NOMELLINI:   Only that it had to be below  
5 that --  
6           MR. O'LAUGHLIN:   No, depth.  Depth, not  
7 elevation.  
8           MR. NOMELLINI:   Oh, okay.  No, I don't know the  
9 depth.  
10          MR. O'LAUGHLIN:   Okay.  
11          MR. NOMELLINI:   It had water in it, so --  
12          MR. O'LAUGHLIN:   Okay.  
13          MR. NOMELLINI:   -- it's got to be greater than  
14 zero.  
15          MR. O'LAUGHLIN:   And would you know the depth  
16 of the channel of Duck Slough when it entered into Burns  
17 Cutoff?  
18          MR. NOMELLINI:   No.  
19          MR. O'LAUGHLIN:   Do you know what --  
20          MR. NOMELLINI:   Except when that dredge was in  
21 there.  
22          MR. O'LAUGHLIN:   Correct, okay.  Do you know  
23 what Manning's n is?  
24          MR. NOMELLINI:   What?  
25          MR. O'LAUGHLIN:   Manning's n?

1 MR. NOME LLINI: Oh, Manning's equation?  
2 MR. O'LAUGHLIN: Yes.  
3 MR. NOME LLINI: Yeah, I know a little bit about  
4 it.  
5 MR. O'LAUGHLIN: Okay. Do you know what the  
6 Manning's n of Duck Slough was at --  
7 MR. NOME LLINI: No.  
8 MR. O'LAUGHLIN: Thank you.  
9 Do you know the gradient in the bottom of the  
10 channel of Duck Slough from Middle River to Burns  
11 Cutoff?  
12 MR. NOME LLINI: No.  
13 MR. O'LAUGHLIN: Would it be your opinion as an  
14 engineer that the amount of water that can flow into  
15 Duck Slough would also be determinant about the amount  
16 of withdrawals coming out of Duck Slough?  
17 MR. NOME LLINI: Yes.  
18 MR. O'LAUGHLIN: Okay. And -- oh, wait, I  
19 already have that answer.  
20 Thank you. I have no further questions.  
21 Appreciate it.  
22 CO-HEARING OFFICER BAGGETT: Thank you.  
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RECROSS-EXAMINATION BY MS. KINCAID  
FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

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MS. KINCAID: Valerie Kincaid for San Luis &  
Delta-Mendota Water Authority.

Mr. Nomellini, are you licensed to practice  
civil engineering in the state of California?

MR. NOME LLINI: No.

MS. KINCAID: No. Thank you.

CO-HEARING OFFICER BAGGETT: San Joaquin? Any  
questions?

MS. GILLICK: No questions.

CO-HEARING OFFICER BAGGETT: Staff? Ernie?  
Dana? Charlie?

CO-HEARING OFFICER HOPPIN: Mr. Nomellini, we  
have all acknowledged we've wandered around here a bit  
today on different subjects all of which are  
interesting.

I'm going to ask you a question on what I call  
Nomellini Theory II, and that is the idea that if you  
don't farm this land because of consumptive use tules  
are going to take over and they're going to use more  
water than corn or sunflowers or --

MR. NOME LLINI: Add willows in there.

1 CO-HEARING OFFICER HOPPIN: With the tules in  
2 particular, that area is different than where I come  
3 from. Would you say that a tule would scavenge water  
4 and have a depth of a root like alfalfa or sunflowers or  
5 something like that?

6 MR. NOMESELLINI: My experience with tules is  
7 that they have relatively shallow roots rather than like  
8 alfalfa which kind of can go around.

9 CO-HEARING OFFICER HOPPIN: That's what's  
10 confused me, because I thought maybe you had a different  
11 kind of a reed or a tule or something there.

12 MR. NOMESELLINI: No, I think the tule --

13 CO-HEARING OFFICER HOPPIN: And I couldn't see  
14 how it would really spark that phenomenon that I would  
15 agree with if you didn't irrigate it.

16 MR. NOMESELLINI: Yeah.

17 The willows, if you carry a water bottle in  
18 your pocket, the willow root is liable to follow you  
19 down the road. Those willows will chase water great  
20 distances.

21 CO-HEARING OFFICER HOPPIN: Can I use that  
22 quote some day --

23 MR. NOMESELLINI: Yes, you can.

24 CO-HEARING OFFICER HOPPIN: -- without  
25 plagiarizing you?

1           MR. NOME LLINI: And the tules are more shallow.  
2 They would be in the fringes. Where the water was too  
3 deep, of course, the tules wouldn't grow.

4           CO-HEARING OFFICER HOPP IN: Thank you for your  
5 answer. And I can use that line?

6           MR. NOME LLINI: Yes, you can. It's not  
7 copyrighted.

8           CO-HEARING OFFICER HOPP IN: I'm going to  
9 scribble it in the back of my Winston Churchill quotes  
10 book.

11          CO-HEARING OFFICER BAGGETT: With that, I guess  
12 we'll wait for the exhibits until you're done with your  
13 case-in-chief?

14          MR. HERRICK: My recollection was that after  
15 Lajoie we moved them into -- at Lajoie and Moore, we  
16 moved them into testimony. It doesn't matter to me if  
17 you want me to do it later or not.

18          CO-HEARING OFFICER BAGGETT: Mr. Nomellini is  
19 going to be here. We might as well wait and finish,  
20 because I think those parties are already gone and not  
21 back.

22          MR. HERRICK: You don't want me to move them  
23 into evidence yet?

24          CO-HEARING OFFICER BAGGETT: No, let's just  
25 wait until we're done with the rest of your case and

1 move the rest of your -- might as well do them all at  
2 once.

3 MR. HERRICK: Okay.

4 CO-HEARING OFFICER BAGGETT: Do you have more  
5 witnesses?

6 MR. ROSE: The Prosecution Team, if now would  
7 be the appropriate time, we'll move in those two  
8 exhibits that you just labeled that I passed out  
9 earlier. You said you'd prefer that those be exhibits?

10 CO-HEARING OFFICER BAGGETT: I just said wait  
11 until we're done with the case.

12 MR. ROSE: Sure.

13 CO-HEARING OFFICER BAGGETT: It's just easier.

14 That's normally how we do it, but I think since  
15 your witnesses weren't going to come back was why I  
16 recall we did it differently than normal.

17 MR. HERRICK: I don't recall that as the  
18 reason, but that's fine.

19 CO-HEARING OFFICER BAGGETT: That's normally  
20 how, at least in the other hearings I do them all at the  
21 close of the case-in-chief.

22 So you want to do -- you've got three more  
23 witnesses, you said?

24 Mr. Herrick, how many more -- you have more  
25 witnesses?

1 MR. HERRICK: Yes. We have a panel of three,  
2 and then Mr. Neudeck. So my suggestion would be to take  
3 lunch, do the panel of three. They can be done fairly  
4 quickly, I would say within an hour. And then I assume  
5 Mr. Neudeck will take the rest of the day.

6 MR. O'LAUGHLIN: I would agree with that  
7 assumption.

8 CO-HEARING OFFICER BAGGETT: Okay.

9 Mussi, we'll do after this, so he's not part of  
10 Pak/Young's witness, right?

11 MR. O'LAUGHLIN: Yeah. My understanding was  
12 Mr. Nomellini's testimony was for both.

13 CO-HEARING OFFICER BAGGETT: Right, For this  
14 one, but your next panel was --

15 SENIOR STAFF COUNSEL HEINRICH: Mr. Herrick,  
16 did you indicate that you were going to have a Mr. Mussi  
17 testify as part of the Pak/Young hearing? Because I  
18 think he may have been listed as a witness for the Mussi  
19 hearing but not for Pak/Young. Is that right?

20 MR. O'LAUGHLIN: Yeah, I would prefer to keep  
21 them separate, if we could.

22 MR. HERRICK: We can --

23 MR. O'LAUGHLIN: I think for a hearing record,  
24 John, it's better to keep Mussi separate. I realize you  
25 want them as a group. I think it will still go fast. I

1 just think the hearing record is cleaner if Mussi is not  
2 of testifying as part of Pak/Young.

3 I get Dante, but --

4 MR. HERRICK: That's fine with me. It's just  
5 that there's three of them. I thought it would go  
6 easier --

7 CO-HEARING OFFICER BAGGETT: No, we'll let  
8 them --

9 MR. HERRICK: -- as Three individuals and not a  
10 panel.

11 CO-HEARING OFFICER BAGGETT: Let's come back at  
12 1:00. 12:45.

13 (Lunch recess)

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AFTERNOON SESSION

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CO-HEARING OFFICER BAGGETT: We are now back on the record with Mr. Herrick's continued case.

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GINO CELLI

Called by YONG PAK AND SUN YOUNG  
DIRECT EXAMINATION BY MR. HERRICK

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MR. HERRICK: Thank you, Mr. Chairman. John Herrick again for, in this instance, Pak and Young.

And the witness we're going to call here is Mr. Gino Celli as a representative of the landowners who don't live in the area. So this is just for the Pak and Young portion of these proceedings, not for the Mussi part.

So, Mr. Celli, would you please give your name and business address?

MR. CELLI: My name is Gino Celli. Business address is 5303 Wood Duck Court, Stockton, California. And I have -- I'm farming various properties on the Delta and -- go ahead.

MR. HERRICK: And have you read Exhibit 5 which is front of you right now?

MR. CELLI: Yes.

1 MR. HERRICK: And is Exhibit 5 a true and  
2 correct copy of your testimony for this proceeding?

3 MR. CELLI: Yes.

4 MR. HERRICK: Would you please just summarize  
5 your testimony.

6 MR. CELLI: Like I said, I've farmed various  
7 properties on the Delta. I've been farming the Pak  
8 property for the last three years, and I'm here  
9 representing them.

10 MR. HERRICK: And does the property receive  
11 water from the Woods Robinson Vasquez -- I'll say  
12 district, but I don't mean that as an official title.

13 MR. CELLI: Yes, it does.

14 MR. HERRICK: To your knowledge is it -- well,  
15 that's fine.

16 That's all we have. We're just trying to have  
17 a representative of the landowner here to say where he  
18 gets the water now. Thank you.

19 CO-HEARING OFFICER BAGGETT: Thank you. Any  
20 cross-examination by any party?

21 MR. ROSE: We don't have any, the Prosecution  
22 Team.

23 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin?

24 MR. O'LAUGHLIN: Thank you.

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CROSS-EXAMINATION BY MR. O'LAUGHLIN  
FOR MODESTO IRRIGATION DISTRICT  
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MR. O'LAUGHLIN: Good afternoon, Mr. Celli. My name is Tim O'Laughlin. I represent the Modesto Irrigation District.

Would you say it would be a fair statement that your knowledge of this property does not predate the three years in which you've been working on it?

MR. CELLI: Excuse me? Can you say that again?

MR. O'LAUGHLIN: Yeah. Maybe I'll just go backwards. When did you first arrive on the property?

MR. CELLI: Three years ago.

MR. O'LAUGHLIN: Okay. So is that -- can we say like 2007?

MR. CELLI: Yes.

MR. O'LAUGHLIN: Okay. And you have a lease to farm this property?

MR. CELLI: Yes, I do.

MR. O'LAUGHLIN: In your lease does it tell you where you are to get water from?

MR. CELLI: Yes.

MR. O'LAUGHLIN: And where does it say you are to get water from?

1 MR. CELLI: Woods Robinson Vasquez.

2 MR. O'LAUGHLIN: Okay. Do you pay to get water  
3 delivered from Woods Robinson Vasquez?

4 MR. CELLI: I do not myself.

5 MR. O'LAUGHLIN: Who does pay?

6 MR. CELLI: I know -- I'm not quite sure what  
7 my landlords have, but I'm sure they have some kind of a  
8 district deal to maintain water.

9 MR. O'LAUGHLIN: Okay. Do you derive water  
10 from any other source other than the Woods Robinson  
11 Vasquez system?

12 MR. CELLI: No.

13 MR. O'LAUGHLIN: Is the Woods Robinson Vasquez  
14 system a canal that is on the easterly side of High  
15 Ridge Levee?

16 MR. CELLI: On the east side there's -- I'm fed  
17 through a concrete ditch is what I'm fed through.

18 MR. O'LAUGHLIN: Okay. Is that concrete ditch  
19 on the east side of the High Ridge Levee, or is it on  
20 the west side of the High Ridge Levee?

21 MR. CELLI: There's one on both sides.

22 MR. O'LAUGHLIN: Do you have any knowledge  
23 yourself of when the canal was built on the north side  
24 of the High Ridge Levee?

25 MR. CELLI: No, I do not.

1           MR. O'LAUGHLIN: Okay. Do you have any  
2 knowledge of any farming practices that occurred on your  
3 property prior to 2007?

4           MR. CELLI: No, I do not.

5           MR. O'LAUGHLIN: All right. When you apply  
6 water to your property, do you do surface irrigation or  
7 subirrigation?

8           MR. CELLI: Surface.

9           MR. O'LAUGHLIN: Is your system set up on your  
10 property to apply water through subirrigation?

11          MR. CELLI: No.

12          MR. O'LAUGHLIN: Do you know how long the  
13 current method of diverting water from the Woods  
14 Robinson Vasquez delivery system has been in place on  
15 your property?

16          MR. CELLI: No, I do not.

17          MR. O'LAUGHLIN: Do you know if your ability to  
18 take Woods Robinson Vasquez water is limited by a  
19 diversion rate?

20          MR. CELLI: No.

21          MR. O'LAUGHLIN: Do you know if it's limited by  
22 a diversion quantity?

23          MR. CELLI: No.

24          MR. O'LAUGHLIN: Have you done any independent  
25 investigation yourself as to the source of water rights

1 for this property?

2 MR. CELLI: No, I have not. Just what I've  
3 been -- what we've been going through lately is all I  
4 know in these last documents and stuff that we  
5 discussed.

6 MR. O'LAUGHLIN: Thank you, Mr. Celli.

7 I have no further questions.

8 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

9 --o0o--

10 CROSS-EXAMINATION BY MR. RUBIN

11 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

12 --o0o--

13 MR. RUBIN: Good afternoon, Mr. Celli. My name  
14 is John Rubin. I'm an attorney that represents San Luis  
15 & Delta-Mendota Water Authority. I just have one or two  
16 questions, I believe, for you.

17 In your written testimony, which I believe is  
18 marked as Exhibit 5, you indicate that you understand  
19 that the delivery of water to the property that you farm  
20 is pursuant to an old water right; is that correct?

21 MR. CELLI: Yes.

22 MR. RUBIN: And is your understanding based  
23 upon the lease that you executed with the owners of the  
24 property?

25 MR. CELLI: Yes.

1           MR. RUBIN:  And in the lease, does it indicate  
2  that the property holds a particular type of water  
3  right?

4           MR. CELLI:  You know, I don't know.  I don't  
5  have the lease in front of me.

6           MR. RUBIN:  Do you recall at all what the lease  
7  said in terms of the water right?

8           MR. CELLI:  That there -- what I -- the only  
9  thing I really recall when I look at my lease is that  
10 they're responsible for the water rights and water.  As  
11 me leasing the property, I usually don't have to worry  
12 about that.

13          MR. RUBIN:  Do you know if the lease indicates  
14 that the owner of the property holds the right or that  
15 the right is held by the Woods Robinson Vasquez  
16 district, as you've characterized it?

17          MR. CELLI:  Like I said, I'd have to look over  
18 the lease again.

19          MR. RUBIN:  And did you do that as you prepared  
20 your testimony?

21          MR. CELLI:  I think we did look it over, if I  
22 remember right.

23          MR. RUBIN:  And did you prepare your testimony  
24 or did somebody else prepare your testimony?

25          MR. CELLI:  Me and Herrick did it together.

1 MR. RUBIN: Okay.

2 I have no further questions.

3 CO-HEARING OFFICER BAGGETT: All right.

4 Anybody else? San Joaquin?

5 MS. GILLICK: No.

6 CO-HEARING OFFICER BAGGETT: Okay. That's it.

7 Do you have a question?

8 WATER RESOURCE CONTROL ENGINEER MONA:

9 Mr. Celli, what is your season of diversion per

10 year?

11 MR. CELLI: Excuse me?

12 WATER RESOURCE CONTROL ENGINEER MONA: When do

13 you divert water for irrigation purposes during the

14 year?

15 MR. CELLI: Depends on the crop, what we're

16 using.

17 WATER RESOURCE CONTROL ENGINEER MONA: Do you

18 have a --

19 MR. CELLI: History? A range?

20 WATER RESOURCE CONTROL ENGINEER MONA: A range?

21 MR. CELLI: Like right now, I probably won't

22 use any water until next month I'll start using the

23 water. It's all different. It's different.

24 It's all depending on what we're putting in.

25 If we're using corn, putting corn, like the last two

1 years I've had, it's from April until September.

2 WATER RESOURCE CONTROL ENGINEER MONA: Is that  
3 the -- since you've been, I guess, farming the property,  
4 that would be your typical irrigation season?

5 MR. CELLI: Yeah. For the last two years,  
6 yeah.

7 WATER RESOURCE CONTROL ENGINEER MONA: Are you  
8 aware of what the typical irrigation season was before  
9 you started farming the property?

10 MR. CELLI: No, I do not.

11 WATER RESOURCE CONTROL ENGINEER MONA: Okay.  
12 Thank you.

13 CO-HEARING OFFICER BAGGETT: Thank you. Next?

14 MR. HERRICK: Thank you. John Herrick once  
15 again, this time for Mussi, et al. I have here Mr. Rudy  
16 Mussi who is one of the principals, one of the owners of  
17 the land.

18 --o0o--

19 RUDY MUSSI

20 Called by RUDY MUSSI, TONI MUSSI AND LORY C. MUSSI

21 INVESTMENT LP

22 DIRECT EXAMINATION BY MR. HERRICK

23 --o0o--

24 MR. HERRICK: And Mr. Mussi, would you please  
25 give your name and business address.

1           MR. MUSSI: Yeah. Rudy Mussi, 3580 West Muller  
2 Road, Stockton, California 95206.

3           MR. HERRICK: Mr. Mussi, you have a copy of  
4 Exhibit 8 in front of you; is that correct?

5           MR. MUSSI: Yes.

6           MR. HERRICK: And is that a true and correct  
7 copy of your testimony being presented here today?

8           MR. MUSSI: Yeah, from the looks of it. It's  
9 been a while since I've seen it, but yes, that's  
10 correct.

11          MR. HERRICK: Would you please summarize your  
12 testimony.

13          MR. MUSSI: Just basically that my brother and  
14 myself own the property; that, you know, there's a map  
15 here that I found -- well, found, saw it hanging on the  
16 wall; and that various crops have been grown out there.

17          MR. HERRICK: And your testimony also talks  
18 about giving testimony regarding irrigation on the  
19 property before 1914; is that correct?

20          MR. MUSSI: Yes.

21          MR. HERRICK: Did you reach a conclusion that  
22 that property was farmed and irrigated since at least  
23 1900 and probably before that?

24          MR. MUSSI: Yes.

25          MR. HERRICK: And was the purpose of the map



1 you've attached to show crops being grown in  
2 approximately the year 1914?

3 MR. MUSSI: Yes.

4 MR. HERRICK: And from those listed crops, you  
5 as a farmer then concluded that surface irrigation must  
6 have been occurring in that area?

7 MR. MUSSI: Yes.

8 MR. HERRICK: And I think that generally covers  
9 it. And again, you're here as an owner representing the  
10 principals in this matter?

11 MR. MUSSI: Yes.

12 MR. HERRICK: Thank you.

13 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin?  
14 Does the prosecution have any questions first?

15 MR. ROSE: No, I don't believe we have any  
16 questions at this time.

17 --o0o--

18 CROSS-EXAMINATION BY MR. O'LAUGHLIN

19 FOR MODESTO IRRIGATION DISTRICT

20 --o0o--

21 MR. O'LAUGHLIN: Good afternoon, Mr. Mussi. My  
22 name is Tim O'Laughlin, Modesto Irrigation District.

23 Are you claiming a riparian right to divert  
24 water from the Middle River to farm your parcel?

25 MR. MUSSI: I'm claiming riparian, pre-14, and

1 whatever else I can claim.

2 MR. O'LAUGHLIN: Okay. Pueblo rights?

3 MR. MUSSI: Hey, if they count, they're on  
4 there.

5 MR. O'LAUGHLIN: I wanted to make sure. Okay.

6 Does your -- let's go through your  
7 appropriative -- do you have a permit or license from  
8 the State Water Resources Control Board to appropriate  
9 water from Middle River for this parcel?

10 MR. MUSSI: No, I don't.

11 MR. O'LAUGHLIN: Have you or your successors in  
12 interest ever applied for a permit from the State Water  
13 Resources Control Board to appropriate water from this  
14 -- for this property?

15 MR. HERRICK: I believe -- you mean the  
16 predecessors?

17 MR. O'LAUGHLIN: Predecessors. Thank you.  
18 Predecessors.

19 MR. MUSSI: You know, I don't know if they did.

20 MR. O'LAUGHLIN: When you bought the property,  
21 did the person who sold you the property tell you what  
22 water rights you had?

23 MR. MUSSI: Yes. Sunny Walter, the prior  
24 owner.

25 MR. O'LAUGHLIN: And what rights did they say

1 that you had?

2 MR. MUSSI: He told me I had riparian rights, I  
3 had appropriative rights. He said I had solid water  
4 rights.

5 MR. O'LAUGHLIN: Okay. What documentation did  
6 he provide you to support that assertion?

7 MR. MUSSI: Documentation of just his knowledge  
8 and the history that he had of that area.

9 MR. O'LAUGHLIN: Okay. In regards to your  
10 pre-1914 rights, can you tell me what the intent was  
11 prior to 1914 to divert water?

12 MR. MUSSI: Farm use.

13 MR. O'LAUGHLIN: Do you know how many acres the  
14 Mussi property was contiguous -- well, let me ask it a  
15 different way.

16 Prior to 1914, was your property riparian to  
17 Middle River?

18 MR. MUSSI: Yes, it was.

19 MR. O'LAUGHLIN: Okay.

20 MR. MUSSI: My understanding of it.

21 MR. O'LAUGHLIN: Okay. Well, let me ask you a  
22 question since I couldn't get this out of the State  
23 Board staff the other day. How is it that you're  
24 claiming a pre-1914 right to divert water to a riparian  
25 parcel?

1 MR. MUSSI: I think you can have both rights.

2 MR. O'LAUGHLIN: Okay. Now, prior to 1914,  
3 what -- if you were diverting or your predecessors were  
4 diverting water onto the property under a riparian right  
5 to farm, let's say, what would be the nature of that  
6 appropriative right?

7 MR. MUSSI: Are we talking about riparian or  
8 appropriate now?

9 MR. O'LAUGHLIN: No, appropriative.

10 What would be the nature of that -- you're  
11 claiming it's riparian. You're claiming the land's  
12 riparian. I'm assuming the water in the channel is  
13 natural water that you're taking, correct?

14 MR. MUSSI: Yes.

15 MR. O'LAUGHLIN: Okay. So, in that time  
16 period, what is the nature of the appropriative action  
17 that is being done to put water on that property?

18 MR. MUSSI: I'm not a legal attorney, but my  
19 understanding is if you put water to use before 1914 you  
20 had a pre-1914 water right.

21 Now, the terminology of it, I'm not an  
22 attorney. I'm just a farmer.

23 MR. O'LAUGHLIN: So in your -- I'm trying to  
24 understand because you're the person testifying about  
25 what rights you have.

1           So in your mind, then, the appropriative nature  
2 of the water right is that it was done prior to 1914; is  
3 that correct?

4           MR. MUSSI: The water was used pre-1914.

5           MR. O'LAUGHLIN: Do you know if you had any  
6 storage facilities on your property prior to 1914 to  
7 store water in excess of 28 days?

8           MR. MUSSI: You know, if there was, besides  
9 Duck Slough that's been mentioned, I consider that a  
10 water storage facility. Now -- and it was abutted to my  
11 property, so I assumed that was part of my water storage  
12 system.

13          MR. O'LAUGHLIN: Do you know if in regards to  
14 your property if there was any upstream development to  
15 bring foreign water in to the watershed to deliver water  
16 to your property?

17          MR. MUSSI: I'm not a water expert. I have no  
18 knowledge of that.

19          MR. O'LAUGHLIN: Do you know if there was any  
20 upstream dams built in regards to your property to  
21 deliver water to your property prior to 1914?

22          MR. MUSSI: You know, I'm not a water expert.  
23 I don't have knowledge of that. The only thing I do  
24 know is that there's water in the ocean, and my  
25 property's basically at sea level, so I always have

1 water.

2 MR. O'LAUGHLIN: Okay. Did you -- are you  
3 aware -- if your property is contiguous to the  
4 watercourse, are you -- by definition would you agree  
5 that it is non -- it is a non -- by definition it's  
6 riparian and therefore it is not an appropriative piece  
7 of property?

8 MR. MUSSI: The legal terminology, I'm not  
9 aware of. I just know that the water was being used on  
10 that property pre-1914, so whatever terminology or  
11 legal, I'm sorry, I'm ignorant to the terminology.

12 MR. O'LAUGHLIN: Okay. Moving on.

13 What was -- prior to 1914, what was the rate of  
14 diversion from Middle -- you were taking -- has your  
15 property always taken water from Middle River?

16 MR. MUSSI: I'm assuming, you know. Okay. I  
17 wasn't there in 1914. From my knowledge, it took water  
18 from Burns Cutoff, and it took water from Middle River  
19 through Duck Slough.

20 MR. O'LAUGHLIN: Through Duck Slough. Okay.  
21 So your property, if I understand correctly, is that  
22 it's adjacent to Duck Slough.

23 So going with the theory that water moved back  
24 and forth between Burns and Middle River, your statement  
25 would be you could take water from either source,

1 correct?

2 MR. MUSSI: Right. My experience with  
3 floodgates and stuff, you could access the water from  
4 both sides, control level from both sides.

5 MR. O'LAUGHLIN: Okay. Do you know what the  
6 rate of diversion prior to 1914 was to the property on  
7 your land?

8 MR. MUSSI: I can't tell you the rate of  
9 diversion. You know, my map here shows that there's an  
10 alfalfa crop, so I'm assuming that there was enough  
11 water to supply that parcel with water to grow an  
12 alfalfa crop.

13 MR. O'LAUGHLIN: Do you know if the diversion  
14 that occurred prior to 1914 has continued in effect  
15 every year since then?

16 MR. MUSSI: From the discussion I had with  
17 Sunny Walter, I would say yes.

18 MR. O'LAUGHLIN: Do you know what the season of  
19 diversion was for your right prior to 1914? When did  
20 you use it? What time of year?

21 MR. MUSSI: From this map that I can see,  
22 there's an alfalfa crop there. So alfalfa, if you  
23 planted it, might have been planted in -- oh, back then  
24 probably November, December.

25 Depending on the year, the rainfall, they might

1 have diverted the water starting in April and might have  
2 continued on until October, November even.

3 MR. O'LAUGHLIN: Okay. In regards to the  
4 alfalfa that was grown out there prior to 1914, was that  
5 used as pasture as opposed to cutting and baling it and  
6 using it at a later date?

7 MR. MUSSI: You know, it could have been used  
8 as both. I don't know if they would have baled it.  
9 They might have just picked it up. But it could have  
10 had multiple uses.

11 MR. O'LAUGHLIN: Do you know -- do you have any  
12 idea -- where do you currently divert water from?

13 MR. MUSSI: Currently from Middle River.

14 MR. O'LAUGHLIN: Okay. And that's through the  
15 canal?

16 MR. MUSSI: It's through that 1925 agreement  
17 that replaced -- eventually replaced Duck Slough.

18 MR. MUSSI: Which is the Woods Robinson  
19 Vasquez?

20 MR. MUSSI: Yes.

21 MR. O'LAUGHLIN: Now, does your property  
22 currently have the ability to irrigate subsurface?

23 MR. MUSSI: Again, the terminology. I'm at sea  
24 level. Could I irrigate it subsurface? I could put  
25 spud ditches in. Instead of running the water over the



1 top, I could run it through spud ditches.

2 MR. O'LAUGHLIN: Do you do that?

3 MR. MUSSI: No. It's just -- it's a better  
4 practice for me to run the water over the surface.

5 MR. O'LAUGHLIN: So you apply water on the  
6 surface?

7 MR. MUSSI: Yes, I do.

8 MR. O'LAUGHLIN: Other than the limitation of  
9 what crop you're growing, do you have any limitation  
10 that you know of in regards to what amount of water you  
11 can apply to your property?

12 MR. MUSSI: My understanding is if I'm riparian  
13 the amount is unlimited unless I'm being wasteful or  
14 unreasonable.

15 MR. O'LAUGHLIN: Do you know the difference  
16 between a riparian right and an appropriative right in  
17 which the appropriative right is quantified whereas a  
18 riparian is unquantified?

19 MR. MUSSI: You know, I've got a general  
20 understanding. I'm not a legal person, so, you know, I  
21 don't -- don't hold me to any legal terminology.

22 MR. O'LAUGHLIN: Do you have any -- did your  
23 predecessors file pursuant to the Civil Code that was in  
24 place prior to 1914 to appropriate water from either  
25 Middle River or Burns Cutoff?

1           MR. MUSSI: My understanding is that they  
2 didn't need to, but I don't know if they did.

3           MR. O'LAUGHLIN: My understanding on this piece  
4 of property is that there are other owners in addition  
5 to you; is that correct?

6           MR. MUSSI: Yes, there is.

7           MR. O'LAUGHLIN: So I'm assuming that you have  
8 gotten the agreement of the other owners to testify for  
9 all the owners in this matter?

10          MR. MUSSI: You know, I have got it for the  
11 major owners. That would be my brother, my wife, his  
12 wife.

13          MR. O'LAUGHLIN: I just want to raise a quick  
14 point here. I don't want to have at a later date some  
15 due process concern that parties to the proceeding  
16 weren't afforded the opportunity to come here in regards  
17 to Mr. Mussi's testimony or they would have put in  
18 different evidence had they been here in that.

19          So in other words, when we're done with Mr.  
20 Mussi, I want to make sure that Mussi is the testimony  
21 for Mussis, and we're not going to get another owner of  
22 the property coming back in and claiming some additional  
23 request to reopen the hearing and supply additional  
24 testimony.

25          MR. MUSSI: There is some minor ownership.

1 There is like a 10 percent ownership. There was like  
2 3 percent, 3 percent, 3 percent. And I haven't heard  
3 from them. I don't know.

4 I think -- how can I word this without  
5 denigrating some of the family members? But they didn't  
6 get along, and some of them might have been in jail, and  
7 I don't know where they're at.

8 CO-HEARING OFFICER BAGGETT: This is not an  
9 issue. This has been noticed. People have been served.  
10 Move on, Mr. O'Laughlin, please.

11 MR. O'LAUGHLIN: Have you in the years that  
12 you've been -- how many years have you been farming this  
13 property?

14 MR. MUSSI: Farming it since 1991. We've  
15 leased some of the facilities on that property since --  
16 I mean, 1990 is when we bought it. Leased some of the  
17 facilities, I think, like in 1991.

18 MR. O'LAUGHLIN: During the time period that  
19 you've been on the property, have you changed the  
20 cropping patterns?

21 MR. MUSSI: No, I haven't. It was diversified  
22 farming before.

23 MR. O'LAUGHLIN: Thank you.

24 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

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CROSS-EXAMINATION BY MR. RUBIN  
FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

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MR. RUBIN: Good afternoon, Mr. Mussi. I'm John Rubin. I'm an attorney with the San Luis & Delta-Mendota Water Authority. I have a few questions for you.

MR. MUSSI: Sure.

MR. RUBIN: Mr. Mussi, did you prepare your written testimony, I believe Exhibit 8?

MR. MUSSI: Yes, with help from counsel.

MR. RUBIN: Mr. Mussi, am I correct that the purpose of your written testimony is to express your conclusion that the parcel at issue in this proceeding was irrigated prior to 1914?

MR. MUSSI: That it was continually irrigated, yes. And it might have been from 1870 when the levees were put up.

MR. RUBIN: But it's your belief that at least since 1914 the property has been irrigated?

MR. MUSSI: Yes.

MR. RUBIN: But you do not know whether the parcel has a pre-1914 water right, do you?

MR. MUSSI: I'm claiming a pre-1914 water

1 right, and I'm also claiming a riparian right.

2 MR. RUBIN: Do you know what is required to  
3 hold a pre-1914 water right?

4 MR. MUSSI: All I know is, you know, the  
5 property has a history of using water before 1914, and  
6 it was put to a beneficial use, and if we use  
7 Nomellini's theory of this being tules or whatever, it's  
8 been beneficial since it's been farmed.

9 MR. RUBIN: And therefore your assertion that  
10 you have a pre-1914 water right is based upon advice you  
11 received from counsel?

12 MR. MUSSI: No. Based on personal knowledge of  
13 my interest in the Delta, of living out there, my dad's  
14 history of being a farm worker out there and beginning  
15 basically our legacy out there.

16 MR. RUBIN: If I were to -- let's assume for  
17 purposes of my question that in order to hold a pre-1914  
18 water right you must be able to identify the quantity of  
19 water that was diverted prior to 1914. Let's assume  
20 that's the case for purposes of my question.

21 Can you tell me today the quantity of water  
22 that was diverted prior to 1914 on the parcel at issue  
23 in this proceeding?

24 MR. MUSSI: This map here shows 1914, and it  
25 shows an alfalfa crop. So based on an alfalfa crop

1 being out there, you know, I'm going to say that there  
2 was enough diversion to take care of that alfalfa crop,  
3 and being that it was a multimonth application, there  
4 was enough water to satisfy the needs of that property.

5 MR. RUBIN: And you believe there was a  
6 multimonth application of water in 1914 based upon the  
7 photograph that's attached to your written testimony,  
8 Exhibit 8?

9 MR. HERRICK: Just for the record, it's a  
10 photocopy of a map. It's not a photo. I just want to  
11 make sure it's clear.

12 MR. RUBIN: Excuse me.

13 MR. MUSSI: You know, based on my farming  
14 knowledge, either they had multiple applications of  
15 water over the surface or there had to be a  
16 subirrigation system where there was water to the  
17 alfalfa. And my history of growing alfalfa for the last  
18 30 years leads me to believe that multiple irrigations  
19 were made.

20 MR. RUBIN: But again, your response to the  
21 question that I just asked indicates that that might  
22 have been either surface or subsurface irrigation?

23 MR. MUSSI: You know, I wasn't there in 1914,  
24 so I can't tell you what method. If it was me, I would  
25 have done surface.

1 MR. RUBIN: Okay, thank you. Appreciate that.

2 And with regard to your written testimony, you  
3 state that you do not have any personal recollection for  
4 water use during the period at or before 1914, correct?

5 MR. MUSSI: Personal, no.

6 MR. RUBIN: And if I understand your testimony  
7 correctly, your testimony is based upon discussions that  
8 you've had over the years with many local farmers; is  
9 that correct?

10 MR. MUSSI: Yes. And, you know, various maps  
11 and other literature that I have read on the history of  
12 the formation of the Delta and --

13 MR. RUBIN: Okay. What other maps aside from  
14 the photocopied map that's attached to your written  
15 testimony did you rely upon for the purposes of your  
16 written testimony, Exhibit 8?

17 MR. MUSSI: I've got 57 years of history in the  
18 Delta. And, you know, through the numerous years I've  
19 seen maps of Union Island, Roberts Island, showing  
20 different sloughs. And pictures in historical books,  
21 Mickey's Grove.

22 So, you know, it's just an accumulation of  
23 knowledge that I've acquired. I can't specifically cite  
24 you. No, I can't refer you to something that you could  
25 rebut me on.

1 MR. RUBIN: And none of the maps --

2 MR. MUSSI: I don't mean to be sarcastic. I'm  
3 just trying to cut it short.

4 MR. RUBIN: No offence has been taken.

5 CO-HEARING OFFICER BAGGETT: It's appreciated.  
6 I wish counsel could take some lessons.

7 MR. RUBIN: I'm sure that wasn't directed  
8 towards me.

9 MR. HERRICK: It was directed to me.

10 MR. RUBIN: Mr. Mussi, the additional maps,  
11 some of the additional information that you were just  
12 referring to, is not part of the testimony that you have  
13 submitted for this proceeding?

14 MR. MUSSI: No, I didn't provide that.

15 MR. RUBIN: Now, Mr. Mussi the photocopy of the  
16 map that's attached to your written testimony,  
17 Exhibit 8, you say was used as part of a display for a  
18 1915 Panama-California Exposition; is that correct?

19 MR. MUSSI: Well, that's what it says on there.  
20 I'm just going by that.

21 MR. RUBIN: You don't know if it was or was not  
22 used as a display for that exposition?

23 MR. MUSSI: No, I wasn't there, so I couldn't  
24 tell you.

25 MR. RUBIN: Let's assume that it was -- the map



1 that's attached to your written testimony, Exhibit 8,  
2 was used for the 1915 Panama-California Exposition. You  
3 don't know what purpose it was used for, do you?

4 MR. MUSSI: No, I don't.

5 MR. RUBIN: Now, Mr. Lindsay, if you wouldn't  
6 mind placing the map on the overhead.

7 CHIEF LINDSAY: Is this the one you're looking  
8 for?

9 MR. RUBIN: Yes. Thank you, Mr. Lindsay.

10 Mr. Mussi, can you identify the area on this  
11 map where the parcel that's the subject of this  
12 proceeding is located?

13 MR. MUSSI: I can give you a general location.  
14 If you look on the bottom of the map, if you're looking  
15 at the waterway, the Middle River.

16 If you look at that little dimple in the  
17 waterway.

18 MR. RUBIN: Which, if I'm understanding your  
19 description correctly, it's roughly at the bottom of the  
20 first image that's attached to your Exhibit 8 in the  
21 middle of the image at the bottom?

22 MR. MUSSI: Right. More or less my property is  
23 in this area.

24 MR. RUBIN: The parcel that you've identified  
25 or the area that you were circling is just north of what

1 you described as a dimple. It's a bend in Middle River  
2 that appears at the center of the map at the bottom.  
3 You're describing an area that's just north of that.  
4 Just west of that, there is a line that appears to  
5 separate a field that's labeled beans from a field  
6 that's labeled alfalfa?

7 MR. MUSSI: Yeah. You know, that's a general  
8 idea. I've done this -- when I looked at this, this was  
9 a while back. So, you know, it's a general area where  
10 I'm giving you.

11 MR. RUBIN: And aside from this map, do you  
12 know what crops -- do you have any independent  
13 additional information that verifies that beans or  
14 alfalfa were grown on the property that's the subject of  
15 this proceeding in 1914 or earlier?

16 MR. MUSSI: Specific property or just area in  
17 general?

18 MR. RUBIN: The specific property.

19 MR. MUSSI: No. The specific property I -- you  
20 know, I'd have to look back through some of my paperwork  
21 or history. But right now, no, I don't recall anything.

22 MR. RUBIN: So today you don't know how many  
23 acres of alfalfa or beans were growing prior to 1914 on  
24 the parcel that's the subject of these proceedings?

25 MR. MUSSI: No. The only thing I can tell you

1 is alfalfa is a multiyear crop. It probably -- back  
2 then it probably lasted about six years, could have  
3 lasted eight years.

4 So, you know, you could have gone back eight  
5 years or you could have gone forward eight years. You  
6 know. And that's the extreme, is the eight years. But,  
7 I mean, six years would be an average lifespan.

8 MR. RUBIN: Now, Mr. Mussi, I would like to  
9 draw your attention to the last paragraph on the first  
10 page of your written testimony, Exhibit 8.

11 If I understand your written testimony  
12 correctly, you indicate that the map shows certain crops  
13 that were being grown on your parcel and that you have  
14 concluded, based upon the crops that are depicted on  
15 that photograph, that irrigation must have occurred; is  
16 that correct?

17 MR. MUSSI: Yes.

18 MR. RUBIN: Then you continue to state that  
19 other testimony submitted during this matter shows that  
20 water was available to the parcel, and based upon that  
21 other information it's your belief that the property was  
22 surface irrigated; is that correct?

23 MR. MUSSI: Yes.

24 MR. RUBIN: And what other information that was  
25 submitted during this proceeding are you relying upon

1 for that conclusion?

2 MR. MUSSI: You know, I'm just drawing on the  
3 history of the Delta and the way alfalfa is grown,  
4 that's all.

5 MR. RUBIN: Thank you.

6 I have no further questions.

7 CO-HEARING OFFICER BAGGETT: Thank you. San  
8 Joaquin? Anyone else? Ernie?

9 WATER RESOURCE CONTROL ENGINEER MONA: I have a  
10 few. Larry, could you put up Pak/Young 3R again,  
11 please.

12 Mr. Mussi, the property that is currently under  
13 this current CDO, is that the property that is currently  
14 identified as being owned by John and Anna Vasquez on  
15 this map?

16 MR. MUSSI: You know, I can't see it from here,  
17 but just knowing the area and the property, I would say  
18 yes.

19 WATER RESOURCE CONTROL ENGINEER MONA: Okay.  
20 Is it your testimony that prior to 1925 that particular  
21 piece of property was being served with water directly  
22 diverted out of -- I think it's identified as High Ridge  
23 Levee aka Duck Slough?

24 MR. MUSSI: My understanding of it, yes.

25 WATER RESOURCE CONTROL ENGINEER MONA: Is that

1 piece of property now identified on this particular map,  
2 is it located within what is described as the Woods  
3 Robinson Vasquez irrigation agreement area, service  
4 area?

5 MR. MUSSI: Yes.

6 WATER RESOURCE CONTROL ENGINEER MONA: And just  
7 for my understanding, is it your testimony that since  
8 1925 this piece of property has been served water  
9 diverted under that system which was developed for the  
10 Woods Robinson Vasquez -- correct? -- district?

11 MR. MUSSI: Well, I don't know if it's under  
12 that original agreement or what they had an  
13 understanding before that.

14 I'm just saying that property was served by  
15 Duck Slough.

16 Now, if Woods Robinson Vasquez had an agreement  
17 prior to that, I don't know. You know, I'm assuming  
18 they may have or they may not have, and that's why they  
19 formalized it. That I don't know.

20 WATER RESOURCE CONTROL ENGINEER MONA:  
21 Currently is the Woods Robinson Vasquez a point of  
22 diversion diverting water in order to serve properties  
23 within the surface area to -- based on the various  
24 properties owners claims of right for diverting out of  
25 the Middle River?



1 experience alfalfa would take multiple applications of  
2 water during the year; is that correct?

3 MR. MUSSI: Yes.

4 MR. HERRICK: And we have information now that  
5 allows people to calculate how much evapotranspiration  
6 an alfalfa crop would consume; is that correct?

7 MR. MUSSI: Yes, we do.

8 MR. HERRICK: And from that, one could estimate  
9 how much water would be needed to serve an alfalfa crop;  
10 is that right?

11 MR. MUSSI: Yeah. And that's what, you know, I  
12 base my conviction that there was plenty of water to  
13 serve that property.

14 MR. HERRICK: And the map also shows to the  
15 north of the alfalfa, it says dairying. Do you see  
16 that, just to the north of where it says alfalfa?

17 MR. MUSSI: Yes, I see that.

18 MR. HERRICK: And that doesn't say dairy farms.  
19 It says dairying, doesn't it?

20 MR. MUSSI: Right.

21 MR. HERRICK: Would you agree that the  
22 reasonable interpretation then would be the dairy cows  
23 were grazing in that area?

24 MR. MUSSI: Yeah. And you would need also  
25 water, you know, unless either subsurface irrigation or

1 top surface irrigation to grow feed.

2 MR. HERRICK: So noticing that indication on  
3 the map, would you then conclude that when it says  
4 alfalfa it means alfalfa for cropping, not for grazing?

5 MR. MUSSI: Yes.

6 MR. HERRICK: You were asked a question with  
7 regard to what other information you may have relied  
8 upon with regard to water use in this area and  
9 specifically on your land. Do you recall those  
10 questions?

11 MR. MUSSI: Yes.

12 MR. HERRICK: And in addition to what you  
13 stated as the other sources upon which you relied,  
14 aren't you a Board Member of the Central Delta Water  
15 Agency?

16 MR. MUSSI: Yes, I am.

17 MR. HERRICK: And as a board member of that  
18 agency, don't you constantly review both historical  
19 water quality, water application, and farming documents?

20 MR. MUSSI: Yes. And I was also a Woods  
21 Irrigation director in the '80s. And through that, we  
22 also basically discussed water issues and water quality.

23 MR. HERRICK: And lastly, there was a question  
24 regarding your statement in your testimony that other  
25 testimony submitted in this matter showed that water was



1 available. Do you recall that question?

2 MR. MUSSI: No. You might just -- I'm just a  
3 little nervous. I don't do this for a living.

4 MR. HERRICK: I'm sorry. I am going fast. In  
5 the last paragraph on the first page of your testimony.

6 MR. MUSSI: Okay.

7 MR. HERRICK: The second -- or excuse me, the  
8 fourth sentence says:

9 The other testimony submitted this matter  
10 show that water was available to the  
11 property --

12 Dot, dot, dot.

13 MR. MUSSI: Yes.

14 MR. HERRICK: And you were asked a question  
15 about that by Mr. Rubin. Do you recall that?

16 MR. MUSSI: Okay.

17 MR. HERRICK: Now, whether or not you've read  
18 the other testimony, isn't it your understanding that  
19 the testimony of people like Mr. Neudeck is providing  
20 information to lead to the conclusion that water was  
21 available to your property?

22 MR. MUSSI: Yes, I am.

23 MR. HERRICK: So that would be one of the  
24 materials that which -- one of the materials that you  
25 were citing to in this sentence?

1 MR. MUSSI: Right.

2 And then, like I said, the prior owner stated  
3 that there was a water history on that property, and his  
4 relative, George Patterson, had a considerable history  
5 in that area.

6 MR. HERRICK: That's all I have. Thank you  
7 very much.

8 CO-HEARING OFFICER BAGGETT: Recross?

9 MR. O'LAUGHLIN: I have no questions.

10 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

11 MR. RUBIN: I have no questions.

12 CO-HEARING OFFICER BAGGETT: Prosecution?

13 MR. ROSE: We have no questions.

14 CO-HEARING OFFICER BAGGETT: San Joaquin?

15 Okay. That's it. Thank you.

16 --o0o--

17 MICHAEL ROBINSON

18 Called by RUDY MUSSI, TONI MUSSI AND LORY C. MUSSI

19 INVESTMENT LP; MARK and VALLA DUNKEL;

20 YONG PAK AND SUN YOUNG

21 DIRECT EXAMINATION BY MR. HERRICK

22 --o0o--

23 MR. HERRICK: Once again, this is John Herrick,  
24 this time representing both Pak and Young and Mussi.

25 I believe Mr. Michael Robinson's testimony has

1 been submitted in support of both actions, and so I have  
2 called Mr. Robinson.

3 Mr. Robinson, could you please state your name  
4 and business address for the record.

5 MR. ROBINSON: Thank you. My name is Michael  
6 S. Robinson, business address 7000 South Inland Drive,  
7 Stockton 95206.

8 MR. HERRICK: And, Mr. Robinson, you have a  
9 copy of Exhibit 8 which is your testimony for both  
10 proceedings here; is that correct?

11 MR. ROBINSON: That's correct.

12 MR. HERRICK: And is that a true and correct  
13 copy of your testimony?

14 MR. ROBINSON: Yes, it is.

15 MR. HERRICK: Would you briefly summarize your  
16 testimony.

17 MR. ROBINSON: Yes, I will.

18 I have lived at the address 7000 South Inland  
19 Drive up until 1970 when I was married and moved. So  
20 I've lived there most all my life. We still work there.  
21 That's our main headquarters and office.

22 My grandfather purchased the original parcel  
23 1890, 1891, and it's been in the family ever since.

24 MR. HERRICK: Mr. Robinson, let me interrupt  
25 you there. Just for clarity, the parcel you're talking

1 about your grandfather purchasing is next door to the  
2 Mussi property, isn't it?

3 MR. ROBINSON: Yes, right, to the south.

4 MR. HERRICK: Go ahead.

5 MR. ROBINSON: Growing up, I worked with my  
6 father all the time. He was, well, very outspoken, and  
7 we had numerous conversations about numerous things  
8 including the Woods Robinson Vasquez Irrigation  
9 District.

10 My understanding from those conversations was  
11 that the name Woods was part of the Woods Irrigation  
12 District. Robinson and Vasquez joined together at some  
13 point in time to create another diversion for  
14 irrigation.

15 They were at the end of the distribution system  
16 for Woods Irrigation, and periodically because the  
17 control of the water supplied was not real accurate they  
18 would get flooded out periodically.

19 And in order to have better control of the  
20 water, they decided to move their diversion point and  
21 join together with their properties and put in the  
22 installation at some point on Middle River.

23 I believe that would have been near the 1900s.  
24 If it was -- well, 1911 was Woods, so at some point in  
25 time they decided to move that installation.



1           that a 1913 map shows canals along the  
2           Duck Slough route connecting to another  
3           slough near Kingston School.

4           Is that -- do you have your testimony in front  
5 of you? That's your statement?

6           MR. ROBINSON: Yes.

7           MR. ROSE: (Reading:)

8           This information confirms my statements.

9           Now, have you seen the 1913 map that you're  
10 discussing, or is that simply something you were  
11 informed by counsel?

12          MR. ROBINSON: Informed by counsel.

13          MR. ROSE: So you don't know what the 1913 map  
14 shows?

15          MR. ROBINSON: No, I do not.

16          MR. ROSE: You don't know when the information  
17 that the 1913 map shows was actually compiled or created  
18 or -- I guess compiled is the best word?

19          MR. ROBINSON: No, I do not.

20          MR. ROSE: So the fact that there's a 1913 map  
21 that could very easily show the same data as 1911, you  
22 relied on that to confirm there has always been a Duck  
23 Slough and that that Duck Slough then became the  
24 irrigation canals that you were told?

25          MR. ROBINSON: Duck Slough did not become a

1 canal. The irrigation canals was to replace Duck Slough  
2 which at some point was filled in.

3 MR. ROSE: Then maybe I'm not quite following  
4 your testimony.

5 What is it that you -- what is it that these  
6 maps as identified by counsel confirm to you?

7 MR. ROBINSON: That in 1911 Duck Slough was  
8 there, and at a subsequent date there were canals that  
9 had replaced Duck Slough.

10 MR. ROSE: So your understanding is that the  
11 1913 maps shows --

12 MR. ROBINSON: Shows canals.

13 MR. ROSE: Shows canals that replaced Duck  
14 Slough?

15 MR. ROBINSON: I would assume that.

16 MR. ROSE: Okay. But again, as I asked you  
17 before, you don't know whether the 1913 map shows  
18 information that was compiled in 1913 or whether it was  
19 in fact the same information from the 1911 map, do you?

20 MR. ROBINSON: No, I don't. I could ask  
21 counsel. Do you have that map? If you'd like to put up  
22 the 1913 map, we can probably look at it.

23 MR. ROSE: I'm just asking as to how you came  
24 to this data. I don't think that the map shows anything  
25 different than what you're saying, which is that you

1 don't know.

2 MR. ROBINSON: Well, I was informed the 1913  
3 map did not show Duck Slough, but it showed canals.

4 MR. ROSE: You were informed of that. Okay.  
5 But you weren't informed as to when the data on the 1913  
6 map was compiled?

7 MR. ROBINSON: No.

8 MR. ROSE: Okay. Now I'll briefly point you to  
9 paragraph D of your testimony. This is going to be a  
10 fairly obvious question. Of course no offense is  
11 intended by this: But you don't have any personal  
12 knowledge of when delivery to various lands within the  
13 water company as you described in paragraph D, when that  
14 began, do you?

15 MR. ROBINSON: I wasn't there. No, I don't.

16 MR. ROSE: I suspected. Again, no offense  
17 intended by that.

18 You don't know -- same question in regards to  
19 paragraph -- I guess those are all under paragraph 6,  
20 but paragraph 6A:

21 Both the parcel and Vasquez parcel had  
22 been farmed at or immediately after  
23 purchase in 1890.

24 You don't have any personal knowledge of that,  
25 do you?



1 MR. ROBINSON: No.

2 MR. ROSE: And same question for paragraph B:

3 Each parcel has been irrigated as part of

4 the farming practices on the land.

5 You don't have any personal knowledge of that?

6 MR. ROBINSON: It was purchased in 1890 and I

7 assume in 1900 it was still farmed.

8 MR. ROSE: But your personal knowledge does not

9 extend to --

10 MR. ROBINSON: No.

11 MR. ROSE: Okay. Thank you very much.

12 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin.

13 --o0o--

14 CROSS-EXAMINATION BY MR. O'LAUGHLIN

15 FOR MODESTO IRRIGATION DISTRICT

16 --o0o--

17 MR. O'LAUGHLIN: Good afternoon, Mr. Robinson.

18 My name is Tim O'Laughlin. I represent the Modesto

19 Irrigation District.

20 Prior to 1914, was Woods Robinson Vasquez an

21 irrigation district?

22 MR. ROBINSON: I could not confirm that. They

23 were operating together.

24 MR. O'LAUGHLIN: Okay. Do you know whether or

25 not they were an irrigation district formed under the

1 Water Code?

2 MR. ROBINSON: No, I do not know that.

3 MR. O'LAUGHLIN: Okay. Same question: Do you  
4 know if Woods Robinson Vasquez was a water district  
5 formed under the Water Code?

6 MR. ROBINSON: No, I do not know that.

7 MR. O'LAUGHLIN: Okay.

8 MR. ROBINSON: 1925, they put their agreement  
9 in writing.

10 MR. O'LAUGHLIN: Okay. So is Woods Robinson  
11 Vasquez a mutual water company?

12 MR. ROBINSON: No.

13 MR. O'LAUGHLIN: Okay. Is Woods Robinson  
14 Vasquez a corporation?

15 MR. ROBINSON: No, I do not believe it is.

16 MR. O'LAUGHLIN: All right. Would it be safe  
17 to say that maybe Woods Robinson Vasquez is a  
18 partnership?

19 MR. ROBINSON: They were working together.

20 MR. O'LAUGHLIN: Okay. Now, one of my  
21 questions that I've always wondered about, and it comes  
22 up in this case as well other cases that we'll deal  
23 with: When Woods Robinson Vasquez prior to 1914 was  
24 delivering water to parcels, was it delivering its water  
25 rights or was it delivering the water rights of the

1 individual landowners?

2 MR. ROBINSON: I believe it was the individual  
3 landowners.

4 MR. O'LAUGHLIN: Okay. Do you know if Woods  
5 Robinson Vasquez is, to your knowledge, asserting -- or  
6 let me -- sorry, strike that.

7 Do you know if Woods Robinson Vasquez has an  
8 independent pre-1914 water right?

9 MR. HERRICK: I would just object to the  
10 question. Mr. Robinson is not here representing his  
11 partners, if they are indeed partners, but Woods  
12 Robinson, and I don't know if he wants to take a legal  
13 position on what rights somebody who is not involved in  
14 this proceeding may have.

15 MR. O'LAUGHLIN: Wait. He came here to  
16 testify, and he's testifying about the type of water  
17 being delivered to these parcels. So one of the  
18 questions to ask is: Is it their water right, or is it  
19 his water right?

20 And if they're going to assert an independent  
21 right, I want to -- I just want to know about it.  
22 Because then if it's -- because this is the same thing  
23 we --

24 CO-HEARING OFFICER BAGGETT: Okay.

25 MR. O'LAUGHLIN: Well, because here's the

1 problem.

2 CO-HEARING OFFICER BAGGETT: You can answer  
3 within your knowledge.

4 MR. O'LAUGHLIN: Yeah, within your knowledge.  
5 That's all I'm asking.

6 CO-HEARING OFFICER BAGGETT: We know you're not  
7 an attorney.

8 MR. ROBINSON: That they delivered their own  
9 water under their own rights.

10 MR. O'LAUGHLIN: Yes, pre-1914.

11 MR. ROBINSON: Riparian rights.

12 MR. O'LAUGHLIN: Woods Robinson Vasquez' rights  
13 are riparian rights?

14 MR. ROBINSON: Well, the individual property  
15 owners' riparian rights.

16 MR. O'LAUGHLIN: Okay. Has Woods Robinson  
17 Vasquez ever applied, prior to 1914, for a Civil Code  
18 appropriation under the Civil Code?

19 MR. ROBINSON: Not to my knowledge.

20 MR. O'LAUGHLIN: Okay. I get confused about  
21 this now. The Woods Robinson Vasquez system runs on  
22 what I will call the northwesterly side of the High  
23 Ridge Levee; is that correct?

24 MR. ROBINSON: Easterly side. Easterly side of  
25 the High Ridge Levee.

1           MR. O'LAUGHLIN:  On the east side of the High  
2 Ridge Levee, or is it on the west side and north of it?  
3 When I look at the map, it appears to start on Middle  
4 River, runs along the westerly side and then --

5           CO-HEARING OFFICER BAGGETT:  Let's --

6           MR. O'LAUGHLIN:  -- as High Ridge Levee goes  
7 north --

8           MR. ROBINSON:  It does not extend down.  The  
9 property that was served does not go down to Middle  
10 River.

11          MR. O'LAUGHLIN:  Okay.

12          MR. ROBINSON:  If you want to put the map back  
13 up again, it will show it.

14          MR. O'LAUGHLIN:  No, we're fine.  I understand  
15 what you're saying.

16          MR. ROBINSON:  It runs east of the High Ridge  
17 Levee to the north.

18          MR. O'LAUGHLIN:  So if I'm standing on the High  
19 Ridge Levee, the Woods Robinson Vasquez is on the east  
20 side of the High Ridge Levee as opposed to being on the  
21 west side of the High Ridge Levee?  That makes no sense  
22 to me.

23          MR. ROBINSON:  Both sides in the north.

24          CO-HEARING OFFICER BAGGETT:  You've got a map.

25          MR. HERRICK:  If I may, just to make sure it's

1 clear without interrupting your questioning, but we keep  
2 referring to east and west.

3 The High Ridge Levee curves. I think the  
4 answer you're looking for, if that's correct, is the  
5 Woods Robinson Vasquez lands are on both sides of what  
6 is now Inland Drive which closely approximates what used  
7 to be High Ridge Levee and Duck Slough.

8 But that's for him to say.

9 CO-HEARING OFFICER BAGGETT: Do you have a map?  
10 I would assume, Mr. O'Laughlin, you've got a map that  
11 would show this?

12 MR. ROBINSON: Woods Irrigation --

13 CO-HEARING OFFICER BAGGETT: We need to really  
14 proceed with this. Can we just pull a map up?

15 MR. ROBINSON: -- shows it.

16 CO-HEARING OFFICER BAGGETT: Wait. Let me ask  
17 the question. Do we really need to go through --

18 MR. O'LAUGHLIN: I thought this was a simple  
19 question. I didn't even think I needed a map on this  
20 one. I'll move on.

21 CO-HEARING OFFICER BAGGETT: Okay. Move on.  
22 Thank you.

23 MR. ROBINSON: Somebody has to put it up and it  
24 will show it.

25 MR. O'LAUGHLIN: You talked about a canal being

1 in place, a concrete canal being put into place. Do you  
2 know when that concrete canal was put into place?

3 MR. ROBINSON: I believe 1925.

4 MR. O'LAUGHLIN: Okay. And where did that  
5 canal -- where was the source of water for the concrete  
6 canal?

7 MR. ROBINSON: Middle River.

8 MR. O'LAUGHLIN: How far inland did the  
9 concrete canal extend in 1925?

10 MR. ROBINSON: Probably a mile and a half, two  
11 miles.

12 MR. O'LAUGHLIN: Does the Woods Robinson  
13 Vasquez system take water from Burns Cutoff?

14 MR. ROBINSON: No.

15 MR. O'LAUGHLIN: Do you know when the  
16 original -- it sounded to me that the concrete canal  
17 replaced a dirt-lined canal; is that correct?

18 MR. ROBINSON: That's correct.

19 MR. O'LAUGHLIN: Do you know when the  
20 dirt-lined canal was put into place?

21 MR. ROBINSON: I don't know specifically, but  
22 if Woods was receiving water from Woods Irrigation, that  
23 would be 1911 or so, so it would be after that.

24 MR. O'LAUGHLIN: Are some of the lands in the  
25 Woods Robinson Vasquez area which received water part of

1 the highlands that were denoted in the Woods Irrigation  
2 Company agreements, if you know?

3 MR. ROBINSON: They were all -- in the 1941  
4 map, they were all shown Woods Robinson Vasquez.

5 MR. O'LAUGHLIN: No, no, no.

6 What I'm asking is if the lands within Woods  
7 Robinson Vasquez that are currently being served with  
8 water were at one time part of the highland properties  
9 denoted in the Woods Irrigation Company 1911 agreements.

10 MR. ROBINSON: I'm not aware of what properties  
11 were designated.

12 MR. O'LAUGHLIN: All right. Do you know prior  
13 to 1914 how much water Woods Robinson Vasquez was  
14 diverting through the dirt-lined canal?

15 MR. ROBINSON: No, but if the cropping was as  
16 designated in the map, the 1914-15 map, the alfalfa,  
17 that would be adequate to supply alfalfa.

18 MR. O'LAUGHLIN: Okay. Do you know the season  
19 of use that was for that diversion from Middle River?

20 MR. ROBINSON: If it was for alfalfa it may be  
21 April through September, October.

22 MR. O'LAUGHLIN: Have you run across this --  
23 does Woods Robinson Vasquez -- let's say prior to 1940,  
24 how did people order water in Woods Robinson Vasquez?

25 MR. ROBINSON: They talked to their neighbors



1 and see who was using water, and if no one was using it  
2 they'd go down and turn on the pumps.

3 MR. O'LAUGHLIN: Do you know when pumps were  
4 installed on Woods Robinson Vasquez's canal?

5 MR. ROBINSON: Well, there were obviously  
6 electric pumps in 1925. Prior to that, I assume there  
7 was some other means of pumping to put it into the  
8 dirt-lined ditch.

9 MR. O'LAUGHLIN: Do you have any evidence of  
10 what pumps were out there prior to 1925?

11 MR. ROBINSON: No, I do not.

12 MR. O'LAUGHLIN: I have no further questions.

13 Thank you.

14 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

15 --o0o--

16 CROSS-EXAMINATION BY MR. RUBIN

17 for SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

18 --o0o--

19 MR. RUBIN: Good afternoon, Mr. Robinson. My  
20 name is John Rubin. I'm an attorney for San Luis &  
21 Delta-Mendota Water Authority. I have a couple of  
22 questions for you.

23 Following up on some questions regarding the  
24 Robinson Vasquez canal that existed post 1925, you  
25 indicated that there was an electric pump on the canal

1 to pump water from Middle River through to the Robinson  
2 Vasquez system?

3 MR. ROBINSON: Now there are two pumps, yes.

4 MR. RUBIN: In 1925, there was one pump?

5 MR. ROBINSON: I don't know the number of pumps  
6 at that time.

7 MR. RUBIN: Therefore I assume you don't know  
8 the capacity of the pumps that existed at that time?

9 MR. ROBINSON: No, I do not.

10 MR. RUBIN: Okay. Do you know if the water  
11 that was pumped into the Robinson Vasquez system was  
12 used during more than one season of planting? Was there  
13 one season of planting on the lands that were served by  
14 the canal?

15 MR. ROBINSON: There's a season of planting.

16 MR. RUBIN: Do you know what the season was?

17 MR. ROBINSON: Well, depending on the crop, it  
18 would be either planted in November-December or planted  
19 in the spring, harvest in the fall. Typical farming.

20 MR. RUBIN: So it's possible that there's  
21 either a fall season or a summer season; is that how you  
22 would characterize it?

23 MR. ROBINSON: Harvest would be in the fall for  
24 most crops.

25 MR. RUBIN: Are you familiar with the agreement

1 that's attached to your written testimony, Exhibit 5?

2 MR. ROBINSON: Yeah, I haven't read it in quite  
3 a while, but I'm aware that it exists, yes.

4 MR. RUBIN: And the agreement that I'm  
5 referring to is labeled as Exhibit 5A. Do you know how  
6 many acres were covered in the agreement of Exhibit 5A?

7 MR. ROBINSON: Not off the top of my head, no.

8 MR. RUBIN: Mr. Robinson, you indicated that  
9 you worked with your father in the family farming and  
10 related businesses for 42 years?

11 MR. ROBINSON: Yes.

12 MR. RUBIN: What's the period of time? What  
13 year did you start working with your father?

14 MR. ROBINSON: About 1960.

15 MR. RUBIN: So you worked with your father  
16 roughly from 1960 to 2002?

17 MR. ROBINSON: Yes.

18 MR. RUBIN: And what years did your father  
19 farm.

20 MR. ROBINSON: 1960s through the '90s, up into  
21 the '90s, but he was always giving us advice.

22 MR. RUBIN: Mr. Robinson --

23 MR. ROBINSON: Well, when he started farming  
24 there?

25 MR. RUBIN: I'm sorry, your father, yes.

1           MR. ROBINSON: Oh, when he started farming  
2 there?

3           MR. RUBIN: Yes.

4           MR. ROBINSON: I believe he started actually  
5 farming himself taking over from his father after World  
6 War I, which would be, I don't know, 1918-19 when he  
7 started farming it.

8           MR. RUBIN: Now, Mr. Robinson, you also spoke  
9 about an earthen-lined canal that existed where the  
10 current concrete-lined canal exists to serve the  
11 Robinson Vasquez area?

12           MR. ROBINSON: In the proximity of it. The  
13 earthen canal was on top of the High Ridge -- high line  
14 -- High Ridge Levee.

15           MR. RUBIN: Now, do you know if there was a  
16 pump that fed that earthen canal?

17           MR. ROBINSON: I don't know that there was one,  
18 but in order to get water into it I would assume there  
19 was a pump.

20           MR. RUBIN: Is it possible that the canal was  
21 fed by gravity during high tides?

22           MR. ROBINSON: If it was on top of that levee,  
23 I believe not, unlikely.

24           MR. RUBIN: Do you know if it was on top or if  
25 it went through?

1           MR. ROBINSON: My recollection was he stated it  
2 was on top of the levee.

3           MR. RUBIN: And "he" is your father?

4           MR. ROBINSON: My father.

5           MR. RUBIN: Do you recall specifically whether  
6 your father said that the diversion facility for the  
7 earthen canal was on top of the levee?

8           MR. ROBINSON: The ditch was on top of the  
9 levee. The diversion would have been in the river.

10          MR. RUBIN: And do you know if the diversion  
11 went through the levee or went over the levee?

12          MR. ROBINSON: I have no recollection of him  
13 saying either way.

14          MR. RUBIN: And if it went through the levee,  
15 it's possible that the canal could have been fed through  
16 gravity, or by gravity?

17          MR. ROBINSON: Hydraulically, I would say no.  
18 If the ditch was on top of the levee, the water level in  
19 the river would not be high enough to supply it.

20          MR. RUBIN: Now, it's your conclusion,  
21 Mr. Robinson, that the parcel at issue in this  
22 proceeding has been farmed since at least 1890?

23          MR. ROBINSON: I believe that was the date that  
24 both parcels were acquired by the separate families and  
25 they would have been farmed then, yes.

1           MR. RUBIN: Do you know how many acres within  
2 the subject parcel was farmed in 1890?

3           MR. ROBINSON: For Mussi, I would say all of  
4 it.

5           MR. RUBIN: What would you base your statement  
6 on?

7           MR. ROBINSON: They bought the property to  
8 farm.

9           MR. RUBIN: Is it possible that some of the  
10 land was left idle?

11          MR. ROBINSON: I would not think so. Other --

12          MR. RUBIN: Is it possible -- sorry.

13          MR. ROBINSON: Other than what, at that time,  
14 what area was taken up by Duck Slough.

15          MR. RUBIN: Is it possible that some of the  
16 land was dry land farmed?

17          MR. ROBINSON: I guess it would be possible.  
18 But if you have the opportunity to irrigate, you don't  
19 dry land farm.

20          MR. RUBIN: Is it possible that you irrigate  
21 through subsurface irrigation?

22          MR. ROBINSON: It was possible.

23          MR. RUBIN: Now, you indicate part of your  
24 conclusion that the subject property was irrigated was  
25 irrigation may have been needed to control salt buildup;

1 is that correct?

2 MR. ROBINSON: It was -- irrigation is a remedy  
3 for salt buildup.

4 MR. RUBIN: Is it your belief that there was  
5 salt buildup prior to 1914 that required irrigation in  
6 order to address the salt buildup?

7 MR. ROBINSON: Any time there is irrigation  
8 there is a potential for salt buildup. Salt buildup is  
9 both a problem and a solution.

10 MR. RUBIN: But again, is it your testimony  
11 today that lands that are the subject of this proceeding  
12 needed to be surface irrigated to address salt buildup?

13 MR. ROBINSON: No. I wouldn't say, no.

14 MR. RUBIN: I have no further questions.

15 CO-HEARING OFFICER BAGGETT: San Joaquin? Any  
16 recross? Okay. Thank you. Any questions, Ernie?  
17 Dana? Thank you.

18 We've got one more witness, Mr. Herrick.

19 MR. HERRICK: Yes.

20 CO-HEARING OFFICER BAGGETT: Let's take a short  
21 break then. Let's take ten minutes, and then you can be  
22 ready to go.

23 (Recess)

24 CO-HEARING OFFICER BAGGETT: Back on the  
25 record. Mr. Herrick.

1 MR. HERRICK: Thank you, Mr. Chairman. John  
2 Herrick again. Before we get to this, the court  
3 reporter asked me to clarify something from the last  
4 cross-examination.

5 And that is regardless of comments either by  
6 the witness or any of the attorneys asking questions,  
7 Mr. Robinson's testimony was Exhibit 8 in both  
8 proceedings and Mr. Rudy's testimony was exhibit --  
9 well, I uncleared that up.

10 (Laughter)

11 MR. ROSE: I don't know if this helps. I have  
12 Michael Robinson's testimony as Pak and Young 8 and  
13 Mussi 5. Is that my own mistake in labeling?

14 MR. HERRICK: That is correct.

15 MR. ROSE: Then the 8A and 5A are the analogous  
16 following exhibit.

17 MR. HERRICK: Their testimonies are as  
18 specified on the witness list.

19 CO-HEARING OFFICER BAGGETT: Very good. Thank  
20 you. And everyone has got that.

21 MR. HERRICK: Maybe we should go home now.

22 Okay. Next we will call Mr. Chris Neudeck in  
23 Pak and Young matter, and he will give the direct  
24 testimony on that.

25 As we start here I would like to clarify that



1 there are incorrect references or citations to exhibits  
2 which I believe staff is generally aware of, and as we  
3 go through it, I will then hopefully clarify that part  
4 of the record so everybody knows what map or what  
5 document we're referring to or what changes or what was  
6 mistakenly presented is clarified.

7 --o0o--

8 CHRISTOPHER H. NEUDECK

9 Called by YONG PAK AND SUN YOUNG

10 DIRECT EXAMINATION BY MR. HERRICK

11 --o0o--

12 MR. HERRICK: So with that, Mr. Neudeck, would  
13 you please give your name and business address.

14 MR. NEUDECK: Yes. Christopher H. Neudeck, 711  
15 North Pershing Avenue, Stockton, California 95201.

16 MR. HERRICK: And Mr. Neudeck, presented as  
17 your evidence here is both your testimony, Exhibit 3,  
18 and then I believe -- I'm sorry, I didn't bring -- your  
19 professional qualifications are exhibit --

20 Thank you for your consideration. I apologize.

21 And 4 for his statement of qualifications.

22 Mr. Neudeck, are you aware of Exhibit 4 in this  
23 proceeding?

24 MR. NEUDECK: Yes, I am.

25 MR. HERRICK: And is it a true and accurate

1 representation of your resume or statement of  
2 qualifications?

3 MR. NEUDECK: Yes, it is.

4 MR. HERRICK: And you have before you a copy of  
5 Exhibit 3; is that correct?

6 MR. NEUDECK: That's correct.

7 MR. HERRICK: With attachments?

8 MR. NEUDECK: Yes.

9 MR. HERRICK: And Exhibit 3 is, excepting as we  
10 shall correct along the way, a true and correct copy of  
11 your testimony for this proceeding?

12 MR. NEUDECK: That is correct.

13 MR. HERRICK: Mr. Neudeck, would you please  
14 summarize your testimony. And I don't say briefly  
15 because there are a number of exhibits that we wish to  
16 go through, and so please do.

17 MR. NEUDECK: Yes. Thank you. Just briefly,  
18 as a matter of background, I'm a registered civil  
19 engineer in the state of California. I've been working  
20 in the Sacramento-San Joaquin Delta for nearly 30 years  
21 and practice in the area of flood control, drainage and  
22 irrigation.

23 My firm, Kjeldsen Sinnock & Neudeck,  
24 Incorporated, are very familiar with the Roberts Island  
25 area. We serve as district engineers for both Upper

1 Roberts and Middle Robert as well as the adjoining  
2 reclamation districts, Union Island 1, 2, RD 17 and the  
3 like.

4 My testimony today is going to involve  
5 basically two areas: One is the mapping of title and  
6 other documents, and the other is some summary of  
7 irrigation and drainage practices.

8 I worked with the chain of title that was  
9 prepared for the Pak and Young case, prepared by Thurl  
10 Pankey from Central Valley Land Service Company.

11 I do have one correction to my testimony. On  
12 the very first exhibit, 3A, there's a typo in my direct  
13 testimony. The parcel number is listed in my testimony  
14 as 131-170-03. That actually is referring to the Mussi  
15 parcel. The Pak/Young parcel is correctly stated as  
16 131-180-07.

17 Now what I'd like to do is just briefly walk  
18 through my exhibits and mapping on the chain of title.

19 The first Exhibit 3A -- and Mr. Lindsay, I  
20 guess we can just bring these up as we go along --  
21 identifies the current configuration of the Pak and  
22 Young parcel.

23 And this is not something to dwell on, but this  
24 is the piece we're speaking of, the piece generally  
25 northwest of what has been deemed in many of the prior

1 testimony as Duck Slough. As 7. You can see 7 reflects  
2 the 07 on the APN.

3 Okay. Walking through, 3B.

4 3B is the first transfer from the State to J.P.  
5 Whitney. This is a very large -- and if you turn to the  
6 last -- actually, Mr. Lindsay, all of these references  
7 are going to be to the last document in these exhibits  
8 -- last page, excuse me. I apologize. I know we have a  
9 lot of information here. But that's where I'm going to  
10 be referring to. So we can leave the full page.

11 Here you can see this is the first transfer,  
12 State to J.P. Whitney. This was done in November of  
13 1876. And this is the State patent.

14 The second exhibit which is 3C is on  
15 January 22nd of 1877. This is where Whitney transfers  
16 it to Fisher. Again, you can see it's a rather large  
17 parcel. All of this is northwest of the slough known as  
18 Duck Slough, Highland Levee, and touching both Burns  
19 Cutoff and Middle River.

20 The next Exhibit 3D, June 20th, 1877, transfer  
21 from Fisher to Glasgow Company. Again, a major transfer  
22 incorporating a majority of the area northwest of the  
23 Duck Slough area still connected to Burns Cutoff and  
24 Middle River.

25 Turning to 3E, in 1896, this is November 6th of

1 1896. This is Glasgow to John S. Woods.

2 An important note to make in this deed, and I  
3 reference this in both this testimony and my Mussi  
4 testimony, is that language in the deed states as  
5 follows:

6 Together with all and singular the  
7 tenements, hereditaments and  
8 appurtenances thereunto belonging or in  
9 anywise appertaining and the reversions  
10 -- reversion and reversions, remainder  
11 and remainders, rents, issues and profits  
12 thereof.

13 And my understanding of hereditaments is the  
14 preservation of water right to this parcel.

15 As you can see at this state -- and I will show  
16 on the map -- this is now no longer connected to either  
17 of the two main water bodies, Burns Cutoff to the north  
18 or to Middle River to the south, whereas it is still  
19 connected to Duck Slough.

20 The next Exhibit 3F. Again, it would be the  
21 last page.

22 MR. HERRICK: Mr. Chairman, the mapping for 3F  
23 is incorrect. I have a copy of the same deed with the  
24 correct mapping.

25 And the problem is it simply includes too much

1 land to the west which is not part of this or not  
2 connected to that. I will pass that out.

3 We would prefer to substitute this as 3F. If  
4 there are objections to that or not, and if they're  
5 upheld, Mr. Neudeck can just describe from the map what  
6 the true shape of the parcel was and not this incorrect  
7 one. So I'll pass that out right now.

8 Mr. Neudeck.

9 MR. NEUDECK: Briefly, the difference in this  
10 map is it is a smaller parcel. This is a grant deed  
11 from E.W.S. Woods to his wife, Alice Woods and others.  
12 And you can see that the cross-hatched area is not as  
13 substantial as the exhibit we had up on the screen.

14 Okay. The last exhibit in my chain is 3G. I  
15 do not have a map exhibit.

16 This is -- the date of this transfer was  
17 December 10, 1928. And this was a deed from Alice Woods  
18 to Lloyd Woods which was E.W.S. and Alice Woods' son.  
19 And it's in this general area here.

20 The current Pak parcel that we showed at the  
21 beginning was eventually subdivided sometime after 1928  
22 which is this date I just mentioned in 3G. And I did  
23 not attempt to map that, and I'll give reasons as to why  
24 I did not attempt to map that.

25 Now I'm going to move into an area, some

1 historical background with some assessor maps.

2           The first map I'd like to refer to is actually  
3 -- well, there's a series of maps, but I'll turn to 3I  
4 which is --

5           MR. HERRICK: Let me clarify that. The next in  
6 order, 3H, is a series of maps, and now Mr. Neudeck is  
7 going to refer to one of those which is his own exhibit.

8           MR. NEUDECK: That's correct.

9           The reason I didn't go through all of them, the  
10 maps date from 1876 through 1910 -- 1919, excuse me, and  
11 I'm just referencing one map.

12           This map has been shown in earlier testimony,  
13 and the purpose of this map is to reference -- this is  
14 real tough on this view here, but you can see the blue  
15 line which has been referenced as the general location  
16 of Duck Slough extending from Burns Cutoff down to  
17 Middle River.

18           MR. O'LAUGHLIN: Excuse me. Which map are we  
19 looking at right now?

20           MR. NEUDECK: This is 3I. This is 1876.

21           MR. O'LAUGHLIN: Thank you.

22           MR. NEUDECK: Now I'm going to give you a  
23 little bit of history as to what they call the High  
24 Ridge Levee along that area and how the High Ridge Levee  
25 was created.

1           You have heard through prior testimony from Mr.  
2 Nomellini this morning and others with regard to how  
3 levees in Delta region were created.

4           The High Ridge Levee in this particular area  
5 was along a slough, a natural slough, originally  
6 creating the natural slough overbank.

7           When the flow would get up and outside the  
8 banks of the slough, it would create small levees.  
9 Ultimately, that slough that I'll reference to you  
10 shortly here was dredged and levees were created to a  
11 greater extent.

12           The next citation in my testimony relates to  
13 that very dredging in 1875. This is the Samson dredge.  
14 We made reference to the Samson dredge.

15           Again, in Mr. Nomellini's testimony we showed  
16 the picture of the Samson dredge even though it was not  
17 on Duck Slough, but we have a direct reference of the  
18 Samson dredge being on Duck Slough in 1875 creating a  
19 channel something on order of 30 feet wide by 7 feet  
20 wide.

21           This is the Duck Slough channel that I've been  
22 referring to so far.

23           All right. Exhibit 3J. Okay. Yeah, thank  
24 you.

25           3J is the overall settlement geography of the



1 Sacramento-San Joaquin Delta by John Thompson in 1957.

2 And in that, there's a quote directly quoting  
3 the Samson steam shovel first job which was on Duck  
4 Slough. That just brings to light the fact that the  
5 Samson dredge was on Duck Slough during that time frame.

6 Okay. Now I'm going to walk through a couple  
7 of additional maps to give some history as to the Duck  
8 Slough connection between Burns Cutoff and Middle River.

9 3L is my next exhibit, and this is an  
10 assessor's map. This is a little better alignment of  
11 Duck Slough.

12 You can now see the configuration of Duck  
13 Slough is more likened to what we see in the current  
14 configuration which is a greater degree of mapping  
15 accuracy.

16 You can also see on this map, if you were to  
17 zoom into it, two dashed lines along either side of the  
18 slough referencing levees. This will be consistent with  
19 the Samson dredge time frame.

20 This is 1881-1882, post the period where the  
21 Samson dredge was in the area so -- Mr. Lindsay, you may  
22 need to go just a little bit further. It's very faint,  
23 but you can see two dashes on either side of slough that  
24 runs the length of the slough.

25 All right. The next exhibit is 3M.

1           This is an 1883 map. It was a map created by  
2 Tucker and Smith, civil engineers, and they were mapping  
3 the lands owned by Fisher.

4           Here again, if you pan down, pan down a little  
5 bit further -- or I'm sorry, pan up. I have to get the  
6 direction here correct. Keep going up.

7           You can see what's referenced as Cross Levee  
8 here. This again is the alignment of Duck Slough and a  
9 levee.

10           Now, interestingly, this is in 1883, they do  
11 not show a levee on either side. They only show a levee  
12 on what would be considered the east side.

13           My belief is they were only looking at the area  
14 within this region of the map, so they're only mapping  
15 the features that they traversed.

16           As you saw in the prior assessor's map, we saw  
17 these dashed lines on either side of Duck Slough  
18 demonstrating that there was likely levees of some sort  
19 on both sides of the river -- both sides of the slough,  
20 excuse me. I apologize for that confusion. Here  
21 they've only shown the levee on the east side.

22           Okay. Moving to 3N, this is an 1886 map  
23 produced by the California State Engineering Department,  
24 topographic and irrigation map.

25           Here again -- and it's a little difficult to

1 see -- right here you can see the Duck Slough alignment,  
2 again between Burns Cutoff, Middle River, abutting up  
3 against the Pak/Young property.

4 Bear with me. We've got a couple more of  
5 these. 30, 1894 map.

6 This is known as the Stockton-Bellota drainage  
7 Map. This again shows Duck Slough continuing. Here the  
8 word "Duck Slough" is right on the alignment, continuing  
9 from Burns Cutoff all the way down to Middle River.

10 3P, this is the 1911 Quad, USGS Quad. It's  
11 actually a 1913 map with 1911 data. And here if you pan  
12 up, I'll get this correct -- oops, got to pan to your  
13 right.

14 CHIEF LINDSAY: I can't go right. Still lost.

15 MR. NEUDECK: You are. That's it. This is  
16 Duck Slough here. And if you were able to zoom in and  
17 have a little more clarity, you could actually see the  
18 blue line within Duck Slough up against the Pak parcel,  
19 Pak/Young parcel.

20 So this is the Duck Slough alignment,  
21 continuing on down here on down to Middle River in this  
22 area right here. And you can actually see blue on up  
23 here to the Kingston School site.

24 I've got some confusion on my exhibits here.  
25 Again I'm going to defer to counsel here to correct.

1           MR. HERRICK: In the testimony the next exhibit  
2 listed is Q, and that's identified as the 1911 Woods  
3 Irrigation Company agreement with E.W.S. Woods to  
4 furnish water.

5           In the testimony, unfortunately, Q is labeled  
6 as the California Delta map by Captains Weathers and  
7 Petzinger.

8           So I will pass out the 1911 agreement which has  
9 been presented in other areas, but this is the actual Q  
10 and we'll correct the numbers of the others as we go.

11           CO-HEARING OFFICER BAGGETT: So this is the new  
12 Q. What is the old Q?

13           MR. HERRICK: We'll get there in a minute, but  
14 the testimony just numbered them in order so that it  
15 incorrectly showed the map of California Delta, of the  
16 Sacramento and San Joaquin Rivers as Q.

17           That will then become R. We'll just go through  
18 and renumber. I apologize for mistake; it is mine.

19           MR. NEUDECK: Okay. This is the 1911 Woods  
20 Irrigation agreement to furnish water. This agreement  
21 serves the Pak/Young parcel.

22           And the importance of this is to demonstrate  
23 the ability to get water to the Pak/Young by virtue of  
24 the Woods Irrigation District.

25           Okay. Moving on.

1           The next fact I'd like to raise is this  
2 provision for the 1911 agreement was further amplified  
3 by another agreement with the Woods Robinson Vasquez  
4 district which was done in 1925.

5           This we've talked to earlier. Mike Robinson  
6 referred to it in his testimony. This was another point  
7 of diversion, final point of diversion serving this area  
8 of the Pak/Young parcel.

9           Now I'd like to go into again some additional  
10 maps, and then I'll wrap up on kind of the general  
11 history of drainage and irrigation within the Delta.

12           Now I'm confused as to what my next exhibit is.

13           MR. HERRICK: The next exhibit would be R as in  
14 the written testimony. It's just the attachment has a Q  
15 on it, and it should be R.

16           So the map is identified as the map of  
17 California Delta of the Sacramento and San Joaquin  
18 Rivers. That should be R.

19           It's just that the map attached has a Q on it  
20 instead. We'll just make that R. We'll do that  
21 henceforth.

22           MR. NEUDECK: Okay. The importance of this map  
23 here, we've seen this map earlier. Mr. Nomellini  
24 testified in his testimony.

25           What I'm tying this to is the slough that's

1 right in the area that I'm highlighting in my -- with my  
2 highlighter on the screen.

3 This is an area just west of the point that  
4 Duck Slough tied in. This is a natural slough from the  
5 Weathers -- this Weathers map which we're -- it's a  
6 large slough identified by people that are navigating  
7 these channels in this vicinity. So they obviously saw  
8 this as a navigational channel enough to map it. So it  
9 was an open channel in 1921.

10 MR. HERRICK: Mr. Neudeck, you've indicated  
11 where you're showing the cursor on the map. You might  
12 want to describe -- there is some language there so you  
13 can focus that for anybody reading the record later.

14 MR. NEUDECK: There's some language? You mean  
15 as far as what the --

16 MR. HERRICK: The slough you're identifying is  
17 next to the words "the pocket" just off of Middle River.

18 MR. NEUDECK: That's correct. I apologize.

19 Yes, the T for "the" is right at the end of the  
20 slough. The pocket actually runs in kind of a  
21 southeasterly direction.

22 The channel actually runs almost in a  
23 north-south direction off of Middle River, the T at the  
24 top of that natural slough off of Middle River.

25 MR. HERRICK: Thank you.

1 MR. NEUDECK: My next exhibit --

2 MR. HERRICK: Still S.

3 MR. NEUDECK: S.

4 MR. HERRICK: Just for clarification, in the  
5 written testimony, it refers to the 1941 map of the  
6 lands served by Woods Irrigation Company, and it's  
7 Exhibit S. It is indeed S.

8 Unfortunately, the map has an R on it, so the  
9 map that says R is now the map that says 3S.

10 MR. NEUDECK: The importance of this map is to  
11 highlight the slough again, the one I just mentioned in  
12 the prior exhibit.

13 Here's this large slough that runs off of  
14 Middle River. This is west of the Duck Slough  
15 intersection. It runs up to a point of what is known as  
16 the Kingston School area.

17 And this is referenced to another natural  
18 slough leading off the Middle River in a northerly  
19 direction.

20 The date of this map is 1941. This is a map of  
21 the lands served by Woods Irrigation Company.

22 MR. HERRICK: The next Exhibit 3T.

23 3T is correct, and it's identified as the  
24 Denny's pocket map of San Joaquin County dated 1913.  
25 That map attached to Mr. Neudeck's testimony has a 3S on

1 it which should be 3T as identified in the written  
2 testimony. Thank you.

3 MR. NEUDECK: I hope you're all following  
4 along. I think I'll get confused here.

5 Okay. The importance of this map is to  
6 demonstrate within the area that we're referring to,  
7 this being Burns Cutoff. You can see all of these lines  
8 including Duck Slough.

9 And if you look at the key in the lower  
10 left-hand corner, they're showing these areas as canals.

11 This is a 1913 map showing irrigation canals  
12 throughout the Woods Irrigation Company area, areas east  
13 of the Duck Slough area, as well as Duck Slough being  
14 called out as canals.

15 My final exhibit is 3U.

16 MR. HERRICK: And again, Mr. Neudeck's  
17 testimony correctly identifies a 1976 Department of  
18 Water Resources Aerial Geology Sacramento-San Joaquin  
19 Delta map as Exhibit 3U.

20 That map on his testimony has 3T on it; it  
21 should be 3U.

22 MR. NEUDECK: Okay. The importance of this is  
23 to demonstrate in 1976 we can see -- let me get my focus  
24 here.

25 MR. HERRICK: Zoom in a little bit.



1 MR. NEUDECK: Well, you want to go down to your  
2 right, up to your -- yeah.

3 There you can see the alignment of Duck Slough  
4 on downwards in this direction towards Middle River, as  
5 well again this major slough that we referred to earlier  
6 in the 1913 map and the 1941 map.

7 This is a major feature for being in 1976. And  
8 this is a map prepared by the Department of Water  
9 Resources just to demonstrate that the nature of these  
10 sloughs in this area were predominant, and the features  
11 were mapped as late as 1976 for this region.

12 At this point, it's my belief the evidence for  
13 Pak/Young parcel is relatively overwhelming as far as  
14 the connection to waterways, both from the standpoint of  
15 initially -- well, from the 1911 Woods agreement, from  
16 the standpoint of the numerous sloughs that I showed not  
17 only dating back pre-1911, as far as up to and close to  
18 1976, both 1931 -- excuse me, 1913, I apologize -- 1913  
19 Denny's pocket map, the 1941 Woods map, and then again  
20 finally with this 1976 map.

21 Now I'd like to just drop into a quick history  
22 of the Sacramento-San Joaquin Delta to give you some  
23 perspective on where I believe some of these channels  
24 were developed and how they were developed.

25 Initially -- and I started on this earlier in

1 my testimony, and I'll wrap it up.

2 MR. HERRICK: Let me interrupt you there. We  
3 didn't cover your Exhibit 3V which is referenced as a  
4 combination map made by you putting together various  
5 bits of information from the prior maps. It is 3V.

6 The map attached to his testimony says 3U on  
7 it, but that should be 3V.

8 MR. NEUDECK: That's correct. Okay.

9 Just briefly back to the history of the  
10 Sacramento-San Joaquin Delta. As has been testified  
11 earlier, through Mr. Nomellini's testimony in  
12 particular, this area of swamp and overflow lands was  
13 reclaimed starting in the early 1850s, formally for the  
14 most part was wrapped up in the early 1900s.

15 Most of the levees we know nowadays were  
16 probably in their formal position by the late 1910, 1909  
17 period.

18 Initially these channels were all natural  
19 channels. They had these overbank areas where they  
20 created deposits of the heavier materials adjoining the  
21 immediate waterways.

22 These were originally termed as what they call  
23 shoestring levees. It was those areas that the original  
24 settlers of this area and the farmers started to  
25 construct their levees.

1           On some of the major channels, those levees  
2 were set back to provide additional capacity. On some  
3 of the minor sloughs, the levees were built right on top  
4 of those sloughs, channels, dendritic channels  
5 throughout this entire area.

6           As Mr. Lajoie testified to earlier, this area  
7 was dotted with an extraordinary amount of these what we  
8 call dendritic or channels running throughout this  
9 region.

10           Upon full reclamation, many of those channels  
11 were cut off from the main channel. And at that time in  
12 order to continue the irrigation and drainage practices,  
13 they installed gates, floodgates and drainage gates.

14           And these gates were installed in such a manner  
15 that they could be operated in both directions. You  
16 could either trap high tides to irrigate from or you  
17 could open and flow out from a drainage perspective.

18           The ground was relatively level. Tides were  
19 used to push water in both directions.

20           In this particular case, we are on a riverine  
21 system on Middle River. As we extend to the upper side  
22 on Burns Cutoff we're more in what we call the tidal,  
23 Delta tidal pool, which we don't have the riverine  
24 system.

25           We don't really see a reaction to a high flow

1 there. Once you go down towards Burns Cutoff or the  
2 Stockton area, you just get a rise and lowering of the  
3 tide. You do not see an actual gradient in the river.

4           Ultimately these areas that were floodgates, as  
5 we've testified to, were turned into pumps.

6           It's been my practice throughout the 30 years  
7 I've been working in the Delta to remove these. These  
8 are not practically the best infrastructure to have in  
9 the middle of the levee when you're trying to protect  
10 the area behind it for flood protection.

11           We've had many occasions where they have been  
12 buried in place and ultimately after high water events  
13 start to leak.

14           Upon further investigation, we learn that we  
15 have this large cavity running through the levee that we  
16 ultimately remove because in many cases they have  
17 already been replaced by pumps.

18           As I've indicated, this is not a matter of  
19 speculation. My practice in the Delta has come across  
20 this practice of removing floodgates and old structures  
21 like this on numerous islands, and I'm aware of ones  
22 that still exist, some that actually still serve a  
23 purpose.

24           But some of the historical ones that come into  
25 a dilapidated case or that were partially covered,

1 reverting to a pump, we've had to take out because of  
2 flood response issues.

3 My final section of testimony relates to my  
4 Term 91 February 2003 testimony, and this relates to the  
5 testimony on the Delta pool.

6 I want to cite directly from that a quote  
7 relating to the hydraulic conductivity. I stated in my  
8 testimony:

9 It's important to understand the local  
10 water supply. The entire Delta is one  
11 big pool of water, some in the channel  
12 and some in the soils. There is no net  
13 difference in the amount of water in the  
14 Delta channels when local diverters take  
15 from neighboring channels, pump from  
16 shallow groundwater, farm crops which  
17 drop from shallow groundwater. Taking  
18 water from one place is virtually the  
19 same as another. This is especially true  
20 during the summer and fall months when  
21 the three tidal barriers downstream of  
22 our site here actually hold water back up  
23 in Middle River and Grant Line Canal  
24 allowing that higher water surface in the  
25 region that we're speaking of.

1           Another reference in that 2003 testimony was a  
2 July 2001 seepage monitoring study done by the  
3 Department of Water Resources. And within that document  
4 there is a direct quote saying:

5           There is a direct connection between the  
6 shallow groundwater --

7           And this study was done on Upper Roberts, so  
8 just to the south of where we are referring to the  
9 Pak/Young parcel, still within Roberts Island, between  
10 Middle River and the San Joaquin -- main stem of the San  
11 Joaquin.

12           Finishing the quote:

13           There is a direct connection between the  
14 shallow groundwater and the neighboring  
15 channels. When the river goes up, the  
16 groundwater goes up.

17           And that was a quote directly out of the  
18 July 2001 DWR study.

19           With that, I conclude my direct testimony.

20           I believe the records I put forth today  
21 demonstrate a connectivity to either surface water  
22 connection or, in this case, Woods Irrigation Company or  
23 the Woods Robinson Vasquez agreement.

24           Thank you.

25           MR. HERRICK: Thank you. Mr. Chairman, I note

1 once again a mistake here, and I'd like to correct it.

2 Mr. Neudeck, on your Exhibit 3V which is that  
3 combination map showing different waterways put on a  
4 current aerial photograph. Do you see that?

5 MR. NEUDECK: Correct.

6 MR. HERRICK: The area hatched appears to be --

7 MR. O'LAUGHLIN: The Tanaka property.

8 MR. HERRICK: The Tanaka property which is not  
9 the subject of this hearing.

10 MR. NEUDECK: Right.

11 MR. HERRICK: And which is just south of the  
12 Mussi hearing which this is not for, which is just south  
13 of the Pak/Young parcel which is clearly indicated on  
14 other exhibits. Anyway, I apologize for that.

15 So with that, what is the Chairman's pleasure?  
16 Would you like me to take his direct for Mussi and  
17 follow on before we break?

18 CO-HEARING OFFICER BAGGETT: Yeah.

19 MR. HERRICK: Thank you. Give me one minute  
20 please.

21 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

22 MR. RUBIN: I just wanted to make sure it's  
23 clear. I was not here the morning. I understand that  
24 you would prefer that we raise any objections we may  
25 have at the time the exhibits are moved into evidence?

1 CO-HEARING OFFICER BAGGETT: Correct.

2 MR. RUBIN: Okay.

3 MR. HERRICK: Counsel pointed out to me with  
4 regard to Mr. Neudeck's testimony we just presented for  
5 Pak/Young we didn't reference the attached Term 91  
6 testimony which was labeled V and is now W, as we did  
7 the ones before that, we just gave it the subsequent  
8 letter.

9 --o0o--

10 CHRISTOPHER H. NEUDECK

11 Called by RUDY MUSSI, TONI MUSSI AND

12 LORY C. MUSSI INVESTMENT LP

13 DIRECT EXAMINATION BY MR. HERRICK

14 --o0o--

15 MR. HERRICK: Anyway so now Mr. Neudeck, I  
16 don't believe he needs to introduce himself again.

17 He will now present the slightly similar and  
18 slightly different direct testimony for the Mussi matter  
19 so we may try to keep those as separate as we can.

20 MR. NEUDECK: Thank you. I won't go through  
21 any of my background and will jump right in.

22 My testimony involves the same two main areas  
23 related to mapping and title of documents and the  
24 summary of irrigation and drainage practices.

25 Again, we began with the chain of title through



1 the Central Valley Land Service Company, Thurl Pankey's  
2 work, on the Mussi property.

3 And starting with Exhibit A, this will bring  
4 forward the current configuration of the Mussi parcel.  
5 We've had some reference to this in testimony by Mr.  
6 Mussi earlier.

7 This is the piece abutting Duck Slough, Inland  
8 Drive, and it's known as parcel 131-170-03 which is the  
9 circle 3 here. Thank you.

10 Okay. We'll walk through these. Mr. Lindsay,  
11 if we can just, again, capture the last page of these  
12 exhibits, I'd appreciate it. The deed themselves we  
13 won't walk through.

14 The first is the State patent dating  
15 November 24th, 1876.

16 Here you can see this is a very large parcel  
17 covering both sides of Duck Slough nearly out to the San  
18 Joaquin touching both Burns Cutoff as well as Middle  
19 River.

20 San Joaquin is to the right of this picture,  
21 Burns Cutoff is to the north. Middle River is to the  
22 south. The San Joaquin River actually flows on up past  
23 and around the other side of Burns Cutoff.

24 The next Exhibit 3C is where J.P. Whitney  
25 grants deeds to M.C. Fisher. This is January 17, 1877.

1           Again, a very large transfer. In this  
2 particular case, it's all areas east of Duck Slough,  
3 still incorporating the Mussi parcel.

4           Once again, still connecting to Burns Cutoff to  
5 the north, Middle River to the south and to some degree  
6 nearing the San Joaquin on the east.

7           Exhibit 3D is a transfer from Fisher to Stewart  
8 dated March 15, 1877. This again is another large  
9 transfer. Similar area, again touching Burns Cutoff,  
10 Middle River and Duck Slough on the west.

11           Okay. 3E. 3E is a date where Stewart  
12 transfers his property to Vasquez. Vasquez -- the date  
13 of this transfer was April 28, 1891.

14           You can see the parcel here abutting Duck  
15 Slough but apart from both Burns Cutoff and Middle  
16 River.

17           The important feature here, again, the same  
18 note I cited in the last hearing on Pak and Young, the  
19 deed language related to tenements and hereditaments was  
20 part of this deed, believing that the hereditaments is  
21 preserving the water right as part of this language at  
22 the time this deed occurred.

23           MR. HERRICK: Mr. Neudeck, would you explain  
24 the altered shape of this mapped parcel with relation to  
25 the section lines and the true line of the High Ridge

1 Levee, Duck Slough.

2 MR. NEUDECK: I'm not sure if I'm -- could you  
3 repeat the question? I apologize. I'm not sure what  
4 you're referring to.

5 MR. HERRICK: (Indicating)

6 MR. NEUDECK: Yeah, this is not exactly the --  
7 again, this is a representation back in 1891 of Duck  
8 Slough. This parcel configuration, as it lays out  
9 today, is slightly different given the fact that Duck  
10 Slough was not a perfect surveyed alignment at this  
11 point.

12 All right. 3G which has not been mapped is the  
13 final subdivision of the property. This was the Milton  
14 Welser deed to the Mussi property.

15 And this at that point created two parcels, and  
16 I did not map that.

17 Now what I'm going to do is briefly walk  
18 through the historical references that I walked through  
19 in the Pak and Young, and we'll go through those  
20 relatively quickly.

21 For reference sake, as a witness, I'm a little  
22 lost here. Do you want me to walk through these as I  
23 stepped through them in the case for Pak and Young,  
24 because many of these are similar?

25 MR. HERRICK: I would just mention the exhibit

1 numbers but not go into the detail you did before.

2 MR. NEUDECK: Okay, so we won't pull the maps  
3 up themselves.

4 MR. O'LAUGHLIN: I think for the record we  
5 should -- since we have separate records on these, we  
6 should go through some detail. Not as much as before,  
7 but some on this.

8 MR. HERRICK: The witness should list each  
9 exhibit and briefly identify it, you know, with the  
10 summary in mind.

11 MR. NEUDECK: Okay. I'll do my best here to  
12 keep everyone attentive to my testimony which I know is  
13 absolutely riveting.

14 But the next subject is the assessor's parcel  
15 map in 1876. Mr. Lindsay, I don't believe we need to  
16 pull it up. It's the blue-lined map.

17 This is where we make reference to the blue  
18 line and extended both from Burns Cutoff down to Middle  
19 River. This is an 1876 assessor's map which I contend  
20 the Mussi parcel abuts to.

21 The next, Exhibit 3K, is reference to the  
22 Samson dredge from the 1957 Delta geography. This is  
23 where we speak to how the Samson dredge dredged a  
24 portion of Duck Slough starting from Burns Cutoff  
25 heading in a southwesterly direction.

1           Exhibit 3L is the 1881-82 assessor's map. The  
2 importance of this was to demonstrate that it was post  
3 the reference to the Samson steam shovel in that the  
4 assessor's map actually shows levees on either side and  
5 again shows the general configuration of Duck Slough.

6           3N -- excuse me, M as in Michael -- is the  
7 Tucker and Smith map of 1883. The importance of this  
8 was to demonstrate again the alignment of Duck Slough as  
9 of 1883.

10           The term Cross Levee now, instead of High Ridge  
11 Levee or the term Duck Slough. The important feature  
12 here is to show levee and slough.

13           One thing I didn't reference in -- I did not  
14 reference in my earlier testimony, and maybe it would be  
15 warranted to pull this exhibit up. I wanted to show  
16 that there is a Cross Levee, a similar Cross Levee to  
17 the southeast of this property, if we can bring that up.

18           CHIEF LINDSAY: I'm sorry, 3M?

19           MR. NEUDECK: M as in Michael, correct. If we  
20 could blow up -- right there.

21           If you note the Cross Levee that's referenced  
22 here versus --

23           MR. HERRICK: Right here.

24           MR. NEUDECK: I apologize. Thank you.

25           This is an area that would be southeast of the

1 area that we've been referring to as Duck Slough. So it  
2 would be upstream on Middle River. There is a term that  
3 runs across the middle of the map between Middle River  
4 and the mainstem of the San Joaquin that says "Cross  
5 Levee".

6 Similar dashed, the reference to the levee  
7 along Duck Slough, also is referenced along here but it  
8 doesn't have the straight line. There is no water  
9 against that.

10 That's the separation between Middle Roberts  
11 and Upper Roberts. There is a cross levee there.

12 In many cases, these levees were constructed  
13 for purposes of preventing flooding from one district to  
14 the next. It most likely wouldn't prevent flooding of  
15 the downstream districts, that being Middle and Lower  
16 Roberts, if Upper Roberts were to fail, but it would  
17 likely protect Upper Roberts, say, if Middle Roberts  
18 were to fail.

19 The reason I say that is these cross levees  
20 were not the same height as the adjoining riverine  
21 levees. So it was a dividing line as well as a flood  
22 control line.

23 But I wanted to show you in reference to the  
24 dashed line that there was another dashed line on the  
25 map showing a levee.

1           The next exhibit is 3N. This is the California  
2 State Engineer topo and irrigation map. This was  
3 referencing the Duck Slough.

4           3O is an 1894 Stockton-Bellota drainage Map.  
5 Here again, this is a reference to Duck Slough. It  
6 actually says Duck Slough on the map, and it shows the  
7 alignment extending from Burns Cutoff to Middle River.

8           My exhibits are all correct on this one,  
9 correct?

10           MR. HERRICK: Hope so.

11           MR. NEUDECK: Okay. I apologize for the  
12 confusion.

13           But 3P is the 1911 Quadrangle -- 1911 data,  
14 1913 map, demonstrating again the alignment of Duck  
15 Slough. As indicated in the Pak/Young testimony,  
16 there's water in that blue line.

17           3Q is a 1921 map. This is the Weathers and  
18 Petzinger marine captains that were mapping the major  
19 slough that runs in a northerly direction just west of  
20 the point that Duck Slough ties into the Middle River  
21 and the area known as the pocket.

22           3R is the 1941 map of land served by Woods  
23 Irrigation Company, again showing the major slough to  
24 the west, the one I just referred to with Weathers and  
25 Petzinger along with Duck Slough alignment and other

1 irrigation features.

2 3S is the 1913 Denny's pocket map that shows  
3 canals throughout Middle Roberts and along the alignment  
4 of Duck Slough.

5 And then finally 3T is the 1976 DWR Aerial and  
6 Geology Map. It shows water down particularly on the  
7 major slough to the west of the slough tie-in.

8 3U is the same map we referred to that's a  
9 compilation and kind of historical use of connectivity.

10 Again, this was more referencing the Tanaka  
11 parcel, which is not a matter in this hearing, but it  
12 does reference a lot of the history that was put  
13 together in this mapping effort.

14 CO-HEARING OFFICER BAGGETT: Maybe you have  
15 confused me then. It wasn't the same numbering we just  
16 corrected? It should have been the same letter. So U  
17 on that one was the map of the Delta.

18 MR. HERRICK: I believe it's correct in this.  
19 This is -- the map U is the --

20 CO-HEARING OFFICER BAGGETT: That's V, right?  
21 It was V before. Is it U now?

22 MR. HERRICK: In the prior --

23 MR. NEUDECK: Pak/Young it was V.

24 CO-HEARING OFFICER BAGGETT: Pak/Young it was  
25 V; but in this one, it's U.



1 MR. HERRICK: Yeah, the lettering is correct --

2 CO-HEARING OFFICER BAGGETT: For --

3 MR. HERRICK: -- on these exhibits in Mussi --

4 CO-HEARING OFFICER BAGGETT: Got it, okay.

5 MR. HERRICK: -- with the testimony numbering.

6 I appreciate that. The fault is all mine. I apologize.

7 CO-HEARING OFFICER BAGGETT: I just relabeled

8 them all.

9 MR. NEUDECK: Give me a moment to catch up

10 where I'm at here. Okay.

11 Now I was going to briefly touch upon the

12 history of the irrigation and drainage practices within

13 the Delta. I just recently spoke about that in the

14 Pak/Young matter relating to the original swamp and

15 overflow lands.

16 As the dendritic channels that extend

17 throughout the Delta were bordered by what is known as

18 shoestring levees -- those are the levees that were

19 created by overflow of those sloughs and the deposits of

20 the heavy materials -- those dendritic channels were

21 eventually leveed off to make the full reclamation of

22 the Delta region starting in the mid 1800s, wrapping up

23 in the early 1900s.

24 During that period as those channels were cut

25 off from the main sloughs and rivers, there were

1 structures put in such as floodgates to continue the  
2 connectivity for purposes of irrigation and drainage.

3           Ultimately some of those areas have been  
4 changed in a sense that the gravity feed systems aren't  
5 as efficient, and the floodgate structures served as a  
6 danger to the flood protection of the reclamation  
7 district, and pumps were placed in there instead of the  
8 gate structures.

9           I think I made reference as well in the Pak and  
10 Young, the purposes of these gate structures that were  
11 occurring in the early transition between the natural  
12 Delta and the reclaimed Delta served both as openings to  
13 allow tidal flow into the farmland as well as opening on  
14 the opposing end to drain water off the irrigated  
15 farmland.

16           They also could serve a purpose to back water  
17 up. There could be flap gates to allow water in, and  
18 then closed down not to allow water back out.

19           I refer to the fact that this is not an issue  
20 of speculation. My firm has been involved in the Delta  
21 since the mid '50s, I myself since the early '80s.

22           And I have had a number of instances where  
23 we've had the opportunity to remove these old  
24 floodgates, namely for purposes of flood protection. In  
25 many cases, they have been filled over historically, and

1 pump structures have been put in place.

2 And we have learned through a flood fight  
3 experience that the levee was leaking, and it was  
4 because of that.

5 There is still instances where these floodgates  
6 are still in play and are serving the irrigation  
7 capabilities today. That definitely exists in the Woods  
8 system, and there's a remnant of that in the Woods  
9 Robinson Vasquez system as well.

10 Okay. To wrap up my testimony related to the  
11 Mussi testimony, is to touch base a little bit on the  
12 Delta pool concept. I made reference to my Term 91  
13 testimony, which is Exhibit -- V.

14 I apologize, I don't have that with me.

15 So my Term 91 testimony, which is Exhibit V,  
16 which I reference the Delta pool, as well as I reference  
17 the July 2001 seepage monitoring study by DWR.

18 The Delta pool reference has been discussed in  
19 prior testimony by Mr. Nomellini with regards to the  
20 entire Delta being one large pool. Water in the  
21 channel, similar water in the river -- I mean similar  
22 water in the farm area.

23 These levees, particularly in this area that  
24 we're speaking of, are extraordinarily sandy. The DWR  
25 2001 seepage monitoring study was able to evaluate that

1 and actually report there was a direct connection. As  
2 the river goes up, so goes the groundwater.

3 They're essentially the same water body. There  
4 might be some lag time as the river climbs that the  
5 groundwater may lag in its rise. But ultimately, if  
6 left to no disturbance, they would equal the same  
7 elevation.

8 In other words, if there wasn't drainage on  
9 that land, the river water and the groundwater behind  
10 the levees would equal in nature.

11 That concludes my testimony.

12 MR. HERRICK: Let me ask two questions here to  
13 sum it up, and then we're done, I believe.

14 Mr. Neudeck, your conclusions, especially on  
15 page 5, are that the Mussi property was abutting a  
16 waterway called Duck Slough through at least 1911; and  
17 then you've connected it through canals to a neighboring  
18 slough well past that, actually through 1941; is that  
19 correct?

20 MR. NEUDECK: That is correct. 1913 as well in  
21 the Denny's pocket map, yes.

22 MR. HERRICK: And based on those maps, you have  
23 concluded there was no time, especially up to the  
24 installation of the current Woods Robinson Vasquez  
25 diversion, there was no time that the Mussi property was

1 not abutting a waterway; is that correct?

2 MR. NEUDECK: Yes, that's my finding.

3 MR. HERRICK: And the distinction with the Pak  
4 and Young property, the other hearing, is that their  
5 property became benefitted by agreement to provide water  
6 in 1911?

7 MR. NEUDECK: 1911, that's correct.

8 MR. HERRICK: I believe that's all.

9 CO-HEARING OFFICER BAGGETT: Very good.  
10 Unless the prosecution has less than 35 minutes  
11 of cross, we will continue till later.

12 MR. ROSE: I'm honestly not sure and wouldn't  
13 want to delay you in any way. So if you'd rather, I'll  
14 begin next time.

15 CO-HEARING OFFICER BAGGETT: I think it's  
16 probably cleaner if we just begin all the cross at once.

17 MR. ROSE: I agree with that.

18 (Discussion off the record)

19 CO-HEARING OFFICER BAGGETT: With that, thank  
20 you very much and we'll see you sooner than later, I'm  
21 sure.

22 \* \* \*

23 (Thereupon the WATER RESOURCES CONTROL  
24 BOARD hearing adjourned at 3:25 p.m.)

25

1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
6 reported in shorthand by me, Linda Kay Rigel, a  
7 Certified Shorthand Reporter of the State of California,  
8 and thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or  
10 attorney for any of the parties to said meeting nor in  
11 any way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 this June 22, 2010.

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LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196

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