

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

Public Hearings to Determine )  
Whether to Adopt Cease and Desist )  
Orders against: )  
Woods Irrigation Company, Middle )  
River in San Joaquin County. )  
~~~~~ )

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1001 I STREET  
COASTAL HEARING ROOM  
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VOLUME II  
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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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P R O C E E D I N G S

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CO-HEARING OFFICER PETTIT: Good morning, everyone. It's a few minutes after 9:00 so I think we may as well get started.

Good morning. We're here today to continue the June 7, 2010, Woods Irrigation Company CDO Hearing. This hearing is being continued in accordance with the Notice of Continuance dated June 10, 2010.

I am State Water Board Member Walt Pettit. Vice-Chair Frances Spivy-Weber is ill today and will not be joining us.

Also present are staff counsel Marianna Aue and staff engineer Ernest Mona.

In the event there's a fire or fire drill, you will be required to vacate this room immediately. I know you've heard this announcement many times.

Please look around now and identify the exits that are closest to you that you might be able to use, and take all your valuables with you if you do have to leave.

The evacuees should exit down the stairs, not the elevators. If anyone has problems with the stairs, please make sure we know about it so we can get you whatever kind of assistance you might need.

1           The hearing will be webcast to the public. It  
2 will be recorded by both audio and video, and in  
3 addition a court reporter is present to prepare a  
4 transcript of the proceeding. Anyone who wants a copy  
5 of the transcript must make separate arrangements with  
6 the court reporter.

7           Vice-Chair Spivy-Weber advised me about an hour  
8 ago that she's going to be watching us on the webcast,  
9 so I will attempt to maintain her usual high standard.  
10 And Frances, we hope you get well and get back with us  
11 quickly.

12           The hearing continues the WIC CDO hearing that  
13 we began on June 7th. During the June 7th hearing, we  
14 completed the Prosecution Team's case-in-chief, and we  
15 began the case-in-chief for Woods and concluded the  
16 direct testimony of Mr. Moore and cross-examination by  
17 Mr. Rubin and Mr. O'Laughlin.

18           So we'll resume with the cross-examination of  
19 Mr. Moore in a moment by Central Delta and San Joaquin  
20 County.

21           The hearing will continue in the same order  
22 that we originally specified with each party who  
23 submitted testimony in evidence having the opportunity  
24 to present a case-in-chief followed by cross-examination  
25 and recross, if any.



1           After all cases-in-chief have been submitted,  
2 there will be an opportunity to present rebuttal  
3 testimony.

4           If necessary, and I'd like to emphasize if  
5 necessary, this hearing will be continued on June 25th,  
6 tomorrow, and June 28th, next Monday.

7           Before we begin, are there any procedural  
8 questions that anyone needs to raise? Seeing none,  
9 we're ready to start.

10           Mr. Herrick, I believe the next thing up is  
11 cross-examination of Mr. Moore by Mr. Ruiz.

12           MR. RUIZ: Mr. Pettit, the County is going to  
13 cross-examine Mr. Moore at this point in time, and if  
14 there's anything -- I just have a few questions but it  
15 might be more efficient if the County goes first at this  
16 time and I follow if there's anything she doesn't get  
17 to.

18           CO-HEARING OFFICER PETTIT: That's fine. Thank  
19 you.

20           MR. RUIZ: Okay.

21                           --o0o--

22                           DONALD MOORE

23                           Previously called by WOODS IRRIGATION COMPANY

24                           CROSS-EXAMINATION BY MS. GILLICK

25                           FOR SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY FLOOD

1 CONTROL & WATER CONSERVATION DISTRICT

2 --o0o--

3 MS. GILLICK: Good morning. DeeAnne Gillick on  
4 behalf of the County of San Joaquin.

5 You know, Mr. Moore, I kind of have to remember  
6 where we were a couple weeks ago. During direct  
7 testimony I think we were looking at Exhibits 2J and 2K  
8 which were maps, aerial photo maps of the Woods  
9 Irrigation Company area of the county.

10 So I think it might be helpful, Mr. Lindsay, if  
11 we could pull up 2J and 2K, is what my notes indicate.

12 CHIEF LINDSAY: This is 2J.

13 MS. GILLICK: Okay. Mr. Moore, I'm sorry, this  
14 is -- I'm not familiar with this. I don't look at  
15 aerial photos often, but to me when I look at this photo  
16 it's just a bunch of shading and some different contrast  
17 lines.

18 Can you tell me -- I mean, how can you tell  
19 from looking at this photo that there were historical  
20 watercourses or even the current watercourse on this  
21 photo just from the shading of the white areas, et  
22 cetera? Can you explain to me how you can do that?

23 MR. MOORE: Yes. What we have here is an  
24 overlay and a transparency. The color you see is from  
25 the 2005 photos of San Joaquin County. The squiggly

1 lines and so on that you asked about are from an overlay  
2 of the 1937 or the 1940 aerial photos.

3 MS. GILLICK: Can I stop you there.

4 So I understand, the coloring in the fields is  
5 from the 2005 crop pattern and what was there in 2005,  
6 the colored fields?

7 MR. MOORE: That's correct.

8 MS. GILLICK: So then the kind of the white  
9 contrast, you say it's an overlay. What does that mean?

10 MR. MOORE: That's an overlay of the photos.  
11 Just to clarify that, if they could drop back to  
12 Exhibit 2E.

13 This is the same photo with no enhancement.  
14 The black and white you see is the 1937. If you look in  
15 the upper left-hand corner, you see the date of 8-13-37,  
16 I believe that is.

17 Those are those photos that are rectified and  
18 registered to fit on the 2005 photo base, the 2005 being  
19 the color that you can see to the top of the photo for  
20 the areas where the black-and-white photos didn't color  
21 it.

22 Now, what we are looking at here where we're  
23 not doing any enhancement games is the various features.  
24 One, to make it very clear, is Duck Slough. This is  
25 Burns Cutoff.

1           When we see Duck Slough coming down in a  
2 southwesterly direction, we can see the features here.  
3 One in particular is this horseshoe shape here which is  
4 an oxbow meander that does not exist today.

5           In addition to that there are many, many --

6           MS. GILLICK: Can I stop you there.

7           You say that horseshoe meander, but it doesn't  
8 exist there today, so what is that showing you?

9           MR. MOORE: That's the original waterway.

10           When you zoom in on this and you look more  
11 closely, and when you view the photos in the standard  
12 procedure of looking at stereo viewing, which gives an  
13 enhanced three-dimensional display of the surface, this  
14 is very clear the channel that was flowing at this time.  
15 This same channel is also shown on the 1909 and 1913  
16 topographic maps of the area.

17           MS. GILLICK: So you're saying --

18           MR. RUBIN: Excuse me. Hearing Officer Pettit,  
19 I apologize for interrupting the cross-examination, but  
20 the questions that are being asked are open-ended  
21 questions. They're -- in essence, the testimony that's  
22 being elicited is much more akin to testimony that's  
23 elicited on direct testimony.

24           We're put at a severe disadvantage by having  
25 gone through our cross-examination, asked leading

1 questions of the witness as you are supposed to be doing  
2 on cross-examination.

3 I would ask that you direct Ms. Gillick to ask  
4 leading questions and not open-ended questions that  
5 elicit testimony as if it were on direct.

6 MS. GILLICK: I think under cross you can do  
7 either. I think if you are --

8 CO-HEARING OFFICER PETTIT: Excuse me, what did  
9 you say?

10 MS. GILLICK: I think under cross it's not  
11 required that it has to be a leading question. It tends  
12 to be a leading question if you want to elicit yes/no  
13 answers, but that's not a requirement under cross.

14 I'm not trying to go through -- and I believe  
15 under cross-examination there was quite a few questions  
16 regarding the direct testimony that was put forth and  
17 the ability to actually see water and see what's there  
18 and by looking at the photo being able to evaluate and  
19 come to the conclusions that Mr. Lajoie did.

20 So on cross -- on my cross, and even on the  
21 direct I think it was talked about but I don't think in  
22 detail what it was.

23 I'm just trying to elicit the detail of how he  
24 can come to these conclusions that there is water in  
25 those -- or was water in those areas.

1 CO-HEARING OFFICER PETTIT: My recollection is  
2 that under the previous cross-examination that Mr. Moore  
3 indicated on a number of occasions that he -- other than  
4 the general indication of what the map shows as to  
5 previous waterways that he couldn't give specific  
6 quantities, times, or water qualities. And so much of  
7 the questioning is beginning to sound somewhat  
8 repetitive, so I guess I'd ask where you are going with  
9 this.

10 MS. GILLICK: Okay. Well, I can just be  
11 mindful of that and keep it focused to try to, you know,  
12 not be repetitive.

13 CO-HEARING OFFICER PETTIT: I'd appreciate it.  
14 Thank you.

15 MS. GILLICK: Okay.

16 So we were talking about this photo along the  
17 horseshoe shape. And so you were -- is it correct that  
18 this 1937 photo depicts that there was actual water in  
19 that Duck Slough at that location in 1937?

20 MR. MOORE: That's correct. There are numerous  
21 places in these obvious stream features that are  
22 dominant on this '37. In many of them, it is clear  
23 there is water in them.

24 MS. GILLICK: Can you identify some of the  
25 areas that you can tell that there was water in them in

1 1937 in the Woods Irrigation Company service area?

2 MR. MOORE: Yes. In fact, other ones, I don't  
3 believe it shows in this series, but with the  
4 overlapping photos -- we do have additional photos that  
5 I don't think are in this display where you can actually  
6 see sunlight reflections off of the water.

7 And in many cases -- in fact, if we could zoom  
8 in to either this area and just to the right, to the  
9 Burns Cutoff area -- okay. We'll have to pan down  
10 towards the bottom. Okay, that's good.

11 Again, here's what we're talking about. In  
12 current photos and today's maps this feature and this  
13 feature above it do not show. These are classic stream  
14 meanders. We have the features here, and coming down  
15 here. We have streams coming down here. We have  
16 streams running through here in 1937.

17 If you could just pan down a little bit more.

18 MS. GILLICK: And just the general area, if you  
19 could describe that area that you're -- it's south of  
20 Burns Cutoff? Kind of what general area are we...

21 MR. MOORE: Yes. This is along Duck Slough.  
22 This is following to the southwest, south of Highway 4  
23 and continuing southwest from Highway 4 along Duck  
24 Slough.

25 MS. GILLICK: Going south along Duck Slough?

1           MR. MOORE:  Yes.  Correct.  And we can see a  
2  waterway continuing in this light-colored field  
3  following southwest along Duck Slough down towards the  
4  Mussi parcel.  That is water in this slough.

5           If we just shift this photo over to 2F, this is  
6  the same area and same -- it appears to be rotated.  
7  There we go.  Again, if we can zoom into this same area  
8  right here where we were just concentrating along Duck  
9  Slough before.  That's good.

10           The same area we were just looking at along  
11  Duck Slough, we now see the water is gone.  Between '37  
12  and 1940, that stream that was flowing right down  
13  parallel to Duck Slough or Inland Drive, High Ridge  
14  Levee, the various names it was called, that had been  
15  filled in.  Excavation equipment had filled that slough  
16  in.  And in 1937, it was obvious there was water in that  
17  slough.

18           MS. GILLICK:  And is it your opinion that this  
19  stretch and course at Duck Slough was an historic route  
20  of Duck Slough?  I know these photos we're looking at  
21  are 1937 and 1940, but was Duck Slough located here  
22  before that?

23           MR. MOORE:  Yes, that is the historic channel.  
24  Again, if we could go back to 2E.  Again, just to --  
25  stop right there.



1           Again, this was the waterway we are talking  
2 about that in 1940 photos has been filled in. There's  
3 clearly water in this.

4           As we continue down following Duck Slough  
5 coming into the Mussi parcel, we can see all the  
6 indications of stream meanders, oxbow meanders coming  
7 through there.

8           When we come down to the Robinson or Tanaka we  
9 can see classic oxbow meanders coming off the  
10 current-day Duck Slough. You can see those same angles  
11 down here. So all along that slough there are classic  
12 indications of sloughs and streams.

13           MS. GILLICK: Okay. So the oxbow, when you say  
14 that's a classic indication, that's an indication to you  
15 that it's a natural historical watercourse?

16           MR. MOORE: That's correct. Oxbow is a  
17 geologic or geomorphic term for a meander, a kind of a  
18 horseshoe-shaped meander in a stream, correct.

19           One other thing to clarify this. If we pan  
20 back up to the north and over to the right back to Burns  
21 Cutoff -- now go to the right.

22           Right in here where we can see Burns Cutoff, we  
23 can see -- okay, just a little more to the right.  
24 That's good. And then down just a little bit.

25           Again, we see natural waterways coming right

1 off of Duck Slough -- I mean, excuse me. Here is Duck  
2 Slough again. We can see the old natural course of the  
3 slough coming right from Burns Cutoff following Duck  
4 Slough to the southwest around the meander we just  
5 talked about, the oxbow.

6 We can see two historic channels that flowed  
7 through that area.

8 And we can see a continuation of one of the  
9 channels coming off here. About half of this was  
10 irrigation, about half was natural.

11 We can see a natural waterway coming off to the  
12 south from the railroad tracks.

13 And what's very important coming from just to  
14 the east again coming off of Burns Cutoff, these are  
15 classic natural stream meanders. We can even see where  
16 they go over right in here.

17 This is what is now the sewage ponds. And we  
18 can see these stream meanders where they continued  
19 before the sewage ponds were in place and continued down  
20 as natural waterways right through this area.

21 This is where the 1909 irrigation maps show  
22 waterways.

23 I don't know if we can see it here, but if we  
24 could zoom right into this area here.

25 This doesn't show quite as clearly as I would

1 like, but in this portion of this natural waterway  
2 coming down from Burns Cutoff you can see water, you can  
3 see trees growing, and it's about this point here where  
4 it takes on more improved techniques. But you can see  
5 the old classic stream meanders followed by the canal  
6 system.

7 MS. GILLICK: So if it's not showing on this  
8 photo, how is it that you can see that?

9 MR. MOORE: This is a reduced resolution photo.

10 CO-HEARING OFFICER PETTIT: Excuse me. I'm  
11 going to interrupt here for a moment. I've got a  
12 question for Ms. Gillick.

13 I think this information, subject to the extent  
14 to which the Board accepts the technology, is certainly  
15 useful for establishing Mr. Moore's analysis of the  
16 hydrology of the area at the time.

17 However, looking back at the CDO, the CDO  
18 specifically asks for information about what's going on  
19 in Woods' service area, and I would be more interested  
20 in hearing questions that are responsive to that.

21 And Mr. Moore, with all due respect, sir, I  
22 think the answers that you're giving are going beyond  
23 the questions that are asked, and they also appear to me  
24 to be the same information you testified to on the 7th,  
25 and I'm hearing the same answers, and I think those

1 answers are in the record.

2 So I would ask that, Ms. Gillick, you propose  
3 to focus this to be more responsive to the CDO.

4 And Mr. Moore, if we continue with this  
5 discussion, I would like to see you just limit the  
6 response to the questions rather than the extent of the  
7 analysis which you're giving which you did give the  
8 other day.

9 MS. GILLICK: And I appreciate that. And I've  
10 got several questions I can direct that are focused.

11 But I do think the CDO asked about riparian  
12 water rights, the riparian water rights that the  
13 District -- the Company is serving to those riparian  
14 lands. So I do think it's relevant.

15 Mr. Moore is not my witness, but I do think it  
16 is relative to the CDO because the CDO specifically  
17 asked about riparian lands, riparian water that's being  
18 served.

19 MR. RUBIN: Hearing Officer Pettit, I would  
20 like an opportunity to respond to that.

21 CO-HEARING OFFICER PETTIT: Go ahead,  
22 Mr. Rubin.

23 MR. RUBIN: Very briefly. We have been  
24 reserving raising any objections, but I completely  
25 disagree with Ms. Gillick's statement about the

1 relevance of testimony about riparian rights.

2           The question before you, as I understand it, is  
3 whether Woods Irrigation Company has water rights.

4 Unless there is an assertion, and I don't believe there  
5 is one, that Woods Irrigation Company owns property, I  
6 don't see how a riparian right is relevant to whether  
7 Woods Irrigation Company holds a water right.

8           And I don't -- I understand the preference of  
9 the hearing officer to wait until the testimony comes in  
10 before we raise our objections, and we'll be doing that.  
11 I only wanted to preserve our right to do that given  
12 Ms. Gillick's statement.

13           CO-HEARING OFFICER PETTIT: Thank you,  
14 Mr. Rubin. And as you can probably tell from my  
15 question a moment ago -- is this thing working? Can you  
16 hear me in the back there? Are you having trouble,  
17 John?

18           MR. HERRICK: It's a little low. No offence.

19           CO-HEARING OFFICER PETTIT: I'll try and speak  
20 up a little more then.

21           Well, Ms. Gillick, you know my concern. And  
22 I'll let this go on for a bit longer, but I do want to  
23 keep it focused, and I don't want to hear repetitive  
24 testimony that we've heard already.

25           MS. GILLICK: I'll move on in my questions.

1 CO-HEARING OFFICER PETTIT: Thank you.

2 MS. GILLICK: Mr. Moore, you mentioned during  
3 your direct testimony a reference to the Atwater study,  
4 and I didn't understand or know what that Atwater study  
5 was referring to. Can you identify what the Atwater  
6 study is?

7 MR. MOORE: The Atwater study was a soils and  
8 water survey done in the 1970s, I believe published in  
9 1982. In Mr. Lajoie's testimony, he referred to it.

10 And the results of Mr. Atwater's study is he  
11 used 1960 aerial photos to identify historic stream  
12 courses in the Woods Irrigation District and the  
13 surrounding area for his study of basically the Holt  
14 Quadrangle.

15 MS. GILLICK: And are your conclusions today  
16 consistent with the Atwater study?

17 MR. MOORE: Correct. Most of the features that  
18 I saw that are natural streams and sloughs coincided  
19 near perfectly with Mr. Atwater's, but with the  
20 technology available today, we were able to identify  
21 considerably more features using the enhancement  
22 techniques and computers that were not available at the  
23 time he did that study.

24 MS. GILLICK: There was some testimony  
25 regarding Exhibit 2D, so maybe if we could pull up

1 Exhibit 2D.

2 And during some previous testimony -- and let's  
3 focus in on the area of the Woods Irrigation Company  
4 service area. So that would be Roberts Island, right?

5 Number 60 and 70 on the map, indications of 60  
6 and 70, is that the general area of the Woods Irrigation  
7 Company service area?

8 MR. MOORE: Yes. In the center there is the  
9 San Joaquin River, so we're looking to the west or left  
10 of the numbers. Those numbers are for soils.

11 Overlaid onto this topographic map was an old  
12 soil survey from the '20s or whenever it was. So that's  
13 all those numbers refer to is the soil type.

14 MS. GILLICK: And there was reference during  
15 your testimony to lines, but there was no indication  
16 what those lines were referring to or indicating. Do  
17 you have an opinion or reference you can explain what  
18 the lines on the map refer to or indicate?

19 MR. MOORE: Yes. There are a number of these  
20 lines. An example is this area here where they're  
21 showing old -- in 1911 when this was surveyed where  
22 they're showing stream courses and sloughs that were  
23 mapped at that time.

24 MS. GILLICK: Can you describe those lines just  
25 for the record? Are they the orange lines?

1           MR. MOORE:  Yes.  We're talking south of Burns  
2 Cutoff along the west side of the Stockton Quadrangle.  
3 This is Burns Cutoff here.

4           MS. GILLICK:  So below the number 80 and below  
5 the railroad tracks, in that area?

6           MR. MOORE:  Yes.  We're going from Burns Cutoff  
7 near the west side of the map continuing down to the  
8 south.  The indications on the map, they're showing what  
9 were irrigation features.  They're showing sloughs and  
10 streams that were mapped in 1911.

11          MS. GILLICK:  And the date of this map, then,  
12 was 1911?

13          MR. MOORE:  1911 was when it was surveyed.  It  
14 was published in 1913.

15          MS. GILLICK:  Okay.  Thank you.  I have no  
16 further questions.

17          CO-HEARING OFFICER PETTIT:  Mr. Ruiz, did you  
18 have anything?

19          MR. RUIZ:  Ms. Gillick has covered it.

20          CO-HEARING OFFICER PETTIT:  Pardon me?

21          MR. RUIZ:  Ms. Gillick has covered it.

22          CO-HEARING OFFICER PETTIT:  Thank you, sir.

23 Ms. Aue or Mr. Mona?

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QUESTIONS FROM STAFF ATTORNEY AUE  
FOR THE STATE BOARD  
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STAFF ATTORNEY AUE: Ms. Gillick brought up an Atwater study. Is that in evidence? Is there a reference to that?

MR. MOORE: No, that's in the Mr. Lajoie testimony in the beginning of the proceedings.

STAFF ATTORNEY AUE: Beginning of this proceeding?

MR. HERRICK: No. Atwater was a source used by Mr. Lajoie in producing documents for the Mussi, Pak and Young hearing.

STAFF ATTORNEY AUE: So it's not in evidence in this hearing?

MR. HERRICK: Not in evidence here. Just for you guys, we intend to just put those all in, I guess, on rebuttal, just so they're there so you know what they're talking about, although I don't think we have any testimony regarding them but we might cite to them or something. So they are available. They will be available.

MR. RUBIN: I would like to make a clarification. Mr. Herrick I don't believe made a

1 correct representation.

2           The study by Mr. Atwater, I don't know if that  
3 has been marked as an exhibit in any proceeding before  
4 the State Water Resources Control Board. There has been  
5 references in other proceedings, but I don't believe  
6 we've seen the study.

7           MR. HERRICK: If I misspoke, I apologize.  
8 Mr. Lajoie relied upon them. Mr. Lajoie's testimony is  
9 in the Pak and Young but not those Atwater study  
10 documents.

11           MS. GILLICK: And just for the record, it is a  
12 reference in Mr. Moore's testimony as well regarding  
13 Exhibit 2K.

14           There is a reference where his maps he's  
15 depicted the Atwater study lines, and that again is a  
16 reference to Mr. Moore's testimony regarding 2K.

17           STAFF ATTORNEY AUE: Thank you.

18           CO-HEARING OFFICER PETTIT: I believe that  
19 completes the cross-examination for Mr. Moore. And we  
20 should be ready to move on unless there is some recross,  
21 which I skipped. Okay.

22           Mr. Herrick.

23           MR. HERRICK: Yes, Mr. Chairman. John Herrick  
24 for Woods again. I do have a little bit of redirect  
25 just to cover a few issues that were touched upon in

1 cross.

2 --o0o--

3 REDIRECT EXAMINATION BY MR. HERRICK

4 FOR Woods IRRIGATION COMPANY

5 --o0o--

6 MR. HERRICK: Mr. Moore, it's been a few weeks  
7 now, but you were asked questions by Mr. Rubin regarding  
8 how you might know whether or not any of the lines on  
9 the maps you were checking dealt with irrigation or  
10 something else. Do you recall those questions?

11 MR. MOORE: Yes, I do.

12 MR. HERRICK: And is it correct to say that you  
13 examined a Woods map dated approximately 1909, a  
14 Hendersen and Billwiller map dated 1914, a Woods  
15 Irrigation Company map dated 1941, the 1911 topo map,  
16 and from those maps you made certain conclusions about  
17 what is and isn't an irrigation ditch; is that correct?

18 MR. MOORE: Yes, that's correct.

19 MR. HERRICK: And that's because some of those  
20 maps actually label the lines as main irrigation ditch  
21 or drainage ditch or canal, et cetera; is that correct?

22 MR. MOORE: Yes.

23 MR. HERRICK: And so in your work then you  
24 overlaid those maps' features designated as irrigation  
25 or drainage ditches and matched them to the historical

1 geomorphic features that you had seen; correct?

2 MR. MOORE: That's correct.

3 MR. HERRICK: And so it's not speculation that  
4 any of those channels were used for irrigation. It's  
5 based on the information you were presented with on the  
6 maps; is that correct?

7 MR. MOORE: Yes, that's correct.

8 MR. HERRICK: And some of the maps have the  
9 word "gates" and stuff like that indicating control of  
10 water through that channel, correct?

11 MR. MOORE: Yes.

12 MR. HERRICK: And those maps also indicate that  
13 the lines that were designated irrigation ditches or  
14 canals all merged together at the main irrigation point  
15 of the Woods Irrigation Company, right?

16 MR. MOORE: Yes.

17 MR. HERRICK: And given your general knowledge  
18 of the area, water was then diverted from Woods into  
19 those canals, correct?

20 MR. MOORE: Yes.

21 MR. HERRICK: So when you've designated  
22 something irrigation or drainage ditches, those aren't  
23 assumptions or guesses; they are based on the facts  
24 before you, correct?

25 MR. MOORE: Yes. Those are all on the maps and

1 the labels on the maps, and there was near-perfect  
2 correlation with the natural stream and slough features  
3 that are identifiable on the aerial photographs.

4 MR. HERRICK: Mr. Moore, there were also  
5 questions dealing with your photo enhancement work and  
6 related activities and the words altered or stitched or  
7 mosaicked were used; do you recall those?

8 MR. MOORE: Yes.

9 MR. HERRICK: Now, in your analysis and use of  
10 these various maps, did you do anything that altered the  
11 data in the maps?

12 MR. MOORE: No.

13 MR. HERRICK: So your techniques you used may  
14 highlight one thing so you could better discern  
15 differences, but you didn't change any of the features  
16 to the map, correct?

17 MR. MOORE: That's correct.

18 MR. HERRICK: And it's typical or normal or the  
19 usual practice in your industry to do this sort of  
20 matching or stitching together or mosaicking of maps in  
21 order to make them fit together, correct?

22 MR. MOORE: Yes. That's a standard procedure.  
23 If you look at Google maps or anything else, virtually  
24 any map you see has been rectified and mosaicked or  
25 stitched today. This is just a common standard practice

1 in the industry.

2 MR. HERRICK: And in your work on this matter  
3 doing the maps that you've presented, did any of this  
4 stitching or mosaicking of maps create features that  
5 weren't there before?

6 MR. MOORE: No, absolutely not.

7 MR. HERRICK: You had questions with regards to  
8 your use of the term riparian features and whether or  
9 not those were watercourses at any particular time; do  
10 you recall those?

11 MR. MOORE: Yes.

12 MR. HERRICK: And is it correct to say that in  
13 your analysis of documents, including up through the  
14 1937 aerial photographs, you specifically did identify  
15 water in certain channels or features; is that correct?

16 MR. MOORE: Yes, that's true. It was clearly  
17 identifiable for a number of reasons. With even minimal  
18 enhancement of the photos, we could identify water.

19 In most of those areas, there was near-perfect  
20 correlation with some of the maps, particularly the  
21 1911/1913 maps that we just pointed out a few minutes  
22 ago. In many cases, there was near-perfect correlation  
23 in the overlays.

24 MR. HERRICK: And I just want to confirm that  
25 part of your work relied upon the expert testimony

1 Mr. Lajoie presented at different hearing, correct?

2 MR. MOORE: That's correct. And I did work  
3 with Mr. Lajoie on that, and I did use his work,  
4 particularly the Atwater and his soils map studies and  
5 so on.

6 MR. HERRICK: And you actually worked with him  
7 to produce that material that you are relying upon here;  
8 is that correct?

9 MR. MOORE: That's correct. Ken and I worked  
10 shoulder-to-shoulder on some of these projects.

11 MR. HERRICK: And among other things, your  
12 Exhibit 2K is one of the maps presented by Mr. Lajoie in  
13 that previous hearing?

14 MR. MOORE: That's correct. That shows the --  
15 the heavy red areas are his soils, and the lines labeled  
16 A, B, C and D. Could we -- maybe we could put that up  
17 there, 2K.

18 MR. HERRICK: 2K, please.

19 MR. MOORE: Yes. All of the heavy red areas  
20 represent the soils work that Ken had taken from 1952  
21 San Joaquin soil surveys. That was all his work. I did  
22 participate in that, but 90 percent of it was  
23 Mr. Lajoie.

24 These lines that show up a little faintly, the  
25 red squiggly lines where you see the A, B, C and D,

1 those are the overlays of the features identified by  
2 Mr. Atwater by the Atwater report that Mr. Lajoie used.  
3 The blue lines are the additional riparian features that  
4 myself -- that mainly myself, I identified.

5 MR. HERRICK: Could you put 2H up, please.

6 Mr. Moore, you were questioned a little bit  
7 about your Exhibit 2H and whether or not -- oops, sorry.  
8 Excuse me. Well, these are my words now -- whether or  
9 not you were confusing different elevations based upon  
10 the map you had produced here. Do you recall those  
11 questions?

12 MR. MOORE: Yes, I do.

13 MR. HERRICK: And could you briefly describe  
14 how you differentiate between different elevations and  
15 determine whether or not one feature is higher than  
16 another when examining maps like 2H.

17 MR. MOORE: In conjunction with doing these,  
18 this is what is called a linear directional filter --  
19 excuse me, a directional filter. That's a standard  
20 procedure used in remote sensing and image enhancement  
21 for studying geomorphic features.

22 And so in conjunction with doing the  
23 enhancement where you can see the Burns Cutoff and  
24 rivers and so on more clearly, all of these features,  
25 the standard nonaltered aerials, were always



1 side-by-side with the computer to evaluate to make sure  
2 that nothing was incorrect.

3 In fact, if you zoomed in on these, you could  
4 even see how the enhancement technique would enhance  
5 writing on the photos.

6 Right up there, for instance, you can see how  
7 the enhancement techniques raised and made it more clear  
8 to see the labeling on the photograph.

9 So this is how the enhancement technique works  
10 to -- if you pan down a little bit, please, down towards  
11 the bottom. Again, you see it -- stop. Yeah.

12 So this shows clearly the features, but you do  
13 have to be careful and study the nonaltered photos to  
14 make sure that you're looking at natural features and  
15 not lettering or some other manmade feature on the  
16 photo.

17 MR. HERRICK: So when you're analyzing this  
18 sort of relief map or picture, you are also taking into  
19 consideration other maps of the area to sort of  
20 calibrate what you're doing and not make mistakes; is  
21 that correct?

22 MR. MOORE: Absolutely. That's completely  
23 necessary and standard procedure using this technique  
24 because the keyword is directional. If you run the  
25 filter one direction the relief shows up correctly; if

1 you run it the opposite direction it will reverse it.  
2 So you run it perpendicular to a feature like the slough  
3 coming down this area, but you always check the feature  
4 to make sure that something didn't reverse.

5 A good sample right here, you can see the  
6 labeling on the photo. This shows it was depressed or  
7 going into the ground. The previous examples of the  
8 labeling on the photo, they were raised coming out of  
9 the ground.

10 So these are the type of things that you always  
11 use and view the nonaltered photos to crosscheck  
12 everything you identify.

13 MR. HERRICK: Do you have any doubt that the  
14 features you've identified as ridges or levees or  
15 channels are somehow incorrect and the levees you've  
16 identified might be holes in the ground or the holes in  
17 the ground might be levees?

18 MR. MOORE: No, there is no doubt whatsoever,  
19 because all of the final judgments were done from the  
20 nonaltered photos.

21 This was mainly done as a demonstration  
22 technique so features would stand out more clearly for  
23 demonstration as we're doing right now.

24 It's also a good technique to bring different  
25 features to your attention for further analysis. But no

1 conclusions were made off of these. They just led us to  
2 points to look at on the nonaltered photos with standard  
3 stereo viewing techniques.

4 MR. HERRICK: Mr. Moore, you were questioned on  
5 Exhibit 2K. Let me -- that may not be correct.

6 Mr. Moore, you were asked some questions as to  
7 why features you've identified were on one map and not  
8 another. Do you recall those questions?

9 MR. MOORE: Yes, I do.

10 MR. HERRICK: And is it correct to say that  
11 some maps may indicate fields that don't have a crop on  
12 them at a certain time unless you can see the underlying  
13 soil structure, whereas other maps might have crops on  
14 them and the structures are then hidden?

15 MR. MOORE: Yes, that's correct. Most of the  
16 relief in this entire area is just a few feet, usually  
17 less than 5 feet.

18 So just a heavy crop like alfalfa -- a good  
19 example, if we go back to photo 2E, and if we could pan  
20 to the west. A little bit more. Then down just a  
21 little bit. We want to go into this area right here.  
22 That's probably good enough.

23 This area right here which is along Duck  
24 Slough --

25 MR. HERRICK: Again, give us more of a

1 description of where you're indicating, please.

2 MR. MOORE: This is just west of the Mussi  
3 parcel along Duck Slough on the west side of Duck  
4 Slough. This is the 1937 photo. You notice it's dark.  
5 There was probably something like alfalfa growing there.  
6 We can see very few features in this area.

7 If we go to photo -- I mean Exhibit 2F. We'll  
8 be zooming into the same area. Pan down. Right there.  
9 If we could zoom into this area. We're in the same area  
10 here near the Mussi parcel along Duck Slough. Now, in  
11 the same area -- that's good.

12 Notice there's no heavy crop there, now it's  
13 very clear. We can see a blow-out and a riparian  
14 feature coming off of Duck Slough.

15 When we come up, we can see those same features  
16 very clearly in 1940. They were hardly discernable on  
17 the 1937s just due to crop growth.

18 So everything was always looked at on two  
19 different sets of photos. I even obtained some 1963  
20 photos of the areas. And so we used about three  
21 different series of photos plus all of the maps before  
22 we made any conclusions.

23 But this is a perfect example of how in 1937  
24 you could see virtually nothing due to heavy crop  
25 growth; in 1940 there were very clear riparian and

1 slough features.

2 MR. HERRICK: So the features aren't appearing  
3 and disappearing, they're just still there and they're  
4 either covered or not covered by something like a crop?

5 MR. MOORE: Correct. These features, the  
6 relief on these is probably just a couple of feet, so a  
7 thick crop like alfalfa could totally cover them up.

8 CO-HEARING OFFICER PETTIT: Mr. Herrick, during  
9 the cross-examination on the 7th, Mr. Moore was asked a  
10 number of questions. In many cases he had to respond  
11 that he didn't know the answer when it came to specifics  
12 about quantities of water that were involved and  
13 diversion points and so on.

14 And so I feel obligated to give him a chance to  
15 defend what he has established with these techniques,  
16 but I hope we're not going to repeat the three or four  
17 hours of explanation of the techniques that we went  
18 through the other day because I think he explained them  
19 pretty fully at that time.

20 So I just am concerned about whether you intend  
21 to plow the same ground again or not.

22 MR. HERRICK: I'm not trying to drag this out,  
23 Mr. Chairman. I just -- during the cross-examination  
24 whenever the questioner brings up an issue that I  
25 thought might need better explanation, I try to recover

1 that. So it is going back over the same ground. I  
2 don't mean to be duplicative, I just mean to make sure  
3 it's clear that the suggestions in the questions are  
4 fully answered.

5 But bearing in mind what you just said, I will  
6 try to shorten what I'm doing here so we don't beat it  
7 too much.

8 CO-HEARING OFFICER PETTIT: Thank you.

9 MR. HERRICK: Mr. Moore, on cross-examination  
10 you were presented with what's been designated MSS  
11 No. 2; do you recall that?

12 MR. MOORE: Yes, I do.

13 MR. HERRICK: And I believe it was two pages.  
14 One page was the blowup of the -- I'll call it the  
15 legend, and then the full diagram. And it's a map, as  
16 I'm reading from the exhibit. It's a map showing  
17 location of Cross Levee and proposed irrigation ditch  
18 along base of levee.

19 Do you have that in front of you?

20 MR. MOORE: Yes, I do.

21 MR. HERRICK: You were asked some questions  
22 about whether or not and why this didn't show any  
23 indication of Duck Slough; do you recall that?

24 MR. MOORE: Yes, I remember that question.

25 MR. HERRICK: Now, as you look at this map, it

1 has a line running along what you've previously  
2 identified as the feature that was Duck Slough; is that  
3 correct?

4 MR. MOORE: Correct.

5 MR. HERRICK: And along this line in a couple  
6 points it says Cross Levee; is that correct?

7 MR. MOORE: That's correct.

8 MR. HERRICK: But again, the map is a map of a  
9 proposed ditch; is it not?

10 MR. MOORE: Whatever it says on it. That's  
11 what I was told when I was given it.

12 MR. HERRICK: So do you know whether or not the  
13 person who drew this map meant the line to be either the  
14 proposed ditch or the Cross Levee or the Cross Levee and  
15 the proposed ditch or the Cross Levee and the proposed  
16 ditch and the remnants of an old slough?

17 MR. MOORE: I have no idea what their intent  
18 was, but Cross Levee and Inland Drive and Duck Slough  
19 seem to be used interchangeably for the area, for the  
20 general area.

21 MR. HERRICK: And it's clear on this map, is it  
22 not, that many other features in the area simply aren't  
23 included because they're not relevant to the proposed  
24 line of irrigation ditch; is that correct?

25 MR. MOORE: Right. I can't tell. I don't

1 think anyone can tell if this line indicated the road  
2 that was on the levee or the natural course of the  
3 waterway that was the original watercourse in the area.  
4 I don't think that can be discerned from this map.

5 MR. HERRICK: That's all I have. Thank you,  
6 Mr. Chairman.

7 CO-HEARING OFFICER PETTIT: Thank you,  
8 Mr. Herrick. Any recross, Mr. Rose?

9 MR. ROSE: No. Thank you.

10 CO-HEARING OFFICER PETTIT: Mr. Rubin,  
11 Mr. O'Laughlin, and Mr. Powell?

12 MR. O'LAUGHLIN: We hopefully will have  
13 Mr. Rubin go first, and hopefully he'll cover most of  
14 our points and be moving the hearing along.

15 CO-HEARING OFFICER PETTIT: Thank you. Please  
16 proceed, Mr. Rubin.

17 --o0o--

18 CROSS-EXAMINATION BY MR. RUBIN

19 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

20 --o0o--

21 MR. RUBIN: Thank you. My name is Jon Rubin,  
22 attorney for San Luis & Delta-Mendota Water Authority.  
23 Good morning.

24 MR. MOORE: Good morning.

25 MR. RUBIN: Mr. Moore, on redirect Mr. Herrick



1 asked you some questions about photos that depicted  
2 water in a feature that you've identified as Duck  
3 Slough; do you recall that?

4 MR. MOORE: Yes.

5 MR. RUBIN: And the photos that you're  
6 referring to are photos that were taken in 1937; is that  
7 correct?

8 MR. MOORE: Yes.

9 MR. RUBIN: And the 1937 photos -- are the  
10 original photos that you examined an exhibit to your  
11 testimony?

12 MR. MOORE: Yes.

13 MR. RUBIN: Which exhibit has the original  
14 photographs?

15 MR. MOORE: Exhibit 2E has the original 1937  
16 photographs.

17 MR. RUBIN: Mr. Moore, Exhibit 2E has multiple  
18 photographs depicted on it; isn't that correct?

19 MR. MOORE: Yes. These 1937 photographs were  
20 shot with 60 percent overlap so that 60 percent of the  
21 photos overlap. And I believe there was about six  
22 photos that were rectified and stitched together for  
23 this exhibit.

24 MR. RUBIN: And is it my understanding in the  
25 top right corner there's a photograph that depicts the

1 city of Stockton in 1937?

2 MR. MOORE: The top right corner is the 2005  
3 map base. From the color photos you see where the 2005  
4 map base of the National Agricultural Image program, the  
5 black-and-white photos where you can see the dates on  
6 them in the upper left corner is -- the black and white  
7 is the 1937 photos.

8 MR. RUBIN: Now, let's take as an example,  
9 there is a section at the top right corner of Woods  
10 Irrigation Company Exhibit 2E right where I believe it's  
11 Burns Cutoff connects to -- is that the San Joaquin  
12 River in the top right corner?

13 MR. MOORE: Are you talking up in here or down  
14 in here?

15 MR. RUBIN: Let me rephrase my question to make  
16 sure that we have a clear record.

17 There is a fairly large watercourse about maybe  
18 a quarter of the way down the page on the right side  
19 that moves from east to west and then towards the north.

20 MR. MOORE: If we're talking this feature here,  
21 that is the Burns Cutoff.

22 MR. RUBIN: Burns Cutoff connects to what  
23 watercourse?

24 MR. MOORE: The San Joaquin River.

25 MR. RUBIN: And then if you're in the San

1    Joaquin River traveling from the east to the west,  
2    starting at the right side of the page there's a -- you  
3    can make a turn into Burns Cutoff?

4           MR. MOORE:   Yes.  It appears you can turn to  
5    the south off the San Joaquin River.

6           MR. RUBIN:   Yes.  And then if you travel down  
7    Burns Cutoff there is another watercourse that you can  
8    make a left turn into; is that correct?

9           MR. HERRICK:  Mr. Rubin, if you don't mind, I'm  
10   getting confused.

11          MR. RUBIN:   Let me use the pointer and have  
12   Mr. Moore describe the area.

13          MR. HERRICK:  If I may without incurring the  
14   wrath, the larger waterway that starts going east to  
15   west and then angles up to the northwest is the San  
16   Joaquin River, but it's the deep water ship channel.

17                 The sinuous line coming from the bottom right  
18   going northwest then going back northeast joining that  
19   larger one is the original San Joaquin River channel.  
20   But it does merge with that deep water ship channel  
21   becoming the San Joaquin again.

22          MR. RUBIN:   And so just so the record's clear,  
23   Burns Cutoff connects to, as Mr. Herrick described, the  
24   deep water channel of the San Joaquin River off of a  
25   portion of Burns Cutoff, Mr. Moore, the original San

1     Joaquin River exists; is that correct?

2             MR. MOORE:   That's my understanding.   The  
3     original river is in the lower right area as you just  
4     pointed to.

5             MR. RUBIN:   And I wanted to focus your  
6     attention on the area where the San Joaquin River, the  
7     original San Joaquin River, joins Burns Cutoff, and  
8     specifically the parcel just to the right of the  
9     original San Joaquin River as it joins Burns Cutoff.

10            MR. MOORE:   Okay.   I see what you mean.

11            MR. RUBIN:   And I was hoping that maybe  
12    Mr. Lindsay can focus us on that area of the map, the  
13    area that I just described.

14            Now, the area that I just described is a place  
15    where apparently two maps have come together.   It's an  
16    area where there's a black-and-white photograph that  
17    joins with a color photograph; is that correct?

18            MR. MOORE:   That's correct.

19            MR. RUBIN:   And if I understand, on the color  
20    photograph, again in the area just east of the  
21    confluence of the San Joaquin River and Burns Cutoff is  
22    some sort of developed property?

23            MR. MOORE:   Yes.   I can see modern buildings  
24    there, yes.

25            MR. RUBIN:   And is it correct that the modern

1 buildings that are depicted on your color photograph are  
2 also reflected on the black-and-white photograph?

3 MR. MOORE: Well, on this I can't see that for  
4 sure on this. I didn't study that area in particular  
5 for my analysis. And from this I can't really see that.

6 I do have high res versions of these photos.  
7 Again, this was a reduced resolution for display only,  
8 so some of the features are not as clear.

9 MR. RUBIN: Is there any reason why we would  
10 see features that are depicted on the color photograph  
11 on the black-and-white photograph if they exist post  
12 1937?

13 MR. MOORE: Say that again. I didn't follow  
14 you.

15 MR. RUBIN: Is there any reason why we would  
16 see on the black-and-white photograph features that  
17 exist post 1937?

18 MR. MOORE: I don't -- I don't see what you're  
19 saying there, and I can't see anything clearly on this  
20 of what you're even talking about.

21 MR. RUBIN: Let me ask my question, and I'll  
22 try to rephrase it so it's more clear.

23 If I am looking at Woods Irrigation Company  
24 Exhibit 2E, if I understand you correctly, the  
25 black-and-white areas, the areas that are depicted in

1 black and white, are areas that are reflected in the  
2 1937 photograph; is that correct?

3 MR. MOORE: On the black-and-white is a 1937  
4 photograph; the color is a 2005 photograph.

5 MR. RUBIN: So there is no reason if I'm  
6 looking at a portion of the area that's in black and  
7 white that there would be a feature that only exists  
8 post 1937?

9 MR. MOORE: The -- I run -- on this particular  
10 photograph, you're on a low-quality edge of the photo,  
11 and I -- in that display, I can't see anything of what  
12 you're talking about. I'm not sure what you're saying  
13 there.

14 MR. RUBIN: Let me ask another question then.  
15 Is it possible that when you layer photographs  
16 that features from one photograph appear to exist on  
17 another photograph?

18 MR. MOORE: Normally there would not be unless  
19 we dropped the transparency of it. In this case there  
20 was no reduction of the transparency.

21 If some bled through or if there's some area --  
22 you've got to understand on this you're looking at the  
23 very edge of the photograph which is the poorest quality  
24 of any photo, and I can't see anything of a correlation  
25 from what you're asking there. I don't see it on this.

1           MR. RUBIN:  Okay.  Let me change subjects for a  
2 second.  There was some discussion about a report done  
3 by a gentleman by the name of Atwater; is that correct?

4           MR. MOORE:  Correct.

5           MR. RUBIN:  Mr. Atwater -- I assume it's a  
6 mister; is that correct?

7           MR. MOORE:  That's my understanding, yes.  
8 Brian -- I believe it was Brian Atwater.

9           MR. RUBIN:  Mr. Atwater.  You did not work with  
10 Mr. Atwater directly when you prepared your testimony?

11          MR. MOORE:  No, I didn't.

12          MR. RUBIN:  Did you talk to Mr. Atwater as you  
13 were preparing your testimony?

14          MR. MOORE:  No, I did not.

15          MR. RUBIN:  Did you independently verify the  
16 work that Mr. Atwater did?

17          MR. MOORE:  Just in conjunction with  
18 Mr. Lajoie.  He did most of that.  I just contributed a  
19 small amount to it.

20          MR. RUBIN:  Did you independently review the  
21 work that Mr. Lajoie did?

22          MR. MOORE:  Yes.

23          MR. RUBIN:  So every conclusion that Mr. Lajoie  
24 drew, you traced back to the source information to  
25 ensure that Mr. Lajoie rendered a proper conclusion?

1 MR. MOORE: That's correct.

2 MR. RUBIN: Okay. Did you review Mr. Atwater's  
3 work?

4 MR. MOORE: I reviewed the diagrams that were  
5 presented in the Lajoie testimony and all, I did that.  
6 I did not read the full Atwater report because a lot of  
7 it did not apply to this.

8 MR. RUBIN: Do you know if Mr. Atwater has made  
9 any corrections to the report or updated his report  
10 since it was originally produced?

11 MR. MOORE: I'm not aware of that. I don't  
12 know.

13 MR. RUBIN: Thank you.

14 Now, Mr. Moore, Mr. Herrick quickly referenced  
15 a bunch of -- numerous maps that you reviewed as you  
16 identified irrigation features; is that correct?

17 MR. MOORE: That's correct.

18 MR. RUBIN: Can you provide me that list of  
19 maps?

20 MR. MOORE: The primary ones I used were the  
21 1909 map labeled Wood Brothers Lands.

22 MR. RUBIN: Let's go one at a time.

23 MR. MOORE: That would be Exhibit 2A.

24 MR. RUBIN: Okay. Now, let's start there and  
25 go one at a time.



1           In Exhibit 2A, and I presume what you've  
2   referenced is Woods Irrigation Company Exhibit 2A?

3           MR. MOORE:   Correct.

4           MR. RUBIN:   On Woods Irrigation Company  
5   Exhibit 2A, you believe that there are features that are  
6   labeled irrigation canals?

7           MR. MOORE:   That's correct.

8           MR. RUBIN:   And which features are labeled on  
9   this map as an irrigation canal?

10          MR. MOORE:   The central feature coming from  
11   north to south from the railroad tracks to the south.  
12   Pan to the right.   Yes.

13          MR. RUBIN:   And, I'm sorry, I might have a poor  
14   quality.   I can't see where on that map it says  
15   irrigation canal.

16          MR. MOORE:   I don't believe it is written on  
17   there, but at numerous locations -- if you could zoom in  
18   a little closer, please.   And to the right.   There we  
19   go.

20                 Yes, those letters, if you make it out on a  
21   better copy, the text adjacent to the canal you see the  
22   word "gate."

23                 In fact, right in the center there where there  
24   is kind of a little pigtail coming off, you can make out  
25   the word "gate."   And to the north of where it says road

1 there it says "dam."

2 So at numerous locations along this -- and this  
3 also corresponds with later maps -- you see all the  
4 water indication or canal indications showing --

5 MR. RUBIN: Okay. Now, the fact that the  
6 feature we're discussing has a label of dam or gate  
7 indicates to you that there's water in that feature?

8 MR. MOORE: Yes. Yeah, that would be a correct  
9 assumption.

10 MR. RUBIN: Is it possible that a dam or a gate  
11 exists to regulate drainage water?

12 MR. MOORE: Well, it regulated water. Which  
13 direction it was going, I'm not aware of on that.

14 MR. RUBIN: So the fact that there is a  
15 reference of a gate or a dam doesn't necessarily  
16 indicate that water is being used for irrigation; it  
17 could be that water is being drained from lands?

18 MR. MOORE: Well, that's a possibility.

19 But also on this there's a very close overlay  
20 with the aeriels and all where we can see a natural  
21 slough that corresponds to the location of this feature.

22 MR. RUBIN: Thank you.

23 Now, what other map -- is there another map  
24 that you relied upon for your conclusion that features  
25 are labeled as irrigation canals?

1           MR. MOORE: On 2B, if you go to the next, which  
2 is the map of the San Joaquin Delta. Again, if we could  
3 zoom in and a little to the right.

4           Again, this same feature, this was a  
5 combination -- actually, they used the Holt and the  
6 Stockton Quadrangles.

7           MR. RUBIN: Mr. Moore, let me interrupt you  
8 just to make sure that we adhere to the direction of the  
9 Hearing Officer and not have you repeat your testimony.

10           My specific question to you is: Where on this  
11 map is there a feature that's labeled irrigation canal?

12           MR. MOORE: There is no label here. Just the  
13 location corresponds with the 1909 map.

14           MR. RUBIN: Thank you.

15           Mr. Moore, is there another map that you relied  
16 upon for your conclusion?

17           MR. MOORE: Oh, excuse me. If you could go  
18 back to that, please. I overlooked the legend at the  
19 bottom of the map. If you could pan down and to the  
20 right.

21           There is a legend there that indicated the  
22 canals. Again, unfortunately, the resolution coming  
23 through here is a little bit low, but this is the legend  
24 that indicated it was either a canal or irrigation.

25           MR. RUBIN: That is my question. I had trouble

1 reading this legend as well, but I did not see a part of  
2 the legend that indicated irrigation canal. It might  
3 have indicated canal; is that correct?

4 MR. MOORE: That's possible. I can't make that  
5 out myself either.

6 MR. RUBIN: Mr. Moore, was there any other maps  
7 you relied upon to base your conclusion that canals were  
8 used for irrigation as opposed to drainage?

9 MR. MOORE: Yes. In 2C and 2D, which are both  
10 the U.S. geologic survey maps of the area.

11 MR. RUBIN: Let's start with 2C. Is 2C a part  
12 of Woods Irrigation Company?

13 MR. MOORE: Well, this was -- something went  
14 wrong with this photo. This doesn't cover our area.

15 MR. RUBIN: Then let's focus on 2D. Let me ask  
16 you first, you indicated this map is a 1910 map? Is  
17 that correct?

18 MR. MOORE: It was surveyed in 1911 and  
19 published in 1913.

20 MR. RUBIN: And in 1911 when they did the  
21 surveying, they also surveyed for soils; is that your  
22 understanding?

23 MR. MOORE: No. The soils were done later.  
24 I'm not sure which year. I believe in the '20s, but  
25 they just used that map as a base to map their soils on.

1           MR. RUBIN: I'm confused now. The map 2D  
2 you've identified as a 1911 survey map that was  
3 published 1913?

4           MR. MOORE: Yes. If you pan down to the lower  
5 left corner maybe we could read that.

6           MR. RUBIN: But you also indicated that this  
7 map reflects soil surveys; is that correct?

8           MR. MOORE: Yes. Pan to the right and then  
9 zoom in. That shows the date right up -- who has the  
10 pointer?

11           If you could just zoom on that point right  
12 there and pan down to the legend to the right. There  
13 you can see the date up there, 1913.

14           MR. RUBIN: But you've also testified, I  
15 believe, that the map reflects soil samples.

16           MR. MOORE: Later on. Years later, probably 10  
17 or 20 years later, somebody used this map to draw lines  
18 indicating a soil survey.

19           So right there, like numbers 30 and 60,  
20 somebody later, many years later, drew those lines on  
21 there to identify soil types for that area.

22           MR. RUBIN: Okay. So the map that we're  
23 looking at, what's been marked Woods Irrigation Company  
24 Exhibit 2D, is not the map that was produced in 1913?

25           MR. MOORE: No, it is the map that's produced

1 in 1913, and somebody added data to it later.

2 MR. RUBIN: Do you know what else might have  
3 been added after 1913 to Exhibit 2D?

4 MR. MOORE: I don't know.

5 MR. RUBIN: Okay. Thank you.

6 And is there any other map that you relied upon  
7 to base your conclusion that canals were serving for  
8 irrigation purposes as opposed to drainage?

9 MR. MOORE: Yes. Later on -- not in this  
10 testimony because they came in later. There was a --

11 MR. RUBIN: If it's not part of your testimony,  
12 I would prefer that you not expand on it because it  
13 would be outside the scope of your testimony.

14 MR. MOORE: Well, yeah, for this testimony --

15 MR. HERRICK: Well, just a minute. You asked  
16 him a question, and he can answer if he's looked at  
17 something.

18 MR. RUBIN: He can answer and then I'll move to  
19 strike it as outside the scope of the testimony before  
20 us.

21 MR. HERRICK: You can't do that. You asked him  
22 is there any map that you reviewed, and he said yes, and  
23 then you said, well, don't tell me because it was in  
24 some other area.

25 MR. RUBIN: Well, Mr. Pettit, I'll withdraw my

1 question. The logical response here is it's not  
2 responsive to my question.

3 My question was what maps he reviewed to form  
4 his conclusion that is reflected in his testimony. If  
5 he reviewed something afterwards, that clearly could not  
6 have been the basis of his conclusion because he drew  
7 his conclusion at the time he submitted the testimony.

8 CO-HEARING OFFICER PETTIT: Yeah, I was going  
9 to ask you to restate the question. Can you answer  
10 that, Mr. Moore?

11 MR. MOORE: Yes.

12 (Discussion between counsel and witness)

13 MR. RUBIN: If Mr. Herrick wants to testify,  
14 he's more than welcome. Otherwise --

15 MR. HERRICK: I'd love to --

16 MR. RUBIN: -- it's --

17 MR. MOORE: What I was referring to --

18 CO-HEARING OFFICER PETTIT: Wait, wait, wait.  
19 One at a time --

20 MR. MOORE: In the Mr. Lajoie testimony, he  
21 used a --

22 CO-HEARING OFFICER PETTIT: Mr. Moore, excuse  
23 me, sir.

24 The process at the moment is Mr. Rubin is  
25 cross-examining a witness, and so the two people who

1 should be talking are Mr. Rubin and the witness.

2 And anyone else who wishes to talk should be  
3 addressing the Chair first. And I don't want to hear  
4 people talking over each other. Please proceed.

5 MR. RUBIN: I'll withdraw my question and move  
6 past this.

7 Mr. Moore, you talked about a feature that I  
8 believe appears on Woods Irrigation Company Exhibit 2E,  
9 and I believe that you referred to it as an oxbow. Do  
10 you recall that testimony?

11 MR. MOORE: On Duck Slough by the railroad  
12 tracks, that's correct.

13 MR. RUBIN: Now, it's your belief that the  
14 feature that you've described as an oxbow provides  
15 evidence that a natural waterway existed in the  
16 location?

17 MR. MOORE: Yes. And if you could zoom in one  
18 more level there, please.

19 MR. RUBIN: And just yes or no rather than  
20 re-testifying.

21 MR. MOORE: Yes, the features I see there  
22 clearly indicate there was a stream or a slough and  
23 there was water in it, correct.

24 MR. RUBIN: And if I understand your testimony  
25 correctly, you believe that that feature existed



1     sometime within the last 15,000 years?

2             MR. MOORE: 15,000 years is a period of  
3     geologic time. That's your recent Holocene time, so it  
4     was within that area. A more recent would be within the  
5     last thousand years, but we know the feature was there  
6     in 1937 and 1940.

7             MR. RUBIN: Thank you.

8             MR. MOORE: It goes back at least hundreds of  
9     years if not thousands before that.

10            MR. RUBIN: Thank you.

11            And I believe you in response to a question  
12     Mr. Herrick asked said that there was near correlation  
13     between the sources of information that you relied upon;  
14     is that correct?

15            MR. MOORE: Yes, near to exact when we overlaid  
16     the various maps, the ones we just mentioned -- '14s,  
17     '11s, '9s and so on. When they were rectified and  
18     registered, there was near-perfect correlation with the  
19     riparian features we could identify on the aerial  
20     photographs.

21            MR. RUBIN: How precise of a correlation do you  
22     believe exists in terms of the location of this  
23     riparian -- or watercourse?

24            MR. MOORE: They will not be exact, but they  
25     were close. Within feet.

1 MR. RUBIN: Between --

2 MR. MOORE: 20, 30, 50 feet, something like  
3 that.

4 MR. RUBIN: Okay, thank you.

5 Now, you also indicated that your conclusions  
6 -- excuse me. You also indicated in response to a  
7 question Mr. Herrick asked that your conclusions that  
8 are reflected in your testimony were based upon the  
9 nonaltered photographs as well as the stereo pairs; is  
10 that correct?

11 MR. MOORE: Correct. We used the nonaltered  
12 individual photographs and viewed those with the stereo  
13 viewer to make all the final conclusions.

14 MR. RUBIN: Okay.

15 I have no further questions.

16 CO-HEARING OFFICER PETTIT: Thank you,  
17 Mr. Rubin. Mr. O'Laughlin?

18 --o0o--

19 CROSS-EXAMINATION BY MR. O'LAUGHLIN

20 FOR MODESTO IRRIGATION DISTRICT

21 --o0o--

22 MR. O'LAUGHLIN: Good morning. Tim O'Laughlin  
23 representing Modesto Irrigation District.

24 Can you put up 2D please?

25 Mr. Moore, can you tell me, is this map part of

1 a larger map?

2 MR. MOORE: You're talking the entire map.

3 That's --

4 MR. O'LAUGHLIN: Yep.

5 MR. MOORE: -- a portion.

6 MR. O'LAUGHLIN: Part of a larger map.

7 MR. MOORE: It's part of a series of maps that  
8 were done for the area.

9 MR. O'LAUGHLIN: Is there any reason why you  
10 didn't include in your testimony the area to the west,  
11 the western portion of Roberts Island or the areas on  
12 the south or include Roberts Island as a totality in  
13 this exhibit?

14 MR. MOORE: The map to the west is the Holt  
15 Quadrangle, and when you go back to that there --  
16 something happened, a computer glitch or something.

17 But 2C came through incorrectly. It did not  
18 show the entire Holt Quadrangle, but that was used for  
19 the analysis.

20 MR. O'LAUGHLIN: I'm -- can you tell by looking  
21 at this map what portion of this map is the original  
22 1911 work as opposed to later additions that were added  
23 to it?

24 MR. MOORE: Most cases, yes, you can. You can  
25 see from the original map legend, and you can identify

1 the contours and features.

2 And then the numerals as mentioned earlier, the  
3 50s and 30s and black lines were added for a soils  
4 survey at a later time.

5 MR. O'LAUGHLIN: What about the coloring? When  
6 was the coloring added to the map and what -- because  
7 there's no legend down below depicting color, and I was  
8 wondering when that was added and what significance is  
9 that?

10 MR. MOORE: The color was part of the original  
11 map.

12 MR. O'LAUGHLIN: Okay. The coloring was?

13 MR. MOORE: Yes. Except possibly the text  
14 there where it says Reclamation District 524 or  
15 something. That very likely was added later.

16 But the coloring along the streams and all was  
17 part of the original map.

18 MR. O'LAUGHLIN: And do you know what the  
19 coloring is supposedly depicting?

20 MR. MOORE: Well, they're depicting map  
21 features. You would have to go to the legend to see, of  
22 the area. But they're showing contour lines, roads,  
23 streams --

24 MR. O'LAUGHLIN: No, no, no. You have a  
25 tendency to wander. Look at -- I asked a specific

1 question: The coloring of the map. Okay?

2 So you said it was on the original map. And  
3 I'm -- I have no reason to agree or disagree with that.

4 My question is: Where is the legend to tell us  
5 what the coloring is?

6 MR. MOORE: Well, there was a standard. It's  
7 not on this map.

8 MR. O'LAUGHLIN: Okay. So you --

9 MR. MOORE: It is not --

10 MR. O'LAUGHLIN: You have --

11 MR. MOORE: -- on this map.

12 MR. O'LAUGHLIN: You have no idea what the  
13 coloring means as far as the legend.

14 MR. MOORE: It was standard coloring for map  
15 legends. If you went to the USGS, you could get that  
16 information, but they do not print it on each individual  
17 map.

18 MR. O'LAUGHLIN: Mr. Chairman, it would be  
19 helpful if he would answer just the questions.

20 The questions are pretty simple, and they  
21 basically call for yes and no responses; and I would  
22 just appreciate a yes-or-no response, and we can move  
23 on. It will make things a lot quicker.

24 MR. HERRICK: Mr. Chairman, may I? Excuse me.

25 The problem is the question is argumentative.

1 He asked him about the coloring, and then he said it's  
2 on a legend on a different piece. And he said so you  
3 don't know.

4 Well, that's argumentative. It misstates what  
5 his answer was. We can ask and --

6 MR. O'LAUGHLIN: Okay.

7 MR. HERRICK: -- ask and answer simple  
8 questions, and the witness will certainly cooperate.

9 MR. O'LAUGHLIN: Do you know what the coloring,  
10 the legend coloring, means?

11 MR. MOORE: The coloring was standard coloring,  
12 magenta coloring for maps that were used -- have been  
13 used up to the present day --

14 MR. O'LAUGHLIN: Yes. What does it mean? What  
15 does --

16 MR. MOORE: -- contour lines and --

17 CO-HEARING OFFICER PETTIT: Mr. Moore, can  
18 you --

19 MR. O'LAUGHLIN: Just say yes or no: You know  
20 or you don't know.

21 MR. MOORE: Yes, I know that it means.

22 MR. O'LAUGHLIN: Okay. What does it mean?

23 MR. MOORE: The coloring varies for the feature  
24 that's being demonstrated, being displayed.

25 MR. O'LAUGHLIN: Okay. What -- we have a red

1 color. What does that display? What does that mean?

2 MR. MOORE: Red coloring where?

3 MR. O'LAUGHLIN: On the map. Or magenta,  
4 whatever you want to call that. What does that --

5 MR. MOORE: The squiggly magenta lines indicate  
6 the topographic -- elevate the contour lines, the  
7 elevation contour lines.

8 MR. O'LAUGHLIN: What about the ones along the  
9 river? What do those depict?

10 MR. MOORE: Those depict the boundary of the  
11 river.

12 MR. O'LAUGHLIN: Is it a boundary or a levee?

13 MR. MOORE: I don't know. I'm not looking  
14 at --

15 MR. O'LAUGHLIN: Well, then you don't --

16 MR. MOORE: -- the legend.

17 MR. O'LAUGHLIN: That gets to my point. See?  
18 It's -- he doesn't know the answer.

19 CO-HEARING OFFICER PETTIT: Mr. Moore, can you  
20 tell what those features mean without having the key map  
21 that USGS produces to describe what the features on  
22 their maps mean?

23 MR. MOORE: Some of them I can, where the same  
24 features are in use today. And some of them in 1913, I  
25 don't know without looking at a legend.

1 CO-HEARING OFFICER PETTIT: I'm not going to  
2 try and help you with your testimony but -- other than  
3 the extent maybe I have -- but I would appreciate it if  
4 you would try and focus in and keep those answers as  
5 narrow as possible.

6 And I mentioned the key maps because I think  
7 that might clear up that question a little bit, so.

8 MR. O'LAUGHLIN: All right.

9 On the map, it appears that there are  
10 horizontal and vertical lines depicted in black. Do you  
11 know -- and they appear to depict roads. Do you know if  
12 those roads were in existence on the original map or if  
13 they were added later?

14 MR. MOORE: Those were on the original map.

15 MR. O'LAUGHLIN: Okay. Also depicted in the  
16 lower right-hand corner in dotted red is a notation:  
17 South San Joaquin Irrigation District. Do you know if  
18 that was in existence in 1911 or added later?

19 MR. MOORE: I don't know that.

20 MR. O'LAUGHLIN: Okay. Also there appear to be  
21 heavy black lines depicted on the map around the city of  
22 Stockton. Do you know if those were in existence in  
23 1911 or added later?

24 MR. MOORE: Well, which ones are you talking  
25 about now?



1           MR. O'LAUGHLIN:  Where basically it's almost a  
2 square around the downtown area of what is noted as  
3 Stockton.  Do you know if that was on the original map  
4 or added later?

5           MR. MOORE:  I don't know that.

6           MR. O'LAUGHLIN:  Okay.  Do you know -- is the  
7 railroad line depicted on this map going through Roberts  
8 Island?

9           MR. MOORE:  What was that -- say again?

10          MR. O'LAUGHLIN:  Do you know if the railroad is  
11 depicted on this map going through Roberts Island?

12          MR. MOORE:  Yes, it is depicted on this map.

13          MR. O'LAUGHLIN:  Do you have in your possession  
14 the original series of USGS survey maps that were done  
15 for 1911, the originals?

16          MR. MOORE:  Not -- this was as close to the  
17 original as I have is this map here.  I don't have an  
18 original, nonaltered copy from USGS, no, I do not have  
19 that.

20          MR. O'LAUGHLIN:  Who did you get this from?  
21 How did you obtain it?

22          MR. MOORE:  That was supplied from Mr.  
23 Nomellini.

24          MR. O'LAUGHLIN:  Do you know where  
25 Mr. Nomellini got it?

1 MR. MOORE: No, I don't.

2 MR. O'LAUGHLIN: I'm assuming then -- one last  
3 question. I'm assuming since you don't have the  
4 original 1911 map that you've never reviewed the  
5 original 1911 map.

6 MR. MOORE: No.

7 MR. O'LAUGHLIN: Okay. No, you have not  
8 reviewed the 1911 map, the original?

9 MR. MOORE: Not an original nonaltered copy  
10 from the USGS. No, I did not.

11 MR. O'LAUGHLIN: Oh, I'm sorry. Like most  
12 lawyers, I don't tell the truth.

13 I thought earlier in our -- in your  
14 cross-examination that you had not reviewed the 1937  
15 photos for cropping patterns; is that correct?

16 The 1937 photos you had not reviewed for  
17 cropping patterns?

18 MR. MOORE: Cropping patterns? You're talking  
19 about agricultural crops?

20 MR. O'LAUGHLIN: Yeah. What crops were grown  
21 on those?

22 MR. MOORE: No, I did not do that.

23 MR. O'LAUGHLIN: Okay. Do you have any  
24 expertise in the area of looking at aerial photos and  
25 denoting what kind of crops are being grown at what

1 time?

2 MR. MOORE: No.

3 MR. O'LAUGHLIN: Thank you.

4 I have no further questions. Thank you.

5 CO-HEARING OFFICER PETTIT: Mr. Powell, any?

6 MR. POWELL: No.

7 CO-HEARING OFFICER PETTIT: Thank you.

8 Mr. Ruiz?

9 MR. RUIZ: Nothing, Mr. Pettit.

10 MS. GILLICK: No questions.

11 CO-HEARING OFFICER PETTIT: Thank you. Both of  
12 you.

13 CO-HEARING OFFICER PETTIT: We're going to take  
14 about a 15-minute break.

15 (Recess)

16 CO-HEARING OFFICER PETTIT: Mr. Herrick, are  
17 you ready to go with Mr. Neudeck? I was just reminded  
18 that you changed the order.

19 MR. HERRICK: Yes. Mr. Nomellini had a  
20 conflict later today. I was going to see if we could  
21 get him on. He's supposed to be somewhere this  
22 afternoon.

23 I appreciate the Board's indulgence. I didn't  
24 mean to not move Mr. Moore's evidence into -- his  
25 testimony into evidence. We can do that at the end or

1 now, up to the Board.

2 CO-HEARING OFFICER PETTIT: Let's go ahead with  
3 Mr. Nomellini, and we can -- I was aware you hadn't  
4 moved it. We can deal with it at any time along here.

5 --o0o--

6 DANTE JOHN NOME LLINI

7 Called by WOODS IRRIGATION COMPANY

8 DIRECT EXAMINATION BY MR. HERRICK

9 --o0o--

10 MR. HERRICK: Mr. Nomellini, you have before  
11 you WIC Exhibit 7 which is a statement of  
12 qualifications; is that correct?

13 MR. NOME LLINI: Yes.

14 MR. HERRICK: Is that a true and correct  
15 statement of your qualifications?

16 MR. NOME LLINI: It is.

17 MR. HERRICK: And you also have in front of you  
18 Exhibit WIC 8. Do you have that?

19 MR. NOME LLINI: Yes.

20 MR. HERRICK: And that is your testimony for  
21 this proceeding?

22 MR. NOME LLINI: Yes, it is.

23 MR. HERRICK: And subject to any changes or  
24 corrections you may make, that is a true and correct  
25 copy of your testimony here; is that right?

1 MR. NOMELLINI: Yes.

2 MR. HERRICK: Would you please summarize your  
3 testimony?

4 MR. NOMELLINI: First of all, I've got a lot of  
5 experience in this area, both as a farmer and as a  
6 lawyer. And I've done some engineering as well.

7 I've represented adjoining reclamation  
8 districts for many years. I'm familiar with the Woods  
9 Irrigation area and their system.

10 And my particular farming individually was just  
11 to the west of this location, and I have had interest  
12 through family farming entities that were spread  
13 throughout the Delta area.

14 The first part of my testimony I'd like to  
15 emphasize is that I believe that the current  
16 investigation associated with the Cease and Desist  
17 Orders is wrongfully focused solely on a stream approach  
18 to the Delta that would be applicable farther up in the  
19 watershed, and I think the Delta is both a combination  
20 of stream flows as well as a pool of water akin to a  
21 lake for which riparian rights would attach.

22 The Delta pool itself has been recognized,  
23 although not with legal certainty, in the previous water  
24 right investigations both by the State and by the Bureau  
25 of Reclamation, and I've made reference to those in my

1 testimony.

2           If I could put up on the screen -- I tried to  
3 pick a couple of elements out of the references, and  
4 I've added one.

5           If you could go to WIC 8M. It's not on the  
6 list. It's in the thumb drive. And this I -- I  
7 informed counsel for the other side that I put this in.  
8 This wasn't part of my original testimony.

9           It's a map of the Delta lowland, simply out of  
10 the Delta atlas.

11           CHIEF LINDSAY: What page please? What page in  
12 your presentation?

13           MR. HERRICK: What page.

14           MR. NOMELLINI: It's not in the presentation.  
15 It's in the thumb drive I gave you.

16           CHIEF LINDSAY: That's what I'm showing right  
17 now.

18           MR. NOMELLINI: Okay. Keep going. It's about  
19 the fourth page from the end.

20           CHIEF LINDSAY: From the end.

21           MR. NOMEELINI: There it is.

22           MR. HERRICK: Maybe 29.

23           MR. NOMELLINI: I gave it an 8M.

24           CHIEF LINDSAY: It's your presentation. You're  
25 going to have to tell me where it is.

1 MR. NOMELEINI: Keep going.

2 CHIEF LINDSAY: Which way.

3 MR. NOMELEINI: Down. Not there? All right.

4 Anyway.

5 MR. HERRICK: Wait, wait. 26.

6 MR. NOMELEINI: There you go.

7 This is simply from the Delta atlas. I would  
8 ask that the Board take judicial notice of it.

9 It simply depicts the area of Delta lowlands  
10 that was assumed for the purpose of those water right  
11 investigations as being riparian.

12 And I think that that isn't conclusive in any  
13 way on this Board's determination, of course, but it's  
14 an indication that others have seen and recognized the  
15 Delta pool as requiring a more unique examination.

16 First of all, these lands that we're dealing  
17 with in Woods are all swamp and overflow lands, so they  
18 were granted by the federal government to the State of  
19 California pursuant to the Arkansas Act of 1950.

20 And as such, the state undertook the obligation  
21 to reclaim these lands and make them productive.

22 And when you levee off these lands and drain  
23 them, you then, in order to make them productive, have  
24 to be managing your water and irrigation, I would submit  
25 was a significant part of that plan and those features.

1           So any implication that would come from an  
2 assumption that a transfer of land in the Delta lowland  
3 areas or swamp and overflow lands should be assumed to  
4 sever the water right I think runs against the policy of  
5 the State, and in particular against the obligation of  
6 the State to carry out in good faith the reclamation of  
7 swamp and overflow lands pursuant to the grant from the  
8 federal government.

9           So setting that aside for the moment, I would  
10 like to -- let's go back and go to the study -- let's go  
11 to the -- one of the first slides. All right.

12           Focussing in on this, irrigation in the Delta  
13 in the swamp and overflow lands involved a combination  
14 use of sloughs, drains, and irrigation facilities.

15           Just because this is designated a drain doesn't  
16 mean it wasn't used for irrigation.

17           My experience as a farm worker was irrigating  
18 lands on Venice Island where we, during the irrigation  
19 season, would close the drainage pumps off, and we would  
20 bring the water up for subirrigation and we would block  
21 what we call the 4 foot ditches and trap the water in  
22 these drains during the irrigation season.

23           After the irrigation season, we would open that  
24 system up so that we could get the drainage.

25           So the dual purpose of sloughs, canals,



1 irrigation, and drainage still exists today. As  
2 reported on the -- this is an excerpt from the  
3 Settlement Geography of the -- well, this is San Joaquin  
4 County, excuse me, Thompson, History of the Delta 1879.

5 This was written in 1879. And it says:

6 The numerous creeks or sloughs running  
7 from the main rivers into the interior,  
8 though necessitating extensive treatment  
9 to dam them effectively at or near their  
10 outlets are admittedly beneficial  
11 features of the land, constituting as  
12 they do main arteries for drainage,  
13 irrigation and navigation. And in the  
14 early days, of course, some of these  
15 features were left open and not dammed  
16 because navigational access was critical  
17 before the roads were built, the bridges,  
18 and ferries.

19 So I think the multiple purpose in the early  
20 days of these features has to be recognized. And this  
21 of course I think, because it's an 1879 publication, is  
22 deserving of historical credibility on that subject.

23 Then they say:

24 Ingeniously contrived tidal gates as an  
25 adjunct to the dams regulate and control

1           the egress and ingress of water from or  
2           to the lands according as draining or  
3           irrigation is temporarily desired.

4           So my experience, and of course my experience  
5 with regard to that practice on Venice Island, involved  
6 highly organic soils.

7           Now these areas in the Woods Irrigation Company  
8 area probably had less organic soil than on Venice  
9 Island. And there was a period of time when there was  
10 organic soil in these areas.

11           Let's go to the next slide.

12           All right. This is from the Settlement  
13 Geography of the Delta. They talk about the history of  
14 irrigating in the Delta. Basically what it tells us is  
15 that irrigation really started mostly after 1870.

16           And they talk about:

17           Flood irrigation had been tried on small  
18 grain by 1871 but was given up because of  
19 excessive weed growth. . . . For other  
20 crops, land soaking before planting or  
21 flood irrigation were practices in use  
22 during the 1870s.

23           And importantly, subirrigation which is still a  
24 part of the organic soil irrigation practice, was a  
25 major factor in the early days.

1           So people were working with the features of the  
2 land and kind of going with it. Along these various  
3 historic sloughs, there were alluvial deposits which  
4 were heavier soils. And they talk about in the history,  
5 Settlement Geography of the Delta, it says:

6           Water delivery systems independent of  
7 drainage ditches were in use by the  
8 latter 1870s. These systems were  
9 maintained by the farmer, only the  
10 drainage system being the responsibility  
11 of the reclamation districts. Water  
12 wheels, windmills, and low-head pumps  
13 were used on the higher alluvial banks.

14           So along these higher soils where the natural  
15 levees were deposited by the flow of water from the  
16 upstream areas, those areas were the areas that were  
17 first irrigated with pumps.

18           So starting in the 1870s, they were utilizing  
19 pumps. This would be in combination with the drains and  
20 the irrigation facilities, dams and gates. There's  
21 blockages even today. And drainage systems to allow the  
22 water to come up so people could pump it out or else  
23 bring it up for subirrigation.

24           So they were used interchangeably over the  
25 years. Let's go to the next slide.

1           This is a tide gate at what I'll call Whiskey  
2 Slough. It's near the Whiskey Slough marina. This tide  
3 gate, I believe, went in. It's a wooden box underneath  
4 the railroad.

5           The railroad ran in the late 1800s.

6           This flap gate on the land side is used for  
7 irrigation purposes. When the water comes up with the  
8 tide, that flap gate opens. Then when it drops, it  
9 holds the water in the pool for irrigation purposes.

10           The parcel I farmed was controlled -- the water  
11 for that was controlled by this gate. That was in the  
12 1950s, early '60s, when I utilized it.

13           And we would use that to keep the water level  
14 up so we could gravity irrigate the land. And what it  
15 does, it traps the high tide so you get almost near high  
16 tide elevation in your pool. You get that much head in  
17 order to go on the land.

18           There was at that time -- let's go to the next  
19 slide.

20           This is the -- and these photographs were taken  
21 about 30 days ago, right before the testimony was put  
22 together. John Herrick and I went out and took these.

23           But there was a tide gate, a flap gate, on the  
24 outside of this when I farmed in the area. And that  
25 would be used to pull the water level down in what we

1 call Whiskey Slough or Trapper Slough, the portion  
2 that's to the south of this. And that would let water  
3 out. And then when the tide came in, it would come in  
4 so we could artificially keep the water level low.

5 This I believe is typical of many of the tide  
6 gate structures that were involved including those at  
7 Woods, and I have some photographs of those.

8 Now, other mechanisms involved screw gates  
9 rather than the flap gate. So you fill the channel up,  
10 close the gate, you know, before the tide drops, then  
11 irrigate out of it, and then manually operate the gate  
12 rather than just have the flap.

13 Let's go to the next slide.

14 This is a gate that's in place today at Middle  
15 River and Trapper Slough. It's a screw gate. It's used  
16 just as they would have used it historically, only they  
17 do it manually rather than with an articulating flap or  
18 gate.

19 Let's go to the next photo.

20 That's the other side of it. There is a flap  
21 gate on that. And so this flap gate also helps trap the  
22 higher water in there because the water can't go out --  
23 that's a metal flap gate, a more modern one.

24 Next exhibit.

25 This is a control structure at the Woods

1 Irrigation facility. And it might be helpful before the  
2 Board decides on this issue to actually make a field  
3 visit and look at some of this stuff.

4 But this structure is made out of brick with  
5 plaster on the outside which indicates to me that it's  
6 pre-1900s when they would have used this type of  
7 construction. It's still in place, and I believe it's  
8 simply the original -- part of the original or very  
9 early structures. Next photo.

10 This again is there's two canals that come off  
11 the Middle River for Woods Irrigation system at this  
12 location. This other structure that interconnects the  
13 two is also made of brick with plaster that would  
14 indicate the old age.

15 Let's go to the next photo.

16 That's my shadow. Not a good photograph. But  
17 you can see right to the left of the shadow and  
18 underneath the horizontal lines, that's kind of a board  
19 across there.

20 You can see the top arch of a tunnel that was  
21 one of the original floodgates made out of brick.  
22 That's there today, and you can go out there and look at  
23 it and see it.

24 Let's go to the next one.

25 This is a lousy photo. But inside is a gate

1 that's still operated on that tunnel on the water side.  
2 And you can -- again, a visit to the field would give  
3 you a better idea.

4 Let's go to the next one.

5 This is just to the south of that previous  
6 tunnel. The tunnel that's here is buried in the dirt,  
7 as I understand it. It was filled in. And therefore,  
8 it no longer operates as a tide gate, and these pumps  
9 are the sole operating mechanism for moving water into  
10 this side of the facility.

11 Thank you for that. I'm sorry. This is WIC  
12 Exhibit 8I, photo 11.

13 (Discussion between counsel and witness)

14 MR. NOMELELLINI: Thank you for that admonition.

15 Do we want to go back through those, Mr.  
16 Pettit, and I'll just identify quickly?

17 CO-HEARING OFFICER PETTIT: Why don't we do it  
18 quickly just so it's clear in the transcript.

19 MR. NOMELELLINI: Let's go back in the photos at  
20 least.

21 CO-HEARING OFFICER PETTIT: Apologize for not  
22 catching that earlier.

23 MR. NOMELELLINI: I apologize as well. I'm sorry.

24 Photo 1 is an attachment to my testimony. It's  
25 the flap gate at Whiskey Slough or near Whiskey Slough

1 Harbor that goes -- a wooden box going underneath the  
2 railroad.

3 All right. Next.

4 This is the water side of that same flap gate  
5 and this is photo 2.

6 Photo 3 is the screw gate at Trapper Slough and  
7 Middle River.

8 Next.

9 Photo 4 is the inland side or the Trapper  
10 Slough side of that same floodgate, and it has a flap  
11 gate on it made out of metal. That's photo 4.

12 WIC Exhibit 8I, photo 7, is the control  
13 structure on the most westerly or northerly canal of  
14 Woods Irrigation Company at Middle River, and it has the  
15 brick with the plaster construction.

16 Next.

17 WIC Exhibit 8I, photo 8, shows a control  
18 structure connecting the -- call it the east and west  
19 canals at Woods Irrigation Company. And again, that  
20 shows the brick and plaster.

21 Next.

22 This is the westerly floodgate at Woods. It's  
23 a tunnel. You can see the brick. This is WIC Exhibit  
24 8I, photo 9. You can see the brick arch at the top of  
25 the tunnel.



1 Photo 10 of WIC Exhibit 8I is the other side of  
2 that tunnel, and it still has an operable gate on it.

3 Next is photo 11, WIC 8I. The floodgate at  
4 this location had been filled in and sealed off, and  
5 pumps are the only operable system at this location at  
6 this time.

7 Next.

8 Photo 12 of 8I is a little farther upstream on  
9 the Woods Irrigation Company area. There's a brick  
10 bulkhead that appears to be the headworks for another  
11 floodgate. And the significance of this is that the  
12 Woods brothers owned the adjoining property early on at  
13 this site as well.

14 Next.

15 This is WIC Exhibit 8I, photo 13. This is a  
16 floodgate, a small one. It's got the brick structure  
17 headworks. This gate was added later. It is downstream  
18 from the Woods facility but indicates the type of  
19 facility in the area.

20 Next.

21 This is a little farther downstream than that  
22 one. It's in the pocket area. The water side is not  
23 visible, but the land side is. And this again is brick  
24 construction covered with plaster and indicates the type  
25 of facility that would have been used early on.

1 Next photo.

2 CHIEF LINDSAY: This one was 8I, photo 14.

3 MR. NOMESELLINI: Yes, thank you for that. 8I,  
4 photo 14.

5 This is 8I, photo 15. This is at the westerly  
6 edge of the pocket area. And up in the upper -- this is  
7 photo 15 of 8I. Up in the upper left-hand corner is a  
8 pipe going through headworks that's no longer in use.

9 There is farther to the west a currently used  
10 pump station, so we're looking at generations of  
11 irrigation facilities at this location.

12 But right here is a remnant of a major sized  
13 floodgate. It can be viewed in the field, it has not  
14 been excavated, but it can be for examination.

15 And again, this is typical of the facilities in  
16 the area, and this could have been used as well in  
17 service of the lands in the Woods Irrigation District  
18 area.

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

20 This is a -- this is WIC 8I, photo 16. This is  
21 a Woods Irrigation facility -- Irrigation Company  
22 facility that is westerly of the two main facilities,  
23 and this location could very well have had a floodgate.

24 It's a -- you can see there's two generations  
25 of pump stations here. And it's likely there was a

1 floodgate at this location, although there is no visible  
2 brick head wall or anything like that. It just -- I  
3 think it's likely that there's one buried in here  
4 someplace.

5 Next photo.

6 This is the lower Roberts Island which is to  
7 the north of Middle Roberts and the area of Woods  
8 Irrigation Company. And this is a 1927 map, and there  
9 are 30 floodgates on this map.

10 I simply show you that as to indicate the  
11 general practice in the area was to use these floodgates  
12 for irrigation and drainage.

13 Is there a problem?

14 CHIEF LINDSAY: What exhibit number is this?

15 MR. NOMELEINI: It's an attachment to my  
16 testimony, so it's exhibit number -- it should be 8, so  
17 it's in WIC Exhibit 8, simply an attachment to my  
18 testimony.

19 CHIEF LINDSAY: You started off describing this  
20 as a photo, so I just wanted to be clear.

21 MR. NOMELEINI: All right. Okay. Let's go to  
22 the next slide.

23 There have been various examinations of the  
24 Delta and what the sources of water that feed the Delta  
25 lands. And in my opinion, the Delta lowlands cannot be

1 physically severed from the water in the channels  
2 because of the interconnection of the flow of water  
3 which both from seepage and deep-seated waters that come  
4 up in the particular area, and I think that's been  
5 pretty well demonstrated in a lot of the studies.

6 This is from a DWR report number 4, Quantity  
7 and Quality of Waters Applied to and Drained From the  
8 Delta Lowlands. It was done in 1956.

9 Let's go to the next slide.

10 When Lower Jones Tract -- well, really -- yeah.  
11 Photo 5 is an attachment to my WIC Exhibit 8.

12 When Jones Tract -- Upper Jones actually  
13 suffered the levee break. It flooded in 2004. The mere  
14 fact that the Jones Tract's areas were flooded caused  
15 seepage to go into the adjoining area that was not  
16 otherwise in that area due to the river flow.

17 So the interconnection of all these flows and  
18 interrelationship of the Delta pool to the Delta lands  
19 is absolutely clear; and if we go ahead and attempt to  
20 discontinue irrigation of the lands which includes  
21 cultivation to keep the vegetation down, drainage, the  
22 Delta will actually revert either to a water body or to  
23 a tule swamp again, and the water use will be much  
24 greater than what's used by agriculture.

25 Let's go to the next slide.

1           This is the same kind of problem.  When Lower  
2 Jones had water in it in 2004, this was water that  
3 flooded the fields on McDonald Island.  That's photo 6  
4 to attachment -- to my WIC 8.

5           Next photo, or next slide.

6           This again is from WIC 8F, page 2.  There's a  
7 significant lateral movement of water through the soil  
8 onto the islands which causes the high water table.

9           This has been pretty well demonstrated in all  
10 the studies, and I've attached those studies.  I mean  
11 they are exhibits in our testimony, and I reference it  
12 here in WIC 8F on page 2.

13           This is related to the -- there was a water  
14 transfer by Delta Wetlands to the Metropolitan Water  
15 District of Southern California.  And in connection with  
16 that transfer, there was an examination of what amount  
17 of water can be saved by fallowing the land, and the  
18 State Board was involved in this.

19           And as I understand it, they went through and  
20 did a comprehensive study and concluded that in that  
21 particular case for the water transfer that if they keep  
22 the land well-disced, free of weeds, keep the drainage  
23 water down, that it would have a net savings about 8/10  
24 of an acre foot per acre, far below what we would  
25 normally think could be a savings.

1           And they point out in that:

2           In some cases, evapotranspiration from  
3           excessive weed growth may have equaled  
4           production crop evapotranspiration.

5           Efforts to control weed growth on the  
6           lowland areas proved problematic.

7           So it's very questionable even with good  
8           farming practices in connection with a water transfer by  
9           keeping the land clean that you're going to avoid a  
10          greater use of water by these areas if they were allowed  
11          to revert. In other words, discontinue irrigated  
12          agriculture and let them revert, you're going to lose  
13          more water.

14          Let's go to the next slide.

15          This is a table from the Central Valley Project  
16          Delta Lowland Service Area Investigation Report DL 9.  
17          This is that 1961 report attached as a -- completely as  
18          an exhibit. It's WIC 8B.

19          And I think it's important -- it's kind of hard  
20          to read that slide. But as an example, for July,  
21          alfalfa use is reported as .65 acre feet per acre.  
22          Pasture -- miscellaneous pasture would be .70 acre feet  
23          per acre.

24          And if you go down and look at tule and swamp,  
25          it's .87 acre feet per acre, and water surface is .65.

1           So the idea that allowing this area to revert  
2 away from irrigated agriculture -- and of course,  
3 everything isn't just alfalfa or pasture. There are  
4 other crops as well.

5           The rule of thumb that I'm aware of over the  
6 years is that agriculture in the Delta saves about 2  
7 acre feet per acre on average for the Delta as a whole.  
8 That's because the various crops involve cultivation of  
9 land where many times for many days it's dry.

10           It doesn't have any vegetation on it, it's in a  
11 cultivated condition, and therefore it doesn't suffer  
12 from the evapotranspiration that you would have from a  
13 water body or a vegetated area.

14           All right. Next slide.

15           This is another -- this is WIC 8E, page 28.  
16 This is an additional table.

17           You'll find that the comparable information on  
18 evapotranspiration rates doesn't vary, very much. On  
19 this one it still has -- if you look at alfalfa, you end  
20 up -- and this is in inches. So inches per acre instead  
21 of acre feet per acre.

22           But you can see that the 6.4 can be compared to  
23 like riparian vegetation, 7.9. Water surface was at  
24 another 7.9.

25           So in any event, I think the evidence is clear

1 that the Delta, in a nonreclaimed state or nonfarmed --  
2 and we need to farm in order to maintain the levees and  
3 the drainage. There's no reason to keep them drained if  
4 we're not going to keep productive agriculture going.

5 So to an area like an upstream area or even a  
6 downstream area, putting the Delta irrigators out of  
7 commission is going to cost more water than they're  
8 using now.

9 CO-HEARING OFFICER PETTIT: Mr. Herrick, we've  
10 gone somewhat over the 20 minutes that we targeted  
11 for --

12 MR. NOMELELLINI: Okay.

13 CO-HEARING OFFICER PETTIT: -- the summary of  
14 the direct testimony.

15 MR. NOMELELLINI: I'll wrap up very briefly then.

16 CO-HEARING OFFICER PETTIT: I realize we caused  
17 you to back up there for a while too. Are we close to  
18 the end?

19 MR. HERRICK: Yes. If we could just have a few  
20 more minutes. Because of the number of witnesses and  
21 we're breaking them up and everything, we are going to  
22 take more than our allotted time. I appreciate the  
23 consideration of the Board.

24 CO-HEARING OFFICER PETTIT: Thank you.

25 MR. NOMELELLINI: Also in my testimony, I've



1 looked at the -- there's a biography of both of the  
2 Woods brothers, and I've attached it.

3           They were two brothers John Newton Woods and  
4 E.W.S. Woods who they called Smithy. He had a pretty  
5 long name, and I'm not sure I can pronounce his first  
6 name properly. Like Erensweigel -- Ezekiel.

7           Anyway, Smithy is the way I'd like to refer to  
8 him if the Chair would allow it.

9           The two brothers amassed a significant area in  
10 the Delta that is now the Woods Irrigation Company area.  
11 And the -- let's go to the next slide. I think I have  
12 it on there. Let's go a little farther. Next.

13           Let's go next.

14           Next one.

15           Maybe I don't have it on there.

16           Anyway, what they did prior to the 1900s, they  
17 put together their farming acreage, was reported to be  
18 as much as 12,000 acres and is generally thought in the  
19 more -- in the 1900s, early 1900s, to be about 8700  
20 acres.

21           But they were farmers, and they had this  
22 operation. They were flooded out in 1893 when the levee  
23 broke near Burns Cutoff. They managed to get their  
24 crops out.

25           But these people were farming this land. And

1 in order to farm it -- there's an indication that in the  
2 1914s they had large amounts of alfalfa in these  
3 areas -- they were irrigating.

4           Irrigation, as I indicated earlier, started in  
5 about 1870. And in the history Settlement Geography of  
6 the Delta it's explained that they started off with  
7 windmills and water wheels, things of that type. But  
8 there were also steam-driven pumps, gasoline-driven  
9 pumps.

10           And electricity came in in the early 1900s. So  
11 they go to electric pumps in 1900, 1906 range, something  
12 like that, to 1911.

13           So the irrigation practices involved pumping to  
14 a great extent in the area.

15           The Woods brothers were operating together.  
16 They had all this extensive irrigation system in place.  
17 And then John Newton Woods died in 1909, and his  
18 daughters, Douglass and Wilhoit, were the heirs.

19           So in order to -- they weren't farmers. They  
20 wanted to subdivide. And in order to accommodate the  
21 irrigation through these joint facilities that would now  
22 be serving, there was a partition of the Woods property,  
23 the Woods brothers properties.

24           The westerly part went to Smithy. The easterly  
25 part went to the heirs of John Newton Woods.

1           So they had to have a mechanism in order to  
2 operate the system which was to operate to serve water  
3 to 40-acre parcels. This was because the girls wanted  
4 to sell off the land. They created the Woods Irrigation  
5 Company in order to operate that.

6           If you look at the documents that we have in  
7 there, there's a decree of distribution for the Woods  
8 estate, John Newton Woods, that explains how they  
9 divided that up.

10           There's farm equipment in there, including  
11 alfalfa-type equipment. And it's clear to me that these  
12 operations or these systems were operated prior to 1914,  
13 prior to 1911, and even prior to 1909. I think it's  
14 clear from the record.

15           So I think with that -- let me just check my  
16 notes to see if I want to bring up any other point to  
17 emphasize out of my testimony.

18           I think that's it.

19           There's also data in here, studies that were  
20 made that during the irrigation season the Delta  
21 accumulates salt. And Walt, you may -- I mean  
22 Mr. Chairman, you may know that from your past history  
23 those studies that show there's an improvement of water  
24 quality in the Delta from the drainage because the salt  
25 is stored in the land during the irrigation.

1           That salt, of course, comes out in the winter  
2 like in January and February when we get the winter  
3 rains on top of it.

4           So irrigation in the Delta, keeping these  
5 people irrigated, should not be subject to some kind of  
6 assumption or presumption that somebody transferring the  
7 land would want to sever the water from the land.

8           The presumption should be the other way,  
9 because of the swamp and overflow grant and the  
10 necessity of having the adjoining lands contribute their  
11 fair share from productivity towards the maintenance of  
12 levees and drains. Otherwise, we're going to use more  
13 water.

14           Thank you very much.

15           CO-HEARING OFFICER PETTIT: Thank you, Mr.  
16 Nomellini.

17           Mr. Rose, any cross?

18           MR. ROSE: We have no cross-examination of  
19 Mr. Nomellini.

20           CO-HEARING OFFICER PETTIT: Thank you.

21                                           --o0o--

22                                           CROSS-EXAMINATION BY MS. KINCAID  
23                                           FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

24                                           --o0o--

25           MS. KINCAID: Good morning, Mr. Nomellini.

1 Valerie Kincaid for San Luis & Delta-Mendota Water  
2 Authority.

3 Mr. Nomellini, did you take the oath in this  
4 hearing?

5 MR. NOME LLINI: Yes, I did.

6 MS. KINCAID: Great.

7 MR. NOME LLINI: I'll take it again. I swear to  
8 tell the truth, and I've been telling the truth.

9 MS. KINCAID: That's okay. I just want to make  
10 sure the record's clear. Thank you.

11 Mr. Nomellini, in the second paragraph on page  
12 1 of your written testimony, marked as Exhibit Woods  
13 Irrigation Company 8?

14 MR. NOME LLINI: Yes.

15 MS. KINCAID: You discuss your Delta pool  
16 theory. Is that correct?

17 MR. NOME LLINI: Yes.

18 MS. KINCAID: And have you previously presented  
19 this theory to the State Water Board?

20 MR. NOME LLINI: Not in this form, no.

21 MS. KINCAID: Not in this form?

22 MR. NOME LLINI: Not in this form. Not this  
23 particular argument. At least that I recall.

24 MS. KINCAID: Do you recall -- one second.

25 Do you recall submitting a closing brief in the

1 Phelps matter for the South Delta Water Agency?

2 MR. NOME LLINI: I participated. I don't recall  
3 all the detail. But our firm was involved in the action  
4 on behalf, I believe, of the Central Delta Water Agency.  
5 But we were involved.

6 MS. KINCAID: And do you recall putting forth  
7 the argument perhaps with the heading that the subject  
8 of Term 91 is unfair due to the Delta pool theory?

9 MR. NOME LLINI: Absolutely.

10 MS. KINCAID: And do you recall whether the  
11 State Water Board accepted that theory?

12 MR. NOME LLINI: The Board did not.

13 MS. KINCAID: Okay. Great.

14 MR. NOME LLINI: You want me to --

15 MS. KINCAID: No, that's fine. Thanks for your  
16 answer.

17 MR. NOME LLINI: Okay.

18 MS. KINCAID: Earlier in your oral testimony  
19 today, you testified that there was a time when organic  
20 soils existed in these areas. Do you recall that  
21 testimony?

22 MR. NOME LLINI: Yes.

23 MS. KINCAID: And when you referenced these  
24 areas, do you mean lands within Roberts Island?

25 MR. NOME LLINI: Yes. Parts of it, yeah.

1 MS. KINCAID: Parts of it. And can you  
2 identify which parts?

3 MR. NOME LLINI: Well, I think so.

4 I think if you look at the maps that show the  
5 alluvial deposits from the streams, those would be areas  
6 that would have less organics.

7 And as you get away from those alluvial  
8 deposits, those would have been the tule marshes that  
9 would have had the organic soils that have since  
10 oxidized and vanished.

11 MS. KINCAID: Okay. In the last paragraph of  
12 your written testimony, Woods Irrigation Company  
13 Exhibit 8, on the last paragraph on page 2, you express  
14 your opinion that if left fallow the Woods Irrigation  
15 Company service area would become tule and swamplands.  
16 Is that correct?

17 MR. NOME LLINI: That's my opinion, yes.

18 MS. KINCAID: And in fact, you testified today  
19 that you believe that the tules would consume more water  
20 than currently used to irrigate crops?

21 MR. NOME LLINI: Correct.

22 MS. KINCAID: Under California water law, can a  
23 person lawfully divert water without a right simply  
24 because the diversion does not injure other water users?

25 MR. NOME LLINI: No. Not simply for that

1 reason, no.

2 MS. KINCAID: And under California water law,  
3 can a person lawfully divert water without a right  
4 simply because a person's diversion benefits other water  
5 users?

6 MR. NOME LLINI: No. I believe you need a right  
7 to divert.

8 MS. KINCAID: Great. Thank you.

9 Mr. Nomellini, do you believe Duck Slough is a  
10 natural watercourse?

11 MR. NOME LLINI: Yes.

12 MS. KINCAID: And is it correct that you  
13 believe Duck Slough existed on Roberts Island?

14 MR. NOME LLINI: Yes.

15 MS. KINCAID: And is it your belief that Duck  
16 Slough ran from Middle River to Burns Cutoff?

17 MR. NOME LLINI: If you want to call it Duck  
18 Slough, yes. I know the references are different. Some  
19 places, it's like High Ridge Levee.

20 But it's my opinion that the serpentine path  
21 that the term High Ridge Levee and Duck Slough have been  
22 applied to was a natural slough. And I'm willing to  
23 call it Duck Slough.

24 MS. KINCAID: Okay. Great.

25 On page 3 of your testimony, Woods Irrigation



1 Company Exhibit 8, you discuss reclamation features of  
2 the Delta. And in that discussion, you cite the  
3 Settlement Geography of the Sacramento and San Joaquin  
4 Delta which is your Exhibit 8D; is that correct?

5 MR. NOME LLINI: Correct.

6 MS. KINCAID: And do you believe Exhibit 8D is  
7 a document upon which the State Water Board can rely?

8 MR. NOME LLINI: Yeah. I think it has -- I mean  
9 it's not perfect in all respects, but I think it is  
10 valuable evidence to take into consideration.

11 MS. KINCAID: Okay. And Mr. Nomellini, I'm  
12 going to hand you map 13 from your Exhibit 8D, the  
13 Settlement Geography of the Sacramento and San Joaquin  
14 Delta, and it appears on page 91.

15 Thank you, Mr. Rubin.

16 Can you tell me if this map portrays Duck  
17 Slough?

18 MR. NOME LLINI: I think it does.

19 MS. KINCAID: And in map 13 of your Woods  
20 Irrigation Company Exhibit 8D, does the line that you  
21 believe depicts Duck Slough connect to Middle River?

22 MR. NOME LLINI: In this map, they do not.

23 MS. KINCAID: Thank you.

24 CHIEF LINDSAY: I'm sorry. I didn't see any  
25 maps in Exhibit 8D.

1 MS. KINCAID: Just for the record, 8D is an  
2 excerpt. I believe Mr. Nomellini included only portions  
3 thereof. It was submitted in the Pak and Mussi matter.

4 MR. NOMELENI: Refer to the page number,  
5 perhaps?

6 MS. KINCAID: It's page 91. And I'm unsure of  
7 the exact number in the Pak and Mussi matter, but I  
8 believe it was submitted in its entirety.

9 And Mr. Lindsay, I'd be more than happy to  
10 provide you with this map if you want to scan it in.

11 CHIEF LINDSAY: Okay. We'll take it --

12 MS. KINCAID: I'm not sure we have that  
13 capability.

14 CHIEF LINDSAY: It's up to the Hearing Officer.  
15 I just point out that I can't find that for you, so I'm  
16 curious if the Hearing Officer wants that.

17 MS. KINCAID: Okay. We can make copies, and we  
18 can mark it as an exhibit if that's the easiest way to  
19 go about it.

20 MR. O'LAUGHLIN: Would that be MSS 3?

21 MS. KINCAID: Yes. It would be.

22 MR. O'LAUGHLIN: Thank you.

23 MS. KINCAID: Mr. Nomellini, on the top of page  
24 4 of your written testimony, Woods Irrigation Company  
25 Exhibit 8, you include a quote about irrigation

1 practices in the Delta?

2 MR. NOMELLINI: Yes.

3 MS. KINCAID: And that quote describes the  
4 practices of the Delta generally; is that correct?

5 MR. NOMELLINI: I think -- yeah, I think it's  
6 generally applicable and consistent with my experience  
7 as well.

8 MS. KINCAID: And it doesn't specifically  
9 describe the practices on the Woods Irrigation Company  
10 service area?

11 MR. NOMELLINI: It's more generic.

12 MS. KINCAID: Great. And you mentioned your  
13 experience. Your experience farming does not include  
14 any farming experience in the Woods Irrigation Company  
15 service area; is that correct?

16 MR. NOMELLINI: That, I think, is correct.

17 MS. KINCAID: Okay. And you attached a number  
18 of photos to your testimony, and we went over them  
19 earlier in your direct. If we could revisit a couple of  
20 those.

21 It's my understanding that the pictures that  
22 actually depict photos of conveyance facilities on the  
23 Woods Irrigation Company service area are photos 7  
24 through 10 and 16. Can you verify if that's correct?

25 MR. NOMELLINI: I think I can. Let me take a

1 look.

2 MS. KINCAID: Great. Thank you.

3 MR. NOMESELLINI: Photo 7 is of Woods Irrigation  
4 Company facility. 8 is also. 9 also Woods. 10, Woods.  
5 11, Woods Irrigation Company.

6 MS. KINCAID: And just to clarify, photo 11  
7 says that it's a headwall of abandoned tide gate just  
8 upstream of the Woods Irrigation main river diversion.

9 Is it your testimony that that photo is still  
10 on the Woods Irrigation service area?

11 MR. NOMESELLINI: It is. I didn't characterize  
12 it as main. The one in the photo number 11 appears to  
13 have been larger than the one downstream that you can  
14 still see the tunnel.

15 MS. KINCAID: But it's your testimony that  
16 photo 11 is a conveyance facility on -- that would  
17 convey water in the Woods Irrigation Company service  
18 area?

19 MR. NOMESELLINI: Yes, it is.

20 MS. KINCAID: Okay. And -- sorry. Can we  
21 continue. 12? Is 12 also in the Woods Irrigation?

22 MR. NOMESELLINI: No. That's not part of the  
23 Woods Irrigation Company. But that's farther upstream,  
24 and that was on Woods brothers property.

25 MS. KINCAID: Okay.

1           MR. NOME LLINI: At one time it was Woods  
2 brothers property.

3           MS. KINCAID: And similarly 14 and 15, I  
4 believe, are not in the Woods Irrigation Company service  
5 area; is that correct?

6           MR. NOME LLINI: That's correct.

7           MS. KINCAID: Okay. And in your oral testimony  
8 on photo 11, you indicated that the photo did not  
9 directly show any facilities that you believed were  
10 dated before 1914; is that correct?

11          MR. NOME LLINI: No. There's -- it doesn't --  
12 it doesn't show the brick tunnel-type structure, but it  
13 does appear. If you look in between on photo 11 of 8,  
14 WIC 8I, you can see where they blocked a -- what appears  
15 to be the floodgate. Right in the middle of the photo,  
16 kind of down, I don't know, about halfway.

17          MS. KINCAID: Okay.

18          MR. NOME LLINI: And I think it would be, if  
19 there's any kind of an issue on this, it would be good  
20 to take a visit to the field. All this stuff is still  
21 there.

22          MS. KINCAID: Okay. And is the purpose of  
23 photos similar to photo 11 to show that these  
24 structures -- that structures were in place before 1914?

25          MR. NOME LLINI: Yes.

1 MS. KINCAID: And in any of the photos -- I'm  
2 sorry; let me rephrase that.

3 Are there any photos that picture a structure  
4 with an actual date in the photo or on the structure?

5 MR. NOMESELLINI: A gate?

6 MS. KINCAID: A date.

7 MR. NOMESELLINI: Oh, a date.

8 MS. KINCAID: Any pipes stamped with the date,  
9 any --

10 MR. NOMESELLINI: I didn't see any date.

11 MS. KINCAID: So is it fair to say in your  
12 opinion it's an estimate that these facilities were  
13 built around 1914?

14 MR. NOMESELLINI: It's my opinion. I think it's  
15 more than an estimate.

16 I mean we have documentary evidence of  
17 agreements that talk about these facilities being in  
18 place. These are the type of facilities that were being  
19 used. And these people were farmers. They were farming  
20 big time from the 1800s, so.

21 MS. KINCAID: Thanks.

22 MR. NOMESELLINI: They weren't out there with  
23 idle ground.

24 MS. KINCAID: Do you think that any of the  
25 structures are of the type that could have been built in

1 the 1920s?

2 MR. NOMESELLINI: I think these metal gates that  
3 were added on some of these structures could have been  
4 later. I mean those -- you got to look at them, but I  
5 mean there's been an evolution of equipment.

6 But yeah, I think some of them could have been  
7 the gate structure, but I don't think the tunnels were  
8 built in the 1920s.

9 MS. KINCAID: Okay, thanks.

10 And from these photos, were you able to  
11 determine the quantity of water that was delivered to  
12 Woods before 1914?

13 MR. NOMESELLINI: From the photos?

14 MS. KINCAID: Right. In your testimony, you  
15 said you rely on these photos to --

16 MR. NOMESELLINI: Well, not solely from the  
17 photos. But from the acreage being served, I have an  
18 opinion as to what the quantity of diversion would have  
19 been.

20 MS. KINCAID: And what is your opinion of the  
21 quantity of diversion --

22 MR. NOMESELLINI: My opinion --

23 MS. KINCAID: -- before 1914?

24 MR. NOMESELLINI: About 90 cubic feet per second.

25 MS. KINCAID: Thank you.

1 MR. NOMESELLINI: That's based on the acreage  
2 being served, primarily.

3 MS. KINCAID: And from these photos, were you  
4 able to determine the season that water was diverted to  
5 the Woods Irrigation Company service area before 1914?

6 MR. NOMESELLINI: From these photos, no.

7 But we know what they were being -- the water  
8 was being used for agriculture. So I would expect the  
9 evapotranspiration rates that they would be serving  
10 would have been higher during the warmer periods,  
11 similar to these charts that I put up.

12 Current evapotranspiration rates which get  
13 highest like in July and August or June.

14 And then in the wintertime, of course, you have  
15 rain and other things that you wouldn't need to divert  
16 as much water.

17 MS. KINCAID: And is it your opinion that these  
18 facilities were not used in any season?

19 MR. NOMESELLINI: I don't think you would have  
20 used them during a rainstorm, you know, a long period of  
21 storm.

22 And typically irrigation -- although there is  
23 some irrigation practice that does use water in the  
24 winter. They may have used some water, like asparagus  
25 historically has been watered in the winter. There's



1 winter flooding of corn ground.

2           At that time, I don't know for sure whether  
3 they -- how much they used in the winter. But I think  
4 we could expect water use similar to what we experience  
5 today with evapotranspiration.

6           So lower in the winter, higher in the spring  
7 and summer.

8           MS. KINCAID: And that belief is not based on  
9 these photos, is that correct? It's based on other  
10 evidence you have submitted?

11           MR. NOMELLINI: Yeah. The photos help me by  
12 showing me there were facilities there. That coupled  
13 together with the documentary evidence which is recorded  
14 has rates of diversion at particular points in the  
15 documents.

16           Same thing if somebody would have filed a  
17 notice for a pre-1914 right. They have got that  
18 information in those documents that were of record in  
19 1911.

20           So you take the combination of that with the  
21 knowledge that the Woods brothers were big time farmers.  
22 And I think -- it's clear to me. I mean there's no  
23 doubt in my mind. They were applying water that would  
24 have met irrigation requirements for pasture and alfalfa  
25 and those kinds of things in those days.

1 MS. KINCAID: And from these photos were you  
2 able to determine the quality of water delivered to the  
3 Woods Irrigation Company service area before 1914?

4 MR. NOMELLINI: No, but I've seen information  
5 that would indicate it's a lot better than it is today.

6 MS. KINCAID: Great. Thanks.

7 Mr. Nomellini, under California water law, what  
8 are the elements required to establish a pre-1914 water  
9 right?

10 MR. NOMELLINI: I think it's proof of diversion  
11 prior to 1914 and establishment of a use and a rate of  
12 diversion.

13 MS. KINCAID: And have you ever advised Central  
14 Delta Water Agency of these required elements?

15 MR. NOMELLINI: I don't remember an occasion  
16 where I have done that specifically no, but --

17 MS. KINCAID: And have you ever advised South  
18 Delta Water Agency of these requirements?

19 MR. NOMELLINI: No.

20 MS. KINCAID: And with those requirements in  
21 mind, is it correct that you do not present any evidence  
22 as to the quantity of water that may have been diverted  
23 by Woods Irrigation Company before 1914?

24 MR. NOMELLINI: If I understand the question,  
25 my answer would be no, I think I have provided evidence

1 and that the record is clear that there was water use  
2 prior to 1914.

3 MS. KINCAID: Let me restate my question.

4 MR. NOMESELLINI: Okay.

5 MS. KINCAID: Have you presented any evidence  
6 as to the quantity of -- specifically to the quantity of  
7 water?

8 MR. NOMESELLINI: Yeah. I told you 90 cubic feet  
9 per second I think was the diversion rate to serve the  
10 approximately 8700 acres of the Woods Irrigation Company  
11 prior to 1914.

12 MS. KINCAID: Can you point me to where the 90  
13 acre feet number exists?

14 MR. NOMESELLINI: I can tell you how I arrived at  
15 it.

16 MS. KINCAID: Okay.

17 MR. NOMESELLINI: There's 8700 acres. Alfalfa  
18 would use approximately .65 acre feet per acre in the  
19 month of July based on the table 8 I put up there.

20 So if you multiply 8700 by .65, you get 5,655  
21 acre feet per month. That was for the month of July.

22 I divided it by 31. I ended up with 182.42  
23 acre feet per day.

24 We know that 1.98 acres -- acre feet per cfs,  
25 so you divide the 182.42 by 1.98. I end up with 92.1

1 cubic feet per second.

2 MS. KINCAID: And in this calculation --  
3 correct me if I'm wrong -- you're assuming that all  
4 lands in the Woods Irrigation Company service area are  
5 irrigated?

6 MR. NOMELLINI: Yes. The 87 -- this  
7 calculation would assume that.

8 And implicit in my assumption is that alfalfa  
9 is representative of what would be occurring either with  
10 pasture, or even if you wanted to leave some swamp and  
11 tule there for livestock feed it would be consuming  
12 water, and if you wanted to keep irrigating you'd have  
13 to supply that water need as well.

14 MS. KINCAID: And do you provide any evidence  
15 to support your conclusion that all lands in the Woods  
16 Irrigation Company service area were irrigated before  
17 1914?

18 MR. NOMELLINI: Well, I think it's unlikely  
19 that they were all irrigated. But I think that the  
20 water use would have been there, and therefore it would  
21 take a water demand.

22 So you're either going to supply the swamp and  
23 tule that's not farmed with subirrigation -- you know,  
24 you're going to lose water from the system when you send  
25 the water down the canals or earthen banks.

1           So I think it's a reasonable basis to support  
2 the inclusion, even with the assumption that not all the  
3 land, not every bit of the land would have been  
4 irrigated.

5           MS. KINCAID:   And can you point me to evidence  
6 in your testimony or supporting your testimony that  
7 indicates the cropping pattern of Woods Irrigation  
8 Company service area before 1914?

9           MR. NOMESELLINI:  There are exhibits that were  
10 submitted by others that I'm aware of.

11           MS. KINCAID:   But there's nothing in your --

12           MR. NOMESELLINI:  In my direct testimony itself,  
13 no.

14           MS. KINCAID:   No.   Okay.

15           Thank you, Mr. Nomellini.

16                             --o0o--

17                             CROSS-EXAMINATION BY MR. O'LAUGHLIN  
18                             FOR MODESTO IRRIGATION DISTRICT

19                             --o0o--

20           MR. O'LAUGHLIN:   Good morning, Mr. Nomellini.  
21 Tim O'Laughlin representing Modesto Irrigation District.

22           MR. NOMESELLINI:   Good morning.

23           MR. O'LAUGHLIN:   In your calculation that you  
24 just performed for the use of 90 cfs, is .67 the highest  
25 evapotranso for crop use?

1           MR. NOMELLINI: I think it's the highest on  
2 that table. I'd have to look at it. But I was looking  
3 at alfalfa. I didn't look at the whole table.

4           MR. O'LAUGHLIN: If other crops were grown  
5 other than alfalfa, the number would go down, correct?

6           MR. NOMELLINI: That's correct. Some other  
7 crops would take less. Yes.

8           MR. O'LAUGHLIN: Okay. Did you include in your  
9 calculation transpiration losses in the canals?

10          MR. NOMELLINI: I did not.

11          MR. O'LAUGHLIN: Okay.

12          MR. NOMELLINI: But it's in my assumption that  
13 -- as the reasonableness of my number.

14          MR. O'LAUGHLIN: Okay. What about --

15          MR. NOMELLINI: It could have been higher, you  
16 know, if you got losses but we got some water that is  
17 coming in from seepage and --

18          MR. O'LAUGHLIN: Okay. What about percolation  
19 for the actual -- into the ground?

20                 Your number that you use was evapotranso. So  
21 that's just -- that's just the application of water that  
22 evaporates and goes in the atmosphere.

23          MR. NOMELLINI: That's exactly correct, yes.

24          MR. O'LAUGHLIN: Okay. So did your number  
25 include water that would go to deep percolation?

1           MR. NOMELLINI: Only insofar that I took that  
2 into consideration as to reasonable magnitude of the  
3 number, but I made no specific adjustment for  
4 percolation or seepage losses.

5           MR. O'LAUGHLIN: Okay.

6           MR. NOMELLINI: Or for water table furnishing  
7 the crop.

8           MR. O'LAUGHLIN: Okay. What about crop demand  
9 when you did your calculation? Did you include the  
10 amount of water the actual crop would use? So you have  
11 evaporation going up, you have percolation going down,  
12 and you actually have crop consumption --

13          MR. NOMELLINI: I used the table.

14          MR. O'LAUGHLIN: Just the table. Okay. Thank  
15 you.

16          Have you done any study or analysis of cropping  
17 patterns in Woods Irrigation Company over the years?

18          MR. NOMELLINI: Study?

19          MR. O'LAUGHLIN: Yeah. Analysis, review.

20          MR. NOMELLINI: I have not in modern time, but  
21 I -- you know, I'm aware of the exhibits that we have.

22          There's that one that shows the 1914 alfalfa  
23 pasture and things of that type in the general vicinity,  
24 and I think that's correct.

25          In the -- if you look at the decree of

1 distribution for John Newton Woods, you'll see a half  
2 interest in alfalfa-type equipment is listed as personal  
3 property in the decree of distribution.

4 MR. O'LAUGHLIN: Did you review the aerial  
5 photographs for 1937?

6 MR. NOMELLINI: Did I -- yeah, I looked at them  
7 a little bit. I looked at Wee's -- or Johnson, your  
8 witness's attachments to them.

9 MR. O'LAUGHLIN: Did you look at the cropping  
10 pattern in 1937 to ascertain what was being grown in  
11 Woods Irrigation Company at that time period?

12 MR. NOMELLINI: I did not, but the photos that  
13 I saw looked to me like it was mostly irrigated.

14 MR. O'LAUGHLIN: Mostly irrigated?

15 MR. NOMELLINI: Yeah. The ones that somebody  
16 said didn't show any sign of irrigation, I don't think  
17 that's correct.

18 MR. O'LAUGHLIN: Okay. Do you have any -- so  
19 your statement would be in 1937 your review of the  
20 aerial photographs that more than 50 percent of Woods  
21 Irrigation District was under irrigation?

22 MR. NOMELLINI: I didn't look at the entire  
23 district, but I would say more than 50 percent, without  
24 even looking at the photographs, in 1950 was irrigated.

25 MR. O'LAUGHLIN: '37.



1 MR. NOMESELLINI: '37, I would say the same  
2 thing.

3 MR. O'LAUGHLIN: Okay. Did you review the 1937  
4 aerial photos in stereo when you reviewed them?

5 MR. NOMESELLINI: No, but I learned what stereo  
6 means. I was wondering about it. But no.

7 MR. O'LAUGHLIN: Okay. In regards to the tide  
8 gates that you've put into evidence with the photos, you  
9 said you have documentary evidence.

10 Are you aware of how Woods Irrigation District  
11 functions?

12 MR. NOMESELLINI: If I understand the question,  
13 yes.

14 MR. O'LAUGHLIN: Okay. Is it your  
15 understanding that basically in Woods Irrigation Company  
16 based on the 1911 agreements that there would be an  
17 adding up of the costs associated with the distribution  
18 system and that the individual landowners would pay  
19 their proportionate share?

20 MR. NOMESELLINI: That's my understanding, yes.

21 MR. O'LAUGHLIN: Have you reviewed any  
22 documents prior to 1915 of installations of facilities  
23 such as the ones you showed there in the cost associated  
24 thereto in regards to Woods Irrigation Company?

25 MR. NOMESELLINI: I don't know.

1 MR. O'LAUGHLIN: You --

2 MR. NOMELLINI: I may have, but -- prior to  
3 1915?

4 MR. O'LAUGHLIN: Prior to 1915. 1915, 1914.  
5 What I'm driving at here, Mr. Nomellini, is if we agree  
6 that the Woods Irrigation Company would have costs and  
7 those costs would be associated to the landowners, my  
8 understanding is at the end of the year Woods adds up  
9 the amount of money due and owing and assesses its  
10 landowners.

11 So prior to 1915, I'm assuming those works cost  
12 money and that there would be a budget item for it, and  
13 we would be able to see it.

14 MR. NOMELLINI: Those works -- the floodgates,  
15 in my opinion, were in there well before 1914.

16 MR. O'LAUGHLIN: Well before. Okay.

17 MR. NOMELLINI: Absolutely.

18 MR. O'LAUGHLIN: Okay. So they were -- let me  
19 ask you another question then. Were they -- they were  
20 in existence prior to the 1911 agreement?

21 MR. NOMELLINI: Absolutely. The 1911 agreement  
22 talks about existing facilities, and they were the  
23 facilities that served the Woods brothers when they  
24 jointly owned all those properties.

25 MR. O'LAUGHLIN: In regards to that, what

1 specific evidence or document can you refer to me that  
2 calls out the specific tide gates you've shown us in  
3 your presentation?

4 MR. NOMELLINI: The specific tide gates, I  
5 can't point to that. But I think those Woods 1911  
6 documents make it clear that the system was there  
7 previously.

8 MR. O'LAUGHLIN: Okay.

9 MR. NOMELLINI: The Woods brothers had it.

10 MR. O'LAUGHLIN: I know. I understand the  
11 1911. But is there a document or a statement in the --  
12 and take your time -- in the 1911 document that says,  
13 you know, there are 15 existing tide gates, there are 17  
14 miles of canal, and those are put into the company? Is  
15 there any --

16 MR. NOMELLINI: I don't remember seeing that in  
17 those documents --

18 MR. O'LAUGHLIN: Is there --

19 MR. NOMELLINI: -- but those documents are  
20 lengthy. If you want me to review them, I can again,  
21 but --

22 MR. O'LAUGHLIN: Sure.

23 MR. NOMELLINI: -- there are maps that we have  
24 we think are dated in 1909 that show some of those  
25 facilities.

1           MR. O'LAUGHLIN: Okay. Is there an inventory  
2 list that you are aware of that Woods Irrigation Company  
3 has ever come up with inventorying the scope and extent  
4 of the canals that existed prior to 1915?

5           MR. NOMELLINI: Other than the maps, you know,  
6 there are maps attached to those 1911 agreements.

7           MR. O'LAUGHLIN: Other than those maps?

8           MR. NOMELLINI: Other than those documents, I  
9 don't know of a specific inventory.

10          MR. O'LAUGHLIN: How -- do you know how water  
11 was ordered prior to 1915 in Woods Irrigation Company?

12          MR. NOMELLINI: Of course I didn't live in 1915  
13 or irrigate in Woods Irrigation Company, but the method  
14 would have been for, logically, would have been for  
15 whoever it was that wanted water to notify the Woods  
16 Irrigation Company that they're ready to irrigate.

17          MR. O'LAUGHLIN: Is it your understanding that  
18 prior to 1915 that -- you said something earlier that  
19 caught my attention, that prior to -- oh -- that in  
20 19 -- prior to 1915 that Woods -- within Woods  
21 Irrigation Company they were using pumps to move  
22 irrigation water.

23          MR. NOMELLINI: That's my belief.

24          MR. O'LAUGHLIN: Okay. Your belief. All  
25 right.

1           Now if there's pumping involved, there would be  
2 a charge associated with the pumping, correct?

3           MR. NOMELLINI: Not necessarily. It could have  
4 been the farmer pumping from the canal onto his field,  
5 or there could have been pumps at the intake on Middle  
6 River.

7           MR. O'LAUGHLIN: Okay. So let's focus on  
8 Woods, though, not the individual farmer.

9           On Woods Irrigation Company, what evidence did  
10 you have that Woods Irrigation Company employed pumps  
11 prior to 1915?

12          MR. NOMELLINI: I think logically --

13          MR. O'LAUGHLIN: I want --

14          MR. NOMELLINI: Oh, specific --

15          MR. O'LAUGHLIN: Yeah.

16          MR. NOMELLINI: -- written evidence of some  
17 kind, I can't point you to -- prior to what, 19?

18          MR. O'LAUGHLIN: 15.

19          MR. NOMELLINI: Yeah. I don't think I have  
20 anything specific in mind.

21          MR. O'LAUGHLIN: Okay. Now if there were in  
22 fact -- Woods Irrigation Company was pumping prior to  
23 1915, there would be a charge associated with the use of  
24 some energy source, correct?

25          MR. NOMELLINI: I would think so. It would

1 either be steam, gas, or electricity.

2 MR. O'LAUGHLIN: It would be something.

3 Have you reviewed the Woods Irrigation  
4 Company's budgets to ascertain if in fact there were any  
5 charges prior to 1915 for gas, diesel, or electric?

6 MR. NOMELLINI: I haven't looked at them.

7 MR. O'LAUGHLIN: Do you have those records  
8 available?

9 MR. NOMELLINI: I don't know. Are they in the  
10 minutes? I had a pile of minutes. I looked at some of  
11 them.

12 MR. O'LAUGHLIN: You previously provided us  
13 with minutes from Woods Irrigation Company in regards to  
14 a subpoena.

15 MR. NOMELLINI: I don't think I did. I think  
16 Mr. Herrick did, but.

17 MR. O'LAUGHLIN: Mr. Herrick. Okay.

18 Is there -- at Woods -- what I'm trying to --  
19 maybe I should ask this a different way.

20 One of the statements being made is that  
21 records were destroyed at Woods Irrigation Company.

22 MR. NOMELLINI: I didn't make that statement.

23 MR. O'LAUGHLIN: Okay. Are you aware of that  
24 statement?

25 MR. NOMELLINI: I don't know.

1 MR. O'LAUGHLIN: Okay.

2 MR. NOMELLINI: I haven't heard that. But  
3 anyway.

4 MR. O'LAUGHLIN: Do you know how the canals  
5 were constructed in Woods Irrigation Company, what they  
6 were made of prior to 1914?

7 MR. NOMELLINI: Well, common sense tells me,  
8 and based on my experience, that there were earth  
9 canals. I've seen some maps that show flumes in  
10 particular locations which I assume were wooden flumes  
11 of some type.

12 MR. O'LAUGHLIN: Prior to 1914, what -- did  
13 Woods Irrigation Company have any diversion structures  
14 on the mainstem of the San Joaquin River?

15 MR. NOMELLINI: I haven't seen any evidence of  
16 an irrigation structure for Woods Irrigation Company on  
17 the San Joaquin River, mainstem of the San Joaquin.

18 MR. O'LAUGHLIN: Prior to 1914, did Woods  
19 Irrigation Company have a diversion structure on Burns  
20 Cutoff?

21 MR. NOMELLINI: The Woods brothers -- I'm not  
22 sure. The Woods brothers had land along Burns Cutoff,  
23 and they had a right to take water from Burns Cutoff.

24 And whether that was integrated into the Woods  
25 agreements when they formed the Woods Irrigation

1 Company, I don't know. But there is -- there is a Woods  
2 ownership, Woods brothers, all the way up to Burns  
3 Cutoff.

4 MR. O'LAUGHLIN: Prior to 1914, was there a  
5 diversion by Woods Irrigation Company on Middle River?

6 MR. NOMELLINI: Yeah, I believe so.

7 MR. O'LAUGHLIN: Okay. How many diversions  
8 were there?

9 MR. NOMELLINI: I think there were probably  
10 three.

11 MR. O'LAUGHLIN: Okay. Do you have a map  
12 depicting the three locations of the diversions on  
13 Middle River prior to 1914, where the locations would  
14 be?

15 MR. NOMELLINI: I think we have all kinds of  
16 maps that show -- the pictures I took, two of the  
17 diversion points are in the pictures.

18 MR. O'LAUGHLIN: And the --

19 MR. NOMELLINI: Actually three of them, all  
20 three that I'm thinking about.

21 MR. O'LAUGHLIN: And I gathered that from your  
22 testimony, but my problem is the pictures don't have a  
23 location on --

24 MR. NOMELLINI: Okay.

25 MR. O'LAUGHLIN: -- a map. You just say --



1 MR. NOMELLINI: Okay.

2 MR. O'LAUGHLIN: -- they're on Middle River.

3 MR. NOMELLINI: I think I do.

4 MR. O'LAUGHLIN: And my understanding --

5 MR. NOMELLINI: Let's look at 6A.

6 MR. O'LAUGHLIN: 6A. Okay. Let's look at 6A.

7 MR. NOMELLINI: If we can.

8 (Interruption by the reporter)

9 MR. NOMELLINI: Let me try with the pointer.

10 The tunnel -- the top of the tunnel floodgate.

11 Okay. Starting with Howard Road and Middle

12 River, which is in the lower part of the map about

13 midway, the westerly tunnel is the one closest to the

14 Howard Road Bridge.

15 And then the easterly facility is where the

16 tunnel has been filled in.

17 And those would be two.

18 And then there's a third one where Stark Road

19 runs south up onto the right bank levee of Middle River.

20 MR. O'LAUGHLIN: Okay. What is -- have you

21 tried to -- or in your ascertainment of the tunnel one

22 first at the end of Howard Road, did you try to

23 ascertain an elevation of the invert of that tunnel?

24 MR. NOMELLINI: At Howard Road and which -- I

25 don't understand which one you're talking about.

1           MR. O'LAUGHLIN: The one with the tunnel.

2           MR. NOMELLINI: Okay. The one that actually

3 shows the top part of the tunnel?

4           MR. O'LAUGHLIN: Yes.

5           MR. NOMELLINI: I did not.

6           MR. O'LAUGHLIN: Okay.

7           MR. NOMELLINI: But I believe somebody in our

8 group did. I think the engineers might know.

9           MR. O'LAUGHLIN: Okay. Do you know what the

10 dimensions of the tunnel are?

11          MR. NOMELLINI: Well, I didn't measure it, but

12 it looked to me like it was about 8 feet in diameter.

13          MR. O'LAUGHLIN: In talking about the elevation

14 of the invert, the other thing I wanted to know is: I'm

15 assuming the tunnel goes to the river. Do you know what

16 the invert of the tunnel is as it hits the river?

17          MR. NOMELLINI: I didn't measure it, but the

18 common practice was to set it down as far below low tide

19 as you could.

20          Normally, you could get a couple feet just

21 going out there at low tide and putting a few boards or

22 something to keep the water out while you set the bottom

23 of the tunnel.

24          MR. O'LAUGHLIN: Okay.

25          MR. NOMELLINI: Or the box, you know, lot of

1 them were wooden boxes. Some were pipes. You can go  
2 deeper than that if you use other techniques.

3 MR. O'LAUGHLIN: Okay. Do you know when they  
4 built the tunnel? Do you know if -- how far the canal  
5 extended before it hit a -- let me ask it a different  
6 way. How many diversion points were there off of this  
7 tunnel canal?

8 MR. NOMELLINI: I haven't tried to count them,  
9 but I don't really know how many.

10 MR. O'LAUGHLIN: Here's my question: How was  
11 it prior to 1914 that when water was, let's say,  
12 hypothetically turned in that people knew what amount of  
13 water to take and how they would take it? And doesn't  
14 that affect the carrying capacity of the canal as well?

15 MR. NOMELLINI: I think it was sufficiently  
16 large to accommodate -- there was Woods brothers, two  
17 brothers, were running this thing prior to 1909.

18 MR. O'LAUGHLIN: Okay.

19 MR. NOMELLINI: And they were farmer types.  
20 They had big land holdings in the Tulare Lake Basin  
21 prior to coming up into the Delta.

22 So they knew what those broad scale irrigation  
23 practices were. And the typical farmer, if he couldn't  
24 get enough through the canal, he would make it larger.

25 So I'm quite confident that these people on the

1 scale that they were operating were building canals of  
2 sufficient capacity.

3 MR. O'LAUGHLIN: But as you sit here today --  
4 one of the things is, looking at this diagram, 6A, one  
5 of the assertions has been is that off of that Howard  
6 Road intake going straight up Roberts Island depicts a  
7 canal. Do we know what the size or width or depth of  
8 that canal is?

9 MR. NOMELLINI: Today?

10 MR. O'LAUGHLIN: No, back in 1914.

11 MR. NOMELLINI: I think it would be sufficient  
12 to irrigate all the ground they had.

13 MR. O'LAUGHLIN: Do you have --

14 MR. NOMELLINI: Those multiple --

15 MR. O'LAUGHLIN: Sorry.

16 MR. NOMELLINI: Multiple facilities would be  
17 sized to accommodate their irrigation needs.

18 MR. O'LAUGHLIN: Can you point to anything that  
19 you are aware of, a specific document at Woods  
20 Irrigation Company or anywhere else, that would  
21 accurately describe the construction of the canals as  
22 they existed prior to 1914, the width, the depth, the  
23 slope?

24 MR. NOMELLINI: I'm not aware of it, but I mean  
25 that -- there's some topography in the -- on a couple of

1 the maps that have some elevations on them.

2 MR. O'LAUGHLIN: Would you generally agree  
3 with -- if irrigation was by gravity prior to 1920,  
4 would you agree that it was probably less water would be  
5 able to be applied for irrigation purposes than if it  
6 was pumped?

7 MR. NOMELLINI: Sure. You could pump more  
8 water than you could move with gravity, but I don't  
9 know. If they were taking the water out at the same  
10 time they were putting water in, there should not have  
11 been any limitation on the sizing of these canals. If  
12 the present gates structures, which I took pictures of,  
13 show the size, they wouldn't have any trouble gravity  
14 feeding as long as they were taking water out.

15 MR. O'LAUGHLIN: Would it be safe to say that  
16 for the other two diversions on Middle River that you do  
17 not know the elevation of the invert?

18 MR. NOMELLINI: A floodgate would have been  
19 placed so it could accommodate water at the low tide.

20 MR. O'LAUGHLIN: But you don't know the  
21 elevation of the invert; is that correct?

22 MR. NOMELLINI: I didn't measure the elevation,  
23 no. But I mean we can tell low tides. You get down to  
24 about a minus 1.5 feet below sea level in June and most  
25 years, 1.8.

1           MR. O'LAUGHLIN: I'm confused by the testimony  
2 that's been given to date in this matter.

3           Is it your assertion that the sloughs are  
4 natural watercourses and had water in them all the time  
5 naturally? Or is it the assertion that the sloughs were  
6 some type of geographic feature that got turned into a  
7 canal and improved?

8           MR. HERRICK: I would just object to the  
9 question. It needs more specificity about what sloughs  
10 we're talking about because the area, pursuant to other  
11 testimony, had sloughs in numerous places, and I don't  
12 know if he's referring to just the ones that have been  
13 matched up to irrigation or drainage lines or something  
14 else.

15           MR. O'LAUGHLIN: Just the one matched up to  
16 irrigation and drainage lines. Are the sloughs --

17           MR. NOMELLINI: I would say both.

18           MR. O'LAUGHLIN: Okay.

19           MR. NOMELLINI: The depth, if -- any kind of  
20 depth in this area below land surface, any significant,  
21 two or three feet, would have water in it.

22           And of course, during the spring flows and the  
23 flood period, you could have water, you know, many, many  
24 feet over the top of the whole area.

25           MR. O'LAUGHLIN: When you were talking earlier

1 about mineral and organic soils, I forget which exhibit  
2 it was by Mr. Lajoie which had all the red on it.  
3 Remember that?

4 MR. NOMELLINI: I think those are the alluvial  
5 soils.

6 MR. O'LAUGHLIN: Okay. And I gather from your  
7 testimony that if, based on what you said, that if we  
8 looked at Roberts Island that the alluvial soils would  
9 be the more mineral soils. And then if we looked at  
10 that map, the organics would basically be what  
11 everything else is at Roberts Island?

12 MR. NOMELLINI: That's my opinion, yes.

13 MR. O'LAUGHLIN: Okay. Now, if the topographic  
14 feature on let's say Roberts Island was at zero, okay?  
15 Elevation on the island. Is it your belief then that  
16 through hydraulic pressure and gradient that that  
17 property would receive waters basically subirrigating it  
18 if the tide and everything else on the outboard bank was  
19 above that?

20 MR. NOMELLINI: If your elevation zero is what  
21 I would call mean sea level?

22 MR. O'LAUGHLIN: Sure.

23 MR. NOMELLINI: The normal high tide would be  
24 up to like 3.4 feet above mean sea level, so yes. Water  
25 would try to seek its own level.

1           In addition, if it's near the surface, it would  
2 support vegetation. And that's why I think the studies  
3 pick 5 feet above mean sea level for the delineation of  
4 the Delta lowlands.

5           MR. O'LAUGHLIN: Have you tried to go back  
6 around and look at the 1911 topo and map the lands  
7 within Woods Irrigation Company that were above 5 feet  
8 and the lands that were below 5 feet?

9           MR. NOMELLINI: I looked at those contours, and  
10 I don't know, you know, if they're right or wrong. But  
11 there could be areas that were 5 feet above sea level.

12           MR. O'LAUGHLIN: Would that change your opinion  
13 as to whether or not irrigation water was applied to  
14 lands above 5 feet?

15           MR. NOMELLINI: No. I think they would have  
16 used pumps of some type to get the water on there or  
17 waterwheels, just like the Settlement Geography of the  
18 Delta described.

19           MR. O'LAUGHLIN: And if lands were at zero mean  
20 sea level or below, they may not need surface water  
21 because they were getting it subsurface, correct?

22           MR. NOMELLINI: Well, when you put the levees  
23 up and you run drainage pumps, you know, you control  
24 that water level.

25           MR. O'LAUGHLIN: Okay.



1 MR. NOMELLINI: So it's a function of the  
2 situation at the time.

3 MR. O'LAUGHLIN: Okay. Are you aware of  
4 drainage pumps existing in Woods Irrigation Company  
5 prior to 1915?

6 MR. NOMELLINI: I know drainage pumps went in  
7 the area, even in the lower area like in Lower Roberts  
8 in the 1800s. Late 1800s.

9 MR. O'LAUGHLIN: Okay.

10 MR. NOMELLINI: I think that would have been an  
11 other that got drainage pumps after the area where Woods  
12 was.

13 MR. O'LAUGHLIN: Okay.

14 MR. NOMELLINI: Which is in Middle Roberts  
15 primarily.

16 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin.

17 MR. O'LAUGHLIN: I'm sorry.

18 CO-HEARING OFFICER PETTIT: Are we at a good  
19 point to stop for lunch, or are you close to being done?

20 MR. O'LAUGHLIN: Oh, I'm sorry.

21 CO-HEARING OFFICER PETTIT: Not a problem. I  
22 just was curious about whether this was a good time.

23 MR. O'LAUGHLIN: Why don't we break for lunch.  
24 I probably have maybe -- then I can collect my notes and  
25 stuff, and then come back and I may have maybe five, ten

1 more minutes.

2 CO-HEARING OFFICER PETTIT: Sounds good.

3 Before you all leave, there's a couple of  
4 things I'd like to bring up.

5 Number one, I think it would be helpful,  
6 Mr. Nomellini and Mr. O'Laughlin, in view of that last  
7 series of questions about the locations of those pumps,  
8 I'm concerned about the clarity of the hearing record,  
9 and pointing to things on the wall doesn't make a --  
10 isn't a great deal of assistance.

11 I'm wondering if during the break or sometime  
12 soon Mr. Nomellini could take a hard copy of that map  
13 and mark the locations of those photographs on the hard  
14 copy of the map, and maybe Ms. Aue could give me some  
15 advice as to how we could consider using that in the  
16 future if we have to get it in the record.

17 MR. O'LAUGHLIN: Oh. If they're agreeable,  
18 we'll make -- we have a hard copy, and if they're  
19 agreeable, when we come back Dante can mark it, and then  
20 we'll just mark it MSS 4.

21 CO-HEARING OFFICER PETTIT: I would think that  
22 would suffice, and I think it would be a lot clearer as  
23 to what you were talking about, so.

24 MR. O'LAUGHLIN: And I -- actually in addition  
25 to that, it would be helpful when we do that, Dante, to

1 remember to mark it to the photo as well.

2 MR. NOMELLINI: Okay. I think we ought to do  
3 that. And sometime before we close the hearing, we  
4 probably ought to put our heads together and see if we  
5 can't make the record as clear as we can. We're liable  
6 to be looking at it for some time.

7 CO-HEARING OFFICER PETTIT: We are very much  
8 interested in doing that.

9 MR. NOMELLINI: We are actually talking about  
10 it, Mr. Pettit, amongst ourselves as to how we could put  
11 this together in a fashion that --

12 CO-HEARING OFFICER PETTIT: Okay. Couple other  
13 things -- I'm sorry. Go ahead, Mr. O'Laughlin.

14 MR. O'LAUGHLIN: What time would you like us  
15 back?

16 CO-HEARING OFFICER PETTIT: I'll get to that in  
17 just a moment. Couple of other things.

18 I think Mr. Mona sent out an e-mail advising  
19 everybody that I'd like to consider going a little later  
20 tonight to cover as much ground as we can. And I hadn't  
21 settled on an hour or anything, but is that going to  
22 inconvenience anybody tremendously if we stay an extra  
23 hour or two tonight?

24 I'd like to keep this thing moving as much as  
25 we can since it's going pretty slow anyhow.

1           MR. HERRICK:  Mr. Chairman, it doesn't  
2 necessarily inconvenience us.  I just want to give you  
3 our thoughts how the rest of the days would go because  
4 we have the witness who is not here, so he has to be  
5 tomorrow for us.

6           Then there's some other cases-in-chief,  
7 although they won't take long.

8           I was assuming, and I believe others were too,  
9 that left Monday for rebuttals to start so we had time  
10 to think and consider all the evidence before we put the  
11 rebuttal on.

12           CO-HEARING OFFICER PETTIT:  As much as I would  
13 like to be an optimist, I was think along the same lines  
14 because I suspect that's what's going to happen.

15           MR. O'LAUGHLIN:  For scheduling purposes, my  
16 understanding is we can finish up Mr. Nomellini this  
17 afternoon and then -- it's your case.  I don't know if  
18 you are going to put on Mr. Neudeck or Neudeck next.  
19 That's going to take two and a half or three hours easy.

20           Then Mr. Grunsky is probably going to take  
21 another couple hours as well.

22           So my expectation is whether it's 5:00 or 5:30  
23 or 6:00, we will probably be hopefully done with your  
24 case-in-chief.

25           My case-in-chief is an hour, hour and a half,

1 two hours at the most with Mr. Wee, and I don't know if  
2 anybody else has a case-in-chief.

3 So we could start rebuttal as soon as maybe  
4 tomorrow afternoon.

5 CO-HEARING OFFICER PETTIT: That brings up  
6 another question that the sooner we could get to see  
7 some of the rebuttal exhibits and testimony the more  
8 help it would be in preparing for it.

9 So if any of you can get that information  
10 distributed to all the parties ahead of time, we'd  
11 appreciate it and they probably would too.

12 MR. O'LAUGHLIN: Well, okay. Let's ask -- I  
13 think that's a great question. If we're going to set  
14 Monday aside for rebuttal --

15 CO-HEARING OFFICER PETTIT: Why don't you get  
16 together amongst yourselves at lunchtime and maybe we  
17 can see if we can come up with something that way.

18 And the only other thing I was thinking is I  
19 realize we're getting a lot of information. I'm  
20 probably going to be pretty liberal about letting stuff  
21 into the record with the caveat that I'm sure my  
22 colleagues and I can evaluate how much weight to give it  
23 and the competence of the individual testimony.

24 So I'm pretty comfortable with that, and I'm  
25 probably going to be pretty liberal about letting it in

1 and we'll use it to the extent that we think it's  
2 useful.

3 That brings me to a reminder of what the key  
4 issues were in this hearing, and the first one was  
5 should the State Water Board issue the CDO?

6 And the second one was: If not, what  
7 modifications to it would be necessary?

8 We've -- or if so. I said if not. If we do  
9 issue it, what modifications to it might be appropriate.

10 And maybe the time hasn't come for you to give  
11 us those suggestions, but to the extent the testimony  
12 can keep in mind those two objectives, I would  
13 appreciate it, and we would like to keep this thing  
14 moving along as much as possible.

15 So with that, it's ten after 12, will an hour  
16 be sufficient? Let's resume at 1:15.

17 MR. RUBIN: Thank you.

18 (Lunch recess)

19

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25

1 AFTERNOON SESSION

2 --o0o--

3 CO-HEARING OFFICER PETTIT: We're ready to  
4 resume with the rest of the cross-examination of  
5 Mr. Nomellini.

6 Before we do that, Ms. Kincaid is going to have  
7 Mr. Nomellini mark out the points on the map he was  
8 testifying to with respect to his photographs, and we'll  
9 take a few minutes to get that done since I suspect he  
10 would rather not be cross-examined at the same time he  
11 is marking the map.

12 Let's get the map settled first.

13 MR. NOME LLINI: Settle the map off the record,  
14 is that what you're suggesting, then --

15 CO-HEARING OFFICER PETTIT: No, you're the one  
16 that has to mark it, so I thought we were going to do it  
17 now. So if that's the case, we'll have to hold off  
18 until you get that done.

19 And I think Ms. Kincaid is going to help tie  
20 the points to the map; is that correct?

21 MS. KINCAID: That's correct.

22 Just to make sure the record's clear, I believe  
23 what Mr. Nomellini is doing is identifying on the map  
24 that we'll be marking MSS 4 the points identified in his  
25 photographs.

1           And Mr. Nomellini, if you could identify which  
2 photograph, you know, just -- I guess identify your  
3 photo 8I-7, for example, on specific points, that would  
4 be helpful.

5           MR. RUBIN: Mr. Pettit, again -- excuse me;  
6 Hearing Officer Pettit. Just so the record is clear, I  
7 believe what Mr. Nomellini is marking is his  
8 understanding of where diversion facilities existed  
9 prior to 1914, and his testimony was that the maps  
10 reflect those locations.

11           And therefore he'll be able to identify which  
12 map corresponds to the diversion location that  
13 Mr. Nomellini believes existed prior to 1914.

14           CO-HEARING OFFICER PETTIT: And does that  
15 include marking on the maps the photo -- the structures  
16 you showed in the photos?

17           MR. NOMELELLINI: I think they're in the same  
18 locations.

19           CO-HEARING OFFICER PETTIT: That was my point.

20           MR. HERRICK: I don't want to make this any  
21 more confusing.

22           Mr. Nomellini is marking on a map that is dated  
23 1941. So I don't want the record to think that it's a  
24 map 1914 or before.

25           He's got a 1941 map that he'll put where he



1 believes or is located the diversions that he just  
2 agreed were there before 1914.

3 CO-HEARING OFFICER PETTIT: My main concern was  
4 just making sure that when we read this thing some time  
5 in the future that we know what point he was talking  
6 about.

7 MR. NOMELENI: Okay. Do you want -- I'll just  
8 focus on the Woods photos and the Woods locations.

9 MS. KINCAID: Right. I assume only the Woods  
10 photos would be able to be located on the Woods map.

11 MR. NOMELENI: Okay. (Marking document)

12 Okay. I have them marked. And this document,  
13 the map I marked them on, has an Exhibit 48 on the side.  
14 It doesn't have the other exhibit number. What number  
15 did you want to give it?

16 MS. KINCAID: It will be MSS 4.

17 MR. NOMELENI: Okay. I've marked on MSS 4 the  
18 locations that correspond to photographs.

19 The most westerly is Exhibit 8I-16, and that  
20 photograph in my opinion is at the same location that I  
21 would have expected there to be a floodgate.

22 I've marked on the two control gates, one 8I-7,  
23 and the photograph of that, and that is the most  
24 westerly control structure that is landward of the river  
25 facilities on Woods.

1           And then to the east of that is 8I-8 which is  
2 another control structure that interconnects the two  
3 diversion facilities, and I believe they were in  
4 existence prior to 1914.

5           Then I marked for the westerly tunnel 8I,  
6 photographs 9 and 10. 9 was the tunnel part on the land  
7 side, and 10 was of the river side where the gate is.

8           Then I marked easterly of that 8I-11 which  
9 shows that bad picture underneath the pump structure of  
10 what appears to be the headgate of a filled-in tunnel.

11           MS. KINCAID: And I believe 8I-12, did you mark  
12 that photograph? I believe you testified earlier that's  
13 also a Woods Irrigation photo?

14           MR. NOMELEINI: Okay. 8I-12 I'll mark. It is  
15 upstream. And I don't know that to be a Woods  
16 Irrigation structure, but it was on the -- on the  
17 property that belonged to the Woods brothers.

18           That was my testimony, that that would have  
19 been serving the Woods brothers. I don't know that it's  
20 ever been integrated into Woods Irrigation Company, but  
21 I'll mark that. That's 8I-12. And I believe that was  
22 in existence prior to 1914.

23           MS. KINCAID: Great.

24           CO-HEARING OFFICER PETTIT: Thank you.

25           Now Mr. Nomellini, you won't be here in the

1 morning?

2 MR. NOMELELLINI: I've got to be gone. Now I can  
3 be available in the morning if there is some reason for  
4 me to be here.

5 CO-HEARING OFFICER PETTIT: I don't know if  
6 it's necessary. The only thing I was thinking of, we  
7 can have copies made of that mark-up for all the  
8 parties, and I don't know if anybody would have any  
9 further questions about it or not, but I'd like to give  
10 them the opportunity.

11 MR. NOMELELLINI: I can be here in the morning.

12 CO-HEARING OFFICER PETTIT: And we can have the  
13 copies back and available tomorrow morning, and then  
14 everybody can look at them and decide whether they raise  
15 any questions or not, I think.

16 MR. NOMELELLINI: That's fine.

17 MR. RUBIN: Hearing Officer Pettit, I don't  
18 think we'll have any questions. I don't want  
19 Mr. Nomellini to travel up here just for the potential,  
20 at least -- and then not have any questions asked of him  
21 if he wasn't otherwise planning on being here.

22 At least from San Luis & Delta-Mendota Water  
23 Authority, we would not expect to ask any questions.

24 MR. ROSE: Nor would we.

25 CO-HEARING OFFICER PETTIT: Okay. As a default

1 worst-case scenario, will you be here Monday?

2 MR. NOMELEINI: Yes.

3 CO-HEARING OFFICER PETTIT: In that case, we  
4 could cover it Monday if we had to. But I appreciate  
5 you respecting his time. I guess you won't need to be  
6 here tomorrow then. Thank you.

7 Thank you Ms. Kincaid.

8 MR. NOMELEINI: Thank you.

9 CO-HEARING OFFICER PETTIT: Before we start the  
10 next cross-examination, I was wondering if any of you  
11 were able to come to a conclusion about submittal of  
12 rebuttal testimony? If not, that's okay. I didn't know  
13 if you had anything to tell us or not.

14 MR. HERRICK: I had a brief discussion with  
15 Mr. O'Laughlin. He's ready to exchange rebuttal  
16 testimony, but we're not. I apologize for that.

17 Because of the new reporting requirements for  
18 diverters from surface waterways, our time between now  
19 and Monday is filled to help other people besides this  
20 proceeding.

21 So I just have to apologize that we won't be  
22 able to get something ahead of time, so I certainly  
23 won't ask Mr. O'Laughlin to give me his because I can't  
24 give him mine.

25 MR. RUBIN: And Hearing Officer Pettit, just --

1 maybe Mr. O'Laughlin rethought his response to  
2 Mr. Herrick.

3 We have been working on development of rebuttal  
4 testimony, and we had a near-final draft of the rebuttal  
5 testimony that we intend to present, but there may be  
6 some changes that we're going to want to make based upon  
7 the testimony provided today and tomorrow.

8 So there is some benefit we see to give us some  
9 time to think about and consider the evidence that was  
10 submitted the last couple of days before we submit it on  
11 Monday.

12 CO-HEARING OFFICER PETTIT: I appreciate the  
13 constraints. I thought it was worth a try. We'd like  
14 to get it as soon as we can, of course, and I'm sure the  
15 rest of you would too.

16 Let's move on. Mr. Ruiz, do you have anything  
17 before we --

18 MR. RUIZ: No, we have not, Central and South  
19 Delta.

20 CO-HEARING OFFICER PETTIT: Okay.

21 Ms. Aue and I are having a debate here. Did  
22 Ms. Gillick also indicate she had no cross?

23 MS. GILLICK: I'm sorry. I shook my head. I  
24 thought you saw it. I don't have any cross.

25 CO-HEARING OFFICER PETTIT: I saw it.

1 STAFF ATTORNEY AUE: I didn't.

2 CO-HEARING OFFICER PETTIT: Mr. Herrick, are  
3 you bringing Mr. Neudeck up next?

4 MR. HERRICK: Yes, I can do that.

5 Since I haven't done anything in order here to  
6 date, I wonder if the Board would mind if I just put on  
7 Mr. Terry Prichard and Mr. Grunsky just because they  
8 keep sitting around for a small bit of testimony. I  
9 thought maybe we'd get them done and the rest of the day  
10 would be Mr. Neudeck.

11 CO-HEARING OFFICER PETTIT: That's fine.

12 MR. HERRICK: If Mr. Prichard and Mr. Grunsky  
13 would come up here, I'll get my stuff here.

14 MR. RUBIN: Mr. Herrick, just for the record, I  
15 might have missed this, but you had no redirect of  
16 Mr. Nomellini? Is that --

17 MR. HERRICK: I had some very piercing  
18 redirect, but Mr. Nomellini said he did everything  
19 perfectly and would not agree to answer any more  
20 questions. Not a joke.

21 (Laughter)

22 MR. RUBIN: A piece of housekeeping.

23 During cross-examination of Mr. Nomellini,  
24 there was reference to a map that is included in a  
25 document, part of which is marked as an exhibit for

1 Woods Irrigation Company.

2 During the break, we obtained a copy of the map  
3 and have multiple copies available to the parties, so I  
4 was going to distribute them. It's marked as MSS  
5 Exhibit 3, and so I will distribute those.

6 CO-HEARING OFFICER PETTIT: Fine. Next  
7 witnesses? We're ready if you are.

8 MR. HERRICK: Thank you, Mr. Chairman. John  
9 Herrick again for Woods Irrigation Company.

10 On this panel, we have witnesses Mr. Timothy  
11 Grunsky and Mr. Terry Prichard.

12 --o0o--

13 TIMOTHY GRUNSKY

14 TERRY PRICHARD

15 Called by WOODS IRRIGATION COMPANY

16 DIRECT EXAMINATION BY MR. HERRICK

17 --o0o--

18 MR. HERRICK: I'll start with Mr. Grunsky.

19 Mr. Grunsky, would you state your name and  
20 business address for the record.

21 MR. GRUNSKY: Timothy Grunsky, 1310 West  
22 Charter Way, Stockton, California 95204.

23 MR. HERRICK: Mr. Grunsky, you have in front of  
24 you WIC Exhibit 11; is that correct?

25 MR. GRUNSKY: Testimony, yes.

1           MR. HERRICK: That is a true and correct copy  
2 of your testimony for the proceedings?

3           MR. GRUNSKY: Yes, it is.

4           MR. HERRICK: And I guess just as an offer of  
5 proof, you're just stating that you're the president of  
6 Woods, you are familiar with the corporate records  
7 generally, and you are here to not only provide a copy  
8 of the original bylaws but then to confirm that certain  
9 portions of minutes used in other people's testimony  
10 were indeed from the minutes of Woods Irrigation  
11 Company; is that correct?

12           MR. GRUNSKY: That's correct.

13           MR. HERRICK: Mr. Prichard, would you please  
14 state your name and business address for the record.

15           MR. PRICHARD: Yes. My name is Terry Prichard.  
16 My business address is 6601 Stanley Road, Stockton,  
17 California.

18           MR. HERRICK: And WIC Exhibit No. 9 is a  
19 statement of your qualifications; is that correct?

20           MR. PRICHARD: Yes, it is.

21           MR. HERRICK: And WIC Exhibit 10 is your  
22 testimony for this proceeding; is that correct?

23           MR. PRICHARD: Correct.

24           MR. HERRICK: And is WIC Exhibit 10 a true and  
25 correct copy of your testimony?



1 MR. PRICHARD: Yes, it is.

2 MR. HERRICK: Would you please summarize your  
3 testimony?

4 MR. PRICHARD: I was asked by Mr. Herrick to  
5 take a look at the map entitled San Joaquin The Gateway  
6 County of California map which was thought to be dated  
7 from 1910 to 1914.

8 The purpose of my review was to comment and/or  
9 come to a conclusion about the water use in the areas  
10 designated by the specific crops and locations which  
11 were upon that map.

12 The map specified that the crops grown at that  
13 time were beans and alfalfa on portions of the north of  
14 the Middle River and south of the Highway 4.

15 You know, although these soils can change over  
16 time, I also took a look at the current soils map for  
17 that area and overlaid that current soils map over this  
18 old map and added to that the -- across the top of the  
19 current positions of Google Earth.

20 Essentially, the type of soils that are  
21 designated in these areas were -- the series were  
22 Egbert, Ryde and Merritt. Those are the predominant  
23 type soils series which are associated.

24 There are also smaller areas of more  
25 mineralized soils which are the Dello and Grangeville

1 sandier soils.

2 All of these in fact are mineral soils that are  
3 not very conducive to subsurface irrigation. And so  
4 from this, I can conclude that, depending on the crop, I  
5 can make a reasonable conclusion whether or not these  
6 were irrigated by surface irrigation or subsurface  
7 irrigation.

8 First, beans. They're predominantly shown on  
9 the map in the relevant area. And since the roots on  
10 the beans is relatively shallow they draw their moisture  
11 from around 18 to 36 inches and they extract most of  
12 that from the upper 18 inches.

13 It's obvious a bean-growing season which  
14 includes summer months would require some sort of  
15 irrigation. And since those beans are grown on these  
16 mineral soils, the most likelihood is for that to be  
17 surface irrigation.

18 A similar analysis was done for alfalfa.  
19 Alfalfa can be irrigated from -- it's a deeper-rooted  
20 crop and can be irrigated using subsurface irrigation  
21 methods.

22 But the locations on this hand-drawn map make  
23 it difficult to determine exactly what crop was in  
24 exactly what soil series.

25 The final conclusion that I have is I believe

1 it's a reasonable conclusion that the surface irrigation  
2 was occurring in these areas for those crops. However,  
3 I did not rule out the fact that subsurface irrigation  
4 for an alfalfa crop could have occurred.

5 MR. HERRICK: I guess that's direct. Thank  
6 you.

7 MR. RUBIN: Hearing Officer Pettit, I know you  
8 like to follow a little bit of a different procedure in  
9 terms of objections, but I think the testimony that you  
10 just heard is particularly contrary to the rules, even  
11 the lax rules that are before you.

12 Mr. Prichard's testimony references a map. I  
13 don't know where that map is. It wasn't provided to me,  
14 as far as I'm aware.

15 And as a result of that, Mr. Prichard's  
16 testimony is complete hearsay and is not supported by  
17 any nonhearsay evidence, and under your rules you are  
18 precluded from admitting that evidence into the record.

19 MR. HERRICK: If I may.

20 All of the maps that have been talked about  
21 today and will be talked about in the future were  
22 provided to Mr. O'Laughlin based on a records request.

23 So we gave him everything, especially the  
24 Gateway map that's been referred to.

25 Mr. Prichard just used that map and is

1     testifying from a source alfalfa and beans were grown in  
2     the areas of Woods and based on his other analysis is  
3     making a conclusion.

4             I think that's perfectly appropriate.

5             If you want us to bring that other map in  
6     later, which has again already been provided to the  
7     other side, we can.

8             But there's no trick here. It's just  
9     Mr. Prichard constituted his testimony this way.

10            CO-HEARING OFFICER PETTIT: Let me take a quick  
11     moment to look at the map that I was looking at and see  
12     where we stand.

13            So we weren't talking about the map that's  
14     attached to his testimony that was submitted; is that  
15     correct?

16            MR. HERRICK: Mr. Prichard can answer better  
17     than I, but I believe the map attached to his testimony  
18     is an outline of the Woods area, and he's telling us he  
19     put that on a Google Earth map, and based on a map that  
20     had alfalfa and beans in our area in some time around or  
21     before 1914 he's made some conclusions.

22            But he can better say it.

23            MR. PRICHARD: Yes, all three maps are on  
24     there.

25            CO-HEARING OFFICER PETTIT: Are combined in

1 this one map?

2 MR. PRICHARD: They are combined in one with  
3 overlay.

4 CO-HEARING OFFICER PETTIT: Okay. And the two  
5 original maps, I guess, are not?

6 MR. PRICHARD: It's the Woods Irrigation  
7 Company lands of the -- served by the Woods Irrigation  
8 Company as well as the Gateway map which had the crops  
9 illustrated on those and with Google Earth and the soil  
10 survey information.

11 CO-HEARING OFFICER PETTIT: Okay. But are  
12 those, first two, have they been submitted?

13 MR. HERRICK: The 1941 Woods map is an exhibit  
14 to a number of people's testimony. I don't know if the  
15 Gateway map is separately presented by anybody except  
16 here through Mr. Prichard.

17 CO-HEARING OFFICER PETTIT: Okay.

18 Mr. Rubin, is it the Gateway map that you were  
19 concerned about?

20 MR. RUBIN: Yes. The foundation for his  
21 testimony is the Gateway map and crops that are  
22 apparently or allegedly depicted on that map. That is  
23 the map that I'm concerned with.

24 There is a description of Exhibit 10A within  
25 the written testimony, and it's described as a:

1           Google Earth map of the area over which I  
2           have placed the current soils types.

3           There is no reference there to the overlaying  
4 as well the San Joaquin, The Gateway County of  
5 California map.

6           And I'll speak to the issue that Mr. Herrick  
7 raised as well in terms of documents that may have been  
8 provided in response to the subpoena that Mr. O'Laughlin  
9 made.

10           There's a number of issues there. The most  
11 fundamental is the volume of material that was provided  
12 in terms -- in response to the subpoena is very large.

13           And if the standard here is that any document  
14 that was submitted in response to that subpoena is  
15 something that we have an obligation to find, I think  
16 that creates an unfair, undo burden on us.

17           It also puts a lot of the other participants in  
18 this process at a severe disadvantage. As an example,  
19 the Prosecution Team I don't believe have copies of any  
20 of those documents. Maybe they do. I know we haven't  
21 provided any copies to them.

22           CO-HEARING OFFICER PETTIT: I think this does  
23 present something of a problem, Mr. Herrick, because  
24 relying on the material that was obtained by the  
25 subpoena I think makes things a little bit too broad for

1 this proceeding.

2           However, we do accept hearsay testimony. We  
3 don't accept it as evidence unless it's corroborated by  
4 something else, so I'm not too concerned about the end  
5 result of this, and my inclination is to allow this  
6 testimony with that caveat.

7           MR. RUBIN: Hearing Officer Pettit, can I speak  
8 to that issue?

9           CO-HEARING OFFICER PETTIT: Sure.

10          MR. RUBIN: In terms of the evidentiary rules,  
11 I understand that hearsay is -- hearsay evidence is  
12 admissible under certain circumstances but it's only if  
13 it's -- and I will quote to you 11513 subsection D of  
14 the California Government Code:

15                   Hearsay evidence may be used for the  
16                   purpose of supplementing or explaining  
17                   other evidence but over timely objections  
18                   shall not be sufficient in itself to  
19                   support a finding.

20          And in this circumstance, Mr. Prichard has  
21 offered no other evidence to support his testimony. And  
22 I guess, if I understand your ruling, you may admit it  
23 but you cannot use it.

24          MR. HERRICK: If I may comment, Mr. Chairman,  
25 that's incorrect.

1           The other evidence that we've submitted, you  
2 know, without overstating it, includes numerous bits of  
3 evidence dealing with whether or not water was delivered  
4 to lands and used for irrigation.

5           The fact that Mr. Prichard's testimony doesn't  
6 include that other evidence doesn't mean anything you  
7 allege he's using is hearsay is unacceptable. That's  
8 not the rule.

9           Now we can -- if you want, we can bring him  
10 back on rebuttal, you know, or -- we're not trying to  
11 hide the ball.

12           When we submit testimony somewhere that  
13 mentions the Gateway map that we previously provided to  
14 them, it's not my intent to be tricking them or  
15 anything. But they could have looked up the map, and  
16 from the stuff we gave them, it's titled Gateway map,  
17 and, you know.

18           CO-HEARING OFFICER PETTIT: I think it would  
19 solve the problem if you brought it back and did present  
20 it at rebuttal.

21           Mr. Rubin, I think the Board's specific  
22 regulations with respect to hearsay may differ from the  
23 statute that you concluded a little bit.

24           And we do accept hearsay. We don't really  
25 consider it unless it's corroborated by other evidence.



1 So I'm not sure it's that big an issue.

2 MS. GILLICK: Hearing Officer Pettit, I'm  
3 sorry, but I believe the Gateway map is in the other  
4 Cease and Desist Order proceeding, and I'm trying to  
5 locate it.

6 If I do, then it's something that we can have  
7 today at the hearing to pull up and have a reference.  
8 Just sharing the information. It's referenced in the  
9 other hearing. I'm trying to locate it.

10 MR. O'LAUGHLIN: Can I ask a question? I'm  
11 perplexed.

12 If I'm understanding correctly, the ruling is:  
13 You'll admit the hearsay, but -- you'll admit it, but if  
14 there's not corroborating testimony, then you don't use  
15 it?

16 CO-HEARING OFFICER PETTIT: That's consistent  
17 with my understanding of our regulations.

18 MR. O'LAUGHLIN: Well, how do we know at what  
19 point in time there is corroborating evidence to  
20 testimony that's hearsay?

21 CO-HEARING OFFICER PETTIT: I'm sorry. Two  
22 people talking at once.

23 MR. O'LAUGHLIN: I'm sorry. I didn't know you  
24 were talking to counsel.

25 CO-HEARING OFFICER PETTIT: Go ahead.

1 MR. O'LAUGHLIN: What I'm confused about -- and  
2 I'm not picking on just this one case or individual -- I  
3 think this can be resolved.

4 But my question goes to a deeper question which  
5 is, you know, we're still going to make objections after  
6 this is all done because you told us to wait, but at  
7 what point in time does the -- do we find out where the  
8 corroborating evidence is for the hearsay?

9 Because see, you're letting all the hearsay in.  
10 I get it. But our question is you can't because there's  
11 nothing corroborating it. When do we get rulings on  
12 that?

13 Or are you saying that we don't get rulings  
14 until you don't make findings on it?

15 That doesn't make any sense that you'd let  
16 evidence in upon which there's no corroborating evidence  
17 because you can't make findings on it.

18 CO-HEARING OFFICER PETTIT: I don't think we  
19 know yet that there's no corroborating evidence.

20 MR. O'LAUGHLIN: Okay.

21 CO-HEARING OFFICER PETTIT: And why don't we  
22 hold off on ruling --

23 MS. GILLICK: Hearing Officer, just for the  
24 record, if anyone cares, it is in the Mussi hearing.  
25 It's Mussi Exhibit 8. The Gateway map is indicated with

1 the crops reference.

2 Don't know if that's your pleasure, but it is  
3 accessible to us.

4 MR. HERRICK: Which means it was reviewed by  
5 all counsel here.

6 CO-HEARING OFFICER PETTIT: Okay. Yeah.

7 I still have a problem about it being in this  
8 record, and that maybe begs the question of how we're  
9 going to come to a conclusion on all these closely  
10 relate matters, but I think it does need to be before us  
11 in this proceeding. Okay.

12 Are you going to bring it back then?

13 MR. HERRICK: I'm sorry?

14 CO-HEARING OFFICER PETTIT: Are you going to  
15 see that it gets in?

16 MR. HERRICK: Absolutely.

17 MR. O'LAUGHLIN: John, if I could make a  
18 suggestion since Mr. Prichard is here, why don't you ask  
19 somebody to get a copy of it, mark it, and then we'll  
20 mark it for identification purposes, and you can include  
21 it in the testimony right now?

22 There's no sense bringing him back later just  
23 to identify that it's the Gateway map.

24 MR. HERRICK: I don't mind doing that at all.  
25 I doubt if I have the Mussi hearing stuff. If somebody

1 has that.

2 MS. GILLICK: For our record, if we could pull  
3 it up on the overhead and him identify it as Mussi  
4 Exhibit 8A and identify it for the record, and we can  
5 provide paper copies tomorrow, if that's an option.

6 CO-HEARING OFFICER PETTIT: Can you get to it,  
7 Mr. Lindsay?

8 CHIEF LINDSAY: Give me a moment here, and I'll  
9 find it. That was Mussi Exhibit 8?

10 MS. GILLICK: Correct. The map attached to the  
11 Mussi Exhibit 8, so the map. You see the first one,  
12 says Gateway. Yeah.

13 MR. HERRICK: If I may, I believe it's four  
14 pages, different parts of the map including the legend  
15 or title. Page -- so all of the pages.

16 Right now on the screen is the map from which  
17 Mr. Prichard started, the portion of the map.

18 CO-HEARING OFFICER PETTIT: Okay. Do you want  
19 to have Mr. Prichard confirm that, that this is what he  
20 was referring to?

21 MR. HERRICK: Mr. Prichard, we have had a  
22 discussion about the basis upon which you made some of  
23 your conclusions and the information on which you  
24 relied.

25 On the screen now is a portion of the

1 attachment to Rudy Mussi's testimony in the Mussi et al  
2 matter which is Exhibit 8 in that matter for Mussi.

3 And would you confirm that this is the map from  
4 which you drew information to use in your -- in  
5 preparing your testimony?

6 MR. PRICHARD: Yes. That's the Gateway map.

7 CO-HEARING OFFICER PETTIT: Are we going to  
8 mark that for this hearing?

9 MR. HERRICK: Yes. Again, the attachment to  
10 Mr. Mussi's includes, I believe, four pages. And so  
11 let's mark all four of those pages Exhibit WIC 11C.  
12 Excuse me. Excuse me. I'm looking at Mr. Grunsky's.  
13 I'm sorry. WIC 10B. I'm sorry.

14 CHIEF LINDSAY: And it appears to be pages 4,  
15 5, 6, and 7 of Mussi 8.

16 MR. HERRICK: Yes. That is correct.

17 CO-HEARING OFFICER PETTIT: And I gather  
18 Ms. Gillick volunteered to have paper copies of that  
19 tomorrow?

20 MR. HERRICK: I'll make sure those --

21 CO-HEARING OFFICER PETTIT: Between you and  
22 her, we will have paper copies tomorrow?

23 MR. HERRICK: Absolutely.

24 CO-HEARING OFFICER PETTIT: Thank you.

25 Does that complete your cross-examination of

1 this panel, Mr. Herrick, or your direct --

2 MR. HERRICK: Yes.

3 CO-HEARING OFFICER PETTIT: -- of this panel?

4 Okay.

5 Mr. Rose?

6 --o0o--

7 CROSS-EXAMINATION BY MR. ROSE

8 FOR PROSECUTION TEAM

9 --o0o--

10 MR. ROSE: Good afternoon, Mr. Prichard,  
11 Mr. Grunsky. David Rose for the Prosecution Team.  
12 Mr. Prichard, a few questions for you briefly.

13 We now have WIC Exhibit 10B is the map we've  
14 been discussing at length at this point. Is that  
15 correct?

16 MR. PRICHARD: Yes.

17 MR. ROSE: Okay. I'm not entirely clear from  
18 your written or oral testimony. When you are looking at  
19 Exhibit 10A -- maybe you could put that up on the  
20 screen.

21 At least 10A as it was described in your  
22 written testimony, the Google Earth map over which the  
23 current soil types were overlaid. I'll wait till this  
24 is up.

25 Exhibit 10A, that's showing current soil types;

1 is that correct?

2 MR. PRICHARD: Yes, it is.

3 MR. ROSE: Not showing soil types as they  
4 existed prior to 1914?

5 MR. PRICHARD: No, it's not.

6 MR. ROSE: And the WIC Exhibit 10B doesn't show  
7 soil types particularly, does it?

8 MR. PRICHARD: No, it does not.

9 MR. ROSE: Okay. So just to be clear from your  
10 written and oral testimony, in places where you say were  
11 or use the past tense, you're talking about soil types  
12 as they exist today?

13 MR. PRICHARD: Yes.

14 MR. ROSE: Okay. And you don't have any  
15 information as to what the exact soil types were prior  
16 to 1914; is that correct?

17 MR. PRICHARD: Most of these soils were mineral  
18 now and were probably mineral then also.

19 MR. ROSE: I mean I don't expect huge changes  
20 in the soil necessarily, but you don't have any  
21 information showing what the soils were prior to 1914?

22 MR. PRICHARD: No, I do not.

23 MR. ROSE: Okay, thank you.

24 I have a few questions for Mr. Grunsky.

25 Mr. Grunsky, does Woods Irrigation Company own

1 any of the lands that it serves water to?

2 MR. GRUNSKY: Just where the pumps are.

3 MR. ROSE: Just where the pumps are. Are any

4 of those lands that Woods owns irrigated --

5 MR. GRUNSKY: No.

6 MR. ROSE: -- where the pumps are?

7 MR. GRUNSKY: No.

8 MR. ROSE: Okay. How many points of diversion

9 does Woods operate?

10 MR. GRUNSKY: Two.

11 MR. ROSE: Two points of diversion. Does

12 anyone else divert water through those points of

13 diversion?

14 MR. GRUNSKY: No.

15 MR. ROSE: So Woods is the only entity

16 diverting water through those points of diversion that

17 it uses?

18 MR. GRUNSKY: Yes.

19 MR. ROSE: I have no further questions. Thank

20 you.

21 MR. O'LAUGHLIN: Mr. Pettit, Mr. Rubin will go

22 first this time, and I'll follow up with any cleanup

23 questions we need to do. Thanks. I'm sure I will.

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CROSS-EXAMINATION BY MR. RUBIN  
FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY  
--o0o--

MR. RUBIN: Good afternoon, gentlemen. Jon Rubin, San Luis & Delta-Mendota Water Authority.

Mr. Grunsky, in your written testimony, Woods Irrigation Company Exhibit 11, you indicate that some of the corporate records for Woods Irrigation Company are missing or destroyed; is that correct?

MR. GRUNSKY: Yes.

MR. RUBIN: What corporate records do you believe are missing?

MR. GRUNSKY: I have no idea. I was just -- I've been president for maybe 10 or 12 years. When I got on the Board, our attorney mentioned there was a gap in records.

I really don't know how that occurred other than when we moved from attorney to attorney or somebody said there was a fire. But I have no verification of it.

MR. RUBIN: So Mr. Grunsky, when you also reference records being destroyed, you don't know how those records were destroyed?

MR. GRUNSKY: No.

1 MR. RUBIN: Or when?

2 MR. GRUNSKY: I was told it was in the '30s,  
3 but I don't know.

4 MR. RUBIN: Okay. Mr. Grunsky, do you  
5 understand -- do you have an understanding of how Woods  
6 Irrigation Company has maintained its corporate records  
7 over time?

8 MR. GRUNSKY: No. The -- I mean I do from my  
9 time. But prior to that, the attorneys have had the  
10 records.

11 MR. RUBIN: So all corporate records prior to  
12 the time that you became involved with Woods Irrigation  
13 Company were held by the attorneys for Woods Irrigation  
14 Company?

15 MR. GRUNSKY: That's my understanding, but I'm  
16 not sure if that's factual. It has been since I've been  
17 there.

18 MR. RUBIN: Okay. Mr. Grunsky, do you have an  
19 occasion to review the minutes of Woods Irrigation  
20 Company's board meetings?

21 MR. GRUNSKY: Recent meetings?

22 MR. RUBIN: Just generally. Do you review the  
23 minutes?

24 MR. GRUNSKY: No. I review our meetings. When  
25 we have a meeting now, I review it before the next

1 meeting.

2 MR. RUBIN: Historically -- or do you have a  
3 sense of whether the historic minutes for Board meetings  
4 of the Woods Irrigation Company exist?

5 MR. GRUNSKY: I'm sure they do. I mean I'm  
6 sure the same practice has been carried on.

7 MR. RUBIN: Then is it your understanding that  
8 there may be minutes that exist for the Board meetings  
9 of the Woods Irrigation Company, but it would not be a  
10 complete record because some would be missing or  
11 destroyed?

12 MR. GRUNSKY: It's hard for me to speculate on  
13 something like that. I mean I can speak for the time  
14 I've been there, but it's hard for me to speculate on  
15 past practices.

16 MR. RUBIN: And so you have no understanding of  
17 records of the Woods Irrigation Company prior to you  
18 working for Woods Irrigation Company?

19 MR. GRUNSKY: No, other than what I've  
20 generally reviewed over the years when we have had an  
21 issue come up. But no, I haven't gone back and done a  
22 historical study of it.

23 MR. RUBIN: Now do you have records of the  
24 quantity of water that Woods Irrigation Company delivers  
25 to lands within its boundaries?

1 MR. GRUNSKY: No.

2 MR. RUBIN: Do you have records of the amount  
3 of electricity that's used to pump water into Woods  
4 Irrigation Company facilities?

5 MR. GRUNSKY: Yeah, we could get that. I don't  
6 have it, but we certainly get PG&E bills for the  
7 irrigation pumps and drain pumps.

8 MR. RUBIN: Do those bills -- can you identify  
9 which bills are for drainage pumps versus which bills  
10 are for irrigation facilities?

11 MR. GRUNSKY: Sure.

12 MR. RUBIN: Mr. Grunsky, in your written  
13 testimony, Woods Irrigation Company Exhibit 11, I  
14 believe you conclude that Woods Irrigation Company has  
15 been delivering water from at least 1910; is that  
16 correct?

17 MR. GRUNSKY: Yes.

18 MR. RUBIN: Upon what records do you base that  
19 opinion?

20 MR. GRUNSKY: Based on my grandmother telling  
21 me her grandfather has been farming out there since the  
22 1890s, and they were growing lots of crops.

23 MR. RUBIN: And in your written testimony,  
24 Woods Irrigation Company Exhibit 11, I believe you state  
25 that your opinion is based upon your familiarity with

1 records and the history of the corporation.

2 MR. GRUNSKY: Through -- I mean the history I  
3 know about is from what my great great grandfather --  
4 and I never knew him. It's -- my grandmother used to  
5 talk about it, and that's just a little bit of verbal  
6 history. It's not much.

7 MR. RUBIN: And in terms of your familiarity  
8 with records, you don't have a familiarity with records  
9 that predate your employment with Woods Irrigation  
10 Company, do you?

11 MR. GRUNSKY: I have a general familiarity. I  
12 don't have like total recall of meetings of Woods  
13 Irrigation Company, that's for sure.

14 MR. RUBIN: Well --

15 MR. GRUNSKY: Prior to me, anyway.

16 MR. RUBIN: In terms of what you do recall of  
17 documents that may support your conclusion, what  
18 documents can you recall?

19 MR. GRUNSKY: Well, specifically, none.

20 MR. RUBIN: Okay.

21 MR. O'LAUGHLIN: If that's the answer, I would  
22 like to move to strike the testimony because he says in  
23 his testimony that he's reviewed the records and it  
24 leads him to conclude that they have been delivering  
25 since 1910.

1           And now he's just testified that he has no  
2   recollection of any specific document anywhere in the  
3   record that would lead him to that conclusion.

4           I get the oral history part. I understand  
5   that. But as far as the records are concerned, he has  
6   none.

7           MR. HERRICK: Mr. Chairman, I believe on  
8   redirect I will clear this up easily, so --

9           MR. O'LAUGHLIN: Wait. You can't -- I'm sorry.  
10   You can't clear up what the witness just plainly said.

11           He said he had no specific recollection of any  
12   specific document to support his statement.

13           I get the verbal history part about talking to  
14   his grandmother and everything else. But he can't say  
15   in his testimony that he has records and has reviewed  
16   them and that sports his opinion and conclusion. That  
17   portion of his testimony should be stricken.

18           MR. HERRICK: Mr. Chairman, if I may. I'm  
19   sorry. I know this is confusing because we're having  
20   different hearings, and I'm not trying to blend the two  
21   together.

22           The counsel who are objecting have already  
23   cross-examined Mr. Grunsky in other proceedings involved  
24   with this, reviewing other documents that specifically  
25   go to this question.

1           And whether or not Mr. Grunsky unfortunately  
2 didn't remember or has forgotten, I can clear that up.

3           But it's not a case of somebody refuting his  
4 testimony. It's a case of questions leading him to a  
5 statement that appears to conflict with his testimony.

6           But again, I can clear that up as soon as we  
7 get to redirect.

8           CO-HEARING OFFICER PETTIT: Well, I was just  
9 going to point out to Mr. Grunsky I think it does need  
10 clarification because we've got testimony right in front  
11 of us that says you're making that statement based on  
12 records, and we just heard you testify that it's based  
13 on conversations with your grandmother.

14           And I think we need to know which it is because  
15 at the moment I have to agree with Mr. O'Laughlin, that  
16 I'm not inclined to admit testimony that -- written  
17 testimony that you have just contradicted.

18           So maybe Mr. Herrick can clear it up, and I'm  
19 not sure how you want to go about that.

20           MR. HERRICK: If it's not inappropriate, I can  
21 ask two or three questions right now which I think will  
22 get things back on track.

23           MR. O'LAUGHLIN: I would prefer that we go  
24 through the normal cross-examination, and if he wants to  
25 put it in -- if you're denying my motion, I understand

1 that, and we'll -- and he can try to clean it up in  
2 redirect. But there's no reason to interrupt this  
3 cross-examination.

4 CO-HEARING OFFICER PETTIT: Okay. I agree, and  
5 I'm not sure I denied your request since I'm telling him  
6 that I want him to clear it up too.

7 So let's do it.

8 MR. RUBIN: Mr. Prichard, one more question  
9 about the statement that we're talking about. You  
10 indicate that you -- that Woods Irrigation Company has  
11 been delivering water to all of the lands within its  
12 boundaries from at least 1910 to the present.

13 That's not a correct statement, is it?

14 MR. GRUNSKY: Are you talking to me?

15 MR. RUBIN: Yes, I'm sorry, Mr. Grunsky. I  
16 apologize. Let me rephrase my question. I do realize,  
17 Mr. Grunsky, I referred to Mr. Prichard.

18 Mr. Grunsky, in your written testimony, Woods  
19 Irrigation Company Exhibit 11, the statement we've been  
20 talking about indicates that Woods Irrigation Company  
21 has been delivering water to all of the lands within its  
22 boundaries. Do you see that phrase?

23 MR. GRUNSKY: Yes.

24 MR. RUBIN: It is not correct that Woods  
25 Irrigation Company has been delivering water to all of



1 its lands since 1910, correct?

2 MR. GRUNSKY: I don't know why that would not  
3 be correct.

4 MR. RUBIN: So it's your belief based upon the  
5 information that you can recall today that all lands  
6 within Woods Irrigation Company have received water from  
7 at least 1910?

8 MR. GRUNSKY: Again, that's -- that would be my  
9 opinion, yes.

10 MR. RUBIN: Okay. Thank you.

11 Now Mr. Grunsky, are you familiar with the  
12 rules and regulations of Woods Irrigation Company?

13 MR. GRUNSKY: Yes.

14 MR. RUBIN: Mr. Grunsky, are you familiar with  
15 Rule 3 of the rules and regulations?

16 MR. GRUNSKY: Specifically, no.

17 MR. RUBIN: Mr. Grunsky, I'm going to give you  
18 a document that I will have marked as MSS 5.

19 Mr. Grunsky, I have given you a document, MSS  
20 Exhibit 5. Does that appear to be rules and regulations  
21 adopted by Woods Irrigation Company on or about  
22 January 25th -- excuse me.

23 Does that reflect the rules and regulations of  
24 Woods Irrigation Company?

25 MR. GRUNSKY: You're speaking of a specific

1 rule. I don't see it there at all.

2 MR. RUBIN: If you turn to the second page,  
3 there is a provision that has a heading: Rules and  
4 Regulations of Woods Irrigation Company?

5 MR. GRUNSKY: Yes.

6 MR. RUBIN: And there is a Rule 3 that's  
7 referenced on the second page of MSS Exhibit 5.

8 MR. GRUNSKY: I see that.

9 MR. RUBIN: And the rule -- let me give you a  
10 few minutes to read the rule.

11 MR. GRUNSKY: (Reviewing document)

12 MR. RUBIN: Have you read the rule?

13 MR. GRUNSKY: Yes.

14 MR. RUBIN: Mr. Grunsky, are you familiar with  
15 how long Rule 3 has been in effect within Woods  
16 Irrigation Company?

17 MR. GRUNSKY: No, I'm not. But reading this,  
18 it says 1940, this particular meeting.

19 MR. RUBIN: If I may have one minute. Thank  
20 you.

21 Mr. Grunsky, is it your understanding Rule 3 of  
22 Woods Irrigation Company rules and regulations precludes  
23 the delivery of water within the company between  
24 September 15th and January 1st except and unless  
25 additional charges are paid?

1 MR. GRUNSKY: That's what it says.

2 MR. RUBIN: And Mr. Grunsky, are you familiar  
3 with Rule 4 of the rules and regulations of Woods  
4 Irrigation Company.

5 MR. GRUNSKY: I mean I can read it, but it's  
6 pretty much impossible to keep water out of it. Just,  
7 you know, water seeps into it.

8 MR. RUBIN: Mr. Grunsky, Rule 4, if I  
9 understand it correctly, precludes water from being  
10 furnished by Woods Irrigation Company during January 1st  
11 through April 15th of each year unless special  
12 permission is provided by the board of directors; is  
13 that correct?

14 MR. GRUNSKY: It does say that, yes.

15 MR. RUBIN: Now, Mr. Grunsky, you provide the  
16 State Water Resources Control Board with no records of  
17 Woods Irrigation Company that reflect an additional  
18 charge -- excuse me -- an additional cost charged by  
19 Woods Irrigation Company to furnish water within the  
20 September 15th to January 1st period, do you?

21 MR. GRUNSKY: No. Or did we?

22 MR. RUBIN: That's correct: Did you?

23 MR. GRUNSKY: Not that I'm aware of.

24 MR. RUBIN: And similarly, you provide the  
25 State Water Resources Control Board with no records that

1 reflect the board of directors providing special  
2 permission to furnish water between January 1st and  
3 April 15th, do you?

4 MR. GRUNSKY: I did not, no.

5 MR. RUBIN: Okay. Mr. Grunsky, are you aware  
6 of whether pumps moved water into the Woods Irrigation  
7 Company facilities prior to 1914?

8 MR. GRUNSKY: Am I personally aware, no, but I  
9 would assume they did.

10 MR. RUBIN: What would be the basis of your  
11 assumption?

12 MR. GRUNSKY: To move the water from the one  
13 side to the other side.

14 MR. RUBIN: Is it possible water was moved with  
15 the power of gravity prior to 1914?

16 MR. GRUNSKY: In my opinion, no.

17 MR. RUBIN: What --

18 MR. GRUNSKY: Not that far.

19 MR. RUBIN: And what would you base your  
20 opinion on?

21 MR. GRUNSKY: Just the slope. The slope -- in  
22 my opinion. Again, I'm not an expert. My opinion, the  
23 slope wouldn't get it all the way to the other end.

24 MR. RUBIN: Okay.

25 MR. GRUNSKY: That's for a, you know, water

1 specialist.

2 MR. RUBIN: Let me ask you: Based upon your  
3 knowledge of the area within Woods Irrigation Company,  
4 how far would water go if there weren't a pump? How far  
5 into Woods?

6 MR. GRUNSKY: I don't even want to venture a  
7 guess. I couldn't tell you.

8 Depends on the tides, depends on, you know, the  
9 rivers. The river level changes during the year, not to  
10 mention the tides.

11 MR. RUBIN: I have no further questions. Thank  
12 you.

13 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin, did  
14 you have any?

15 MR. O'LAUGHLIN: Yes, thank you.

16 --o0o--

17 CROSS-EXAMINATION BY MR. O'LAUGHLIN

18 FOR MODESTO IRRIGATION DISTRICT

19 --o0o--

20 MR. O'LAUGHLIN: Good afternoon, gentlemen. My  
21 name is Tim O'Laughlin. I represent Modesto Irrigation  
22 District. I'll start with Mr. Prichard.

23 In preparation for your testimony here today,  
24 did you review any -- other than the Gateway map, did  
25 you review any cropping records in San Joaquin County

1 prior to 1940?

2 MR. PRICHARD: No, I did not.

3 MR. O'LAUGHLIN: Okay. Are you aware if any  
4 such cropping information is available in San Joaquin  
5 County?

6 MR. PRICHARD: Only on a county-wide basis.

7 MR. O'LAUGHLIN: You use a -- what soils --  
8 what year is the soils map that you use? From what  
9 year?

10 MR. PRICHARD: That is the web version of the  
11 current available soil map for San Joaquin County.

12 MR. O'LAUGHLIN: Did you go back and look at to  
13 ascertain if there were earlier soil maps that were done  
14 for Roberts Island prior to the one that you used?

15 MR. PRICHARD: I did not.

16 MR. O'LAUGHLIN: Is it standard -- wouldn't it  
17 be standard practice in your field to try to -- if  
18 you're ascertaining what's growing out in a certain area  
19 earlier to ascertain probably the earliest soils map  
20 possible?

21 MR. PRICHARD: Early soils maps were conducted  
22 on a larger scale than the current maps are, so they're  
23 probably not that valuable.

24 MR. O'LAUGHLIN: Okay. Were you present in  
25 court today when Mr. Nomellini testified? Were you here

1 today?

2 MR. PRICHARD: Yes, I was.

3 MR. O'LAUGHLIN: Sorry. Court. I was  
4 confused. Sorry, judge.

5 Were you here earlier this morning when  
6 Mr. Nomellini testified?

7 MR. PRICHARD: For most of it, I believe.

8 MR. O'LAUGHLIN: Okay. He made a statement  
9 that in regard -- have you reviewed either Mr. Lajoie or  
10 Mr. Moore's testimony prior to today?

11 MR. PRICHARD: I have not.

12 MR. O'LAUGHLIN: Okay. Mr. Grunsky, in regards  
13 to Mr. Rubin's question in regards to a gravity-fed  
14 system prior to 1914, you were present when  
15 Mr. Nomellini testified earlier today; is that correct?

16 MR. GRUNSKY: No.

17 MR. O'LAUGHLIN: Okay. How many -- prior to  
18 1914, how many diversions did Woods Irrigation District  
19 have from the San Joaquin River?

20 MR. GRUNSKY: I would guess the same, two.

21 MR. O'LAUGHLIN: From the San Joaquin River?

22 MR. GRUNSKY: Oh. From the San Joaquin, I  
23 don't know of any.

24 MR. O'LAUGHLIN: Okay. Burns Cutoff?

25 MR. GRUNSKY: That's where water's pumped into.

1 I'm not aware of any diverting out of there.

2 MR. O'LAUGHLIN: Okay. Then on Middle River,  
3 how many diversions prior to 1914 did Woods Irrigation  
4 Company have?

5 MR. GRUNSKY: The same two.

6 MR. O'LAUGHLIN: Same two. Okay.

7 And those are located at the -- can we just  
8 throw up a map generally of Woods or the facility? Is  
9 that the current pumping location?

10 MR. GRUNSKY: Same spot.

11 MR. O'LAUGHLIN: Fine. I know exactly where it  
12 is then. All right.

13 Now, do you know -- are there any records at  
14 Woods Irrigation Company depicting the location of the  
15 canals that were in place prior to 1914?

16 MR. GRUNSKY: We have maps. I'm not sure if  
17 it's prior to '14 or it is '14 and it shows similar  
18 spots.

19 MR. O'LAUGHLIN: Okay. Other than that, are  
20 there any engineering drawings or cross-sections showing  
21 how the canals were constructed?

22 MR. GRUNSKY: I don't believe the canals were  
23 constructed. I think they were just there. They were  
24 basically old streambeds, like that through the island.

25 MR. O'LAUGHLIN: So in your opinion then -- and



1 this is a question I asked earlier. I get confused  
2 about this. So your understanding is that there were  
3 existing kind of meanders or sloughs or watercourses  
4 that were dug out and improved to deliver water for  
5 Woods Irrigation Company?

6 MR. GRUNSKY: I don't think they were dug out.  
7 I think they were just there.

8 MR. O'LAUGHLIN: Okay. Now, earlier in  
9 Mr. Nomellini's testimony he talked about the tules and  
10 growth in the Delta. Would those sloughs and waterways  
11 have tules and those types of vegetation in them  
12 naturally?

13 MR. HERRICK: Mr. Chairman, I don't really mind  
14 the line of questioning, but I see no connection between  
15 the direct testimony and questions about what  
16 Mr. Nomellini described in his direct.

17 MR. O'LAUGHLIN: Well, this is going to go to  
18 the question which is on the last statement that they  
19 have been delivering water to all the lands within the  
20 boundaries.

21 I want to get at the scope and extent of how  
22 they could move water through the system. And if you're  
23 using an artificial construct channel, you may be able  
24 to deliver water farther with pumping, but if you're  
25 using natural channels and the natural topography and

1 gravity, it may be entirely different. I just want to  
2 explore that.

3 MR. RUBIN: Hearing Officer Pettit, I would  
4 like to add that the scope of cross is not limited to  
5 direct testimony. If that were the case, I think a  
6 number of people here have violated the rule.

7 CO-HEARING OFFICER PETTIT: And I think in view  
8 of some of the testimony we have heard up till now, I'm  
9 going to allow those questions.

10 MR. O'LAUGHLIN: Thank you.

11 So were there tules and stuff in the drainage  
12 -- in the sloughs and natural waterways?

13 MR. GRUNSKY: I would have no way of knowing  
14 that other -- today? Yes.

15 MR. O'LAUGHLIN: Do you know what effect having  
16 tules and other vegetation in a water-delivery system  
17 does with the ability to deliver water?

18 MR. GRUNSKY: It obstructs water.

19 MR. O'LAUGHLIN: Okay. Now you said earlier  
20 that in regards to Mr. Rubin's testimony -- questions,  
21 water wouldn't get to the other end. And I want to  
22 explore that a little bit.

23 So my understanding from you is that there's  
24 two diversions prior to 1914; is that correct?

25 MR. GRUNSKY: I mean that's -- yes. That's my

1 opinion.

2 MR. O'LAUGHLIN: Right. And as we sit here  
3 today, you don't know the depth of the channel of those  
4 canals, is that correct? Prior to 1914.

5 MR. GRUNSKY: No. Prior to 1914, no.

6 MR. O'LAUGHLIN: And you don't know the width,  
7 correct?

8 MR. GRUNSKY: I'm assuming they're similar to  
9 today, but I don't know what it was then.

10 MR. O'LAUGHLIN: And you don't know the  
11 gradient, correct?

12 MR. GRUNSKY: Correct.

13 MR. O'LAUGHLIN: Okay. Now you did make an  
14 assumption or statement that it wouldn't get to the  
15 other side. Is that based on the head or is that based  
16 on the gradient of the channel?

17 MR. GRUNSKY: Again, I'm not a water guy. I'm  
18 making an assumption that the flow from where the pumps  
19 are to where it's going to drain with the -- just to say  
20 a mean tide, an average tide, wouldn't move very much  
21 water.

22 MR. O'LAUGHLIN: All right.

23 And that's because the slope is uphill, so to  
24 speak?

25 MR. GRUNSKY: No, it's not uphill, but it's

1 not -- in my opinion. Again, I'm not a water expert.  
2 Not downhill enough to move through the whole district.

3 MR. O'LAUGHLIN: Okay. I want to talk a little  
4 bit about these records. You said at one time that the  
5 attorneys kept your records. So when you came on board,  
6 who was the attorney for Woods Irrigation Company that  
7 was keeping the records?

8 MR. GRUNSKY: Don Geiger recently became the  
9 attorney, and I'm not sure who the attorney was prior to  
10 that.

11 MR. O'LAUGHLIN: Okay. So are the records --  
12 are all of the records for Woods Irrigation Company kept  
13 with Mr. Geiger, or are they kept someplace else?

14 MR. GRUNSKY: I think Mr. Geiger has some. I  
15 think Mr. Nomellini has some. I think Mr. Herrick has  
16 some. I think they each have -- I'm assuming. I know  
17 Geiger has them.

18 MR. O'LAUGHLIN: So who is the custodian -- let  
19 me ask it a different way. Who is the custodian of  
20 record for the company?

21 MR. GRUNSKY: Geiger.

22 MR. O'LAUGHLIN: Now when you say three  
23 separate attorneys have records, are any specific  
24 records held by one attorney as opposed to another  
25 attorney --

1 MR. GRUNSKY: No.

2 MR. O'LAUGHLIN: -- or they're given copies?

3 MR. GRUNSKY: Just copies. Don's -- we pay

4 him. He's our attorney, our district attorney --

5 company attorney, I should say.

6 MR. O'LAUGHLIN: Mr. Geiger?

7 MR. GRUNSKY: Yes.

8 MR. O'LAUGHLIN: Are you the person most

9 knowledgeable about Woods Irrigation Company?

10 MR. GRUNSKY: No.

11 MR. O'LAUGHLIN: Who in your opinion is the

12 person most knowledgeable about Woods Irrigation

13 Company?

14 MR. GRUNSKY: You asked me this before, and I

15 said it was Dan Nomellini.

16 MR. O'LAUGHLIN: Okay.

17 MR. GRUNSKY: And I still believe that.

18 MR. O'LAUGHLIN: It's funny --

19 MR. GRUNSKY: Different hearing, wasn't it?

20 MR. O'LAUGHLIN: I don't mean to bore you with

21 the same questions --

22 MR. GRUNSKY: I'm sorry.

23 MR. O'LAUGHLIN: -- but we have two different

24 hearings going on.

25 Are there accounting documents kept by Woods

1 Irrigation Company on a yearly basis?

2 MR. GRUNSKY: Yes.

3 MR. O'LAUGHLIN: Are all those records  
4 maintained by either Mr. Geiger, Mr. Nomellini, or Mr.  
5 Herrick?

6 MR. GRUNSKY: Mr. Geiger.

7 MR. O'LAUGHLIN: Mr. Geiger. If it was -- if  
8 it was -- if a circumstance arose, and I'm looking at  
9 the exhibit that was marked by Mr. Rubin, MSS 5.

10 If somebody paid a water charge under Rule 3,  
11 do you know if that would show up as a separate entry in  
12 the Woods Irrigation Company accounting records?

13 MR. GRUNSKY: There -- it's billed yearly for  
14 irrigation and drainage.

15 MR. O'LAUGHLIN: I understand -- let me see if  
16 we get the understanding correct on the irrigation.

17 My understanding is that at the end of the year  
18 Woods Irrigation Company adds up its total costs for  
19 operating in a year; is that correct?

20 MR. GRUNSKY: No.

21 MR. O'LAUGHLIN: No.

22 MR. GRUNSKY: We have a flat per-acre fee for  
23 drainage and irrigation.

24 MR. O'LAUGHLIN: Right, right, right.

25 But what I'm saying is that that flat

1 irrigation or drainage is based on the amount of cost  
2 expended in a year. So your guess is that if you have  
3 \$500,000 in costs and you divide it up between  
4 irrigation and drainage, you apply a flat rate per acre.  
5 But if it goes to \$1 million to cover it, you're going  
6 to change your flat rate, right?

7 MR. GRUNSKY: The rate can change depending on  
8 future projects we may have to -- you know, for  
9 improvements.

10 MR. O'LAUGHLIN: Or current costs?

11 MR. GRUNSKY: Sure.

12 MR. O'LAUGHLIN: If diesel goes through the  
13 roof.

14 MR. GRUNSKY: Utilities go up, sure.

15 MR. O'LAUGHLIN: Right. So then -- now, I've  
16 never understood in looking at your minutes. Do you --  
17 what do you -- do you try to capture that money going  
18 forward, or is it looking back in hindsight?

19 MR. GRUNSKY: It's forward.

20 MR. O'LAUGHLIN: Okay. So let me get back to  
21 this question then: If someone in Rule No. 3 had pumped  
22 water and was charged 30 percent -- 30 cents an hour  
23 from September through January for that ability to do  
24 that, would that show up in Woods Irrigation Company as  
25 a book entry saying additional pumping costs?

1           Because that's additional and over and above  
2 the flat rate, isn't it?

3           MR. GRUNSKY: No, our flat rate's --

4           MR. O'LAUGHLIN: Yeah, but this says right  
5 here, if you look at it, it says:

6           Unless an additional charge therefor be  
7 paid in advance at the time of demanding  
8 water, said charge shall be 30 cents per  
9 hour for the time a pump must be  
10 operated.

11           So that's additional, correct?

12           MR. GRUNSKY: I saw what that says, but we  
13 charge, you know, irrigation and drainage once a year.

14           MR. O'LAUGHLIN: I know. So you're saying that  
15 this Rule No. 3 was never implemented?

16           MR. GRUNSKY: Not since I've been there.

17           MR. O'LAUGHLIN: Okay. So -- but what I'm  
18 asking is: In the company records would we be able to  
19 go back in 1940 and find whether or not there are --  
20 there's an accounting of money coming in to Woods for  
21 additional charges under Rule No. 3?

22           MR. GRUNSKY: No, I couldn't tell you if there  
23 was in 1940. I don't have -- I have never been privy to  
24 those records for those books.

25           MR. O'LAUGHLIN: Who has those records, if you



1 know? Who has the accounting records prior to 1940?

2 MR. GRUNSKY: I couldn't tell you that. Geiger  
3 has them all now. I don't know how far -- I don't know  
4 how far they go back.

5 MR. O'LAUGHLIN: Okay. Is it -- if we go back  
6 prior to 1940, is it your understanding then that if  
7 capital projects were undertaken that that cost would be  
8 borne by the landowners in the amount of acreage that  
9 had been irrigated?

10 So let's say hypothetically -- I'll just give  
11 you a hypothetical. Let's say Woods spends \$10,000 in  
12 1920 to build an extension on the canal. Would that  
13 show up as a capital cost that we could track to show  
14 the development of the irrigation company?

15 MR. GRUNSKY: I just can't speak back to 1940.  
16 I don't...

17 MR. O'LAUGHLIN: Okay. Well, then let's go to  
18 your statement to 1910.

19 Tell me the scope and extent of documents that  
20 you believe support your statement -- I got your  
21 statement about talking to your grandmother -- that  
22 support your statement that water has been delivered to  
23 all lands within Woods Irrigation Company?

24 MR. GRUNSKY: Well, I mean I've looked at the  
25 bylaws. I think it was formed in 1909, and I can't

1     imagine they didn't form it to not move water.

2             MR. O'LAUGHLIN:   But even in the 1909  
3     formation, isn't it true that certain lands were already  
4     noted not to be able to be served because they were high  
5     lands?

6             MR. GRUNSKY:   Objection.   That misstates the  
7     documents.

8             MR. GRUNSKY:   I'm not aware of that.

9             MR. HERRICK:   The articles of incorporation  
10    describe the company, not any operations or lands to be  
11    served.

12            MR. O'LAUGHLIN:   Sorry.   Okay.

13            Have you reviewed the 1911 agreement?   The 1911  
14    agreement between Woods and the landowners?

15            MR. GRUNSKY:   Have I reviewed it lately, no.

16            MR. O'LAUGHLIN:   All right.   And actually prior  
17    to 1940, in this first whereas under the MSS 5, it says  
18    certain lands had already been excluded from Woods  
19    Irrigation District.   Do you see that?

20            MR. GRUNSKY:   I'll get there.   Yeah.

21            MR. O'LAUGHLIN:   Have you -- are you aware of  
22    anybody in Woods since the articles of incorporation  
23    were drafted in 1909 to the present who has done a  
24    mapping of how Woods Irrigation Company boundary lines  
25    have changed over time?

1 MR. GRUNSKY: No.

2 MR. O'LAUGHLIN: Okay. I got the 1909 articles  
3 of incorporation. What other documents do you rely upon  
4 for your statement that water had been served to all  
5 lands in Woods prior to -- up to 1910?

6 MR. GRUNSKY: That was just basically an  
7 assumption that they formed this company to move water,  
8 you know, through the lands that the brothers owned.

9 I don't know why they would have -- what's the  
10 value of lands that you're not going to irrigate?

11 MR. O'LAUGHLIN: Do you know how dry land  
12 farming for wheat was done back in 1912, the cultivation  
13 practices?

14 MR. GRUNSKY: No. I know how it's done today.

15 MR. O'LAUGHLIN: Okay. If you don't know,  
16 those are perfectly fine answers to say that you know or  
17 I don't know.

18 MR. GRUNSKY: Okay.

19 MR. O'LAUGHLIN: Can you help me on Rule 11 in  
20 regards to MSS 5. Couple questions beforehand.

21 Are you aware in the minutes for Woods  
22 Irrigation Company if there are any other prior rules of  
23 the company, prior to this 1940 document?

24 MR. GRUNSKY: I'm not aware.

25 MR. O'LAUGHLIN: Do you know if or how long any

1 of these specific rules contained within this document  
2 remained in force and effect?

3 MR. GRUNSKY: No.

4 MR. O'LAUGHLIN: It says in here under Rule 11:  
5 Seasonal irrigation shall be deemed to be  
6 four irrigations per season.

7 What is your understanding of seasonal  
8 irrigation?

9 MR. GRUNSKY: The general season for  
10 irrigating, just practical purposes, is say October  
11 to -- excuse me -- from March to October, typically.  
12 Maybe early November sometimes.

13 MR. O'LAUGHLIN: Okay. That would match up  
14 kind of with Rule No. 3 and with Rule No. 4, correct?

15 MR. GRUNSKY: Generally. It's saying it's a  
16 seasonal --

17 MR. O'LAUGHLIN: Okay.

18 MR. GRUNSKY: -- situation.

19 MR. O'LAUGHLIN: Now in regards to it says will  
20 be four irrigations per season. Do you know what amount  
21 of quantity or diversion rate or quantity was to be  
22 supplied within those four irrigations to a particular  
23 piece of property?

24 MR. GRUNSKY: No.

25 MR. O'LAUGHLIN: On Rule No. 12, it talks about

1 headgates. Do you know what type of delivery system  
2 prior to, I don't know, 1940, 1930, there was from the  
3 canal to the farm?

4 MR. GRUNSKY: No.

5 MR. O'LAUGHLIN: Do you know -- I want to go --  
6 I missed a point, sorry, on Rule 11. Again, it says --  
7 in the season, it says:

8 If more irrigation is desired or  
9 requested, additional irrigation will be  
10 charged at the rate of 30 cents per hour.

11 Are you aware of any records at Woods which  
12 would denote that we could look to see if people took  
13 more than four irrigations in any particular irrigation  
14 season?

15 MR. GRUNSKY: No.

16 MR. O'LAUGHLIN: Are there -- in a lot of  
17 districts, they have -- farmers have order forms to get  
18 water delivered to their property. Do you know if Woods  
19 Irrigation Company has a form of ordering water?

20 MR. GRUNSKY: You're talking about now?

21 MR. O'LAUGHLIN: Historically or at any time.

22 MR. GRUNSKY: We don't now. We just call the  
23 ditch tender, and he takes care of it, so.

24 MR. O'LAUGHLIN: Okay. Are you aware of any  
25 records at Woods Irrigation Company that would show an

1 ordering of water by landowners at any time to deliver  
2 water to a specific piece of property?

3 MR. GRUNSKY: No.

4 MR. O'LAUGHLIN: Are you aware of any  
5 measurements at any time that Woods Irrigation District  
6 has done of flow in any of its canals?

7 MR. GRUNSKY: No.

8 MR. O'LAUGHLIN: Are you aware of any  
9 measurements by Woods Irrigation Company of any amounts  
10 of water diverted to any particular party or parcel at  
11 any particular flow rate?

12 MR. GRUNSKY: No, other than the work Mark and  
13 those guys did. I'm not aware of any flow rates.

14 MR. O'LAUGHLIN: Okay. Then let me go more  
15 generally. Are you aware of any records maintained by  
16 Woods Irrigation Company denoting any measurement of  
17 water within Woods Irrigation Company?

18 MR. GRUNSKY: No.

19 MR. RUBIN: Mr. O'Laughlin, can I just make  
20 sure the record is clear.

21 The witness answered the question just before  
22 this with a reference to "Mark," that the only work he  
23 was aware of is the work that Mark had done.

24 I assume that -- well, I ask whether the  
25 witness was referring to the Prosecution Team and

1 specifically Mr. Stretars?

2 MR. GRUNSKY: Yes. And that's the only flow  
3 rates I'm aware of.

4 MR. O'LAUGHLIN: Okay. Yeah. That was my  
5 understanding, the flow rates Mr. Stretars took when he  
6 came out and measured.

7 Are you aware of any records at Woods  
8 Irrigation Company denoting cropping patterns within the  
9 company in any particular year?

10 MR. GRUNSKY: No.

11 MR. O'LAUGHLIN: Are you aware if -- my  
12 understanding is Woods is asserting a right to 77.7 cfs,  
13 a pre-14 right.

14 If Woods is delivering more than 77.7 cfs, how  
15 does it make a determination of the individual water  
16 rights that are being asked for above that?

17 MR. HERRICK: If I could just ask the question  
18 be restated. A number of times it's been mentioned here  
19 that Woods is asserting a right of 77.7.

20 That's the number totaled by the prosecution  
21 staff from the agreements.

22 Wood's submittal which is within the  
23 Prosecution Team's testimony, doesn't assert any amount,  
24 number. So I don't want the witness to think that  
25 somewhere else Woods has taken the position that that is

1 the number.

2 MR. O'LAUGHLIN: Thank you for that  
3 clarification.

4 If 77.7 cfs is assumed or asserted to be the  
5 pre-14 right of Woods Irrigation Company, how is it that  
6 Woods makes a determination if people order water above  
7 that to deliver to their properties?

8 MR. GRUNSKY: I think -- my personal opinion, I  
9 think there's riparian rights and pre-1914 rights.

10 MR. O'LAUGHLIN: And now, has -- are you -- and  
11 I appreciate that.

12 Is there -- based on that belief, are there  
13 actual records at Woods Irrigation Company denoting what  
14 parcels of land within Woods Irrigation Company have a  
15 riparian right, a pre-14 right or riparian right?

16 MR. GRUNSKY: Well, I -- that was all one ranch  
17 at one time, and it was on the river. That's where I'm  
18 getting my assumption of riparian rights.

19 MR. O'LAUGHLIN: I'm not -- just -- I'm not  
20 arguing with that point.

21 I just want to know what documents you have at  
22 Woods Irrigation Company that would tell you that an  
23 individual piece of property would have either a  
24 riparian right or a post-14 right or riparian right that  
25 you would then be able to say we can deliver water to



1 that parcel above the 77.7.

2 MR. GRUNSKY: I would defer to -- we've done  
3 some work on that, but -- yeah, we've done work on it,  
4 but I don't think it's -- I don't think it's part of the  
5 proceeding yet.

6 MR. O'LAUGHLIN: Okay.

7 MR. GRUNSKY: I know we spent a lot of time on  
8 it.

9 MR. O'LAUGHLIN: Okay. So do you -- are there  
10 documents at Woods that you are aware of that would set  
11 forth Woods Irrigation Company's understanding of what  
12 the rights are of farmers within its district?

13 (Discussion between counsel and witness)

14 MR. O'LAUGHLIN: Two things. I know John's  
15 sitting right there. Unfortunately, he can't answer.  
16 And you can't ask him questions, and he can't testify.

17 So if you know, it's great to say --

18 MR. GRUNSKY: I know our engineer has done a  
19 lot of extensive work on it. I wasn't here this  
20 morning, so I don't know if they've been here and  
21 testified or not.

22 MR. O'LAUGHLIN: Who is your engineer?

23 MR. GRUNSKY: Kjeldsen and Sinnock. They have  
24 done some work on riparian rights within the District.

25 MR. O'LAUGHLIN: Is that Mr. Neudeck?

1 MR. GRUNSKY: Yes.

2 MR. O'LAUGHLIN: Okay. Thanks.

3 MR. GRUNSKY: I'm not sure if he's testified or  
4 not this morning.

5 MR. O'LAUGHLIN: No, he hasn't. So I would be  
6 in a better position to ask Mr. Neudeck the questions  
7 about riparian and pre-14 and post-14 water rights?

8 MR. GRUNSKY: Yes.

9 MR. O'LAUGHLIN: Thank you. Is Mr. Geiger  
10 located in Stockton?

11 MR. GRUNSKY: Yes.

12 MR. O'LAUGHLIN: Did -- I find these things  
13 interesting. You talked to your grandmother about the  
14 history of your family. Were there documents, photos,  
15 heirlooms left to you over time depicting your family's  
16 history on Roberts Island in the large farm that was  
17 there?

18 MR. GRUNSKY: Inherited the ranch, but no, no  
19 documents.

20 MR. O'LAUGHLIN: One quick second. Let me  
21 review my notes. I believe I'm done.

22 Thank you both. Appreciate it very much. I'm  
23 done, Mr. Pettit.

24 CO-HEARING OFFICER PETTIT: Thank you,  
25 Mr. O'Laughlin. Mr. Ruiz?

1 MR. RUIZ: We have no cross.

2 MS. GILLICK: The County has no cross.

3 CO-HEARING OFFICER PETTIT: Thank you both.

4 I have one question, Mr. Grunsky. You  
5 mentioned your ditch tender getting orders for delivery  
6 of water. Can you tell me just what a user tells the  
7 ditch tender when he wants water?

8 MR. GRUNSKY: Yeah. He'll call and say, you  
9 know, I'm going to irrigate my tomatoes. Say I'd like  
10 to irrigate them Wednesday. Say he's calling on a  
11 Sunday night.

12 And the ditch tender will, you know, see who is  
13 irrigating upstream and, you know, give him a time  
14 frame, say so-and-so's going to be finished on Monday.  
15 So-and-so's going to be finished on Tuesday. Somebody  
16 else has got it Wednesday before it gets to you. We  
17 can't get you the water until Thursday.

18 He just tries to coordinate when he can get the  
19 water.

20 CO-HEARING OFFICER PETTIT: Is the -- I assume  
21 that means he may release some extra water or judge the  
22 timing based on what other irrigators are doing.

23 Is the amount he might decide he needs based on  
24 practice, or do you have some formula for that?

25 MR. GRUNSKY: It's based on his expertise. He

1 doesn't push more water down than -- because we have to  
2 drain -- we have to pay, you know, PG&E to pump it out.

3 CO-HEARING OFFICER PETTIT: So basically the  
4 delivery orders are based on the ditch tender's and the  
5 diverter's long practice or experience with it.

6 MR. GRUNSKY: Yeah. Because you want as little  
7 water as possible to get to the end because it saves on  
8 utilities cost.

9 CO-HEARING OFFICER PETTIT: I understand that.  
10 No numbers or anything at the moment that you have?

11 MR. GRUNSKY: No.

12 CO-HEARING OFFICER PETTIT: Thank you.

13 Mr. Herrick, I understand you're going to do  
14 some redirect?

15 MR. HERRICK: Yes.

16 --o0o--

17 REDIRECT EXAMINATION BY MR. HERRICK

18 FOR WOODS IRRIGATION COMPANY

19 --o0o--

20 MR. HERRICK: Let me just follow up briefly on  
21 the Chairman's question there.

22 The operation of the Woods diversions is based  
23 on an analysis done by the person in charge of how much  
24 pump is needed to get how much water to a certain place  
25 trying to minimize the excess water at the end of the

1 system that has to be pumped out as drainage; is that  
2 correct?

3 MR. GRUNSKY: Correct.

4 MR. HERRICK: And to your knowledge, during  
5 your familiarity with Woods, that's the way it works;  
6 isn't that correct?

7 MR. GRUNSKY: Yes.

8 MR. HERRICK: And there's no record of -- kept  
9 by Woods of calls for water or what pumps were on what  
10 days or what bleed-offs may be done on any pumps; is  
11 that correct?

12 MR. GRUNSKY: That's correct.

13 MR. HERRICK: Okay. So you would not expect  
14 any earlier records to show that data, would you?

15 MR. GRUNSKY: I wouldn't.

16 MR. HERRICK: Okay. Now following on that,  
17 Mr. Rubin asked you questions about electrical bills.  
18 And do you have an understanding how far back any  
19 electrical bills for Woods have been kept?

20 MR. GRUNSKY: I don't.

21 MR. HERRICK: Okay. And an electrical bill  
22 would tell you the number of hours electrical -- I'm  
23 going to say this wrong -- number of kilowatt hours used  
24 for the pump; is that correct?

25 MR. GRUNSKY: Yes.

1           MR. HERRICK:  But the ditch tender when he  
2  operates the pumps, although the pump may be going at  
3  full speed, they may be bleeding off part of that water,  
4  correct?  Back into the river rather than pumping the  
5  full amount into the channel -- into the supply ditch?

6           MR. GRUNSKY:  I don't know what you mean,  
7  bleeding off.

8           MR. HERRICK:  There is a -- some or all of the  
9  pipes allow the ditch tender to bleed off some of the  
10 water being pumped back into the river rather than into  
11 the Woods supply ditch; isn't that correct?

12           In other words, he runs the pump at one RPM,  
13 but he adjusts how much water is actually going into the  
14 channel.

15           MR. GRUNSKY:  Yeah, he adjusts.

16           MR. HERRICK:  So an electrical record will show  
17 you that a pump was running, but that doesn't  
18 necessarily translate into how much water was reaching  
19 the ditch, correct?

20           MR. GRUNSKY:  Making that assumption, I guess,  
21 yes.

22           MR. HERRICK:  That's all right.  Maybe you're  
23 not that familiar with it.

24           MR. GRUNSKY:  I'm not that familiar with it.

25           I know he, based where he's got to go, he hits

1 the pumps and gets it there, and he knows the size of  
2 the man's field and how much water tomatoes take, and he  
3 gets it as close as he can.

4 MR. HERRICK: All right. We'll follow that up  
5 with someone else maybe.

6 Mr. Grunsky, you were asked about the records  
7 upon which you based your testimony which in fact your  
8 testimony says that you do. Remember that -- do you  
9 recall that?

10 MR. GRUNSKY: Yes.

11 MR. HERRICK: To refresh your memory, and as  
12 was touched on by a later question, attached to your  
13 testimony are the articles of incorporation for Woods;  
14 is that correct?

15 MR. GRUNSKY: Yes.

16 MR. HERRICK: That's one of the documents upon  
17 which you relied that water was being delivered to Woods  
18 since somewhere around 1910; is that correct?

19 MR. GRUNSKY: Yeah, I just -- when I said that,  
20 I wasn't -- I just assumed everybody knew about that. I  
21 wasn't --

22 MR. HERRICK: That's all right. We're just  
23 doing a follow-up here.

24 MR. GRUNSKY: Okay.

25 MR. HERRICK: And in addition to that, in your

1 prior testimony and as was referenced today, you've at  
2 least partially reviewed the two 1911 agreements to  
3 supply water upon which the Woods district provides  
4 water to various acres; is that correct?

5 MR. GRUNSKY: Yes.

6 MR. HERRICK: And again, without testing your  
7 knowledge, you have reviewed those, and from those  
8 documents you also conclude that since somewhere around  
9 1910 water has been delivered to those lands; is that  
10 correct?

11 MR. GRUNSKY: Yes.

12 MR. HERRICK: And part of the reason you make  
13 that conclusion is that the documents don't talk about  
14 building a system; they talk about an existing system.  
15 Is that correct?

16 MR. GRUNSKY: Correct.

17 MR. HERRICK: And since the Woods brothers then  
18 owned the land before the company was formed, you are  
19 assuming then that they were supplying themselves with  
20 water before the company was constituted; is that  
21 correct?

22 MR. GRUNSKY: Right. Well, they formed the  
23 company.

24 MR. HERRICK: Right. And in addition to that,  
25 although you may not have read the entire document, you



1 are generally familiar with the 1957 quiet title action  
2 brought to resolve issues of stock ownership for the  
3 Woods Irrigation Company, correct?

4 MR. GRUNSKY: You can say generally, yes.

5 MR. HERRICK: And there have been discussions  
6 in preparation for this with regard to the language  
7 contained in that quiet title action which make  
8 statements about the continuous delivery of water to the  
9 lands in Woods Irrigation, correct?

10 MR. GRUNSKY: Correct.

11 MR. HERRICK: So those are three documents  
12 referring to use of water, either from 1909 or 1910 or  
13 1911, and those are the documents, those are some of the  
14 documents upon which you make your statement in your  
15 testimony that you reviewed corporate records and  
16 conclude that water's been delivered since then. Is  
17 that right?

18 MR. GRUNSKY: Prior is when the -- just, again,  
19 this is general. When the company was formed, I've just  
20 always felt it was formed to irrigate, and it's just  
21 been my understanding my entire life.

22 MR. HERRICK: But the documents we just  
23 discussed now support that; is that correct?

24 MR. GRUNSKY: Absolutely.

25 MR. HERRICK: Yes. And although you may not

1 have read them all, you are familiar with the existence  
2 of the early minutes for Woods Irrigation Company going  
3 back to whatever date they go back to?

4 MR. GRUNSKY: I know there are some, and I know  
5 there's a gap. Talking earlier, I don't know -- I heard  
6 rumors of how they got lost, a fire.

7 MR. HERRICK: Thank you.

8 You were asked questions about rules from 1940  
9 apparently for Woods Irrigation Company. Do you recall  
10 that?

11 MR. GRUNSKY: Yes.

12 MR. HERRICK: To your knowledge, are those  
13 rules that deal with limitations on delivery of water,  
14 are those in effect today?

15 MR. GRUNSKY: Not that I'm aware of. But the  
16 general cycle of irrigating is the same. It's very  
17 similar.

18 MR. HERRICK: But to your knowledge, there  
19 aren't any additional fees paid for people dependent  
20 upon needs of water that may be in conflict with the  
21 strict requirements of these 1940 rules; is that  
22 correct?

23 MR. GRUNSKY: That's correct.

24 MR. HERRICK: And you have no knowledge of  
25 whether or not back in 1940 these rules were actually

1 enforced, do you?

2 MR. GRUNSKY: No. Yeah, that's before my time.

3 MR. HERRICK: That's right. And would it be  
4 correct to say that all you're aware of is that each  
5 year, to your knowledge, Woods assesses an amount for  
6 irrigation and for drainage?

7 MR. GRUNSKY: Yes.

8 MR. HERRICK: And that's not based upon extras.  
9 It's based upon a per-acre amount for the costs and any  
10 potential capital improvements they're going to do in  
11 the future or any other expenses?

12 MR. GRUNSKY: Yeah.

13 MR. HERRICK: And again, to your knowledge,  
14 there aren't any separate or other accounting records  
15 which may break out any sort of costs like that that are  
16 held by Woods?

17 MR. GRUNSKY: Not that I am aware of.

18 MR. HERRICK: Okay. And -- okay. Thank you.

19 I do want to clarify the discussion about who  
20 holds the corporate records. And your corporate  
21 attorney is Mr. Don Geiger; is that correct?

22 MR. GRUNSKY: Correct.

23 MR. HERRICK: As far as you know, the corporate  
24 records, whatever they may be, are maintained at his  
25 office; is that correct?

1 MR. GRUNSKY: That's correct.

2 MR. HERRICK: And although Mr. Nomellini and I  
3 are involved in this current issue, we don't hold  
4 corporate records except maybe copies that we've gotten  
5 from him.

6 MR. GRUNSKY: Correct.

7 MR. HERRICK: Okay. Mr. Grunsky, you were  
8 asked questions about billings back in 1914 and past  
9 that. Are you aware of whether or not the board of  
10 directors for Woods back in 1914 billed people  
11 prospectively or retrospectively?

12 MR. GRUNSKY: I have no idea.

13 MR. HERRICK: Do you know whether or not --  
14 that's fine.

15 Turning to Mr. Prichard. You were asked a  
16 couple questions with regard to soil types. Are you  
17 generally familiar with Roberts Island soils?

18 MR. PRICHARD: Yes, I am.

19 MR. HERRICK: And do you think that your use of  
20 a current soils map materially affects your conclusions  
21 with regard to whether or not certain crops would have  
22 been irrigated back around 1914?

23 MR. PRICHARD: No, it does not.

24 MR. HERRICK: And -- okay. Thank you.

25 One more question for Mr. Grunsky; I apologize.

1           You described Woods as having two points of  
2 diversion; is that correct?

3           MR. GRUNSKY: That's correct.

4           MR. HERRICK: Now just as a visual, Middle  
5 River runs generally north along Upper Roberts going  
6 downstream to the north, and then it takes sort of a  
7 bend around Middle Roberts which is mostly Woods  
8 Irrigation Company area, right?

9           MR. GRUNSKY: Right.

10          MR. HERRICK: And at one of those bends near  
11 Howard Road, the Woods Irrigation Company has two  
12 structures, each of which has six pumps on it -- excuse  
13 me -- each of which has three pumps; is that correct?

14          MR. GRUNSKY: Correct.

15          MR. HERRICK: So there are actually two  
16 platforms with six pumps?

17          MR. GRUNSKY: Correct.

18          MR. HERRICK: But they're are only, what, 30  
19 yards apart, 20 yards apart?

20          MR. GRUNSKY: Yeah. 50 feet.

21          MR. HERRICK: And you're considering that one  
22 diversion point?

23          MR. GRUNSKY: That's correct.

24          MR. HERRICK: That's generally referred to as  
25 the main diversion points for Woods?

1 MR. GRUNSKY: Yes.

2 MR. HERRICK: So although its two platforms and  
3 six pumps --

4 MR. GRUNSKY: One point of diversion.

5 MR. HERRICK: That's what I want to clarify.  
6 When you said two points of diversion, that's one.

7 MR. GRUNSKY: Yeah.

8 MR. HERRICK: Okay. And then the second one  
9 is, I don't know, maybe half a mile downstream which is  
10 north-ish, and it's a much smaller, one-pump diversion;  
11 is that correct?

12 MR. GRUNSKY: Yes.

13 MR. HERRICK: I just want to make sure there's  
14 no confusion when you say two, and there's three  
15 platforms or whatever, there's seven pumps or something.  
16 Thank you.

17 That's all I have. Thank you, Mr. Chairman.

18 CO-HEARING OFFICER PETTIT: Thank you,  
19 Mr. Herrick.

20 Mr. Rose?

21 --o0o--

22 RECROSS-EXAMINATION BY MR. ROSE

23 FOR PROSECUTION TEAM

24 --o0o--

25 MR. ROSE: This will obviously be very brief

1 because it's only within the scope of the questions just  
2 asked.

3 Mr. Grunsky, is it my understanding that the  
4 operation of diverting water, delivering it to your  
5 service area, is not done with any particular  
6 consideration of water rights; is that correct?

7 MR. GRUNSKY: I really don't understand that  
8 question.

9 MR. ROSE: You said in response to some  
10 questions from Mr. Herrick that the operation of your  
11 diversion system is done based on the experience of the  
12 ditch tender and the request of the particular  
13 irrigator; is that correct?

14 MR. GRUNSKY: Request of the farmers to the  
15 ditch tender.

16 MR. ROSE: That's what I mean. The farmer  
17 makes a request to the ditch tender; the ditch tender  
18 provides some amount of water. Is that correct?

19 MR. GRUNSKY: That's correct.

20 MR. ROSE: Okay. Nowhere in that calculation  
21 is any consideration of water rights; is that correct?

22 MR. HERRICK: You mean by the ditch tender?

23 MR. ROSE: By either party as to whether  
24 there's the existence of sufficient water rights for  
25 those deliveries.

1 I'm not suggesting in that question that they  
2 do or do not exist, but that's not part of the  
3 consideration, is it?

4 MR. GRUNSKY: No, the fact that they are a  
5 member of Woods. We feel we have pre-1914 and riparian  
6 rights, if that's the consideration you're looking for.

7 MR. ROSE: All I was --

8 MR. GRUNSKY: Obviously we're --

9 MR. ROSE: -- looking for -- sorry. I didn't  
10 mean to interrupt or talk over you.

11 But looking for a specific answer to that  
12 question is: When the call is made and when the water  
13 is put into the ditch, there is no particular  
14 consideration as to the amounts or availability of water  
15 under particular water rights; is that correct?

16 MR. GRUNSKY: The -- I mean just the --  
17 obviously, has to be a member of the irrigation company.

18 MR. ROSE: They are a member of the irrigation  
19 company making these calls.

20 MR. GRUNSKY: Yes.

21 MR. ROSE: Obviously. But there is no  
22 consideration of water rights in that calculus; is that  
23 correct?

24 MR. GRUNSKY: I would guess yes, yeah.

25 MR. ROSE: Yes, there is a consideration?



1           MR. GRUNSKY:  No, there is -- I would agree  
2 with you.

3           MR. ROSE:  Okay.  No --

4           MR. GRUNSKY:  Yeah.

5           MR. ROSE:  There's no consideration.  Thank  
6 you.  I just wasn't sure.

7           MR. GRUNSKY:  Yeah.

8           MR. ROSE:  Okay.  And Woods doesn't maintain  
9 any records of particular water rights of its  
10 landowners?  Is that correct?

11           MR. GRUNSKY:  On specific landowners?

12           MR. ROSE:  Does Woods maintain records?  And  
13 this is a records question, so you can say yes or no,  
14 you don't know:  Does Woods, that you are aware of,  
15 maintain any records of water rights held by any entity  
16 other than itself?

17           MR. GRUNSKY:  As I spoke earlier, the engineers  
18 have done some work on that, but I haven't seen the  
19 testimony to it.

20           MR. ROSE:  Okay.

21           MR. GRUNSKY:  Yeah.  Generally I'm not aware.

22           MR. ROSE:  Okay.  And my question  
23 specifically -- and you can say you're not aware.  I  
24 just want to be clear as to records.

25           You're not aware of any records held by Woods

1 of rights held by any of its particular landowners?

2 MR. GRUNSKY: No.

3 MR. ROSE: Okay. And you also are not aware of  
4 any records of how much water is diverted at those  
5 particular PODs, points of diversion?

6 MR. GRUNSKY: No.

7 MR. ROSE: No measuring devices or anything  
8 like that?

9 MR. GRUNSKY: No.

10 MR. ROSE: Thank you. I have no further  
11 questions.

12 CO-HEARING OFFICER PETTIT: Thank you,  
13 Mr. Rose.

14 Mr. Rubin.

15 --o0o--

16 RECROSS-EXAMINATION BY MR. RUBIN

17 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

18 --o0o--

19 MR. RUBIN: Jon Rubin for the San Luis &  
20 Delta-Mendota Water Authority. Just hopefully a  
21 clarifying question or two, Mr. Grunsky.

22 In response to questions that Mr. Herrick asked  
23 of you, it appears as though your conclusion that's  
24 reflected in Woods Irrigation Company Exhibit 11 is  
25 based upon three records as well as some historic

1 accounts from family members; is that correct?

2 MR. GRUNSKY: Briefly, it's based on the  
3 formation of the company, and I've glanced with John at  
4 the other records.

5 MR. RUBIN: Okay. That's what I want to --  
6 just what I want to clear up. It's -- I think your  
7 testimony's been clear that your conclusion is based in  
8 part on communications that you had with family members,  
9 specifically your grandmother?

10 MR. GRUNSKY: Right.

11 MR. RUBIN: And then the records that you base  
12 your conclusion on, there are three as I understand it:  
13 The 1909 articles of incorporation, maybe --

14 MR. GRUNSKY: Yes.

15 MR. RUBIN: -- four.

16 Then there's two agreements from 1911 that you  
17 base your upon on?

18 MR. GRUNSKY: I know of an agreement from 1911.  
19 I don't know of two agreements from 1911.

20 MR. RUBIN: But then the third piece of  
21 information is a complaint that Mr. Herrick referenced  
22 in a question to you; is that correct?

23 MR. GRUNSKY: Yes.

24 MR. RUBIN: And the complaint is a complaint of  
25 quiet title?

1 MR. GRUNSKY: Yeah. And I just don't know much  
2 about it other than I've seen it.

3 MR. RUBIN: And you saw it at a meeting with  
4 Mr. Herrick?

5 MR. GRUNSKY: Yes.

6 MR. RUBIN: And did you read it, or did Mr.  
7 Herrick explain it to you?

8 MR. GRUNSKY: No, just -- I didn't read it.

9 MR. RUBIN: Thank you. I have no further  
10 questions.

11 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin?

12 --o0o--

13 RECROSS-EXAMINATION BY MR. O'LAUGHLIN

14 FOR MODESTO IRRIGATION DISTRICT

15 --o0o--

16 MR. O'LAUGHLIN: Mr. Grunsky, in regards to the  
17 articles of incorporation, what was the starting  
18 capitalization for Woods Irrigation Company?

19 MR. GRUNSKY: Oh, gosh. It was --

20 MR. O'LAUGHLIN: \$10,000 ring a bell?

21 MR. GRUNSKY: Yeah, I think it was \$10,000.

22 MR. O'LAUGHLIN: After the initial  
23 capitalization of the corporation, when was the first  
24 time that Woods Irrigation Company charged the lands  
25 within Woods Irrigation Company for operation and

1 maintenance charges?

2 MR. GRUNSKY: I don't know.

3 MR. O'LAUGHLIN: At this -- I'm just going to  
4 clear up this. So now we're clear that there -- there's  
5 two platforms currently in existence that have three  
6 pumps each or six pumps each?

7 MR. GRUNSKY: Three.

8 MR. O'LAUGHLIN: Three each. So six total.

9 MR. GRUNSKY: Yes.

10 MR. O'LAUGHLIN: Okay. Do you know what the  
11 horsepower is on those pumps?

12 MR. GRUNSKY: They vary from 20 to 50.

13 MR. O'LAUGHLIN: Okay. Now, is that canal  
14 that's currently there, the canal that we -- that has --  
15 people have been talking earlier that Mr. Nomellini  
16 talked about where the tunnel came out, went into this  
17 main canal, and then basically goes up kind of the  
18 center of Roberts Island, is that it?

19 Do the pumps -- let me ask it a different way.

20 Do the pumps that are currently there deliver  
21 into one main canal or two separate canals?

22 MR. GRUNSKY: There's two separate canals.

23 MR. O'LAUGHLIN: Okay. And so it's your  
24 understanding that previously then that if there were  
25 two separate diversion structures there, they would

1 deliver into the two separate canals, correct? That  
2 Mr. Nomellini described earlier?

3 MR. GRUNSKY: There's -- yeah, there's two  
4 platforms and two different canals.

5 MR. O'LAUGHLIN: Okay. So Mr. Nomellini showed  
6 us earlier what he called the headgates or tide gates  
7 that appeared to connect to those two separate canals.  
8 Okay.

9 So if I understand your testimony now  
10 correctly, there's three pumps on each canal, and the  
11 horsepower is 20 to 50 --

12 MR. GRUNSKY: Mostly 20s and 30s. There could  
13 be a 50 on there. I don't want to misspeak. There  
14 could be a 50.

15 MR. O'LAUGHLIN: Do you know the efficiency of  
16 those pumps?

17 MR. GRUNSKY: No, sure don't.

18 MR. O'LAUGHLIN: Follow-up on a question that  
19 Mr. Herrick asked you. If Woods Irrigation Company was  
20 pumping water, let's say in the 1920s or '30s, there  
21 would be some type of what I'll call fuel charge, either  
22 gas, diesel, or electric that was incurred by the  
23 company to pump, am I correct?

24 MR. GRUNSKY: I don't know.

25 MR. O'LAUGHLIN: Okay. What's the earliest

1 records that you know of at Woods Irrigation Company  
2 that would give us some indication that a pump had been  
3 installed at Woods Irrigation Company to help move  
4 irrigation water?

5 MR. GRUNSKY: I don't know of any of those  
6 records. Again, I can speak to when I've been on the  
7 District.

8 MR. O'LAUGHLIN: Okay. In regards -- I served  
9 Woods Irrigation Company with a subpoena. Do you -- I'm  
10 unclear about this now. Are the documents that I  
11 received from Mr. Herrick, or are the documents I  
12 received from Mr. Geiger?

13 In other words, did I get the custodian of  
14 record documents or --

15 MR. GRUNSKY: You would have -- Geiger -- if  
16 you -- Geiger has all the documents, but when asked he  
17 gives them to -- I'm just -- I'm guessing -- but to John  
18 or to Dan. But Don Geiger is the attorney of record for  
19 the company.

20 MR. O'LAUGHLIN: Do you have any belief or  
21 hesitancy in the authenticity of the Woods Irrigation  
22 minutes that we supplied you as MSS 5?

23 MR. GRUNSKY: No.

24 MR. O'LAUGHLIN: In regards to the records that  
25 you've talked about for individual water right holders,

1 those are records that Woods has done in the last year  
2 or so in preparation for these proceedings?

3 MR. GRUNSKY: Yes.

4 MR. O'LAUGHLIN: Thank you. No further  
5 questions.

6 CO-HEARING OFFICER PETTIT: Mr. Powell?

7 MR. POWELL: No questions.

8 CO-HEARING OFFICER PETTIT: Mr. Ruiz?  
9 Ms. Gillick.

10 MS. GILLICK: No questions.

11 CO-HEARING OFFICER PETTIT: Thank you.

12 STAFF ATTORNEY AUE: No.

13 CO-HEARING OFFICER PETTIT: Couple of quick  
14 questions.

15 Mr. Grunsky, do I understand that all the  
16 present pumps are electrical driven, electric pumps?

17 MR. GRUNSKY: Pardon me?

18 CO-HEARING OFFICER PETTIT: Are all your  
19 present pumps driven by electric motors?

20 MR. GRUNSKY: Yes.

21 CO-HEARING OFFICER PETTIT: And has PG&E or  
22 anybody else ever done a pump test to correlate the  
23 demand with the water output?

24 MR. GRUNSKY: PG&E has done pump tests. They  
25 are just -- we've done a couple times over the years to



1 make sure they are efficient, you know. I can't recall  
2 the last one. Probably within the last couple of years.

3 CO-HEARING OFFICER PETTIT: Thank you.

4 MR. HERRICK: You want to bring on Mr. Neudeck,  
5 or do you want to take a five, ten-minute break?

6 CO-HEARING OFFICER PETTIT: I suspect we'd  
7 better take a break. Thank you, Mr. Herrick. Let's  
8 take another 15 minutes and try and be back on time.

9 (Recess)

10 CO-HEARING OFFICER PETTIT: Let's go back on  
11 the record. Mr. Herrick, is Mr. Neudeck appearing by  
12 himself? We thought you were going to have him and  
13 Mr. Landon appear as a panel -- or Mr. Blake, I'm sorry.

14 MR. HERRICK: Mr. Blake is unavailable today.  
15 We did try to discuss the unavailability of a couple of  
16 witnesses at the first hearing, so he'll be here  
17 tomorrow.

18 I think we can get through Mr. Neudeck or  
19 close. I'd rather not wait to put them both on. That  
20 would be a long complicated day I think.

21 CO-HEARING OFFICER PETTIT: Okay. Let's  
22 proceed then.

23 MR. HERRICK: Thank you.

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CHRISTOPHER H. NEUDECK

Called by WOODS IRRIGATION COMPANY

DIRECT EXAMINATION BY MR. HERRICK

--o0o--

MR. HERRICK: Once again, John Herrick for Woods Irrigation Company. The next is Mr. Christopher Neudeck. Mr. Neudeck, would you give your name and business address for the record.

MR. NEUDECK: Yes. It's Christopher H. Neudeck. Business address is 711 North Pershing Avenue, Stockton, California 95203.

MR. HERRICK: And I have been remiss. You did take the oath when the proceeding began?

MR. NEUDECK: Yes, I did.

MR. HERRICK: You have in front of you WIC Exhibit No. 3 which is your statement of qualifications; is that correct?

MR. NEUDECK: That's correct.

MR. HERRICK: And it is a true and accurate representation of those qualifications?

MR. NEUDECK: Yes, it is.

MR. HERRICK: You also have in front of you Exhibit WIC 4, and that is your testimony for this proceeding?

1 MR. NEUDECK: That's correct.

2 MR. HERRICK: And it is, absent any corrections  
3 or errors that you'll correct on the way, it is a true  
4 and correct copy of your testimony; is that correct?

5 MR. NEUDECK: Yes, it is.

6 MR. HERRICK: Would you please summarize your  
7 testimony?

8 MR. NEUDECK: Certainly.

9 MR. O'LAUGHLIN: Can I ask a favor of the  
10 Chairman and counsel?

11 This testimony is very important. There's a  
12 ton of information that's going to be delivered in this  
13 testimony. And I would request that if Mr. Neudeck  
14 needs additional time to do that and fully explain to  
15 the Hearing Officer and the participants his viewpoints,  
16 he should and shouldn't be held to the 20-minute time  
17 limit.

18 It's a very extensive record that he has, and I  
19 just would ask the Hearing Officer's indulgence on that.

20 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin  
21 obviously just saw us set the clock. I think we can  
22 accommodate that request.

23 I have looked at Mr. Neudeck's testimony, and I  
24 agree that there's a lot of meat there, and we don't  
25 want to cut it off too short.

1           So with some reservation about not letting it  
2 go forever, don't feel too constrained by the 20  
3 minutes.

4           MR. NEUDECK: I'll do my best.

5           CO-HEARING OFFICER PETTIT: Thank you, sir.

6           MR. NEUDECK: Thank you.

7           As a matter of background, I'm a Registered  
8 Civil Engineer in the state of California. I have been  
9 practicing with my firm, Kjeldsen, Sinnock & Neudeck,  
10 for almost 30 years. My testimony states 25 years.

11           I've been in the business over 28 years,  
12 primarily practicing in the field of water resource  
13 engineering with an expertise in the area of flood  
14 control and drainage, particularly in the Sacramento-San  
15 Joaquin Delta.

16           In particular our firm, Kjeldsen, Sinnock &  
17 Neudeck, represents the Roberts Island area,  
18 specifically Reclamation Districts 5, 44, and 524 which  
19 are Upper Roberts and Middle Roberts, Middle Roberts  
20 being mainly the area we're speaking of today, as well  
21 as the surrounding reclamation districts, Union Island 1  
22 and 2 and Reclamation District 17.

23           Today's testimony that I'm going to be  
24 delivering is basically broken up into three parts.

25           The first part relates to reiterating testimony

1 that was delivered in my June 9th testimony with Mr.  
2 Mussi, Mussi et al, which is in my package of exhibits  
3 as WIC Exhibit 4A.

4           Secondly I'm going to relate back to some  
5 Term 91 testimony that was delivered in 2003 related to  
6 the Delta pool.

7           Then thirdly, I'm going to relate to some of  
8 the quantities and diversion rates by which Woods  
9 Irrigation Company has provided.

10           So I'll get started.

11           The first item, as I've indicated, is WIC  
12 Exhibit 4A which is my Mussi testimony that I've  
13 incorporated entirely. The purpose of that is to relate  
14 to the existence of Duck Slough.

15           Duck Slough has been referred to in much of the  
16 testimony throughout this hearing as well as prior  
17 hearings generally along the area known as Inland Drive.

18           And we've demonstrated that we've established  
19 water in it through 1911, and we believe as well through  
20 1913. And since that testimony in the Mussi case, I now  
21 derived a conclusion that water likely existed in -- in  
22 through probably 1926.

23           There are two exhibits, I will not bring them  
24 up, but for reference sake they are parts of the  
25 testimony which was a 1911 Quadrangle map that shows

1 water in Duck Slough as well as the existence of canals  
2 in 1913 on the Denny's map.

3 The additional evidence that draws my  
4 conclusion to indicating that Duck Slough likely had  
5 water in it through 1926 is a case in the Third District  
6 Court of Appeal. It's the case of Nelson et al versus  
7 Robinson where there was a dispute between landowners  
8 over seepage and drainage.

9 This particular case -- and I think,  
10 Mr. Lindsay, if you could pull up Exhibit 4C at this  
11 time it would be helpful to give everyone a picture as  
12 to where these properties exist so I can speak to that.

13 STAFF ATTORNEY AUE: With the Hearing Officer's  
14 permission I just wanted to ask before we get into  
15 testimony about Duck Slough.

16 It's my understanding from the maps that Duck  
17 Slough does not abut the Woods Irrigation District  
18 lands. Is that the case?

19 MR. NEUDECK: Woods Irrigation Company -- it  
20 actually runs through it. Woods is on either side.

21 STAFF ATTORNEY AUE: So the service area --

22 MR. NEUDECK: Correct.

23 STAFF ATTORNEY AUE: -- includes --

24 MR. NEUDECK: Original service area.

25 STAFF ATTORNEY AUE: But not the service area

1 today?

2 MR. NEUDECK: Correct. The drainage area is to  
3 the right. The 1911 service -- the agreement from 1911.

4 STAFF ATTORNEY AUE: Okay. So it's being  
5 submitted to show that it's a natural water body, but  
6 it's not adjacent to any of the lands being served  
7 today?

8 MR. HERRICK: If I may? And the Chairman can  
9 tell me to be quiet if he wants.

10 As was the case in the Term 91 matter, a  
11 showing that a riparian land maintained connection  
12 through an agreement to provide water in that hearing  
13 was found to be good enough to have preserved the  
14 riparian right.

15 That's a general statement.

16 So in this instance, we're making the case that  
17 Duck Slough was one of the water bodies to which some  
18 lands were riparian up through the time of the 1911  
19 agreement which then was a way of preserving an ability  
20 to get water to those lands, thus maintaining a riparian  
21 right even if later connections to any waterways were  
22 severed.

23 Does that make sense?

24 CO-HEARING OFFICER PETTIT: I think it does.  
25 And I guess if the original 1911 situation included

1 lands on both sides of Duck Slough, is that what you're  
2 saying?

3 MR. HERRICK: (Nodding head)

4 CO-HEARING OFFICER PETTIT: I would guess it  
5 has some weight with respect to the history of what  
6 might be left, anyway. So okay. Go ahead.

7 MR. NEUDECK: Briefly, Mr. Lindsay, if you  
8 could pan down -- I'm sorry. Pan up. I apologize. Get  
9 my directions correct here.

10 It's very difficult to see. If you could  
11 rotate it. Sorry. Only goes around one way. Very  
12 difficult to see.

13 But this is the Nelson property to the west of  
14 Duck Slough, and this is the Robinson property to the  
15 east of Duck Slough.

16 This is the alignment of Duck Slough as it runs  
17 down to Middle River. So my pointer's on Middle River,  
18 and the termination point of Duck Slough or the  
19 commencement point of Duck Slough. And then Nelson's on  
20 the west. Robinson's on the east.

21 MR. HERRICK: Why don't you describe the  
22 pocket.

23 MR. NEUDECK: This is also referred to -- the  
24 Nelson area, the Nelson property, is also referred to as  
25 the pocket area, the area between this levee here and



1 Duck Slough, High Ridge Levee and the Robinson property  
2 to the east of Duck Slough.

3 The importance of this exhibit is to  
4 demonstrate the existence of Duck Slough. And within  
5 this Third District Court of Appeals case, there was an  
6 issue raised about seepage coming from the Duck Slough  
7 area.

8 The Mussi property at the time is the area just  
9 directly in this pocketed area here, so that's the  
10 general reference to the Mussi property here.

11 The case goes on to speak to where seepage  
12 became visible in 1926, and in response to the  
13 plaintiffs -- plaintiffs being Nelson. Nelson was the  
14 plaintiff; Robinson was the defendant. That Robinson  
15 was -- the grounds from Robinson were seeping onto  
16 Nelson, and the case was to eliminate that seepage.

17 If you look at Exhibit 4C -- let me get the  
18 right page on here. I apologize. It's 4B. And turn to  
19 page 8. Eight of ten.

20 See the top three, four lines here state:

21 Defendants engaged men and equipment and  
22 spent time and money on plaintiff's land,  
23 levelling the same and eliminating a  
24 slough which said defendant maintained  
25 full of water immediately east of

1                   defendant's land during 1926.

2                   Now this, I believe, it's my opinion they are  
3 referring to Duck Slough with the exception there is a  
4 typographical error there.

5                   If you recall the prior photograph, the  
6 plaintiff was on the west with the slough in the middle.  
7 The defendant was on the east. So calling the slough to  
8 the east would mean in this particular case the slough  
9 would be on the opposite side of the Robinson property,  
10 and the likeliness of that slough seeping through  
11 Robinson onto Nelson is unlike.

12                   Point here being is this particular case  
13 demonstrates there was water in Duck Slough, and in 1926  
14 there was reference made to it, and that was the purpose  
15 of bringing that into my testimony here.

16                   Another next point of my testimony, I'd like to  
17 refer back to the Term 91 hearings which were conducted  
18 in February of 2003. This is the part where we speak to  
19 the issue related to the Delta pool.

20                   Within that testimony, the statement was made  
21 by me that the entire Delta is one big pool of water,  
22 some in channel and some in the soils.

23                   There's no net difference in the amount of  
24 water in the Delta channels. When local diverters take  
25 from neighboring channels, pump from shallow groundwater

1 or farm crops which draw from the shallow groundwater,  
2 taking water from one place is virtually the same as  
3 another.

4 This was further substantiated by a study done  
5 by DWR which is also part of that same testimony. And  
6 this was a July 2001 study done on Upper Roberts which  
7 is the area just upstream of Middle Roberts.

8 In that study -- it was a groundwater and  
9 monitoring study -- there were statements taken directly  
10 out of that that indicate changes in groundwater  
11 elevation at the site mimic changes in the river stage  
12 downstream -- excuse me; strike that.

13 Changes in groundwater elevation of the site  
14 mimic changes in the adjacent river stage less  
15 pronounced and slightly lagged behind. Reference being  
16 that changes in the river are mimicked by changes in the  
17 groundwater on the land itself.

18 From here I'm going to move into more of the  
19 meat of the testimony which relates to calculating the  
20 amount of the pre-1914 diversion of Woods Irrigation  
21 Company.

22 Now I don't have the Woods Irrigation Company  
23 agreements as part of my exhibits. I originally  
24 intended on testifying as a panel and had intended to  
25 have my associate Landon Blake go before me.

1           But there is two exhibits, Exhibit Nos. 60 and  
2 6P, which the 1911 agreement to commit Woods Irrigation  
3 Company to deliver water to the lands owned by both  
4 E.W.S. Woods and Jessie Wilhoit Mary Douglass.

5           In those agreements, there's reference to the  
6 rate of delivery. The E.W.S. agreement states a  
7 delivery of 44.8 cfs while the Wilhoit Douglass makes  
8 reference to delivery of 32.86 cfs.

9           Now, at its face value, that seems a little odd  
10 given the time frame and history that they had such  
11 specific numbers for the rate of delivery; but as you  
12 carry on through the agreement, you can see the reason  
13 for that was it directly related to their acreage.

14           The E.W.S. Woods agreement describes the  
15 acreage stating that they contained 4480 acres, more or  
16 less, whereas the Wilhoit Douglass states that they  
17 contained 3286.37 acres, more or less.

18           Doing the math, that relates to 1 cfs per  
19 hundred acres of land.

20           However, there is a mistake that was made here  
21 as well. If you look at the E.W.S. agreement closely,  
22 there's actually three parcels in that agreement. When  
23 you add all three parcels, you get a greater quantity  
24 than the 4480.

25           The first parcel described is an area 12.74

1 acres. The second parcel is an area of 769.32. And  
2 third parcel is an area of 4480 acres. If you take all  
3 three of those, which is where the apparent mistake was  
4 made, you come up with 5262.06 acres, a greater amount  
5 than the original 44 acres (sic).

6 I believe the agreement in 1911 commits Woods  
7 Irrigation Company to furnish water to all the lands,  
8 not just the 4480.

9 So I believe it was an incorrect statement made  
10 that they were to deliver the 4480. If you do the math  
11 at this point, the 5262 results in a higher diversion  
12 rate relating to 52.62 cfs.

13 Before I get into the follow-on calculations,  
14 there was additional correction to that diversion.

15 In the minutes of the Woods Irrigation Company  
16 in April 14, 1913, the Board ratified an agreement where  
17 they referenced releasing 370 acres from their 1911  
18 agreement. That was with the E.W.S. Woods agreement.

19 So that 370 would be coming off of what was  
20 originally presented as the 4480, as I read, added the  
21 5262. So taking that into account and doing the math,  
22 5262 less 370, you come up with a net 4892 for the  
23 E.W.S. Woods.

24 All right. As a result of this and looking at  
25 other minutes, it's my belief that Woods Irrigation

1 Company was releasing these specifically from their  
2 area, but whereas the rest of the area was to be served  
3 within its service area.

4 We've looked at additional maps that are not  
5 part of my testimony, but they're part of Mr. Blake's  
6 testimony -- again, I apologize because his exhibits  
7 weren't yet in play.

8 But Exhibits 6J, 6P, and 6K, relate to the  
9 Woods brothers land, the Wilhoit subdivision map, and  
10 then also a map by Hendersen and Billwiller that shows  
11 irrigation systems throughout this reach.

12 Why don't we -- is it possible, Mr. Lindsay, to  
13 pull those up and I will walk through those briefly.  
14 Let's start with 6J, then we're going to go to 6P and  
15 6K.

16 This map's difficult to read. It's what we  
17 call the black map. And we dated it between 1908 and  
18 1910. I will not be testifying to the dating of this  
19 map. My associate, Mr. Landon Blake, will testify to  
20 the dating of this map.

21 But in this, you can see -- and it's difficult.  
22 You can see the irrigation system within Woods  
23 Irrigation Company area, just demonstrating the ability  
24 to irrigate lands within the service area.

25 Let's go ahead and pull up 6P. It's the last

1 page of this.

2           There again, this is the subdivision of the  
3 west Wilhoit tract. Mr. Nomellini referred to this  
4 earlier, the west -- excuse me -- Wilhoit Douglass.  
5 Apologize.

6           Wilhoit Douglass subdivided their ground. The  
7 easterly half of the Woods Irrigation Company. They  
8 were anticipating not farming and selling off parcels to  
9 smaller farmers.

10           So this again shows the facility through the  
11 service area to serve and irrigate those areas within  
12 the irrigation company area.

13           The last map is 6K. This is a map by Hendersen  
14 and Billwiller. It's a 1914 map. Rotate that. Well,  
15 actually probably the thing to do would be to go down to  
16 the lower left-hand corner first. Actually this --  
17 we've seen this map earlier.

18           The word canals is here. It's a -- it's this  
19 line right here. It's very difficult to see. But if  
20 you pan back up, Mr. Lindsay.

21           That, we believe, is showing these areas within  
22 the Woods service area again as canals, particularly the  
23 Duck Slough area. This would be in 1914.

24           As I indicated earlier, we did not find any  
25 other references within the minutes of the board

1 reducing the area for the service area. And as shown in  
2 Exhibit 4F, there's a statement in there where it shows  
3 the board fixing rates and assessments and a tax  
4 necessary to pay the expenses and maintenance of the  
5 system -- of irrigation, the cost of furnishing water as  
6 evidenced in that exhibit.

7 From this I conclude that Woods Irrigation  
8 Company was in fact delivering water to all its lands  
9 except the 1913 exception, the 370 acres.

10 Now I'd like to move into what was referred to  
11 earlier -- I think with the prior panel on the 1957  
12 complaint to quiet title, corporate stock and  
13 declaratory relief. This is Exhibit 4J -- 4G, excuse  
14 me. I apologize.

15 Turn to page 5 of that exhibit. Right here,  
16 starting with the word attached:

17 Attached hereto and marked as Exhibit B  
18 and incorporated by reference herein is a  
19 legal description of the exterior  
20 boundaries of the tract of land irrigated  
21 by the plaintiff since it commenced  
22 operations in 1911. Continuously since  
23 the date of said agreement, the plaintiff  
24 was irrigating and draining the lands so  
25 described and set forth.



1           Again, evidence that they have been continually  
2 irrigating the area within their service area.

3           As a result of this, it's my conclusion that  
4 Woods Irrigation Company has been providing water to all  
5 its area since 19 -- between 1911 through 1957.

6           Now getting back to some of the calculations.

7           As indicated previously, the 4892 acres is my  
8 corrected calculation based off of the acreage in the  
9 E.W.S. Woods coupled with the Wilhoit Douglass lands,  
10 the 3286, totals the acreage of both agreements of  
11 8178.43 acres.

12           Using the 1 cfs per hundred acres as  
13 anticipated in the 1911 agreement yields a diversion  
14 rate of 81.78 cfs. This is the amount we believe, or I  
15 believe, was putting -- was being put to use by Woods  
16 before and thereafter in 1914.

17           Furthermore, it's my understanding that the  
18 Regional Board -- the State Board staff has another  
19 estimate for usage on land which estimates 1 cfs per 80  
20 acres average use of water in the Delta, not the hundred  
21 acres that was used in the 1911 agreement.

22           If you take this total amount of the 8178  
23 divide that by 80, that yields a diversion rate of  
24 102.23 cfs.

25           What I'm demonstrating is a diversion rate of

1 somewhere between 81.78 cfs to 102.23 cfs is Woods  
2 Irrigation Company's pre-1914 right.

3 It's my belief that Woods is able to divert  
4 this amount under its pre-1914 right, and any additional  
5 amounts will be pursuant to their riparian rights for  
6 land within the service area.

7 That concludes my testimony.

8 MR. HERRICK: Mr. Chairman, Mr. Neudeck's  
9 testimony also included the Mussi testimony that dealt  
10 with Duck Slough.

11 I think it would be beneficial if he would  
12 generally just march through that because I anticipate a  
13 lot of cross-examination questions on it.

14 Again, he was just sort of incorporating it  
15 trying to save time, but these Hearing Officers haven't  
16 heard that testimony. So Mr. Neudeck, perhaps you could  
17 march through that.

18 MR. NEUDECK: Should I grab my file?

19 MR. HERRICK: Certainly.

20 MR. O'LAUGHLIN: I would agree with that. I  
21 think that would be well worthwhile for this hearing  
22 since you have not heard the testimony, and we would  
23 support that.

24 I know it's going to run a little bit long, but  
25 I think this is a key issue in the case, and lots of

1 testimony would be worthwhile.

2 CO-HEARING OFFICER PETTIT: I think if we can  
3 maybe answer some of the questions in advance, it's  
4 worth it, so let's do it.

5 MR. NEUDECK: Okay. I apologize. I wasn't  
6 aware I was going to be doing this. Okay. I won't go  
7 through my qualification since I've already done that.

8 The Mussi testimony basically relates to two  
9 areas, the review of mapping and title documents  
10 together with the summary of irrigation and drainage  
11 practices.

12 The chain of title work that was done for the  
13 Mussi property was done by a gentleman name of Thurl  
14 Pankey Central Valley Land Service Company.

15 We reviewed -- and initially what I'll do is  
16 walk through the Mussi property, and maybe what we can  
17 do is bring up the Exhibits 3, and I'll just walk  
18 through those really briefly.

19 So if you could bring up 3A, Mr. Lindsay, and  
20 we'll just start walking through those.

21 CHIEF LINDSAY: Let me understand. This is 3A  
22 in Mussi?

23 MR. NEUDECK: Mussi. These are both -- no,  
24 that's --

25 MS. GILLICK: But wasn't that also submitted in

1 this proceeding as 4A, part of Mr. Neudeck's testimony,  
2 4A?

3 MR. HERRICK: It's 4A in this testimony.

4 CHIEF LINDSAY: Okay. Thanks. That's fine.

5 MR. NEUDECK: The exhibits are --

6 MS. GILLICK: Stay in the record in this  
7 proceeding.

8 MR. HERRICK: If you could just find the  
9 exhibits for 4A and start going through them, that will  
10 be work too.

11 CHIEF LINDSAY: You're going to have to help me  
12 out with a page number.

13 MR. NEUDECK: Okay. 3A is the -- this is the  
14 first one here. Rotate it to the -- clockwise.

15 CHIEF LINDSAY: You got it.

16 MR. NEUDECK: It just gives you an idea where  
17 Mussi property is currently. This is a current APN,  
18 131-170-03.

19 This is the Mussi property to the west of what  
20 is demonstrated here on this APN as Inland Drive, also  
21 known as Duck Slough and High Ridge Levee.

22 It's this triangular area also identified as  
23 the circled 3 here. This is the current APN.

24 The next Exhibit 3 -- well, 3B for me. Am I  
25 doing this correctly, or I should I be calling them

1 something else?

2 We go to the last page of this. What I'm going  
3 to do is walk you through briefly the chain of title for  
4 the Mussi property.

5 If we go to the last page of 3B, there is a  
6 map. What this demonstrates is the first grant from the  
7 State of California to J.P. Whitney. This is done  
8 November 24th, 1876.

9 You can see Duck Slough running through the  
10 center of this picture. It's a very large grant that  
11 takes this area to the right.

12 Almost to the right of this map is the San  
13 Joaquin River. The area to the bottom of the map is  
14 Middle River.

15 Duck Slough runs through about the middle.  
16 Burns Cut is the -- kind of the northeast corner.

17 Mussi property is right below the fold in this  
18 area here.

19 The next grant is 3C. Once again, the last  
20 page of this.

21 This is a grant from J.P. Whitney to M.C.  
22 Fisher. This was done January 17, 1877. This now is  
23 all to the east side of the High Ridge Levee, Duck  
24 Slough containing the Mussi property within this area,  
25 nearly extending out to the mainstem of the San Joaquin,

1 Middle River to the south, Burns Cutoff to the north.  
2 And it includes the current Woods service area as well.

3 The next exhibit is 3D.

4 This transfers -- again very sizable transfer  
5 from Fisher to Stewart. This is March 15, 1877. Again,  
6 a large transfer. Mussi property here to the left of  
7 the picture up against the Duck Slough, High Ridge Levee  
8 area just below the fold.

9 Again similar service area to the Woods  
10 Irrigation Company. Burns Cutoff to the north.  
11 Mainstem of the San Joaquin to the east, right-hand side  
12 of the picture. Then Middle River to the south.

13 Next transfer is 3E.

14 This brings us down very closely to the size of  
15 the -- I don't have that mapped.

16 MR. HERRICK: Mr. Neudeck, since this is  
17 incorporated testimony, this part now gets specific onto  
18 Mussi's property which doesn't necessarily relate to  
19 Woods, so you could probably skip this.

20 MR. NEUDECK: Okay.

21 MR. HERRICK: Move on.

22 MR. NEUDECK: So I'll jump down to my  
23 discussion related to the assessor's maps? Okay. I  
24 apologize for the confusion as a witness. I'm just  
25 trying to follow all this. I wasn't necessarily

1 prepared to take these both on.

2 The first item is -- let's go to 3I.

3 CHIEF LINDSAY: Do you know about what page  
4 that is?

5 MR. NEUDECK: 3I is -- 3H is all the assessor's  
6 maps. I thought we had separate --

7 MR. HERRICK: We do.

8 MR. NEUDECK: Looking for 3I.

9 MR. HERRICK: There's a page, says 3I, and  
10 following it is an assessor's map.

11 CHIEF LINDSAY: These appear not to have  
12 scanned very well.

13 MR. NEUDECK: If this is the quality of the  
14 assessor's map, we're not going to be able to -- not  
15 going to work.

16 MR. HERRICK: I believe they did appear fairly  
17 clear in the Mussi hearing. Perhaps we could go to 3I  
18 in the Mussi hearing.

19 MR. O'LAUGHLIN: Do you mind if I bring up a  
20 procedural issue?

21 CO-HEARING OFFICER PETTIT: Go ahead.

22 MR. O'LAUGHLIN: My understanding from counsel  
23 and my discussions is that the State may not have -- or  
24 may have rebuttal testimony, but if they do it may be  
25 oral.

1           And my understanding from Mr. Herrick is that  
2 his testimony, if anything, won't be available till  
3 Monday, so we're all going to make our rebuttal  
4 testimony available on Monday, and we're going to switch  
5 the order up slightly.

6           The San Luis & Delta-Mendota Water Authority  
7 will go first with rebuttal followed by Mr. Herrick's  
8 client, and then the State will go last.

9           CO-HEARING OFFICER PETTIT: Mr. Rose,  
10 Mr. Herrick, that okay with both of you?

11           MR. HERRICK: Yes.

12           MR. ROSE: That's fine with us.

13           CO-HEARING OFFICER PETTIT: Okay. So be it.

14           MR. NEUDECK: Okay. This Exhibit 3I is an 1876  
15 assessor's map. We have made reference to this in prior  
16 hearings.

17           What this does is very faintly shows the  
18 alignment roughly of where Duck Slough/High Ridge Levee  
19 is. This is a very rough rendition of this. This is  
20 not the actual configuration. It was almost 130 years  
21 ago, so the mapping at this time was not very accurate.

22           But it does depict a blue line which it's my  
23 opinion is referencing Duck Slough.

24           This is Middle River at the bottom of the  
25 assessor's map. The top is Burns Cutoff. And then



1 connecting the two is what we construe to be Duck Slough  
2 and High Ridge Levee.

3           The next exhibit is 3J. I can speak to this.  
4 This relates to the formation of Duck Slough. This is  
5 referencing to the dredging of Duck Slough, and it comes  
6 out of the Settlement Geography of the San Joaquin  
7 Delta, specifically page 267.

8           And the quote there was that the Samson  
9 dredge's first job was on Duck Slough. This is  
10 extending from Burns Cutoff, heading in a what otherwise  
11 would be construed to be upstream direction,  
12 constructing parts of Duck Slough.

13           And this is a confirmation that Duck Slough was  
14 a natural slough being enlarged by a channel.

15           The reference in the document speaks to the  
16 Samson dredge needed a body of water to float in and was  
17 creating a channel to head its way upstream on the  
18 configuration of 30 feet wide by 7 feet deep in order to  
19 float its dredge, then it disposed of the spoils on  
20 either bank.

21           So again, referencing Duck Slough, this came  
22 specifically out of this 1957 Settlement Geography.

23           From this I conclude that from very early on  
24 1875, you know, Duck Slough -- well, in this case, I'm  
25 repeating what relates to the Mussi property.

1           So let's move on to Exhibit 3L. 3L is just a  
2 slightly greater improvement over what was shown earlier  
3 on the assessor's maps.

4           Here you can see the configuration of Duck  
5 Slough starting to take a greater formation of what it  
6 looks like in reality.

7           But again, we have Burns Cutoff to the upper  
8 right of the assessor's map extending down through,  
9 tying in to Middle River. This is an assessor's map  
10 dating between 1881 and 1882 demonstrating the location  
11 of Duck Slough at that time.

12           Moving to 3M, M as in Michael.

13           This is an 1883 map by Tucker and Smith, a map  
14 of the lands owned by Fisher. And here, you'll see -- I  
15 apologize. I was looking down. You need to pan down.  
16 Thank you. Down. I apologize.

17           This what's now designated Cross Levee. And  
18 this Cross Levee follows the configuration -- and you've  
19 heard in some of the previous testimony: High Ridge  
20 Levee, Cross Levee, Duck Slough, Inland Drive. They're  
21 all synonymous of this sinuous configuration that we're  
22 showing here.

23           So you'll hear this terminology from a number  
24 of different sources, but this is what is Duck Slough.

25           The importance here is the map is showing a

1 dash then a straight line which demonstrates -- the dash  
2 is showing the levee, and the straight line is showing a  
3 watercourse.

4 If you pan up -- I believe that's the correct  
5 direction. Push the picture up. Stop right there.

6 You can see this area I'm highlighting in the  
7 middle of the photo which is the different -- the  
8 separation between Middle Roberts Reclamation District  
9 524 to the top of the photo and Reclamation District 544  
10 to the bottom of the photo which is actually upstream.

11 This Cross Levee is just a dash on the map here  
12 which demonstrates there is no water. It's just a  
13 separation between two tracts of land.

14 Historically these levees were built to prevent  
15 back flooding. They would not prevent downstream  
16 flooding because the higher water surface would tend to  
17 overtop them if a levee broke upstream of this levee.  
18 But if a levee broke in this area, it would prevent  
19 Upper Roberts from flooding.

20 So they would separate these districts by these  
21 somewhat lower cross levees. They were probably 5 to 6  
22 feet lower than the levees along the mainstem of the San  
23 Joaquin or along the Middle River.

24 All right. Let's move to Exhibit 3N. This is  
25 an 1886 map. This is the California State Engineer

1 Department of Topography and Irrigation map. And the  
2 purpose of this is to -- probably going to need to focus  
3 in. Zoom. Thank you.

4 What I want to -- pan up a little. Right in  
5 this area here. It's a very little difficult, but this  
6 is the alignment of Duck Slough.

7 So again, an indication that Duck Slough  
8 existed. And this was the 1886 time frame, and this is  
9 on a State map.

10 MR. HERRICK: Why don't you describe better  
11 where that is. Doesn't it say Duck Slough?

12 MR. NEUDECK: Yeah, if you were to really blow  
13 this up, you could actually see the term Duck Slough on  
14 it.

15 Extends again from Burns Cutoff in a  
16 southwesterly direction, down to Middle River. And you  
17 can see in the upper reach here where my highlighter is  
18 right now the term Duck Slough. You have to really blow  
19 this up to see it. I'm not sure this quality of map  
20 will show that.

21 Right there. It -- Duck, D-u-c-k. SL being  
22 the abbreviation for slough. So it's right in this area  
23 here. This is in 1886.

24 Okay. Let's move to the next exhibit which is  
25 30. This is an 1894 map. Stockton-Bellota Drainage

1 District map.

2 And again, it shows Duck Slough extending from  
3 Burns Cutoff. The term Duck Slough is written right  
4 along its alignment in a southwesterly direction down to  
5 Middle River in the middle of this photo here. Just  
6 another demonstration of the existence of Duck Slough in  
7 1884. Excuse me. Correct that. 1894.

8 Exhibit 3P is the 1911 USGS Quadrangle map.  
9 This is the map that was produced in 1913, 1911 data.

10 And here, this is the map we've referred to  
11 throughout prior hearings, but this is the alignment of  
12 Duck Slough. And you can see blue, if you blow this up,  
13 within the Duck Slough region.

14 But this is the Duck Slough alignment tied into  
15 Middle River, pocket area to the west, Kingston School  
16 here in the middle of the photo.

17 As you extend up, you can see the blue actually  
18 shown on this quadrangle map done by the US Geological  
19 Survey. This is a 1911 survey.

20 Yeah, I say that, even though the map is  
21 published in 1913.

22 The next exhibit is 3Q. This is a 1921 map.  
23 This is a map by Captain Weathers and Petzinger. These  
24 are navigational maps.

25 The importance of this map is to show right

1 down here by the pocket area -- it doesn't -- this is  
2 not demonstrating Duck Slough, and you might ask why is  
3 it not demonstrating Duck Slough?

4 This is a navigation map. This is a slough to  
5 show you the navigational areas. The importance of it  
6 is this slough right here where the T is in the area  
7 called the pocket, this is a major slough just to the  
8 west of where Duck Slough ties into Middle River.

9 And it's an area that demonstrates a major  
10 slough coming off of Middle River, and it was shown on a  
11 navigation map. And that was the importance of bringing  
12 this map into my exhibits, to demonstrate a major slough  
13 coming off of Middle River into this region.

14 Next exhibit is 3R.

15 This is a 1941 Woods map. The purpose behind  
16 this is to show the irrigation systems throughout the  
17 Woods as well as Duck Slough.

18 You can see in 1941 they do have, you know,  
19 some of the service area now being shown on this area  
20 here as being drainage only. The majority of the  
21 irrigated lands now in the center of this region here.

22 Whereas the mainstem of the San Joaquin is to  
23 the right of this map, Duck Slough is to the left and  
24 west of this map. Then we have the main feeders for the  
25 irrigation system running kind of northerly direction

1 off of Middle River.

2 MR. HERRICK: Mr. Neudeck, the purpose of this  
3 map is also to show the continued existence of that  
4 slough you previously -- on the previous map; is that  
5 not correct?

6 MR. NEUDECK: That is correct. The Duck  
7 Slough.

8 MR. HERRICK: Excuse me.

9 MR. NEUDECK: Oh, I apologize.  
10 The -- a predominant feature on this is to show  
11 this slough to the west of Duck Slough which was where  
12 the Weathers and Petzinger map showed. And here's this  
13 major slough coming off the Middle River up to the area  
14 known as Kingston School area as of 1941.

15 The next map, 3S, is a 1913 map. This is  
16 what's called a San Joaquin County Denny's pocket map.  
17 The importance here is -- let's rotate this.

18 That's right. I apologize. I'm sorry. I was  
19 looking at my own exhibit and looking up too quickly  
20 here.

21 If you come down to the legend, you'll see the  
22 term -- if you can blow that up. There you can read it.  
23 Canals. That's the key feature here. Now I need you to  
24 expand back out.

25 Go to the Duck Slough area. You can see this

1 area here. Here is Burns Cutoff. Here is the alignment  
2 of Duck Slough. Here's other canals throughout the  
3 Woods Irrigation service area. Here is this main slough  
4 we just spoke about with the Weathers Petzinger map as  
5 well as the Woods map off to the west of the pocket  
6 area.

7 3T. This is what's known as DWR Areal Geology  
8 map. And the importance of this map is -- this is a  
9 1976 map, and the importance of this, if you can blow  
10 this up. Let's see if I can get in the area.

11 This area right here. Here's the Duck Slough  
12 alignment. This area right here is still showing water  
13 in it which is the large slough the Petzinger Weathers  
14 map showed.

15 This is in 1976. So we're showing water in  
16 this main slough that comes off of Middle River as late  
17 as 1976 and shown on this DWR map.

18 That was the importance of showing that major  
19 watercourse off of Middle River.

20 CO-HEARING OFFICER PETTIT: Excuse me,  
21 Mr. Neudeck. Mr. Lindsay, can you show the title or the  
22 legend on that map? Can you get to it?

23 CHIEF LINDSAY: I think it's -- there it is.  
24 Here. Right here.

25 CO-HEARING OFFICER PETTIT: Okay. That's what



1 I was interested in, and Mr. Neudeck will appreciate,  
2 was the spelling of aerial.

3 MR. NEUDECK: I looked up areal in every  
4 possible source, and I've never seen it spelled this way  
5 so.

6 CO-HEARING OFFICER PETTIT: I was making the  
7 distinction between that and an aerial photograph.

8 MR. NEUDECK: I'm assuming it's -- I have not  
9 found from my own limited research why it's spelled this  
10 direction. I mean this manner. I don't know.

11 CO-HEARING OFFICER PETTIT: Well.

12 MR. NEUDECK: I mean it's an areal -- it comes  
13 from the root --

14 MR. HERRICK: Area.

15 MR. NEUDECK: Area. And I don't know exactly.  
16 I don't have an explanation for that, why it's not  
17 i-a-l.

18 CO-HEARING OFFICER PETTIT: I understand, and I  
19 agree. But I think there is a distinction between the  
20 two terms, and that's what I wanted to make sure we were  
21 clear on.

22 MR. NEUDECK: Okay.

23 (Discussion between counsel and witness)

24 MR. NEUDECK: Just in summary to the balance of  
25 this testimony would be to kind of speak to the history

1 of irrigation and drainage and to speak a little bit to  
2 how levees in general were created in the Sacramento-San  
3 Joaquin Delta.

4           Initially the Delta was originally formed along  
5 the original banks of the sloughs and rivers.

6           Sloughs and rivers would -- dendritically were  
7 created throughout the Delta region, and as they  
8 overflowed their banks they would create high banks,  
9 immediately depositing the heavier materials along the  
10 channels themselves.

11           Those basically were referred to as shoestring  
12 levees. The initial settlers started to construct  
13 levees on those. We believe in some cases levees remain  
14 there, but on the larger stem rivers, San Joaquin, Old  
15 River, Middle River, they actually would reclaim the  
16 land by setting those levees back and allowing the river  
17 to expand its capacity.

18           One of the key elements of this was as they  
19 started to reclaim this land, they closed off those  
20 dendritic channels to the original mainstem.

21           So there was -- as has been shown in much of  
22 the testimony from Lajoie, as they started to close  
23 those off, they didn't close them off permanently. They  
24 installed floodgates.

25           And the reference to floodgates is extremely

1 important for our Woods Irrigation Company because  
2 that's how the irrigation was transmitted into their  
3 canals initially, through floodgates.

4 Those floodgates in many cases were constructed  
5 probably, you know, around the turn of the century.  
6 Reclamation started in the mid 1800s, for the most part  
7 was completed by the early 1900s, and then improvements  
8 ever since then.

9 But for the most part, that reclamation, when  
10 you closed off that channel you installed a control  
11 feature.

12 As time went on, those control features were  
13 replaced. They weren't as efficient. Maybe the gravity  
14 system didn't serve in many cases. Those floodgates  
15 turned into pumps, and those floodgates were either  
16 removed or remained in place.

17 We have documents that were testified earlier  
18 by Mr. Nomellini. You saw the actual photographs of the  
19 Woods Irrigation Company diversion points made out of  
20 brick, very historical in nature.

21 These floodgates that he made reference to that  
22 exist along Lower Roberts exist throughout the Delta.  
23 My firm and myself personally have removed several of  
24 these as they become a problem.

25 Many of them are buried in place. You don't

1 know they exist until you get a high-water event and all  
2 of a sudden something starts leaking and you notice --  
3 someone either, one, is aware of the old floodgate or,  
4 two, by investigation you find them.

5 But they're down low. They're down typically  
6 at or below the normal tide level. And they're a lot of  
7 times made out of wood or brick that tend to collapse.

8 So they are a historical reference. There is  
9 these throughout. That was a means of irrigating. And  
10 for the most part, the more efficient methodology  
11 nowadays is to pump where you can control water to a  
12 greater extent.

13 With that, I think that pretty much summarizes  
14 the Mussi testimony for purposes of this hearing. Is  
15 that correct?

16 MR. HERRICK: Mr. Neudeck, let me just ask you  
17 a couple summary questions to make sure the record's  
18 clear with regard to your testimony in Duck Slough.

19 Your testimony with regard to Duck Slough is  
20 that a number of historic records, including assessor's  
21 and various other maps, indicate the presence of that  
22 feature through the early 1900s; is that correct?

23 MR. NEUDECK: That's correct.

24 MR. HERRICK: Then you have a map, a US  
25 Geological quad map dated 1913 with 1911 information

1 which shows water in that feature as of that late date;  
2 is that correct?

3 MR. NEUDECK: That is correct.

4 MR. HERRICK: And then you show a later map, a  
5 1913 map called the Denny's pocket map, which appears to  
6 connect a number of surface water features including the  
7 Duck Slough, thus maintaining a connection --  
8 maintaining water in those features; is that correct?

9 MR. NEUDECK: That's correct.

10 MR. HERRICK: And one of those features is that  
11 apparently significant slough running north from Middle  
12 River up to Kingston School, correct?

13 MR. NEUDECK: Yes. That's what's shown on that  
14 that Denny's map.

15 MR. HERRICK: In fact that slough apparently  
16 existed not only through a 1941 map but appears as a  
17 water feature on a 1976 map, correct?

18 MR. NEUDECK: That's correct.

19 MR. HERRICK: And so it's your testimony then  
20 that Duck Slough in its -- Duck Slough then was a water  
21 feature well past the 1911 date of the Woods agreements;  
22 is that correct?

23 MR. NEUDECK: That's correct. And that's  
24 further substantiated by the 1926 case where the  
25 Woods -- I mean the Robinson Nelson case where there was

1 reference made to water being in it as well that causes  
2 seepage.

3 MR. HERRICK: In fact, the case referenced that  
4 slough being maintained full of water for irrigation,  
5 didn't it?

6 MR. NEUDECK: That's correct.

7 MR. HERRICK: Okay.

8 MR. NEUDECK: In addition, there is the 1937  
9 aerial photos that we have that show water within Duck  
10 Slough as well.

11 MR. HERRICK: Thank you, Mr. Chairman. I was  
12 just trying to make sure there wasn't too much  
13 confusion. Mr. Neudeck's testimony covers a lot of  
14 areas, and hopefully we can get through it all.

15 I believe that will end our direct examination.

16 CO-HEARING OFFICER PETTIT: Sometimes leading  
17 questions can promote efficiency.

18 MR. HERRICK: Yes.

19 CO-HEARING OFFICER PETTIT: Mr. Rose? While  
20 Mr. Rose is coming up, I have a question for Mr. Ruiz  
21 and Ms. Gillick.

22 When the other parties and I were discussing  
23 rebuttal testimony little while ago, I didn't ask for  
24 your opinion because it didn't change your order in the  
25 scheme of things, but I just wanted to make sure that

1 was okay with you.

2 MR. RUIZ: That's fine with us.

3 MS. GILLICK: And that's fine with the County  
4 as well.

5 CO-HEARING OFFICER PETTIT: Thank you.

6 I just have a question that isn't process, but  
7 we've just been discussing the fact that some of these  
8 exhibits are pretty near unreadable or illegible.

9 And considering that this matter is likely to  
10 be around for a while and to go further, we don't really  
11 want a hearing record with things that we can't read,  
12 and I was just wondering what would be the most  
13 efficient way of correcting that deficiency so when we  
14 have to start copying this record for others and so on  
15 that we have something legible to copy.

16 MR. HERRICK: Mr. Chairman, we would certainly  
17 be willing to resubmit -- or perhaps, since the Mussi  
18 testimony which is the exact same thing with the exact  
19 same numbering, maybe that could just be transferred  
20 over and replace the bad copies.

21 CHIEF LINDSAY: That was 4A. In this hearing,  
22 all those were just 4A.

23 MR. RUBIN: Hearing Officer Pettit, we began  
24 today with a bit of a discussion about the record and  
25 some issues that the parties are discussing.

1           Rather than take too much time today, maybe we  
2 could talk a little bit about how we are looking to  
3 proceed and either come back to you tomorrow or at the  
4 latest Monday with some thoughts.

5           CO-HEARING OFFICER PETTIT: I wasn't suggesting  
6 we stop and do that now. I was just raising it as  
7 something for all of us to start thinking about as to  
8 how we're going to correct that situation.

9           MR. HERRICK: We will.

10          CO-HEARING OFFICER PETTIT: Thank you.

11          Mr. Rose, go ahead.

12          MR. ROSE: Thank you.

13                               --o0o--

14                               CROSS-EXAMINATION BY MR. ROSE  
15                               FOR PROSECUTION TEAM

16                               --o0o--

17          MR. ROSE: Good afternoon, Mr. Neudeck. David  
18 Rose, State Water Board Prosecution Team.

19           I have some questions for you regarding your  
20 testimony in the Mussi matter. I think I'll save those  
21 for that matter. I do have some questions that are  
22 specific to the Woods matter, though.

23           In particular, in your testimony -- I believe  
24 that's WIC Exhibit 4. On page 3, you say in regards to  
25 the two 1911 agreements, and those are WIC Exhibit 60



1 and 6P, those agreements to serve water, that it appears  
2 the parties made an error. Is that correct?

3 MR. NEUDECK: That is correct.

4 MR. ROSE: You don't have any first-hand  
5 knowledge of how these agreements were crafted, do you?

6 MR. NEUDECK: No, I do not.

7 MR. ROSE: You don't have any first-hand  
8 knowledge of the intent of the parties in crafting these  
9 agreements, do you?

10 MR. NEUDECK: I'm hesitating to answer that  
11 question only from the standpoint that I think the  
12 general intent was to draft an agreement that provided  
13 water to the service area, but that may not be  
14 responsive to your question so I may have to answer no  
15 to your question.

16 MR. ROSE: That's just first-hand knowledge.  
17 Obviously you have testified as to your opinion as to  
18 what the intent was.

19 But you don't have any first-hand knowledge as  
20 to the intent of the parties in crafting these  
21 agreements.

22 MR. NEUDECK: That's correct.

23 MR. ROSE: Okay. Now on page 4 of your  
24 testimony, you do some calculations using a 1 cubic feet  
25 per second per 100 acres factor.

1           That diversion rate doesn't appear anywhere in  
2 the 1911 agreements, does it?

3           MR. NEUDECK: Not my adjusted calculation, no.  
4 Those are my calculations premised off what I believe to  
5 be the error in summation of the E.W.S. Woods total  
6 acreage.

7           MR. ROSE: Okay. And in your answer, you're  
8 talking about your calculations where you go forward  
9 with that 1 cfs per 100 acres factor, and then you  
10 calculate that out to get different direct diversion  
11 rates?

12           MR. NEUDECK: Yes.

13           MR. ROSE: That's what you were --

14           MR. NEUDECK: Yes.

15           MR. ROSE: -- just answering as to?

16           Now in particular maybe there is a better term,  
17 and you can help me out with this. But that 1 cfs per  
18 100 acres factor: That doesn't appear anywhere in the  
19 agreements, does it?

20           MR. NEUDECK: No. That was a conclusion that  
21 was reached, and as I indicated based off of the math of  
22 the agreement. It seemed to be a little unusual that  
23 they had such a very specific diversion rate, but as you  
24 read on, it made sense.

25           MR. ROSE: No, I --

1 MR. NEUDECK: That's --

2 MR. ROSE: -- understand.

3 MR. NEUDECK: -- the reason for it.

4 MR. ROSE: Sorry to talk over --

5 MR. NEUDECK: That's fine.

6 MR. ROSE: -- you. To understand your process  
7 for getting that.

8 But you don't see anywhere in here that they  
9 mention 1 cubic feet per second per 100 acres?

10 MR. NEUDECK: No, I do not.

11 MR. ROSE: And you also use a -- do some  
12 calculations using a 1 cubic foot per 80 acres factor.  
13 That rate, that factor, doesn't appear anywhere in the  
14 1911 agreements, does it?

15 MR. NEUDECK: No, it does not.

16 MR. ROSE: The agreements don't specify any  
17 particular calculation for the amount of water to be  
18 served based on acreage, do they?

19 MR. NEUDECK: No.

20 MR. ROSE: The agreements do, however, specify  
21 a direct diversion rate, don't they?

22 MR. NEUDECK: Correct.

23 MR. ROSE: Do you have those agreements with  
24 you, WIC Exhibit 60 and WIC 6P?

25 MR. NEUDECK: Yes.

1           MR. ROSE: I'm going to read some language from  
2 that agreement to you, and you can tell me if this is  
3 accurate from this agreement.

4           MR. NEUDECK: Can you refer to which exhibit  
5 you're --

6           MR. ROSE: Yes. I'll start with WIC Exhibit  
7 60. Starting on the third line from the bottom of the  
8 second paragraph. If it's more helpful, that's also the  
9 fourth line from the top of the second paragraph.

10           I'll begin reading the middle of the sentence  
11 where it says:

12           The first party agrees under terms,  
13           conditions, limitations, and restrictions  
14           herein stated to furnish the second party  
15           water not exceeding at any one time 44  
16           point -- I believe that's 8 -- cubic feet  
17           per second.

18           Does that appear to be what the agreement says  
19 to you?

20           MR. NEUDECK: Yes.

21           MR. ROSE: Okay. I'm going to read from the  
22 other agreement as well, WIC Exhibit 6P, starting in  
23 roughly the same place, third line from the bottom of  
24 the second paragraph:

25           The first party agrees under the terms,

1 conditions, limitations, and restrictions  
2 herein stated to furnish the second  
3 party -- parties, in the case -- water  
4 not exceeding at any one time 32.8 -- or  
5 86; whatever that is -- cubic feet per  
6 second.

7 Is that accurate?

8 MR. NEUDECK: That's correct.

9 MR. ROSE: Okay. Now both of these agreements  
10 use the words "not exceeding," don't they? Not  
11 exceeding?

12 MR. NEUDECK: Yes, they do. I just wanted to  
13 confirm that. I apologize. That was my understanding,  
14 but I wanted to read both of them before I agreed.

15 MR. ROSE: Sure. Sorry for rushing you on  
16 that.

17 Now briefly, on page 4 you extrapolate using  
18 both of those calculations that we previously discussed,  
19 the 1 cfs per 100 acres and 1 cfs per 80 acres, what  
20 amount of water would have actually been put to use  
21 immediately before and after 1914; is that correct?

22 You do some calculations using those factors?

23 MR. NEUDECK: That's correct.

24 MR. ROSE: Okay. Now you don't have any  
25 first-hand knowledge to support that either of these

1 diversion rates were actually being applied prior to  
2 1914, do you?

3 MR. HERRICK: I'll just ask for clarification.  
4 You keep asking for first-hand knowledge. You mean  
5 within his personal knowledge? Or other testimony,  
6 documents? Or -- what are you looking for? He  
7 certainly was not alive in 1911.

8 MR. ROSE: Right. So I'll ask it both ways.

9 MR. NEUDECK: I'm pausing because I'm trying to  
10 absorb all this. I apologize.

11 MR. ROSE: That's fine. I'll ask the question  
12 again. Even where the answers are obvious.

13 You don't have any personal first-hand  
14 knowledge to support that either of these diversion  
15 rates were actually being applied prior to 1914?

16 MR. NEUDECK: No, I do not.

17 MR. ROSE: And you don't have any supporting  
18 documentation that is conclusive that either one of  
19 these diversion rates was being applied prior to 1914,  
20 do you?

21 MR. NEUDECK: I do not have conclusive evidence  
22 that these diversion rate were being applied, no.

23 MR. ROSE: You don't have any conclusive  
24 evidence -- or first-hand knowledge, but let's go with  
25 evidence -- to support any particular diversion rate

1 other than the ones laid out in the agreements, do you?

2 MR. NEUDECK: Well, the diversion rates were  
3 what the agreements agreed to service the area.

4 Lots of evidence as to the area being serviced.  
5 Relating it to a specific diversion rate, I don't have a  
6 direct measurement for that.

7 Maybe I'm speaking beyond where I should be in  
8 this answer, but there's a lot of evidence as to that  
9 area being farmed, that area being irrigated. We -- I  
10 personally have put in a lot of evidence to that extent  
11 that the systems existed.

12 But the specific diversion rates as stated here  
13 on page 4 of my testimony, no, I do not have specific  
14 measurement of those diversion rates at that time.

15 MR. ROSE: That's fair. Maybe it will be more  
16 clear if I ask it this way: Could the rates identified  
17 in the agreements, the maximum diversion rates  
18 identified in the agreements, actually have irrigated  
19 the lands identified in those agreements?

20 MR. NEUDECK: Yes.

21 MR. ROSE: And are you anywhere suggesting that  
22 1 cubic foot per second is necessary to irrigate 100  
23 acres?

24 I'll strike that question. Your previous  
25 question has the same answer.

1 I have no further questions at this time.

2 CO-HEARING OFFICER PETTIT: Thank you,  
3 Mr. Rose.

4 I'll ask for some advice from Mr. Rubin,  
5 Mr. O'Laughlin, Mr. Powell. We've been going for just a  
6 little over an hour. Do you have any suggestion as to  
7 whether we keep going for a while little longer, take a  
8 break now?

9 That may relate to how much time you anticipate  
10 for your cross, but if you have any thoughts, I'd  
11 appreciate hearing them.

12 MR. O'LAUGHLIN: Okay. What we were thinking  
13 about is that I do not believe we can finish our  
14 cross-examination today of Mr. Neudeck.

15 So what we were planning is if you want to take  
16 a short break, and Mr. Rubin could start and he can  
17 probably take us to around 5:30 or 6:00. We'll stop.  
18 I'll finish tomorrow, and then we can start the direct  
19 of the other parties.

20 CO-HEARING OFFICER PETTIT: Sounds like a plan.  
21 Let's take --

22 MR. ROSE: Mr. Pettit -- Board Member Pettit,  
23 sorry.

24 I just realized, before we get off of my turn,  
25 if you would call it that, I do have one additional



1 question. I could do it when we get back or now. I  
2 hate to be a bother.

3 CO-HEARING OFFICER PETTIT: Do it now.

4 MR. ROSE: Okay.

5 MR. O'LAUGHLIN: It better be good.

6 (Laughter)

7 CO-HEARING OFFICER PETTIT: I answer to any of  
8 those names, Mr. Rose, so don't worry about it.

9 MR. ROSE: Mr. Neudeck, one final question.  
10 You don't have any evidence that the 1911  
11 agreements have been changed between 1911 and 1914, do  
12 you?

13 MR. NEUDECK: I have introduced in my testimony  
14 the 1913 reduction in irrigated area, the 370 acres.  
15 Outside of that, I don't know of any evidence of  
16 changing these agreements.

17 MR. ROSE: Okay. More specifically -- turn my  
18 one question into two -- you don't have any evidence  
19 that the agreements were changed between 1911 and 1914  
20 as to the direct diversion rates, the max direct  
21 diversion rates, as identified in those agreements?

22 MR. NEUDECK: No, I do not.

23 MR. ROSE: Thank you. Now I'm done.

24 CO-HEARING OFFICER PETTIT: Let's be back at 20  
25 to 6:00 -- or 20 to 5:00.

1 (Recess)

2 CO-HEARING OFFICER PETTIT: I guess we're ready  
3 to proceed, Mr. Rubin.

4 --o0o--

5 CROSS-EXAMINATION BY MR. RUBIN

6 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

7 --o0o--

8 MR. RUBIN: Good afternoon, Mr. Neudeck. Jon  
9 Rubin, San Luis & Delta-Mendota Water Authority. I have  
10 some questions for you this afternoon.

11 MR. NEUDECK: Good afternoon.

12 MR. RUBIN: Mr. Neudeck, you acknowledge that  
13 prior to 1914 there were lands within Woods Irrigation  
14 Company that were cultivated but not irrigated with  
15 surface water, correct?

16 MR. NEUDECK: They were -- there was lands that  
17 were considered high lands that were not -- that  
18 facilities were not yet constructed to; that's correct.

19 MR. RUBIN: So there were lands in 1914 and  
20 prior that were cultivated but not irrigated with  
21 surface water?

22 MR. NEUDECK: I don't necessarily know the  
23 degree of cultivation, so I can't speak to that. But I  
24 can speak that there were lands within the service area  
25 that did not have facilities extending thereto.

1           So I don't have any knowledge as to their  
2 degree of cultivation.

3           MR. RUBIN: Okay. Let's get to the more  
4 specific question. There were lands in 1914 and prior  
5 within Woods Irrigation Company that were not receiving  
6 surface water for irrigation purposes?

7           MR. NEUDECK: That's correct.

8           MR. RUBIN: In your written testimony, Woods  
9 Irrigation Company Exhibit 4, you discuss testimony that  
10 you prepared for another State Water Board enforcement  
11 proceeding, correct?

12          MR. NEUDECK: That's correct.

13          MR. RUBIN: And you indicate in your written  
14 testimony, Woods Irrigation Company Exhibit 4, that  
15 since you prepared the testimony for that other  
16 proceeding a court of appeal decision was discovered; is  
17 that correct?

18          MR. NEUDECK: That's correct.

19          MR. RUBIN: And the court of appeal decision is  
20 marked for identification purposes as Woods Irrigation  
21 Company Exhibit 4B?

22          MR. NEUDECK: Yes.

23          MR. RUBIN: You did not discover that opinion,  
24 did you?

25          MR. NEUDECK: No, I did not, sir.

1           MR. RUBIN: Do you know who discovered that  
2 opinion?

3           MR. NEUDECK: I believe -- and I'll refer to  
4 them as our team, and I know you're going to ask  
5 questions about this, and I'm not trying to be sarcastic  
6 but there's been a team of us working on this for quite  
7 some time.

8           So it's been my firm jointly together with  
9 South Delta, Central Delta, and a number of other  
10 independent contractors.

11           So I don't have specific knowledge as to who  
12 brought the case forward, but the team brought it to our  
13 attention.

14           MR. RUBIN: Okay. I appreciate your honest  
15 answer.

16           MR. NEUDECK: All right.

17           MR. RUBIN: All we're here for.

18           Let me talk a little bit about your scope of  
19 work. Were you retained by Woods Irrigation Company?

20           MR. NEUDECK: No, not specifically. I was  
21 actually retained by South Delta Water Agency and  
22 Central Delta Water Agency to work on this case.

23           MR. RUBIN: And was there a scope of work that  
24 you were provided with?

25           MR. NEUDECK: No. The scope has evolved over

1 time in response to the CDO hearing.

2 MR. RUBIN: Do you recall your -- the first  
3 direction you were provided by South Delta and Central  
4 Delta Water Agencies?

5 MR. NEUDECK: Mainly dealt with chain of title  
6 mapping. My staff, Mr. Blake, that you'll hear from  
7 tomorrow, and related to that aspect of it historically.

8 MR. RUBIN: It's your opinion that Woods  
9 Irrigation Company holds a 1914 -- a pre-1914 water  
10 right?

11 MR. NEUDECK: Yes, that's correct.

12 MR. RUBIN: Is it your opinion that Woods  
13 Irrigation Company also holds riparian rights?

14 MR. NEUDECK: I have not expressed that opinion  
15 in my testimony.

16 MR. RUBIN: Is it your opinion that Woods  
17 Irrigation Company holds a riparian water right?

18 MR. NEUDECK: The -- I have not expressed that  
19 in my direct testimony. The lands within the Woods  
20 Irrigation Company have riparian rights. My firm has  
21 been working on those, and testimony tomorrow will  
22 relate to that.

23 As to whether Woods is the owner of those  
24 riparian rights, I don't offer any opinion to.

25 MR. RUBIN: Okay. As to your conclusion that

1 Woods Irrigation Company holds a pre-1914 water right,  
2 your conclusion that Woods holds a pre-14 water right is  
3 based upon your analysis of the information that you  
4 reviewed for this proceeding?

5 MR. NEUDECK: That's correct.

6 MR. RUBIN: And your analysis indicates that  
7 prior to 1914 lands within Woods Irrigation Company were  
8 receiving water from Woods Irrigation Company?

9 MR. NEUDECK: That's correct.

10 MR. RUBIN: If I owned a parcel of land within  
11 Woods and I was receiving water prior to 1914, would I  
12 also have a pre-1914 water right?

13 MR. NEUDECK: I think that requires a legal  
14 conclusion, one to which I don't have.

15 MR. RUBIN: Let me --

16 MR. NEUDECK: And I just -- I understand  
17 there's a lot of legal issues in this case. I've been  
18 sitting throughout all the testimony. And I don't have  
19 an answer to that question.

20 MR. RUBIN: Let me explore this a little bit.  
21 You've testified today that Woods Irrigation  
22 Company, you believe, holds a pre-1914 water right?

23 MR. NEUDECK: That's correct.

24 MR. RUBIN: Is it possible that a landowner  
25 within Woods also holds a pre-1914 water right?

1           MR. NEUDECK: I would -- my assumption would be  
2 correct -- yes. The answer is yes, through the 1911  
3 service agreements.

4           MR. RUBIN: Okay. And again, if I were a  
5 landowner that owned land prior to 1914 within Woods  
6 Irrigation Company that was addressed within the 1911  
7 agreement that you just referenced, it's your opinion  
8 that both Woods Irrigation Company and I would hold  
9 pre-1914 water rights?

10          MR. NEUDECK: Yes.

11          MR. RUBIN: And if I'm receiving water today,  
12 if I were lucky enough to live that long, if I were  
13 receiving water today, would I be receiving water under  
14 Woods Irrigation Company pre-1914 water right or under  
15 my water right?

16          MR. NEUDECK: That's where I think the legal  
17 conclusion comes, and I don't have a response to that.

18          MR. RUBIN: Okay. Thank you.

19          Now, getting back to the court of appeal  
20 decision, you reference the court of appeal decision  
21 which has been marked Woods Irrigation Company  
22 Exhibit 4B, because you believe it establishes an  
23 important fact for this proceeding; is that correct?

24          MR. NEUDECK: That's correct.

25          MR. RUBIN: And the fact that you believe the

1 court of appeal decision establishes is the existence of  
2 Duck Slough?

3 MR. NEUDECK: That's correct.

4 MR. RUBIN: And Woods Irrigation Company  
5 Exhibit 4C is a map that depicts the land that was  
6 discussed in the court of appeal decision?

7 MR. NEUDECK: Yes.

8 MR. RUBIN: And the lands that were discussed  
9 in the court of appeal decision lie within sections 34  
10 and 35 as those sections are depicted in Exhibit 4C for  
11 Woods Irrigation Company?

12 MR. NEUDECK: That's correct.

13 MR. RUBIN: Mr. Lindsay, if I may ask that you  
14 put up Exhibit 4C? Thank you.

15 Mr. Neudeck, you also believe the court of  
16 appeal decision, Woods Irrigation Company Exhibit 4B,  
17 supports your position that Duck Slough is the unmarked  
18 feature reflected on Woods Irrigation Company 4C as a  
19 line that runs through section 34, heads north through  
20 section 27, and then east?

21 MR. HERRICK: If I may, just before he answers  
22 that, I should have noted earlier that the map is not a  
23 good copy on the overhead either, so we should make sure  
24 that's clarified later because the map in the --  
25 attached to the testimony has landowner names written in



1 it. But I just want to make sure we --

2 MR. RUBIN: Let me ask you a question,  
3 Mr. Neudeck, to make sure the record is clear based on  
4 the information we have before us right now.

5 Woods Irrigation Company Exhibit 4C includes  
6 some section numbers?

7 MR. NEUDECK: That's correct.

8 MR. RUBIN: And one of the very clear section  
9 numbers is 34 which appears roughly in the center of the  
10 exhibit at the bottom?

11 MR. NEUDECK: Yes.

12 MR. RUBIN: If I read this exhibit correctly,  
13 Exhibit 4C, the section above 34 is section 27?

14 MR. NEUDECK: That's correct.

15 MR. RUBIN: And I was asking you about the  
16 feature that runs through section 34, heads north into  
17 section 27, and then roughly to the east. Do you see  
18 that feature?

19 MR. NEUDECK: Yes. I see the line on the map  
20 and you're referring to as a feature. Yes, I do.

21 MR. RUBIN: And that feature is the feature  
22 that you believe is depicting Duck Slough?

23 MR. NEUDECK: Yes -- yes. The answer is yes.

24 MR. RUBIN: And if I understand your testimony  
25 correctly, Exhibit 4C is a portion of an assessor's

1 parcel map?

2 MR. NEUDECK: Correct.

3 MR. RUBIN: Is assessor's parcel map -- is the  
4 assessor's parcel map from 1919?

5 MR. NEUDECK: That, I don't recall.

6 MR. RUBIN: Can you maybe to refresh your  
7 recollection review page 4 -- excuse me, page 2 --

8 MR. NEUDECK: I apologize. Yes. Yes. I --  
9 I -- there's a lot of testimony, and I get --

10 MR. RUBIN: Mr. Neudeck --

11 MR. NEUDECK: Thank you for clarifying my  
12 testimony, Mr. Rubin.

13 MR. RUBIN: No need to --

14 MR. NEUDECK: I apologize. We have a lot of  
15 maps in front of us, and I am a little bit -- I've got  
16 too much on my mind right now.

17 MR. RUBIN: And it's been a long day.

18 MR. NEUDECK: Yes, thank you.

19 MR. RUBIN: Again, just to make sure the record  
20 is clear: Exhibit 4C is a portion of an assessor's  
21 parcel map for San Joaquin County that was dated 1919?

22 MR. NEUDECK: That's correct.

23 MR. RUBIN: And are you familiar with the full  
24 assessor's parcel map dated from 1919?

25 MR. NEUDECK: We have copies of it. I don't

1 have a direct recollection if there's a feature that you  
2 are referring to.

3           The purpose of this map was to give you an  
4 orientation of the landowners relative to Duck Slough.

5           MR. RUBIN: Sure. Do you know if the feature  
6 that we just described that runs through section 34 and  
7 27 is labeled on the assessor's parcel map for San  
8 Joaquin County dated 1919?

9           MR. NEUDECK: I don't know if it's labeled, but  
10 I have no doubt in my mind that's Duck Slough. That's  
11 clearly Duck Slough. I've looked at many maps, seen  
12 many exhibits. It's Duck Slough.

13           MR. RUBIN: I appreciate that. My question was  
14 whether it was labeled. Let me --

15           MR. NEUDECK: Answer is I don't know.

16           MR. RUBIN: Let me provide you a copy of the  
17 assessor's parcel map from 1919 and see if that  
18 refreshes your recollection.

19           MR. NEUDECK: Okay. And it's labeled in this  
20 case -- the only label shown on this map is "levee."

21           MR. RUBIN: Thank you.

22           MR. NEUDECK: You're welcome.

23           MR. RUBIN: Again, just for the record, after  
24 refreshing your recollection, the feature that appears  
25 on Woods Irrigation Company Exhibit 4C that runs through

1 sections 34 and 27 is labeled on the assessor's parcel  
2 map as a levee?

3 MR. NEUDECK: Yes. It's "levee." But as I --  
4 in my direct testimony, this particular line has been  
5 labeled Cross Levee, High Ridge Levee, Duck Slough.

6 So there is a number of labels all depicting  
7 the configuration set forth in this exhibit here that  
8 we're referring to as Duck Slough.

9 MR. RUBIN: Let me ask you some additional  
10 questions based upon your response.

11 I have marked as MSS -- I believe the next in  
12 order is 5. 6, excuse me -- another assessor's parcel  
13 map. This one is I believe from 1883.

14 I'm going to -- Mr. Neudeck, I'm going to  
15 approach, if you don't mind, and ask that you hold on to  
16 this. I have some questions.

17 MR. NEUDECK: Okay.

18 MR. RUBIN: Mr. Neudeck, what I provided to you  
19 is an assessor's parcel map; that is correct?

20 MR. NEUDECK: That's correct.

21 MR. RUBIN: And are you familiar with the  
22 assessor's parcel map that I provided to you?

23 MR. NEUDECK: I'm familiar generally with it,  
24 yes.

25 MR. RUBIN: Is it from 1883? Did I see that

1 correct?

2 MR. NEUDECK: Yes. Yeah. I'm trying to look  
3 at -- 1883.

4 MR. RUBIN: And I provided you with a marker.  
5 And this is not going to be a precise exercise, but I  
6 was hoping that you might be able to help me here.

7 You've indicated that there is a feature that  
8 runs from Burns Cutoff to Middle River that's Duck  
9 Slough, and that's a waterway.

10 You have also indicated that there's a feature  
11 that runs from Duck Slough -- excuse me -- from Burns  
12 Cutoff to Middle River that's called the High Ridge  
13 Levee.

14 And you've indicated that there is a feature  
15 that runs from Burns Cutoff to Middle River that's  
16 called Inland Drive.

17 And I was hoping that you might be able to take  
18 that marker and just indicate generally where those  
19 three features are.

20 MR. NEUDECK: Okay. I can explain. If you  
21 want me to circle it, it's all same feature.

22 MR. RUBIN: Well --

23 MR. NEUDECK: Which I have no problem.

24 MR. RUBIN: I guess what I'm trying to get a  
25 better sense of is Inland Drive is a road; is that

1 correct?

2 MR. NEUDECK: That's correct.

3 MR. RUBIN: And High Ridge Levee is a levee; is  
4 that correct?

5 MR. NEUDECK: That's correct.

6 MR. RUBIN: And Duck Slough is a watercourse?

7 MR. NEUDECK: That's correct.

8 MR. RUBIN: I'm trying to understand where  
9 those lie. Does the Inland Road exist on top of the  
10 levee?

11 MR. NEUDECK: It exists --

12 MR. HERRICK: Let me interrupt for  
13 clarification. Are you asking if Inland Drive exists in  
14 1883?

15 MR. RUBIN: No, I apologize. I provided the  
16 map just so that Mr. Neudeck can provide a depiction of  
17 the locations as he understands that they have existed.

18 MR. NEUDECK: And I think you started to answer  
19 my own answer.

20 As I see them depicted, as I understand, Inland  
21 Drive follows the old alignment of Duck Slough. High  
22 Ridge Levee follows the alignment of Duck Slough.

23 MR. RUBIN: Let me -- I apologize. But -- so  
24 according to your understanding, at some point in  
25 history Duck Slough existed and was a watercourse that

1 ran from Burns Cutoff to Middle River?

2 MR. NEUDECK: That's correct.

3 MR. RUBIN: Then at some point later in  
4 history, Duck Slough was filled in?

5 MR. NEUDECK: That's correct.

6 MR. RUBIN: And not only was it filled in, but  
7 a levee was constructed on top of it?

8 MR. NEUDECK: No. I believe the levee existed  
9 probably from the very early stages of Duck Slough.

10 To what degree its height was a factor and  
11 which side of the slough it was, I'm not specifically  
12 clear when it comes to, like say for instance, the  
13 alignment of Inland Drive.

14 MR. RUBIN: Okay. That's what I was trying to  
15 get at is: On what side of the levee did Duck Slough  
16 exist? When you -- if I were standing --

17 MR. NEUDECK: I understand the question. Let  
18 me answer it.

19 MR. RUBIN: But just so the record is clear:  
20 If I were standing at Middle River, and I was looking  
21 straight down or straight up, however you to want to  
22 look at it, where these features exist, according to  
23 your testimony so far what you've said is there would  
24 be -- you would have a place where Duck Slough existed;  
25 on top of that, you would have Inland Drive. Is that

1 correct?

2 MR. NEUDECK: I'm going to ask you to repeat  
3 that. It -- I want to make sure I understood the  
4 question. I apologize.

5 I know you're trying to get to a point, but  
6 I -- you're asking me a very specific question, and the  
7 way I'm going to phrase my answer, I have to understand  
8 what you just said there.

9 MR. RUBIN: Describe for me the location as you  
10 were going to of the location of Inland Drive, Duck  
11 Slough. And the levee.

12 MR. NEUDECK: Okay. Let me take two steps  
13 back.

14 What appears to be the direction of questioning  
15 is that there's only one levee. I've never testified  
16 that there's only one levee.

17 In fact, I've testified that there's two  
18 levees. Not necessarily direct testimony today, but  
19 there is mapping that demonstrated there was two levees.

20 That's the way the slough was formed. The  
21 slough was formed initially with high banking on either  
22 side, natural deposits.

23 Now it appears -- there is some records --  
24 there is one record that contradicts it, a map that I  
25 showed you today. But it appears that the High Ridge



1 Levee was on the west side of Duck Slough. That's what  
2 most of our predominant mapping is showing.

3 But there was also a levee on the east side of  
4 Duck Slough. Maybe not as prominent.

5 Now where did Inland Drive go? I don't know.

6 MR. RUBIN: Okay.

7 MR. NEUDECK: If they backfilled it, they may  
8 have backfilled directly over that and shifted the road  
9 over the top of it.

10 Most likely, because the levee was a  
11 predominant feature, that's where the road went.  
12 Because it was --

13 MR. RUBIN: The High Ridge Levee.

14 MR. NEUDECK: High Ridge Levee. Because it was  
15 predominant use and it was -- would be taken out of  
16 what, you know, cultivation, that would be a good place  
17 to put a county road rather than an area they could  
18 otherwise put to good cultivation.

19 MR. RUBIN: That's answers my question. Thank  
20 you.

21 Now returning again to the court of appeal  
22 decision which has been marked Woods Irrigation Company  
23 Exhibit 4B, is it your view that the court of appeal  
24 decision reflects Duck Slough existing until at least  
25 1926?

1 MR. NEUDECK: That's correct.

2 MR. RUBIN: Mr. Lindsay, might you place on the  
3 overhead MSS Exhibit 2?

4 Mr. Neudeck, I believe this was the subject of  
5 discussion earlier today. MSS Exhibit 2 is a map that  
6 was prepared in 1924, correct?

7 MR. NEUDECK: That's correct.

8 MR. RUBIN: And the map indicates a Cross  
9 Levee; is that correct?

10 MR. NEUDECK: Yes.

11 MR. RUBIN: And the Cross Levee depicted on MSS  
12 2 is in roughly the same place as the feature that's  
13 depicted on Woods Irrigation Company Exhibit 4C; is that  
14 correct?

15 MR. NEUDECK: Yes.

16 MR. RUBIN: And according to MSS Exhibit 2,  
17 there was a proposed irrigation ditch as well; is that  
18 correct?

19 MR. NEUDECK: Yes. This is a map showing the  
20 location of the Woods Robinson Vasquez irrigation ditch.  
21 I said proposed -- yeah. Proposed irrigation ditch.

22 MR. RUBIN: So it's your opinion that in 1924  
23 the Cross Levee existed?

24 MR. NEUDECK: Yes.

25 MR. RUBIN: And is it your opinion that Duck

1 Slough was also in existence at that time but just not  
2 depicted on this map?

3 MR. NEUDECK: Yes. That's not the purpose of  
4 this map.

5 MR. RUBIN: I understand.

6 And is it your opinion that Duck Slough  
7 appeared on the right side of the Cross Levee?

8 MR. NEUDECK: I would be misstating my prior  
9 testimony to reverse that decision. I just stated that  
10 the predominant levee was likely on the west side. So  
11 in this particular case, so -- the answer is yes.

12 MR. RUBIN: So --

13 MR. NEUDECK: I apologize. I was trying to  
14 explain my response to -- the answer is yes.

15 MR. RUBIN: So again, just to make sure we're  
16 clear here: On MSS Exhibit 2, there's a depiction of a  
17 Cross Levee, and it's your opinion that there was a Duck  
18 Slough at that time not depicted on this map, and it  
19 would have existed on the right side of where the Cross  
20 Levee is depicted?

21 MR. NEUDECK: Yes.

22 MR. RUBIN: And it's your opinion that even  
23 though Duck Slough appeared there, there was a proposal  
24 to build an irrigation ditch along either the Cross  
25 Levee or Duck Slough?

1           MR. NEUDECK:  Yeah.  This irrigation ditch was  
2 up against the levee.  It was tightly held to the High  
3 Ridge Levee.

4           MR. RUBIN:  Okay.

5           MR. NEUDECK:  And that feature exists today.  
6 So the Duck Slough was east of the irrigation ditch that  
7 was proposed for the Woods Robinson Vasquez.

8           MR. RUBIN:  Now we're going to get into another  
9 terrible exercise.

10          MR. NEUDECK:  Okay.

11          MR. RUBIN:  But according to your testimony  
12 today, as the features depicted on MSS Exhibit 2, you  
13 would have the Cross Levee, Duck Slough, and then the  
14 irrigation canal.

15          MR. NEUDECK:  No.

16          MR. RUBIN:  Being proposed?

17          MR. NEUDECK:  No.  I apologize.

18          Cross Levee, proposed irrigation, then Duck  
19 Slough.  The irrigation ditch would be up tight against  
20 the Cross Levee, then Duck Slough would be to the east  
21 of that.  So Cross Levee, irrigation ditch, then Duck  
22 Slough.

23          MR. RUBIN:  Now, the Woods Robinson Vasquez  
24 system, did that take water from Middle River?

25          MR. NEUDECK:  Yes.

1           MR. RUBIN:  And did it take it all the way  
2 through -- all the way up as depicted on the map here?  
3 Did it -- did they irrigate lands at the top of this  
4 map?

5           MR. HERRICK:  Just for clarification -- excuse  
6 me, Mr. Chairman.

7           This is a 1924 map of a proposed pipeline.  I  
8 just want to make sure if the question is dealing with  
9 at this time or after the ditch was installed or what?

10          MR. RUBIN:  Thank you.  I believe the witness  
11 testified that the ditch was constructed.

12          So once the ditch was constructed, did the  
13 ditch continue along the Cross Levee to lands at the top  
14 of the map as depicted on MSS 2?

15          MR. NEUDECK:  I'm hesitating because this  
16 exhibit is not the -- this is a blow-up of the exhibit,  
17 and I don't have the original exhibit, but you have the  
18 full exhibit.

19          And what happens is there's a point with which  
20 this proposed irrigation ditch crosses to the west side  
21 of the Cross Levee, and it's not depicted here.

22          So when you say top of map, I don't want this  
23 to go into the record and then you look at the wrong top  
24 of map.

25          MR. RUBIN:  Thank you.  Maybe, Ms. Kincaid, you

1 can give Mr. Neudeck a copy of the map.

2 MR. NEUDECK: Follow-on questions. Thank you.  
3 Okay. Thank you.

4 MR. RUBIN: And according to the map that you  
5 are looking at which I have marked MSS Exhibit 7,  
6 similar to MSS Exhibit 2 but continues further to the  
7 north.

8 MR. NEUDECK: That's correct. You see in the  
9 middle of the page -- I'm going to ask you to reiterate  
10 the question you just asked.

11 Because you referenced a MSS. I don't have any  
12 MSS on this, so I'm not sure that's correct. I'm  
13 answering assuming the exhibit's correct that I'm  
14 looking at.

15 MR. RUBIN: Just make sure the record's clear.  
16 You have in your hand a document. I have marked it as  
17 MSS Exhibit 7. And it's a map that is similar to MSS  
18 Exhibit 2 which is already on the screen in front of us  
19 but provides more detail. It includes lands to the  
20 north of MSS 2.

21 MR. NEUDECK: Okay.

22 MR. RUBIN: That's correct?

23 MR. NEUDECK: Yes. And I'm not trying to be --  
24 I just know you guys are trying to get the record  
25 straight.

1           What this particular map shows is about midway  
2 you see the word Cross Levee that runs -- appears to be  
3 east-west direction. The word Vasquez is to the east of  
4 that line.

5           And then there's some wordage there that I  
6 can't pick up. Looks like benchmark, railroad spike.

7           At that point, the irrigation ditch crosses  
8 over and runs along the west side of the Duck Slough up  
9 to the point where it terminates which is the Honker  
10 Lake Tract, top of the Honker Lake Tract.

11           MR. RUBIN: Mr. Neudeck, do you know when the  
12 irrigation canal for the Woods Robinson Vasquez system  
13 was constructed?

14           MR. NEUDECK: I need a point of clarification.  
15 I guess I can refer to my other testimony because under  
16 the Pak and Young testimony I made reference to  
17 knowledge of Mike Robinson.

18           The District was formed in '25, but  
19 evidently -- from my -- my understanding was that the  
20 ditch was created earlier than that and the system was  
21 created earlier than that. So pre '25. Pre-1925.

22           MR. RUBIN: Okay. So it's your opinion that  
23 the proposed ditch that's reflected on MSS Exhibit 7 as  
24 well as MSS Exhibit 2 was constructed in 1925?

25           MR. NEUDECK: Yeah. Or maybe right then, right

1 in '24.

2 MR. RUBIN: And then so it's your testimony  
3 today that there was a ditch constructed for the Woods  
4 Robinson Vasquez system in either 1924 or 1925 and that,  
5 based upon the court of appeal decision, Woods  
6 Irrigation Company Exhibit 4B, Duck Slough no longer  
7 existed as a feature in 1926?

8 MR. NEUDECK: No. My -- I think you  
9 misrepresented my testimony.

10 I was saying it did exist in 1926. And I  
11 confirm my conclusion there was water in 1926, and  
12 that's where the seepage was emanating from.

13 MR. RUBIN: Mr. Neudeck, I believe you  
14 testified earlier that based upon your understanding of  
15 Woods Irrigation Company Exhibit 4B and the findings by  
16 the court that the feature you described as Duck Slough  
17 no longer existed or no longer existed after 1926.

18 MR. NEUDECK: In this region it was backfilled.  
19 So the exact timing of when it was backfilled, I  
20 don't -- but it was during this time frame. So water  
21 there and then it was backfilled.

22 So in this very area that we're speaking of  
23 between the Nelson and Robinson property because of the  
24 seepage impacts, the Robinsons moved to backfill it to  
25 reduce the impacts to their neighbor.



1           MR. RUBIN: Do you know if the Woods Robinson  
2 Vasquez canal that was constructed in either 1924 or  
3 1925 was concrete lined?

4           MR. NEUDECK: I don't know at the time.

5           MR. RUBIN: Would you suspect that it was an  
6 earthen canal?

7           MR. NEUDECK: I don't have an opinion to that.

8           MR. RUBIN: Mr. Neudeck, in your written  
9 testimony, Woods Irrigation Company Exhibit 4, you also  
10 discuss the testimony -- excuse me -- you also discuss  
11 that the testimony you prepared for the other State  
12 Water Board proceeding references a DWR study; is that  
13 correct?

14          MR. NEUDECK: Yes.

15          MR. RUBIN: And in your written testimony, you  
16 cite to the DWR study to support your conclusion that  
17 any ditch, canal, or slough that is deep enough and  
18 unlined will fill with water because it is connected to  
19 surrounding channels?

20          MR. NEUDECK: That's correct.

21          MR. RUBIN: Do you believe that statement  
22 applies to ditches, canals, and sloughs within Roberts  
23 Island?

24          MR. NEUDECK: Yes, I do.

25          MR. RUBIN: When is a ditch on Roberts Island

1 deep enough to fill with water?

2 MR. NEUDECK: Provided it's below the mean high  
3 tide, it will fill with water.

4 If it's, say, something on the order -- and  
5 I'll give you reference to elevations. There's been  
6 reference to elevations by Mr. Nomellini that he's  
7 talking a mean tide around 3 and a half. I think that's  
8 relatively good. It might be a little lower, say  
9 elevation 3.

10 So if you have a ditch flow line that's above  
11 elevation 3, it likely is not going to be seeped into.  
12 Below 3, then you have the ability to get water into it  
13 by seepage.

14 MR. RUBIN: Do you have a sense of the  
15 elevation of the lands within Roberts Island?

16 MR. NEUDECK: I do.

17 MR. RUBIN: And do you have a sense of the  
18 elevation of lands within Woods Irrigation Company?

19 MR. NEUDECK: Yes, I do.

20 MR. RUBIN: What is the elevation of lands  
21 within Woods Irrigation Company?

22 MR. NEUDECK: They're -- they have elevations  
23 in excess of what I just stated which was elevation 3.  
24 Elevation 5. There's -- you know, historically land was  
25 not entirely level. But predominantly it probably falls

1 from -- there was earlier testimony, 5 to minus 5. I  
2 think it's probably more along the orders of probably a  
3 2 to about a minus 5, minus 7.

4 When I say fall, that's from Middle River to  
5 Burns Cutoff. So there is areas -- which I think is the  
6 point of your question -- there is areas that would not  
7 be seeped into that are above that normal average tide.

8 MR. RUBIN: I'm sorry. You said the average  
9 tide was?

10 MR. NEUDECK: 3.

11 MR. RUBIN: 3 to 3 and a half feet.

12 MR. NEUDECK: Right.

13 MR. RUBIN: Above mean --

14 MR. NEUDECK: And I said there was areas of  
15 ground that was 5. So that would be above the 3. These  
16 are elevations.

17 MR. RUBIN: And like the canal, if there were  
18 land that were at or below the mean tide level, those  
19 lands could be subirrigated; is that correct?

20 MR. NEUDECK: That's correct.

21 MR. RUBIN: Mr. Neudeck, if I own some land  
22 within Woods Irrigation Company that existed at or below  
23 the mean tide level, I could again irrigate my crops  
24 using subsurface water?

25 MR. NEUDECK: That's correct.

1           MR. RUBIN: I also could obtain water from  
2 Woods Irrigation Company?

3           MR. NEUDECK: I'm hesitating because the  
4 response is both sub and surface could be obtained  
5 vis-a-vis Woods Irrigation Company. So I don't know if  
6 you were excluding subirrigation from a delivery from  
7 Woods Irrigation Company.

8           Woods Irrigation Company can deliver a canal  
9 full of water. You can pull off of that, pull what we  
10 call spud ditches and run your water down the spud  
11 ditches and then subirrigate from that point.

12           And I will clarify spud ditches if that's  
13 important.

14           So Woods Irrigation Company can provide water  
15 for both subirrigation as well as top application of  
16 water.

17           MR. RUBIN: Let me make sure we're clear in  
18 terms of my questioning.

19           MR. NEUDECK: All right.

20           MR. RUBIN: If I own land within Woods  
21 Irrigation Company that lies at zero sea level, that  
22 land could be cultivated, and I could rely upon water  
23 that's within the ground without regard for any surface  
24 water that Woods Irrigation Company might deliver; is  
25 that correct?

1           MR. NEUDECK: I need to qualify my statement  
2 because, first of all, I'm not sure the land you're  
3 within -- you were speaking about lands, I think you  
4 said, within the Woods Irrigation service area.

5           The -- my answer is no. And the reason for it  
6 is that the groundwater is controlled.

7           In other words, if it wasn't controlled, if it  
8 was precontrolling, then the answer would be yes because  
9 the water would naturally seep into that.

10           But because Woods is a controlled system now,  
11 we drain and irrigate. So they tend to bring for the  
12 most part that drainage water down below a subirrigation  
13 level.

14           MR. RUBIN: Thank you. That's very helpful.

15           Now -- so if I were farming within -- on  
16 Roberts Island in 1900, and my property was at zero sea  
17 level, I wouldn't need to try to find a way to bring  
18 surface water to my field. I could plant and rely upon  
19 water that's within the ground; is that correct?

20           MR. NEUDECK: Yeah, that ability would be  
21 there.

22           MR. RUBIN: And today, if I were planting on  
23 that same ground, I would have to depend upon surface  
24 water because of the drainage system that's in place?

25           MR. NEUDECK: Yes, but you could still

1 subirrigate.

2 MR. RUBIN: I understand that. But you would  
3 be subirrigating with surface water?

4 MR. NEUDECK: That's correct.

5 MR. RUBIN: Okay. Now, if I were farming in  
6 1900, and I could farm my land because it's at zero sea  
7 level without surface water, why would I pay to install  
8 canals to bring surface water to my property?

9 MR. NEUDECK: Probably from the standpoint of  
10 efficiency and how the water is applied. You might have  
11 part of the field that's subirrigated and part of the  
12 field that -- in 1900, those -- that ground was not  
13 level.

14 So to get -- trying to find the right  
15 terminology -- a reasonable application rate, top  
16 application would give that to you.

17 I'm not a farmer. I value farmers, and I'm  
18 around them most of my life. But that's my explanation  
19 of farming. I think the top application is applicable.

20 If you have level fields, much of the central  
21 Delta is still subirrigated today because of the nature  
22 of the soil type, and it's a very efficient way of  
23 irrigating.

24 I think back in the 1900s it might not have  
25 been as efficient because of the nature of the

1 topography.

2 MR. RUBIN: I apologize. I don't mean to be  
3 argumentative here. But the reality is you don't know  
4 why somebody who was irrigating in 1900 with subsurface  
5 might agree to pay for surface water, a conveyance  
6 system?

7 MR. NEUDECK: Not other than what I just  
8 testified to.

9 MR. RUBIN: And what you testified to is  
10 speculation.

11 MR. NEUDECK: That's correct.

12 MR. RUBIN: Mr. Neudeck, in your written  
13 testimony, you also discuss two recorded agreements that  
14 are dated September 9, 1911 -- excuse me. September 29,  
15 1911, is that correct?

16 MR. NEUDECK: That's correct.

17 MR. O'LAUGHLIN: Thank you, Mr. Herrick, for  
18 the correction.

19 Those two agreements reference diversion rates  
20 of 44.80 and 32.86 cubic feet per second; is that  
21 correct?

22 MR. NEUDECK: That's correct. Those two  
23 agreements, the E.W.S. Woods at 44.8, and the Wilhoit  
24 Douglass is 32.86.

25 MR. RUBIN: Now it's your belief that the 1911

1 agreements provide a commitment by Woods Irrigation  
2 Company to furnish at least 77.66 cubic feet per second,  
3 the combination of the 44.80 and the 32.86 cubic feet  
4 per second? Is that correct?

5 MR. NEUDECK: Provided you say at least because  
6 I think there was an error made. That's correct.

7 MR. RUBIN: Do you know if Woods Irrigation  
8 Company ever diverted water in 1914 at a rate of at  
9 least 77.66 cubic feet per second?

10 MR. NEUDECK: As I testified to the Prosecution  
11 Team, I do not know the actual diversion rates.

12 MR. RUBIN: And you don't know the actual  
13 diversion rates in 1914 or earlier, correct?

14 MR. NEUDECK: No. I just know what they were  
15 provided.

16 MR. RUBIN: Now, do you know when, if ever,  
17 Woods Irrigation Company diverted at least 77.66 cubic  
18 feet per second?

19 MR. NEUDECK: Based on a calculation that was  
20 done in my presence both prior to this testimony and  
21 again today in front of this Board by Mr. Nomellini, I'd  
22 say there was the ability based off the cropping pattern  
23 that was part of his response to divert all of the 77,  
24 premised off the application scenario he put forth.

25 MR. RUBIN: I understand that.



1           My question was more specific than whether  
2 there was an ability to divert that much water --

3           MR. NEUDECK:   Okay.

4           MR. RUBIN:   -- based upon Mr. Nomellini's  
5 testimony.

6           My question was specific as to:  Do you know  
7 when, if ever, Woods Irrigation Company diverted at  
8 least 77.66 cubic feet per second?

9           MR. NEUDECK:  No, I don't know that.

10          MR. RUBIN:  In fact, nothing in your testimony  
11 quantifies the amount of water Woods Irrigation Company  
12 delivered in or before 1914?

13          MR. NEUDECK:  It does not speak directly to the  
14 diversion, the actual diversion measurements, no.

15          MR. RUBIN:  And nothing in your testimony  
16 identifies the season the Woods Irrigation Company  
17 diverted water in or before 1914?

18          MR. NEUDECK:  No.

19          MR. RUBIN:  Now I think you alluded to this in  
20 your testimony today, and it's in your written  
21 testimony, that the 1911 agreements identify dry lands;  
22 is that correct?

23          MR. NEUDECK:  Correct.

24          MR. RUBIN:  And at the time the 1911 agreements  
25 were executed, dry lands were not irrigated with surface

1 water, were they?

2 MR. NEUDECK: That's correct. The facilities  
3 were not constructed to reach those areas.

4 MR. RUBIN: And dry lands were generally lands  
5 with higher elevation?

6 MR. NEUDECK: That's correct.

7 MR. RUBIN: And is it your understanding that  
8 the dry lands could not be served by Woods Irrigation  
9 Company because Woods Irrigation Company depended upon a  
10 gravity system?

11 MR. NEUDECK: That was not delineated within  
12 the agreement, and I don't know why. It was stated  
13 these -- this is an existing system, and they may have  
14 taken an area that they perceived they would be able to  
15 construct facilities to. And I believe with the  
16 exception of 370 acres, the balance of that area was all  
17 served ultimately.

18 MR. RUBIN: Now is it your opinion that in 1911  
19 Woods Irrigation Company had a system that was powered  
20 by gravity?

21 MR. NEUDECK: I believe the system -- well, the  
22 answer is yes.

23 MR. RUBIN: Thank you.

24 MR. NEUDECK: But I still believe there was a  
25 likeliness of pumps. I don't disregard the fact that

1 there may have been pumps.

2 I don't have evidence of pump. I don't have  
3 electrical -- this is anticipating, maybe, some  
4 questions -- but I don't have electrical records of  
5 pumps.

6 Pumps were in existence. They were in  
7 existence back in the 1870s. They -- you know, we had  
8 dredgers. We had lots of pumps.

9 But the point being is they had the floodgates.  
10 The floodgates are still in existence today. Gravity.  
11 I believe the gravity was adequate to irrigate this  
12 area. Pumps were more efficient.

13 MR. O'LAUGHLIN: And based upon your answer,  
14 you have no reason to believe that there were pumps in  
15 1911, correct?

16 Excuse me. Let me rephrase just to make sure  
17 we're clear.

18 That based upon testimony today, you have no  
19 reason to believe there were pumps being used to move  
20 water within -- into the Woods Irrigation Company's  
21 system?

22 MR. NEUDECK: I do not have any specific  
23 references to pumps. But pumps were -- there were pumps  
24 available, and there may have been pumps assisting this  
25 operation. I don't have any records of that.

1           MR. RUBIN: I understand that, but I just want  
2 to make sure we're clear: There may have been pumps,  
3 but you have no information to say there were pumps?

4           MR. NEUDECK: That is correct.

5           MR. RUBIN: The only information you have is  
6 the fact that pumps existed in this world in 1911?

7           MR. NEUDECK: Yes.

8           MR. RUBIN: Now I believe in your testimony on  
9 page 4 you assume that in 1913 all lands within Woods  
10 Irrigation Company service area except those released  
11 from the 1911 agreement were irrigated with surface  
12 water?

13          MR. NEUDECK: Yes.

14          MR. RUBIN: And this is an assumption you're  
15 making, correct?

16          MR. NEUDECK: That's correct. Based off the  
17 information that I reviewed.

18          MR. RUBIN: Let's talk about the information  
19 that you reviewed. What information did you review to  
20 make your assumption?

21          MR. NEUDECK: Well, I make reference to it in  
22 my testimony. There was several maps that relate to  
23 irrigation systems. That's Exhibits 6J, 6P, and 6K.

24          MR. RUBIN: And if I recall, Exhibit 6 -- let  
25 me strike that.

1           Is your assumption that all lands within Woods  
2 Irrigation Company except those released from the 1911  
3 agreement were irrigated with surface water based upon  
4 Exhibit 6J, 6P, and 6K only.

5           MR. NEUDECK: That's what I made reference in  
6 my direct testimony. There's been a whole series of  
7 maps presented throughout these hearings that make  
8 reference to the facilities throughout Woods.

9           Furthermore, I did not find any further  
10 exceptions within the minutes of the Woods Irrigation  
11 Company. And by not having any further exceptions, I  
12 drew the conclusion that the balance of the area was  
13 being served.

14           MR. RUBIN: Let's start with Woods Irrigation  
15 Company 6J. I believe that's what you referred to as  
16 the black map, or somebody referred to as the black map?

17           MR. NEUDECK: Because the background is black.  
18 Maybe it was the wrong reference.

19           MR. RUBIN: That's -- I want to make sure we're  
20 talking about the same thing.

21           There's nothing on this map, Woods Irrigation  
22 Company 6J, that identifies the amount of acreage that  
23 was being irrigated with surface water, is there?

24           MR. NEUDECK: No, nothing specifically.

25           MR. RUBIN: And 6P, Exhibit 6P, is a 1911

1 agreement; is that correct?

2 MR. NEUDECK: That's correct. It's the  
3 subdivision of the Wilhoit Douglass property, and it  
4 shows a distribution system throughout that region.

5 MR. RUBIN: But again, there's nothing in here  
6 in Exhibit 6P that says what lands are being irrigated  
7 with surface water, is there?

8 MR. NEUDECK: There's nothing specific that  
9 says this land is being irrigated.

10 The facilities are present. This is farm land.  
11 Farm land is not going to grow a crop without being  
12 irrigated.

13 So it's a general perception. It's the weight  
14 of what I've been reviewing over time and recognizing  
15 the use of the land.

16 MR. RUBIN: Let's talk about that.

17 You indicated that crop land will not -- excuse  
18 me -- farm land will not grow a crop unless it's being  
19 irrigated. That's the foundation for much of your  
20 testimony, correct?

21 MR. NEUDECK: That's correct.

22 MR. RUBIN: But that's not true, is it?

23 MR. NEUDECK: Well, you're asking me to refute  
24 what I just testified to. I don't think I should do  
25 that.

1           MR. RUBIN: Crop land, in order to grow a crop,  
2 needs irrigation, but it doesn't need surface water for  
3 irrigation?

4           MR. NEUDECK: That's not the question you asked  
5 me.

6           MR. RUBIN: I just asked you a question, if you  
7 might answer it.

8           MR. NEUDECK: Okay. It could be subirrigated  
9 as well as surface irrigated.

10           And when we talk about surface irrigation, is  
11 that irrigated top application or surface irrigated used  
12 for subirrigation? There's a number of ways to get  
13 water to the roots of the crop.

14           MR. RUBIN: And again, on Roberts Island, if I  
15 were a farmer and my property lied at zero sea level,  
16 and there was a system in place -- excuse me; strike  
17 that.

18           If I were a farmer in Roberts Island and my  
19 property was at zero sea level, I could rely upon  
20 groundwater to subirrigate my crops, correct?

21           MR. NEUDECK: What time frame? Could you  
22 clarify the time frame?

23           MR. RUBIN: In the date of exhibit Woods  
24 Irrigation Company 6P. So 1911.

25           MR. NEUDECK: I don't know the conditions of

1 the drainage system at the time at the level they kept  
2 the water. They may very well have.

3 Another fact that I didn't make note of earlier  
4 that if you -- some of the documents will show there's  
5 dams and gates throughout these irrigation canals that  
6 provide for the ability to back water up.

7 So even though the water itself would otherwise  
8 naturally drain out, the system of gates and canals will  
9 cause that water to back up. That's another means to  
10 subirrigate. So --

11 MR. RUBIN: Let's talk a little bit about that  
12 then because this is another area I'm a little bit  
13 confused about.

14 MR. NEUDECK: All right.

15 MR. RUBIN: There's canals that are depicted in  
16 the map that's part of Woods Irrigation Company  
17 Exhibit 6P that have -- the maps have canals on them,  
18 correct?

19 MR. NEUDECK: Correct.

20 MR. RUBIN: And you've just indicated that  
21 those canals could have been used to collect drainage  
22 water?

23 MR. NEUDECK: Yes.

24 MR. RUBIN: Mr. Neudeck, is it possible that a  
25 landowner would pay for infrastructure like a canal that



1 the landowner was not using because it wanted to  
2 preserve a right to use it in the future?

3 MR. NEUDECK: Possibly, yes.

4 MR. RUBIN: Mr. Neudeck, I believe Exhibit 4G  
5 is a complaint that you have cited to as support for  
6 diversions by Woods Irrigation Company; is that correct?

7 MR. NEUDECK: That's correct.

8 MR. RUBIN: And the complaint is a complaint to  
9 quiet title; is that correct?

10 MR. NEUDECK: Yes.

11 MR. RUBIN: Do you know what a complaint to  
12 quiet title is?

13 MR. NEUDECK: Not exactly. I generally know  
14 the purpose of it. At the time was they had the east  
15 and west portions of the Woods Irrigation Company, and  
16 there was an issue over the stock ownership.

17 I've read the case, but I don't possess the  
18 ability to understand exactly what the quiet title  
19 action or quiet title complaint to quiet title really  
20 means. But I know it was an issue over stock ownership.

21 MR. RUBIN: I have a couple of questions. I'm  
22 not going to get too deep into the complaint --

23 MR. NEUDECK: Thank you.

24 MR. RUBIN: -- itself.

25 Is it your understanding that the complaint,

1 Exhibit 4G, was prepared in 1957?

2 MR. NEUDECK: That's correct.

3 MR. RUBIN: And do you have an understanding  
4 who prepared the complaint?

5 MR. NEUDECK: I think the plaintiff was one of  
6 the parties. The defendant was the other. So I don't  
7 know whether it was the E.W.S. Woods side. I need to go  
8 back and refer. I haven't read it recently.

9 MR. RUBIN: Mr. Neudeck, I would like your  
10 honest answer here, and I wouldn't want you to  
11 speculate.

12 Mr. Lindsay, if you could go to the top of the  
13 document.

14 Does the information that's provided in lines 3  
15 through 4 provide any indication to you as to who may  
16 have prepared the document?

17 MR. NEUDECK: Well, yeah. The firm Jones,  
18 Lane, Weaver & Daley would be the law firm that prepared  
19 it on behalf of the Woods Irrigation Company.

20 MR. RUBIN: Thank you.

21 MR. NEUDECK: Sorry for not understanding the  
22 clearness of your question. I was going down another  
23 path.

24 MR. RUBIN: And it's your opinion that the  
25 complaint provides additional support that all lands

1 within Woods Irrigation Company were irrigated with  
2 surface water from 1914 to 1957?

3 MR. NEUDECK: That's correct.

4 MR. RUBIN: And that's not completely accurate,  
5 is it? There are provisions within the complaint that  
6 indicate lands were not being irrigated? If it would  
7 help, Mr. Neudeck, to refresh your recollection, I  
8 would --

9 MR. NEUDECK: Yeah, I'd ask for a direct  
10 reference. My -- the reference I made were lines 7  
11 through 12 on page 5 that made the statements  
12 continually since day of said agreements plaintiff has  
13 been irrigating, draining all lands.

14 But if there's a specific statement within the  
15 document itself that relates to an area not being  
16 irrigated, I would defer to you pointing it out.

17 MR. RUBIN: Mr. Neudeck, if you read from the  
18 bottom of page 4 where -- line 31 to line 4 on page 5.

19 MR. NEUDECK: Want me to do that out loud?

20 MR. RUBIN: No. You can read that to yourself.

21 THE WITNESS: (Reviewing document)

22 MR. RUBIN: Page 5, line 4 -- excuse me. Yeah,  
23 line 4 indicates that certain lands were able to be  
24 brought under production with surface water and some  
25 lands were not?

1 MR. NEUDECK: That's what it --

2 MR. HERRICK: Wait, wait, wait. Excuse me.

3 The language says what it says, and it doesn't  
4 say what Mr. Rubin just said.

5 MR. RUBIN: Mr. Herrick, you'll have the  
6 opportunity to correct or help clarify.

7 MR. HERRICK: Yes, but we're doing a battery of  
8 quick questions, and when you misstate what the document  
9 says, we're going to get incorrect answers  
10 unintentionally.

11 MR. RUBIN: If Mr. Neudeck needs more time to  
12 review the text of the agreement, of the complaint, I'll  
13 provide him as much time as he needs it.

14 MR. NEUDECK: Okay. Let's start over.

15 This is going to be the difficult part for an  
16 engineer to work through, but I'm going to try and read  
17 the words as they specifically state.

18 MR. RUBIN: Mr. Neudeck, let's do this a little  
19 bit differently.

20 Woods Irrigation Company Exhibit 6G on page 4,  
21 line 31 says that:

22 Said contracts to furnish water described  
23 in paragraph 3 hereof expressly set forth  
24 that certain designated portions of land  
25 described therein were not capable of

1           being irrigated at the date of the  
2           execution of said agreements.

3           Correct? Is that --

4           MR. NEUDECK: That's what it states.

5           MR. RUBIN: Then says that:

6           Certain of said lands have since been  
7           brought under irrigation and certain  
8           proved not to be capable of irrigation.

9           Correct?

10          MR. NEUDECK: That's what it says.

11          MR. RUBIN: Does that affect your decision that  
12 this agreement -- excuse me -- this complaint supports  
13 your conclusion that all lands within Woods Irrigation  
14 Company were irrigated with surface water from prior to  
15 1914 until 1957?

16          MR. NEUDECK: Well, it doesn't change it  
17 because I don't understand it.

18          MR. RUBIN: Okay.

19          MR. NEUDECK: I really don't know what it's  
20 referring to.

21          MR. RUBIN: Mr. Neudeck, again, it's your  
22 conclusion that Exhibits 6J, 6P, and 6K show an  
23 irrigation system able to deliver water to all of Woods  
24 Irrigation Company lands prior to 1914?

25          MR. NEUDECK: That was my testimony, correct.

1           MR. RUBIN:  However, there is nothing in  
2 Exhibit 6J, 6P, or 6K that identifies a feature as an  
3 irrigation canal; is that correct?

4           MR. NEUDECK:  I need to pull those back up.  
5 For instance, 6P -- if you pull 6P up, I believe the  
6 main irrigation canal that runs through it states such.  
7 I think it says irrigation and drainage canal.

8           Can you zoom in -- can you pan down.  I'm  
9 sorry.  Drag -- yeah.  Okay.  Right -- see a dashed  
10 line.  Can you zoom in on that part there?

11          CHIEF LINDSAY:  Looking for the upper part.

12          MR. NEUDECK:  Yeah, about the top third there.

13          Right along the sinuous channel there.  Right  
14 just to the left of where your cursor just was.  Right  
15 in that area in there.

16          CHIEF LINDSAY:  I don't think the legibility of  
17 this is going to improve.

18          MR. NEUDECK:  Okay.  I may not have -- there  
19 may not be the actual verbiage on the map, but I know  
20 those are irrigation canals.

21          MR. RUBIN:  Mr. Neudeck, are you familiar with  
22 the rules and regulations of Woods Irrigation Company?

23          MR. NEUDECK:  No.

24          MR. RUBIN:  Aside from the exhibits that are  
25 attached to your written testimony, do you have any

1 other evidence that you believe demonstrates that  
2 specific lands within Woods Irrigation Company were  
3 irrigated? Excuse me. Irrigated with surface water?

4 MR. NEUDECK: I am familiar with the map that  
5 was referred to in the prior panel, the Gateway map,  
6 which has on that map alfalfa.

7 Alfalfa is an irrigated crop. So by reference  
8 to that. That's the only crop map that I've looked at  
9 for this area.

10 All the rest of my exposure is from the 1980s  
11 forward which is where my experience is, there's a lot  
12 of irrigated crops out there. But there is a gap  
13 otherwise.

14 MR. RUBIN: So you reviewed the Gateway map  
15 that we've discussed earlier today?

16 MR. NEUDECK: Yes, I looked at it.

17 MR. RUBIN: And on that map, it does not  
18 indicate whether crops were grown using surface water or  
19 were subirrigated?

20 MR. NEUDECK: Not to my knowledge.

21 MR. RUBIN: Now, I believe one of your exhibits  
22 is testimony that you submitted in the Phelps case; is  
23 that correct?

24 MR. NEUDECK: That was the -- yes, the Term 91  
25 case. February 2003.

1           MR. RUBIN:  And I believe that's Woods  
2  Irrigation Company Exhibit 4D; is that correct?

3           MR. NEUDECK:  That's correct.

4           MR. RUBIN:  Do you know the results of the  
5  enforcement action in which you submitted testimony,  
6  Woods Irrigation Company Exhibit 4D?

7           MR. NEUDECK:  Not entirely.  Generally know  
8  that we were not successful in making our point.

9           MR. RUBIN:  Do you know if either the State  
10 Water Resources Control Board or the court, whether  
11 either accepted your testimony?

12          MR. NEUDECK:  Accepted it into the record?

13          MR. RUBIN:  Whether they relied upon it to  
14 support their decision?

15          MR. NEUDECK:  I have one minor understanding  
16 about a dispute as to my testimony to the nexus of  
17 various channels to the mainstem channel.

18                 There was apparently not a nexus.  They didn't  
19 have good sound -- good evidence that there was  
20 floodgates or some other diversion structure to fill  
21 those sloughs, so that there was a -- that was a  
22 problem.

23                 I don't have any of the other specifics.

24          MR. RUBIN:  Do you know if the State Water  
25 Resources Control Board or the court found your



1 testimony credible?

2 MR. NEUDECK: No, I do not.

3 MR. RUBIN: I would like to -- a few more  
4 questions on some of the exhibits that you discussed  
5 that were submitted in the Mussi matter.

6 And Mr. Lindsay, I know it's late in the day,  
7 but if you wouldn't mind placing on the overhead  
8 Exhibit 3N as in Nancy.

9 If you wouldn't mind enlarging the area roughly  
10 in the middle of the map.

11 Now Mr. Neudeck, is there a feature depicted on  
12 Mussi Exhibit 3N that's labeled Duck Slough?

13 MR. NEUDECK: Yes, there is. Do you want me to  
14 highlight that?

15 MR. RUBIN: If you wouldn't mind, and maybe you  
16 could identify the section numbers on which it's  
17 located.

18 MR. NEUDECK: No, I can't. I really --  
19 unfortunately, my eyes are not that good.

20 MR. RUBIN: Mr. Lindsay, is it possible to zoom  
21 in a little further in the center of the exhibit?

22 Now Mr. Neudeck, there is a feature labeled  
23 Duck Slough, correct?

24 MR. NEUDECK: Correct.

25 MR. RUBIN: Does Duck Slough exist from a point

1 roughly in the middle of Burns Cutoff and travel  
2 southwest?

3 MR. NEUDECK: That's correct.

4 MR. RUBIN: And if I see this correctly, it  
5 travels through what are labeled sections 13, 14, 23,  
6 22, then 27?

7 MR. NEUDECK: That's correct.

8 MR. RUBIN: It doesn't connect to Middle River  
9 on this map, does it?

10 MR. NEUDECK: This map does not depict showing  
11 it connecting to Middle River?

12 MR. RUBIN: Thank you.

13 Mr. Lindsay, if you don't mind placing  
14 Exhibit 30, and if you wouldn't mind focusing our  
15 attention in the same, roughly the same location.

16 Mr. Neudeck, what we're looking at is a map in  
17 the area of Burns Cutoff; is that correct?

18 MR. NEUDECK: Yes.

19 MR. RUBIN: And coming from roughly the middle  
20 is a feature that's labeled Duck Slough, in the middle  
21 of Burns Cutoff?

22 MR. NEUDECK: That's correct.

23 MR. RUBIN: And there's a feature that continues  
24 on this map from Burns Cutoff to Middle River; is that  
25 correct?

1           MR. NEUDECK:  Yes.  The Duck Slough feature  
2  does.

3           MR. RUBIN:  Let's talk a little bit about that.  
4  There's a line that moves from the middle of Burns  
5  Cutoff to Middle River, correct?

6           MR. NEUDECK:  Yes.

7           MR. RUBIN:  And the line moves through roughly  
8  two sections, and that line is dark; is that correct?

9           MR. NEUDECK:  It is darker at the northeast  
10 end -- yeah.  Northeast end of it.  Under the name Duck  
11 Slough, it is a wider line.

12          MR. RUBIN:  And then it becomes a lighter line  
13 or thinner line after it travels through those first two  
14 sections?

15          MR. NEUDECK:  Yes, it does.

16          MR. RUBIN:  Is it possible that the change in  
17 the way that that line is depicted reflects a change in  
18 the features that exist in the different sections?

19          MR. NEUDECK:  Could very well have been.  It  
20 could have been where the Samson dredge stopped.

21                 We don't have any record of where the Samson  
22 dredge dredged to, but we know it commenced at Burns  
23 Cutoff and headed in an upstream direction, so maybe  
24 that was a wider section of Duck Slough at the north  
25 end.

1           MR. RUBIN:  And therefore -- but it's also  
2 possible that Duck Slough stopped after it traveled  
3 through those first two sections, and the levee that  
4 you've talked about as High Ridge Levee continued?

5           MR. NEUDECK:  No, that's not possible.

6           MR. RUBIN:  That's not possible?

7           MR. NEUDECK:  No.

8           MR. RUBIN:  So your conclusion, based upon this  
9 map, is that the first two sections in which the line  
10 exists is a watercourse, and that watercourse continues  
11 through the remainder of the sections?

12          MR. NEUDECK:  That's correct.

13          MR. RUBIN:  And is it your belief that the  
14 first two sections are darker because it's a larger  
15 watercourse?

16          MR. NEUDECK:  That's my general -- that's my  
17 opinion at this point, yes.

18          MR. RUBIN:  And upon what do you base that  
19 opinion?

20          MR. NEUDECK:  The width of the feature is --  
21 throughout this map shows a more, you know, a larger  
22 watercourse.  So the mapper was evidently trying to  
23 depict a wider watercourse.

24          MR. RUBIN:  Hearing Officer Pettit, could I  
25 have one minute?  Thank you.

1           Mr. Neudeck, I would now ask you to focus your  
2 attention and Mr. Lindsay to place on the screen  
3 Exhibit 3T in the Mussi matter.

4           And again, Mr. Lindsay, if you wouldn't mind  
5 focusing our attention in the area we've just been  
6 discussing, the area of Burns Cutoff. And again, if you  
7 might focus as close as you can without distorting the  
8 resolution.

9           Mr. Neudeck, as you look at this exhibit, 3T in  
10 the Mussi matter, does it appear as though a line exists  
11 from the middle of Burns Cutoff and travels south and to  
12 the west?

13           MR. NEUDECK: Yes.

14           MR. RUBIN: Is that a continuous line as  
15 depicted on Exhibit 3T in the Mussi matter?

16           MR. NEUDECK: It looks as though there's a  
17 break just north of 4 south -- excuse me. North of  
18 Highway 4 and south of the railroad. I'm not exactly  
19 certain, but there does appear to be a break there.

20           MR. RUBIN: And not only is there a break  
21 there, but the feature depicted on Exhibit 3T changes in  
22 the manner in which it's depicted; is that correct?

23           MR. NEUDECK: I'm not sure what you're  
24 referring to.

25           MR. RUBIN: There's a feature that exists from

1 Burns Cutoff moving south and west. That is not a  
2 single line, is it?

3 MR. NEUDECK: No. There's two lines there.

4 MR. RUBIN: And the feature after the break  
5 that you described near Highway 4 is a single line?

6 MR. NEUDECK: Correct.

7 MR. RUBIN: And that single line continues down  
8 towards the south and towards the west, correct?

9 MR. NEUDECK: That's correct.

10 MR. RUBIN: That single line feature does not  
11 connect to Middle River, does it?

12 MR. NEUDECK: No, it does not. But keep in  
13 mind this is 1976, this map.

14 MR. RUBIN: Thank you.

15 Mr. Pettit, I have no further questions.

16 CO-HEARING OFFICER PETTIT: Thank you.

17 I presume that we're done for today then, and  
18 we're going to resume with Mr. O'Laughlin's cross  
19 tomorrow morning; is that correct?

20 MR. O'LAUGHLIN: Correct. And we come back at  
21 9:00 a.m., right?

22 CO-HEARING OFFICER PETTIT: That's correct  
23 also. And are there any other questions or issues to  
24 raise before we adjourn?

25 Seeing none, we're done for the evening. Thank

1 you all. It's been a long day.

2 \* \* \*

3 (Thereupon the WATER RESOURCES CONTROL  
4 BOARD hearing was continued at 5:55 p.m.)

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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 July 7, 2010.

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LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196

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