

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.)
~~~~~ )

JOE SERNA JR./CaleEPA BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA  
VOLUME III  
FRIDAY, JUNE 25, 2010  
9:00 A.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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

2 --o0o--

3 CO-HEARING OFFICER PETTIT: It's 9 o'clock,  
4 June 25th, so it's time to resume the Woods Irrigation  
5 Company hearing. We recessed late yesterday afternoon.

6 I'm Walt Pettit, Board Member and one of the  
7 co-chairs for this hearing.

8 Ms. Spivy-Weber will not be joining us again  
9 today. She's still ill. However, I did talk to her.  
10 She watched the entire proceeding yesterday -- which may  
11 indicate how ill she is -- and so don't assume anything  
12 escaped her notice.

13 And Ms. Aue and Mr. Mona are with me again.

14 So we will proceed. I don't see anybody here  
15 that hasn't heard our evacuation notice a number of  
16 times. I'm still obligated to repeat it.

17 In summary, if there's a fire alarm, we have to  
18 evacuate the building. Know where the exits are. Don't  
19 go down the elevators. Use the stairs.

20 If anybody needs any particular assistance,  
21 please make sure the staff and I know about it so that  
22 we can assist you.

23 And with that, the meeting is being webcast  
24 again and taped, and with that I think we're ready to  
25 start.

1           And Mr. O'Laughlin is scheduled to  
2 cross-examine Mr. Neudeck first thing this morning.

3                               --o0o--

4                               CHRISTOPHER H. NEUDECK

5           Previously called by WOODS IRRIGATION COMPANY

6                               CROSS-EXAMINATION BY MR. O'LAUGHLIN

7                               --o0o--

8           MR. O'LAUGHLIN: Thank you, Mr. Pettit.

9           Good morning, Mr. Neudeck. My name is Tim  
10 O'Laughlin. I represent Modesto Irrigation District in  
11 this matter.

12           To get started today, I'm going to ask for your  
13 artistic abilities. I've marked as MSS 8 a butcher  
14 block white piece of paper. This is a schematic only.  
15 It's not an actual representation.

16           And I draw a line and labeled Burns Cutoff, and  
17 then I drew a line called High Ridge Levee, and that  
18 connected to Middle River.

19           What I would like you to do, if possible, is  
20 take the blue marker and mark on the document where Duck  
21 Slough is located schematically in relationship to the  
22 High Ridge Levee if you could.

23           MR. NEUDECK: (Complying)

24           MR. O'LAUGHLIN: Thank you, Mr. Neudeck.

25           On MSS 8, you have drawn a blue line that is to



1 the right or east side of High Ridge Levee connecting  
2 Burns Cutoff to Middle River. Is that your depiction of  
3 Duck Slough?

4 MR. NEUDECK: Yes, the -- predominantly, the  
5 High Ridge Levee is, as I understand, was to the west  
6 whereas there was a levee as well to the east.

7 MR. O'LAUGHLIN: Okay. So and then -- on, as  
8 well on MSS 8, you have drawn a dashed line to the east  
9 or to the right of the blue line, and you have drawn a  
10 line saying levee. Is that the levee associated with  
11 Duck Slough?

12 MR. NEUDECK: That's correct. I don't think it  
13 was as dominant as a feature, but as I indicated in my  
14 direct testimony, Duck Slough was a natural slough, did  
15 have overbank area.

16 Particularly in the area on the north end near  
17 Burns Cutoff where the Samson dredge dredged Duck  
18 Slough, deposition occurred in both sides, but there was  
19 recognition of a levee on both sides of Duck Slough.

20 MR. O'LAUGHLIN: Thank you. Now would you say  
21 this depiction works until such point in time that Duck  
22 Slough is filled in?

23 In other words, the slough didn't move to the  
24 other side of the levee, and the levees didn't move.  
25 This schematic basically stayed in place until Duck

1 Slough was filled in?

2 MR. NEUDECK: The predominant feature of Duck  
3 Slough was on the east side. There was -- and I don't  
4 know whether this was brought out in this hearing or  
5 not, but there was points of exit that exited out of  
6 Duck Slough that penetrated the High Ridge Levee heading  
7 to the west.

8 But the predominant feature conveying water  
9 from Middle River to Burns Cutoff or backing up from  
10 Burns Cutoff to Middle River was on the east side.

11 MR. O'LAUGHLIN: Now -- and just  
12 schematically-wise, if you can do this, we had a  
13 discussion yesterday about the location of the  
14 irrigation canal that was put in at or about 1924, '25,  
15 '27, whatever. The Woods Vasquez irrigation canal. Do  
16 you recall that discussion?

17 MR. NEUDECK: Yes, I do.

18 MR. O'LAUGHLIN: Okay. Can you take a -- I  
19 think there is a green marker. And if you could -- this  
20 is schematic only -- is draw in there where that canal  
21 was located in relationship to the Duck Slough and the  
22 High Ridge Levee?

23 MR. NEUDECK: Do you want a cross-section of  
24 that, or do you want a plan view of it?

25 MR. O'LAUGHLIN: Plan view, please.

1 MR. NEUDECK: I wasn't trying to confuse you.

2 MR. O'LAUGHLIN: I know. That's all right. Is  
3 there enough room on there? There should be.

4 MR. NEUDECK: (Complying)

5 MR. O'LAUGHLIN: You can draw it in between if  
6 you need to.

7 Now, other than that -- sorry.

8 On MSS 8 you have drawn now a green line  
9 depicting the Woods-Vasquez irrigation canal built  
10 sometime in the 1920s. And it seems to depict that it's  
11 at or near -- between the High Ridge Levee and Duck  
12 Slough, or actually is in Duck Slough, until a point  
13 somewhere up north where it crosses back through the  
14 High Ridge Levee and then travels on the north and west  
15 side of High Ridge Levee. Is that correct?

16 MR. WEE: That's correct.

17 MR. O'LAUGHLIN: Now, are you aware of any  
18 irrigation canal being built from Burns Cutoff down the  
19 west -- the east side of the High Ridge Levee in the  
20 approximate location where you have Duck Slough now from  
21 Burns Cutoff in a southerly direction?

22 MR. WEE: Along the High Ridge Levee?

23 MR. O'LAUGHLIN: Yeah. On the inboard side  
24 where Duck Slough is. Are you aware of any irrigation  
25 canal being built to convey water down an irrigation

1 canal on High Ridge Levee in or about the location where  
2 Duck Slough is depicted on MSS 8?

3 (Interruption by the reporter)

4 MR. NEUDECK: I'm going to ask for  
5 clarification. Are you referring to an irrigation canal  
6 similarly to what I described the Woods Vasquez canal  
7 but yet emanating from Burns Cutoff in a southwesterly  
8 direction so it would be similarly located?

9 MR. O'LAUGHLIN: Yes.

10 MR. NEUDECK: No, I'm not aware of that.

11 MR. O'LAUGHLIN: In the portion of Duck Slough  
12 from Burns Cutoff to where the green line exits and goes  
13 north, are you -- do you have an opinion or an  
14 understanding of when Duck Slough in that section was  
15 filled in?

16 MR. NEUDECK: The only reference that I have  
17 for filling was the 1957 -- excuse me; strike that --  
18 1926. I apologize. Wrong day. The 1926 Nelson  
19 Robinson case where there was a section between those  
20 two properties being filled in.

21 I don't have any other direct knowledge of when  
22 Duck Slough was filled in.

23 MR. O'LAUGHLIN: Okay. Now if I understand  
24 your testimony correctly yesterday though, the Nelson  
25 Robinson case that you -- the -- is it Nelson Robinson

1 or Vasquez? The Vasquez case that you were talking  
2 about yesterday, the seepage case?

3 MR. NEUDECK: Correct.

4 MR. O'LAUGHLIN: Is the seepage case located  
5 from the somewhere in the location from Middle River to  
6 where your green line exits and crosses the High Ridge  
7 Levee then goes north?

8 MR. NEUDECK: It's in that general vicinity,  
9 yes.

10 MR. O'LAUGHLIN: Okay. I was confused and  
11 maybe you can help me on this one too.

12 Can you denote on the Middle River, just  
13 schematically again, on MSS 8 where the Robinson  
14 property was located and put an R in it and where the  
15 Vasquez property was located and put a V in it?

16 MR. NEUDECK: (Complying) I'm actually going  
17 to locate where the Nelson property was and where the  
18 Robinson property was.

19 MR. O'LAUGHLIN: Yes.

20 MR. NEUDECK: I knew I wasn't supposed to speak  
21 at the board so.

22 MR. O'LAUGHLIN: Okay. Now in regards to this,  
23 is it your opinion when that case arose that the  
24 irrigation canal that you've depicted in green had been  
25 installed and was being operated which caused the

1 seepage problem?

2 MR. NEUDECK: No. It was my opinion that what  
3 caused the seepage problem was Duck Slough, not the  
4 irrigation -- Woods Vasquez irrigation ditch.

5 MR. O'LAUGHLIN: Okay. So at the point where  
6 this seepage occurs, we have Duck Slough, then we have  
7 an irrigation. We have Duck Slough to the east. We  
8 have the canal I'll call in the middle. And we have the  
9 High Ridge Levee to the west. And your statement is  
10 that Duck Slough was seeping through the irrigation  
11 canal through the levee and onto Nelson's property?

12 MR. NEUDECK: That's my allegation. But since  
13 I'm so good at drafting schematics, can I show you in a  
14 schematic what I'm referring to?

15 MR. O'LAUGHLIN: No -- yeah, actually, I tried  
16 to draw this out yesterday as a schematic and I couldn't  
17 do it. That would be helpful if you could do that.

18 If you could put it on MSS 8 and put it on the  
19 right side, and we'll call it a schematic.

20 MR. NEUDECK: Okay. This will be a  
21 cross-section of what would be through the levee,  
22 through the Woods Vasquez irrigation ditch, and through  
23 Duck Slough.

24 MR. O'LAUGHLIN: With Robinson's property on  
25 the east end and Nelson's property on the west end?

1           MR. NEUDECK: Right. So on my picture it will  
2 be Robinson on the right, Nelson on the left.

3           MR. O'LAUGHLIN: Yes, absolutely.

4           MR. NEUDECK: I'll attempt to draw that.

5           MR. O'LAUGHLIN: Thank you.

6           MR. NEUDECK: (Complying)

7           MR. O'LAUGHLIN: I don't care about scale.  
8           While you're standing there, can you label an N  
9 for Nelson and an R for Robinson so we know when we're  
10 looking at the schematic what side that we're looking  
11 at.

12          MR. NEUDECK: (Complying)

13          MR. O'LAUGHLIN: Then in pink on the MSS 8, you  
14 have denoted the Nelson property in pink with a circle  
15 around it and the Robinson property with an R with a  
16 circle around it. Is that correct?

17          MR. NEUDECK: That's correct. And the scale  
18 unfortunately is the vertical scale I need to explain,  
19 but go ahead and you can question me on that.

20          MR. O'LAUGHLIN: No. Actually, the depiction  
21 is very nice. I would actually like to ask you about  
22 the vertical scale. Is that schematically a vertical  
23 scale that you believe is correct?

24          MR. NEUDECK: No, actually it's not.  
25          And I -- I probably should redraw that. I --

1 the -- I'm assuming essentially the Nelson and Robinson  
2 property to be effectively at the same relative  
3 elevations on either side of the Duck Slough.

4 MR. O'LAUGHLIN: Why don't we make the  
5 depiction more accurately -- more schematically correct.  
6 Because if that's the case, then the black line that's  
7 under the N should drop as low as the black line above  
8 the R, correct? If Nelson and Robinson's properties are  
9 vertically...

10 MR. NEUDECK: Yeah. Unfortunately, I drew it  
11 kind of at an angle. That's correct.

12 MR. O'LAUGHLIN: Why don't we change that so we  
13 have the accurate depiction. Just draw a hatch line  
14 through the original one or draw a dotted line -- there  
15 you go. Oh. There you go. Perfect. Okay. That's  
16 wonderful.

17 So you're -- you have now drawn a dotted line  
18 from the Robinson property to the Nelson property, a  
19 hatched line which depicts that the vertical scale is  
20 that the Robinson and Nelson properties were basically  
21 at the same elevation.

22 MR. NEUDECK: Correct.

23 MR. O'LAUGHLIN: I have a hydraulic question in  
24 regards to this then. If the Nelson -- if water -- how  
25 would water that is -- is Duck Slough lower than the



1 elevation of the Nelson property?

2 MR. NEUDECK: Duck Slough would vary I believe  
3 with the groundwater, with possibly tidal influence, so  
4 that's why I put that arrow up and down. It wouldn't  
5 necessarily be -- it wouldn't be above it, but certainly  
6 has the ability to seep into it.

7 MR. O'LAUGHLIN: Okay. Is it your -- looking  
8 at the vertical scale on this as well. Is it your  
9 understanding that the irrigation canal, though, was  
10 higher than the Nelson and Robinson property?

11 MR. NEUDECK: It was at -- I believe it was  
12 close. I'm reflecting upon the current alignment, so  
13 it's close to the elevation of the ground.

14 MR. O'LAUGHLIN: Thank you. I want to turn to  
15 your testimony that you offered in the Mussi matter. I  
16 have the Pak one. I think they're the same thing.

17 And I want to turn to page 4 and talk a little  
18 bit about Duck Slough.

19 MR. HERRICK: Page 4 of the text?

20 MR. O'LAUGHLIN: Yes, page 4 of the text.

21 Thank you. I'm sorry. Page 3, where it starts at the  
22 bottom of the page:

23 In this case we actually have a written  
24 source which confirms the enlargement of  
25 the slough abutting the property.

1           THE WITNESS: I see that in the Mussi matter,  
2 so I'm looking at the Mussi matter. I don't have the  
3 Pak Young matter. I think it's similar.

4           MR. O'LAUGHLIN: Yeah. This quote that you  
5 have here was taken from a text; is that correct?

6           MR. NEUDECK: Yes. That quote from the  
7 Settlement Geography of the Sacramento-San Joaquin  
8 Delta, page 267 of the 1957 document.

9           MR. O'LAUGHLIN: Now did you ever -- when you  
10 looked at that quote, was there a citation for the quote  
11 given by the Settlement Geography of the Sacramento-San  
12 Joaquin Delta?

13          MR. NEUDECK: I'm not sure what you mean by  
14 citation.

15          MR. O'LAUGHLIN: Yeah. In other words, did the  
16 author of the Settlement Geography of the Sacramento-San  
17 Joaquin Delta California put a citation or footnote  
18 referencing a primary document for the quote regarding  
19 the work done by Samson in Duck Slough and Burns Cutoff?

20          MR. NEUDECK: There was a footnote, but it  
21 doesn't relate to a citation. So no, I'm not aware of  
22 it -- of one.

23          MR. O'LAUGHLIN: Have you tried to ascertain  
24 the work that was done by the Samson dredge at Burns  
25 Cutoff?

1           MR. NEUDECK: Beyond this quote, to the extent  
2 that they -- the limits of the dredge, no.

3           MR. O'LAUGHLIN: Would that answer be the same  
4 in regards to Duck Slough?

5           MR. NEUDECK: The answer was related to Duck  
6 Slough, so my first answer is related. I do not have --  
7 have not ascertained the extent with which the Samson  
8 dredge dredged Duck Slough.

9           MR. O'LAUGHLIN: Okay. It appears in here --  
10 and I'm perplexed. I don't know which way to go with  
11 this.

12           On page 4, you say:

13           The description of the Settlement  
14           Geography --

15           It's the second paragraph.

16           -- confirms the process of using the  
17           slough itself as a borrow pit and  
18           deepening of the slough along the High  
19           Ridge Levee. Such deepening was  
20           necessary to transport the floating  
21           dredge which was improving the levee.

22           So let's break this quote down.

23           Is it your understanding that the Samson dredge  
24 entered Duck Slough at Burns Cutoff and then proceeded  
25 to enter Duck Slough and dredge Duck Slough out?

1 MR. NEUDECK: Yes.

2 MR. O'LAUGHLIN: Okay. Now, do you know -- and  
3 in fact, you seem to say in the next paragraph that the  
4 slough became a substantial waterway approximately 30  
5 feet wide by 7 feet, and then it says "deed". I'm  
6 assuming that means "deep".

7 MR. NEUDECK: Correct.

8 MR. O'LAUGHLIN: Okay. So you're -- now, have  
9 you ascertained based on your research that you've done  
10 how far down Duck Slough the Samson dredge went widening  
11 it or -- sorry -- dredging it to an approximate  
12 dimension of 30 feet wide and 7 feet deep?

13 MR. NEUDECK: No, I have not.

14 MR. O'LAUGHLIN: Okay. Do you have an estimate  
15 or an opinion for us as to how far down Duck Slough the  
16 Samson dredge went to deepen and to dredge it?

17 MR. NEUDECK: The only opinion would be drawn  
18 by that one map, and I forget the exhibit. Yesterday  
19 there was a map showing what appeared to be a wider  
20 section of Duck Slough. That would be the only  
21 inference.

22 I don't have any opinion as to the limits the  
23 dredge -- otherwise, I have no opinion as to the limits  
24 the dredge proceeded down Duck Slough.

25 MR. O'LAUGHLIN: So from your -- so -- well,

1 I -- okay.

2 So sometime around 1875, a portion of Duck  
3 Slough is widened by 30 feet and deepened to 7 feet, and  
4 at some point undetermined, we don't know where that  
5 ceases, correct?

6 MR. NEUDECK: That's correct.

7 The purpose of this quote was to demonstrate  
8 the size of the canal in this location the dredge was  
9 working and to demonstrate it was a natural slough that  
10 was floating a dredge.

11 I don't have the extent with which that dredge  
12 worked though.

13 MR. O'LAUGHLIN: Well, in 18 -- prior -- did  
14 you ascertain in your historical research any maps  
15 depicting the course of Duck Slough prior to 1860?

16 MR. NEUDECK: No.

17 MR. O'LAUGHLIN: Are you aware of such maps?

18 MR. NEUDECK: Confirming my prior answer, no.

19 MR. O'LAUGHLIN: Now, what is in your opinion  
20 the condition of Duck Slough in 1875 from the point  
21 where the Samson dredge stops to the point where Duck  
22 Slough intersects Middle River?

23 Can you generally describe for us the width,  
24 depth, and basically the configuration or condition of  
25 that channel?

1           MR. NEUDECK: I don't have actual dimensions.  
2 The configuration was the configuration that's been  
3 stated and shown on the numerous maps that we've  
4 included as part of my testimony and others in this  
5 case.

6           It's a predominant feature that's been shown on  
7 all the maps that we've included. It's a predominant  
8 feature that not only runs through Roberts, it extends  
9 on down through Union.

10           This was a natural slough. Don Moore testified  
11 that it may have been in existence thousands of years  
12 ago.

13           I just don't have any records prior to the  
14 mapping that I have included in my testimony.

15           So I know the slough's been around for a long  
16 time. I don't have any direct exhibits to show so,  
17 but -- other than what Mr. Moore's has testified to from  
18 its -- from a natural water feature in this area.

19           MR. O'LAUGHLIN: You are a civil engineer; is  
20 that correct?

21           MR. NEUDECK: That's correct.

22           MR. O'LAUGHLIN: Do you understand basic  
23 hydraulics?

24           MR. NEUDECK: I believe I do, yes.

25           MR. O'LAUGHLIN: So what I'm trying to get at

1 here is that it's asserted that Duck Slough was a  
2 watercourse that had the ability to move water both from  
3 Burns Cutoff to Middle River and Middle River to Burns  
4 Cutoff. Are you aware of that?

5 MR. NEUDECK: Yes.

6 MR. O'LAUGHLIN: Do you agree with the  
7 statement that Duck Slough had the ability to move water  
8 both ways?

9 MR. NEUDECK: Yes, I do.

10 MR. O'LAUGHLIN: Okay. Now, so how, if we're  
11 to inform the Board of the ability to move water, how  
12 will we go about ascertaining the carrying capacity of  
13 Duck Slough prior to 1900, in your mind?

14 MR. NEUDECK: Well, I didn't know it was a  
15 burden of us to demonstrate the carrying capacity.  
16 Rather, we're demonstrating that it was an existing  
17 riparian slough that was connected to Middle River and  
18 Burns Cutoff.

19 I do not have a configuration other than the  
20 northeasterly end that we've been speaking to relative  
21 to the dredge.

22 We know it's likely smaller than 30 feet wide  
23 because they widened it to 30 feet. But it was a  
24 natural slough. To what degree its width and depth was,  
25 I don't have any direct testimony to that extent.

1           But it existed. It conveyed water. I don't  
2 know the amount of water or the rate with which it  
3 conveyed water, but it was connected.

4           MR. O'LAUGHLIN: Well, what is your  
5 understanding of a definition of a slough?

6           MR. NEUDECK: A natural water body.

7           MR. O'LAUGHLIN: Any other description of what  
8 a slough is?

9           MR. NEUDECK: Well, in -- it's something less  
10 than what we would constitute to be a river.

11           A slough in the Delta tends to be these what I  
12 construe to be a dendritic channel of sort, something  
13 fed off of a main channel. It had a smaller carrying  
14 capacity than the mainstem such as mainstem of the San  
15 Joaquin, Middle, Old River, Mokelumne, Cosumnes, those  
16 type of rivers. So it was an offshoot of a main  
17 watercourse.

18           MR. O'LAUGHLIN: Okay. If water is to move in  
19 both directions on Duck Slough in this state of nature,  
20 Duck Slough would have to have a zero gradient channel;  
21 is that correct?

22           MR. NEUDECK: Not necessarily. If it's below  
23 sea level, the gradient is in the water elevation, not  
24 the slope of the ditch.

25           MR. O'LAUGHLIN: So this is back to the Delta



1 pool theory that the hydraulics in the Delta determine  
2 everything, and depending on what the elevation of the  
3 invert or the channel is, it has water in it?

4 Or are you -- let me rephrase that.

5 Are you opining that if the tidal influence is  
6 higher on Middle River, you could push water upstream  
7 all the way across Roberts Island to Burns Cutoff?

8 MR. NEUDECK: No, I'm not opining that. That  
9 would actually be downstream. Middle River to Burns  
10 Cutoff is a downstream direction for this watercourse.

11 MR. O'LAUGHLIN: Okay.

12 MR. NEUDECK: So I'm not opining what you  
13 stated. I'm opining that you could move water from  
14 Middle River to Burns Cutoff because the natural fall in  
15 elevation is that direction, both from a tide  
16 perspective as well as a ground elevation perspective.

17 MR. O'LAUGHLIN: But -- so how does water -- if  
18 the general -- I had this discussion with Mr. Nomellini  
19 earlier in these proceedings. Might have been these  
20 proceedings or another one.

21 And he opined that water moved both ways. So  
22 if the general fall of the land and the general slope is  
23 from Middle River to Burns Cutoff, how does water go  
24 from Burns Cutoff back to Middle River?

25 MR. NEUDECK: That's a good question.

1 MR. O'LAUGHLIN: I get one a day.

2 MR. NEUDECK: I appreciate you asking that. I  
3 want to explain that.

4 The elevations are at or very near sea level.  
5 We're not talking about elevations above sea level. The  
6 tides are above sea level. So the ability to back water  
7 from Burns Cutoff all the way back to Middle River  
8 exists.

9 Middle River is a tidal river so the water is  
10 naturally backing up through all of the conveyance  
11 facilities to that point.

12 Duck Slough being a conveyance facility would  
13 push on a high tide water back up towards Middle River.  
14 That's why it could convey in both directions.

15 MR. O'LAUGHLIN: Okay. If you're going to  
16 convey water both directions in the slough, is  
17 Manning's n an important component of knowing the amount  
18 of water that can be moved in such a channel?

19 MR. NEUDECK: Manning's n would play a role in  
20 calculating the volumetric flow rate, yes.

21 MR. O'LAUGHLIN: And so would the gradient of  
22 the channel; is that correct? Of Duck Slough?

23 MR. NEUDECK: Yes, to some degree.

24 MR. O'LAUGHLIN: And as well, I'm assuming that  
25 you'd have to understand what type of head was at either

1 end of Duck Slough; is that correct?

2 MR. NEUDECK: That's correct.

3 MR. O'LAUGHLIN: Okay. And you testified --  
4 let me ask you again. Do you know when in fact water  
5 was in Duck Slough and in what amount at any time of any  
6 year?

7 MR. NEUDECK: Well, I have testified that  
8 there's been water through 1926.

9 We have had subsequent testimony or prior  
10 testimony by Mr. Moore related to the 1937 aerial, that  
11 there was water in portions of Duck Slough as late as  
12 1937. He stated that in 1941 that area had been  
13 backfilled.

14 So I have knowledge of Duck Slough having water  
15 into it as late as 1937. The amount, I do not have -- I  
16 don't have a direct measurement of such.

17 MR. O'LAUGHLIN: Do you know if -- do you know  
18 when the connection between Duck Slough and Middle River  
19 was leveed?

20 MR. NEUDECK: No.

21 MR. O'LAUGHLIN: Do you know if and when a tide  
22 gate was installed on Duck Slough on Middle River?

23 MR. NEUDECK: At the time that it was leveed.

24 MR. O'LAUGHLIN: Okay. And you don't know the  
25 time, so you can't give me a time period?

1 MR. NEUDECK: That's correct.

2 MR. O'LAUGHLIN: Okay. In regards to Duck  
3 Slough where it enters Burns Cutoff, do you know when  
4 that portion of Duck Slough was leveed?

5 MR. NEUDECK: No. I don't have an exact date.

6 MR. O'LAUGHLIN: Okay.

7 MR. NEUDECK: I know all this reclamation  
8 occurred, as I testified in my direct, sometime between  
9 the 1870s and the turn of the century, 1900.

10 So not that that's a very exact time frame, but  
11 within that 30 to 35-year period is when this region was  
12 being leveed off. So that would bring you within the  
13 time frame of that period.

14 MR. O'LAUGHLIN: Do you know when a tide gate  
15 was installed, if at all -- or are you of an opinion  
16 that a tide gate was installed at Duck Slough where it  
17 entered Burns Cutoff?

18 MR. NEUDECK: Yes. There's a gentleman that  
19 lives near it on that end has indicated remnants of old  
20 tide gates that exist currently up there. So I don't  
21 know the timing of such, but there was tide gates in  
22 that area.

23 MR. O'LAUGHLIN: Is it your opinion that the  
24 tide gate that was installed originally had the  
25 capability to move water from Burns Cutoff into Duck

1 Slough and down Duck Slough toward Middle River?

2 MR. NEUDECK: It would be my opinion that would  
3 be the case. It's a -- it was into a tidal water. So  
4 if you had a high tide on Burns Cutoff -- now keep in  
5 mind, you can't move water up against water. So if you  
6 had the water open on the Middle River side and it was  
7 flowing north, you'd be working against a head.

8 But if the water was not flowing out of Middle  
9 River in an upstream condition, which in this case is  
10 north, if that say wasn't flowing northerly, you could  
11 back water up southerly in an upstream condition.

12 MR. O'LAUGHLIN: So is it your understanding  
13 then that the tide gate would allow drainage water to go  
14 out and then had the capability to move irrigation water  
15 in?

16 MR. NEUDECK: I don't have direct knowledge of  
17 what the condition of the tide gate was.

18 You saw reference to double gating of tide  
19 gates by Mr. Nomellini's testimony. I do not know  
20 whether the same existed at Burns Cutoff where you'd  
21 have a flap gate on either side and you could operate it  
22 to trap tides as well as drain, depending upon which  
23 gate you lowered.

24 MR. O'LAUGHLIN: Because it would depend on the  
25 elevation of the gate; is that correct?

1           MR. NEUDECK: It would -- well, it would depend  
2 on the elevation of the floodgate itself. Yes, I'm  
3 sorry. The pipe through the levee.

4           MR. O'LAUGHLIN: Okay. One of your statements  
5 in regards to Duck Slough is you looked at the  
6 assessor's parcel maps in regards to Duck Slough?

7           MR. NEUDECK: Yes.

8           MR. O'LAUGHLIN: And you found an assessor's  
9 parcel map -- let me find out what number it is. Yes.  
10 Sorry. It's Exhibit 3L.

11           We've put on the screen Exhibit 3L. There is  
12 a -- your assertion in your testimony on page 4 is it  
13 includes a blue line along the dotted lines, and you  
14 interpreted these marks to be the assessor's notion of  
15 both the High Ridge Levee and Duck Slough. Do you see  
16 that in your testimony?

17           MR. NEUDECK: Yes.

18           MR. O'LAUGHLIN: Okay. Now, this is an  
19 assessor's parcel map from 1881 and 1882; is that  
20 correct?

21           MR. NEUDECK: That's correct.

22           MR. O'LAUGHLIN: Okay. Did you review other  
23 assessor's parcel map -- assessor maps, either earlier  
24 or later, that had such a blue line depiction upon it?

25           MR. NEUDECK: Yes.

1           MR. O'LAUGHLIN:   Okay.   What other assessor's  
2 map did you review that also had a blue line on it?

3           MR. NEUDECK:   As my direct testimony for the  
4 Mussi case, it's Exhibit 3I which is the 1876 which has  
5 a what we called a blue line extending from Burns Cutoff  
6 to Middle River on it.

7           MR. O'LAUGHLIN:   Okay.   So there is a blue line  
8 on the assessor's parcel map, Exhibit I from Mussi,  
9 dated 1876.   And there's one from 1881 and 1882.

10           I was looking at this Exhibit 3L.   Is Middle  
11 River depicted on Exhibit 3L?

12           MR. NEUDECK:   Yes.   That's the blue there at  
13 the bottom of the map.

14           MR. O'LAUGHLIN:   Is that a blue line or a green  
15 line?

16           MR. NEUDECK:   Well.   It looks green on this  
17 copy.   It looks blue on my copy.   So I would construe it  
18 to be blue-green.

19           MR. O'LAUGHLIN:   Can you move over on the map  
20 and show the San Joaquin River side?

21           MR. NEUDECK:   It doesn't pick up the San  
22 Joaquin.   That's Burns Cutoff there.

23           MR. O'LAUGHLIN:   Okay.

24           MR. NEUDECK:   Another important note is that  
25 you'll see two dashed lines along Duck Slough which

1 further confirms my schematic here on the white board  
2 showing the High Ridge and the levee to the east as  
3 well.

4 MR. O'LAUGHLIN: Okay. What do you --  
5 actually, you've gone right to one of my questions.  
6 There's no legend on this map, is there?

7 MR. NEUDECK: No.

8 MR. O'LAUGHLIN: In your opinion, what do the  
9 two dashed lines depict?

10 MR. NEUDECK: Levees.

11 MR. O'LAUGHLIN: Other than the two assessor's  
12 parcel maps, one from 1876 and one from 1881, '82, are  
13 there any other assessor's parcel maps that denote a  
14 blue line either before or after those time periods?

15 MR. NEUDECK: Those are the two I included in  
16 my testimony. There may be. I don't have any direct  
17 recollection as to -- these are the two that I showed  
18 for the time frame that we were trying to demonstrate  
19 its existence.

20 MR. O'LAUGHLIN: Do you know when the assessors  
21 were required by law to go out and perform their  
22 assessments?

23 MR. NEUDECK: No. The dates of our maps, our  
24 research started in 1876.

25 MR. O'LAUGHLIN: No, I mean the month of any



1 year when the assessors were required to go out and do  
2 their assessments.

3 MR. NEUDECK: No, I do not.

4 MR. O'LAUGHLIN: Okay. Do you know what -- in  
5 1875 if there was a flood on Middle Roberts Island that  
6 covered the -- covered basically Middle Roberts island  
7 under water?

8 MR. NEUDECK: I know that there was a flood. I  
9 don't recall the date. I don't know that it was in  
10 1875, so I can't -- I don't have an opinion as to that.

11 MR. O'LAUGHLIN: Okay. Do you know again in  
12 1881 or 1882 in what month the assessors went out to  
13 assess properties on Middle Roberts Island?

14 MR. NEUDECK: No. As stated earlier.

15 MR. O'LAUGHLIN: Also in regards to 1881 or  
16 1882, do you know if there was a flood on Middle Roberts  
17 Island in that year?

18 MR. NEUDECK: No. I think the flood event was  
19 later towards the end of the century, but I don't have  
20 the exact date.

21 MR. O'LAUGHLIN: Okay. I'm looking at a map,  
22 an assessor's map -- got to get the right date. It's  
23 the 1882, 1883 assessor's parcel map you have in your  
24 testimony.

25 MR. NEUDECK: Okay.

1           MR. O'LAUGHLIN:  And I believe '82-83.  It's  
2 the year right after the '81-82.

3           CHIEF LINDSAY:  Just to confirm, which exhibit  
4 is this?  Did we change exhibits?

5           MR. O'LAUGHLIN:  Yes.  We're changing exhibits.  
6 This is going to be -- I believe it's in the whole  
7 category of assessor's parcel maps under H, and it's  
8 labeled 1882-83.

9           Do you have a number on it?  I don't have a  
10 number on it.

11          MR. HERRICK:  It would be approximately the  
12 15th map in that series.  Maybe 13 or something.

13          MR. O'LAUGHLIN:  That's not the one I have.

14          CHIEF LINDSAY:  You're going to have to help me  
15 out here.

16          MR. NEUDECK:  The tab is on the left-hand side,  
17 Mr. Lindsay, if that helps.  So that would be the  
18 northwest corner of the map.  That might be --

19          MR. O'LAUGHLIN:  That's it.

20          MR. NEUDECK:  That might be it.  I can't tell  
21 if there's a fold on it.  No.  That's not it.  Too far.  
22 I think that says 6 there.

23          MR. O'LAUGHLIN:  While he's looking for that,  
24 we'll move on.

25          Actually, you know what we should do in regards

1 to these maps is, if John's agreeable to this, I think  
2 the maps under H should be individually labeled like H1,  
3 H2, H3 so we could readily access them and discuss them  
4 rather than H having 20 some-odd maps.

5 And I think we should do that as we move  
6 forward because I'm going to have questions about these  
7 maps and I don't want to delay what we're doing. We'll  
8 take that during a break and get it revolved.

9 CO-HEARING OFFICER PETTIT: Great. Thank you.

10 MR. O'LAUGHLIN: Hey, John, don't worry about  
11 it. We'll get the numbering straightened out and come  
12 back to this later.

13 Do you have an understanding or knowledge of  
14 the construction of the High Ridge Levee?

15 MR. NEUDECK: The reference to the Samson  
16 dredge is the only reference I have to the actual  
17 construction.

18 Outside of that, predating the dredge time  
19 frame, levees were constructed by Chinese labor with  
20 horses and what they call Fresno scrapers.

21 And, you know, around the 1870s, the dredge and  
22 steam shovels were introduced into the Delta region to  
23 mechanically start moving material.

24 So pre-1870s the levee was constructed by  
25 horses and horse-drawn scrapers. Post-1870s, at least

1 in the upper reach, it was done by the dredge.

2 That's the best I can relate to the  
3 construction techniques for that High Ridge Levee.

4 MR. O'LAUGHLIN: Okay. But -- and I got your  
5 general statement. I want to be much more specific than  
6 that.

7 In regards to the Samson dredge, is it your  
8 testimony that at least on one side of when the Samson  
9 dredge was moving through Duck Slough it deposited  
10 money -- spoils that became part of the High Ridge  
11 Levee?

12 MR. NEUDECK: Yeah. It likely deposited on  
13 both sides. It wasn't a long shovel, so in order to --  
14 it would swing to either side.

15 MR. O'LAUGHLIN: Okay. So if the Samson dredge  
16 entered Duck Slough and was working from Duck Slough --  
17 I mean from Burns Cutoff to Middle River, then it would  
18 deposit spoils on the north side which would then equate  
19 to the High Ridge Levee, correct?

20 MR. NEUDECK: Correct.

21 MR. O'LAUGHLIN: Then it would deposit soils on  
22 the south side which depict to your map the little  
23 dashed line on MSS 8, correct?

24 MR. NEUDECK: That's correct.

25 MR. O'LAUGHLIN: Okay. Now, are you -- other

1 than the Samson dredge, and we don't know how far it  
2 went and we don't know the scope and extent of it, are  
3 you -- do you have any knowledge as to how the rest of  
4 the High Ridge Levee was built?

5           Specifically. Not generally; specifically.

6           MR. NEUDECK: No. Just -- I would revert back  
7 to what I just stated in my general statement as to  
8 how -- and this is knowledge that I -- my opinion is  
9 very strong as to how levees were constructed in this  
10 region.

11           I am familiar with the reclamation of the  
12 Sacramento-San Joaquin Delta, and this is the  
13 methodology how levees were constructed.

14           So I strongly believe -- I have a strong  
15 opinion that that's how it was constructed. I'm not  
16 speculating on this answer. They didn't -- that was the  
17 methodology. That was the methodology and the practice  
18 at the time.

19           MR. O'LAUGHLIN: Now, in regards to the  
20 construction of these levees, you said Fresno scrapers  
21 were employed?

22           MR. NEUDECK: That's correct.

23           MR. O'LAUGHLIN: Can you describe for us how a  
24 Fresno scraper works?

25           MR. NEUDECK: A Fresno scraper was drawn by

1 horses. It's a small -- trying to relate it to current  
2 technology.

3 It's a small earthen scraper, probably carries  
4 probably less than a yard, maybe half a yard. Very  
5 small device, kind of a wheelbarrow on its side drag  
6 behind the horses that would scrape the adjoining ground  
7 near the levee.

8 Because this was not something they went far  
9 distances to gather their spoils to construct the levee.

10 So it was -- the mineral deposits that were  
11 near the levee they were planning to construct would be  
12 scraped from the ground and carried to the location  
13 where the levee was to be built.

14 MR. O'LAUGHLIN: What in your opinion based on  
15 your -- how far distant from potential location of a  
16 levee would a Fresno scraper operate, ballpark?

17 MR. NEUDECK: As close as possible. It would  
18 be relatively close.

19 MR. O'LAUGHLIN: Now given the condition of the  
20 ground, would they have to break the soil first or break  
21 it up before the Fresno scrapers would move it?

22 MR. NEUDECK: These were -- tended to be  
23 sedimentary deposits, sands and so forth. There may  
24 have been some clay particles in there that would have  
25 caused that.

1           But for the most part, they didn't have large  
2 earth-moving equipment to break it, so they would have  
3 gone to the area where the horses could draw the scraper  
4 through it to gather it.

5           MR. O'LAUGHLIN: Now when these horses were  
6 drawing these scrapers, would they go through an area  
7 that was wet or muddy, or would they basically operate  
8 on dry land?

9           MR. NEUDECK: They had what's all tule shoe,  
10 which is a very large horseshoe, to help distribute the  
11 load and less stable soils.

12           So it's a well-known fact that they did get in  
13 less stable soils, but for the most part they would work  
14 where the soils would be more stable, that -- which  
15 would be closer to the original what I call shoestring  
16 levee, the deposits off the original slough.

17           But they did have those shoes to carry them in  
18 areas that were less stable. But then most of those  
19 areas were the areas that were more organic in nature  
20 and not the type of material you would want to build a  
21 levee out of.

22           MR. O'LAUGHLIN: That was one of my questions  
23 as well is: When they were trying to locate these  
24 levees on Roberts Island, let's say, they tried to  
25 locate them on mineral soils; is that correct?

1           MR. NEUDECK:  Yes.  That is correct.  That was  
2  the original location.  As I testified to yesterday,  
3  these natural sloughs, particularly Duck Slough, that  
4  was the case.

5           The mainstem of the San Joaquin was set back at  
6  some point in the -- between 1870s, 1900s for both  
7  borrow and carrying capacity.  And that is where it  
8  likely may have moved off, particularly as you get  
9  further in the Delta, off some sedimentary soils where  
10 the dredger would come in, borrow the material  
11 immediately waterside of the existing levee, and then  
12 set the levee back.

13           And that's where the soil might have been  
14 starting to encroach upon some of the more organics.  
15 But generally in this area, you're on sedimentary  
16 foundations.

17           MR. O'LAUGHLIN:  Now when these levees were  
18 built, would they generally scrape from only one side to  
19 build up a levee, or would they generally scrape from  
20 both sides of the potential levee to meet in the middle  
21 and mound the spoils material?

22           MR. NEUDECK:  I don't have a direct  
23 acknowledgement of that.  Depending upon width of the  
24 sedimentary foundation, they may have been able to  
25 scrape -- depending upon the water level.



1           If they had a low tide, say, in Duck Slough,  
2 they could scrape from the waterside. Certainly, the  
3 Samson dredge took from the waterside and deposited on  
4 it. But for the most part, you know, the horses had to  
5 work in dryer, more stable ground.

6           So they may have started off by scraping some  
7 of that. That would help the carrying capacity of the  
8 slough. But there comes a point where that becomes  
9 impractical so they would move to the land side of the  
10 levee.

11           MR. O'LAUGHLIN: Do you -- based on your  
12 history and knowledge of the Delta, do you know who Mr.  
13 E.E. Tucker was?

14           MR. NEUDECK: He was an engineer, and I have a  
15 map from him. But that's to the extent that I have  
16 knowledge of Mr. Tucker.

17           MR. O'LAUGHLIN: Okay. Do you know who a Mr.  
18 Gibbs was?

19           MR. NEUDECK: No, I do not.

20           MR. O'LAUGHLIN: Other than your general  
21 description of the construction of the High Ridge Levee  
22 plus your description of the Samson dredge work that  
23 occurred there, do you have any other documents to point  
24 us to relating to the construction of the High Ridge  
25 Levee?

1 MR. NEUDECK: Not in my testimony.

2 My experience I draw from. I have, you know,  
3 more experience than what has been included in here from  
4 the construction standpoint. But none other in my  
5 direct testimony.

6 MR. O'LAUGHLIN: If the slough is on the --  
7 Duck Slough is on the east side of the High Ridge Levee,  
8 then is it your opinion that parcels to the west of the  
9 High Ridge Levee would not be riparian to Duck Slough?

10 MR. NEUDECK: No. They would be riparian.

11 It's no different than the parcels adjacent to  
12 Middle River, the mainstem of the San Joaquin. There is  
13 a levee between them, but -- I mean this is reclaimed  
14 land. This is ground that is leveed off and drained and  
15 reclaimed.

16 If a levee can't separate the land from the  
17 water and if that levee is appointed to sever riparian  
18 nature, then we've got a problem.

19 MR. O'LAUGHLIN: Okay. Now, have you reviewed  
20 the calls for the grant deeds as to where the properties  
21 west of the High Ridge Levee have their most easterly  
22 boundary determined?

23 MR. NEUDECK: My staff, Mr. Blake, has. But  
24 no, I have not.

25 MR. O'LAUGHLIN: Okay. He's here today, right?

1           MR. NEUDECK: He's here today and will be  
2     testifying next, yes.

3           MR. O'LAUGHLIN: Okay. So let me ask you a  
4     hypothetical. If the call of the grant deeds is to the  
5     toe of the west side of the High Ridge Levee, then  
6     how -- isn't the property separated or severed from Duck  
7     Slough?

8           MR. NEUDECK: I don't believe that's the call.  
9     My -- I think if you go back and in the chain, the call  
10    is to the levee or to the watercourse.

11          MR. O'LAUGHLIN: Okay.

12          MR. NEUDECK: Now there may have been a loss in  
13    that conveyance. But if you go back in the chain,  
14    you'll find the correct call.

15          MR. O'LAUGHLIN: How many chains -- how many  
16    conveyances have you reviewed wherein the call was made  
17    to Duck Slough?

18          THE WITNESS: I think most of them are to the  
19    levee.

20          MR. O'LAUGHLIN: Okay. Is there any -- I had a  
21    hard time, and I know you have one exhibit in here that  
22    says Duck Slough, but I -- I haven't seen in any of the  
23    chain of titles that I looked at any calls to Duck  
24    Slough except for a call, I think it's in the Stewart  
25    conveyance at or near Burns Cutoff.

1           Have you reviewed any other calls to Duck  
2 Slough?

3           MR. NEUDECK: I don't have a direct  
4 recollection of that. But I would defer and seek advice  
5 from my surveyor, Mr. Black. He's reviewed those in  
6 more detail.

7           MR. O'LAUGHLIN: Okay.

8           Can we take a quick minute? I'm done with Duck  
9 Slough. I'm going to move to Woods Irrigation Company's  
10 actual conveyance facilities and drainage facilities. I  
11 have to just take one or two minutes to get some  
12 documents.

13          CO-HEARING OFFICER PETTIT: Let's go off the  
14 record for a couple of minutes then.

15          MR. O'LAUGHLIN: Okay. Thank you.

16          (Recess)

17          MR. O'LAUGHLIN: I've marked MSS 9. It's the  
18 base map. We're going to have Mr. Neudeck draw the  
19 systems of Woods Irrigation Company on that map.

20          And then I've marked as MSS 10 another map  
21 which we'll denote as post-1925 conveyance facilities  
22 for Woods Irrigation Company.

23          And then we'll talk about those briefly.  
24 Unfortunately he's going to have to draw on them first,  
25 and then we'll scan them and make copies and make them

1 available to everybody if that's okay.

2 CO-HEARING OFFICER PETTIT: That's okay.

3 Another question though. I notice that we have  
4 consumed an hour and --

5 MR. O'LAUGHLIN: I'm just going to go through  
6 this section here. Probably if we do it okay, it's  
7 going to take about 15 minutes or so. 15, 20 minutes.

8 CO-HEARING OFFICER PETTIT: Sounds good. I  
9 just don't want to shortcut any discussion of Duck  
10 Slough.

11 (Recess)

12 CO-HEARING OFFICER PETTIT: Are we ready to go?

13 MR. O'LAUGHLIN: We're ready to go.

14 CO-HEARING OFFICER PETTIT: Okay.

15 MR. O'LAUGHLIN: Back on the record.

16 Mr. Neudeck, I put in front of you MSS 4 which  
17 is an exhibit upon which Mr. Nomellini drew what he  
18 believed to be the head gates that Woods Irrigation  
19 Company had on Middle River.

20 Do you see that in front of you?

21 MR. NEUDECK: Yes.

22 MR. O'LAUGHLIN: And you were present when  
23 Mr. Nomellini testified regarding that; is that correct?

24 MR. NEUDECK: That's correct.

25 MR. O'LAUGHLIN: Do you have any disagreement

1 with Mr. Nomellini that those are in fact the head gates  
2 in the approximate location of those head gates for  
3 Woods Irrigation Company on Middle River?

4 MR. NEUDECK: No, I agree with them. I've seen  
5 those.

6 MR. O'LAUGHLIN: Okay. Now one of the  
7 questions that didn't -- Mr. Nomellini was unclear about  
8 yesterday, and maybe you can answer it.

9 Prior to 1914, do you believe that there were  
10 any other headworks or diversion facilities other than  
11 the three listed on MSS 4?

12 MR. NEUDECK: This is for Woods, and  
13 specifically related to say like along the San Joaquin  
14 for instance, or --

15 MR. O'LAUGHLIN: I'm only looking at Middle  
16 River right now. The three diversion facilities for  
17 Woods Irrigation Company on Middle River. Are you aware  
18 of any additional tidal gates to convey water to Woods  
19 Irrigation Company other than the three there?

20 MR. NEUDECK: No, I'm not.

21 MR. O'LAUGHLIN: Okay. Are you aware of any  
22 tidal gates on the San Joaquin River that would divert  
23 water to Woods Irrigation Company prior to 1914? San  
24 Joaquin River.

25 MR. NEUDECK: I don't have a specific reference

1 to it, but in Mr. Lajoie and Mr. Moore's testimony, they  
2 demonstrate that there is channels that head out and tie  
3 into the San Joaquin which I can infer may have been a  
4 location to feed the Woods Irrigation Company.

5 I don't have any direct knowledge of that, but  
6 I do recall seeing those channels heading in an easterly  
7 direction out to the San Joaquin.

8 That may be where I disagree slightly with  
9 Mr. Nomellini where he stated that he did not believe  
10 there was any influence from the San Joaquin to the  
11 Woods Irrigation Company. But that's based off of a  
12 natural channel off of the Moore and Lajoie testimony.

13 MR. O'LAUGHLIN: Okay. Prior to 1914, was  
14 Woods Irrigation Company diverting water from Duck  
15 Slough?

16 MR. NEUDECK: I believe that there was features  
17 off of Duck Slough that were feeding the Woods service  
18 area.

19 There was features that were emulating down in  
20 a kind of a southeasterly direction. We have exhibits.  
21 The 1937 photos show some of that just above the Mussi  
22 property.

23 Whether that was controlled by Woods, or just  
24 natural riparian water coming into the Woods service  
25 area, probably the latter. I don't know that it would

1 have been controlled by Woods. The Woods Irrigation  
2 Company controlled the features along Middle River.

3 MR. O'LAUGHLIN: Okay. Well, you talked  
4 earlier in your testimony about a Woods Irrigation  
5 system. What I'm trying to get a handle on is Woods  
6 Irrigation system that was in place at 1909, 1911 when  
7 the corporation started and the agreements were entered  
8 into.

9 So my question, going back to Duck Slough then:  
10 Is it your opinion that any features of diversion coming  
11 off Duck Slough were private and not Woods Irrigation  
12 Company?

13 MR. NEUDECK: I would say they would be like  
14 natural sloughs. So probably not features of the Woods  
15 system, but I don't put it past that Woods didn't  
16 improve that feature.

17 I don't have an exact knowledge of all of the  
18 locations of canals, both drainage and irrigation and  
19 otherwise in this area, but I do know that there was a  
20 substantial amount of them.

21 So whether the Woods put it to use as part of  
22 their system, I don't know. I know they existed. I  
23 know they had water in them. Whether they were serving  
24 as drainage or whether they were serving as irrigation,  
25 I don't have an opinion on.



1           But either way, there was water in them and  
2 they could have served this area. Whether they were  
3 controlled by the Woods Irrigation Company ditch tender,  
4 I don't know.

5           MR. O'LAUGHLIN: Okay. Mr. Nomellini testified  
6 yesterday that the three headworks we saw were in fact  
7 in existence prior to 1914 that are depicted on MSS 4  
8 and in his photo exhibits. Would you agree with that  
9 statement?

10          MR. NEUDECK: Yes, I would.

11          MR. O'LAUGHLIN: Okay. Have you tried to  
12 determine what the elevation of the invert of those head  
13 gates are?

14          MR. NEUDECK: No, I have not surveyed. I have  
15 done some calculations based off some assumptions, but I  
16 don't have survey data for that.

17          MR. O'LAUGHLIN: What calculations based off of  
18 assumptions have you done regarding the head gates?

19          MR. NEUDECK: In response to some of the  
20 questions that have been coming out in the prior  
21 testimony regarding the capacity of the floodgate, I  
22 evaluated the carrying capacity of the floodgate and  
23 generally what a canal carrying capacity would be  
24 downstream of that.

25          MR. O'LAUGHLIN: Okay. Perfect.

1           What is -- on MSS 4, if you could identify what  
2 individual head gate you're talking about and describe  
3 for us what you believe the carrying capacity of the  
4 head gate is, please.

5           MR. HERRICK: Mr. Neudeck, when you answer,  
6 Mr. Nomellini has marked on the MSS 4: 8I, 9 and 10,  
7 meaning pictures 9 and 10; and 8I 11 and 12.

8           Anyway, try to match your answers to the  
9 numbers on that so we have a good record. Thank you.

10          MR. NEUDECK: Can I ask for clarification? I  
11 apologize. I was scrolling my notes when you said that.

12          Can you just give me the reference to the  
13 western -- the main diversion point which we're calling  
14 one diversion point. There's two systems. One's to the  
15 west and one's to the east.

16          Can you give me the reference so I can --  
17 actually, it doesn't make any difference. Let me back  
18 up for a second. Okay? For my calculation perspective.

19          The main diversion point which we're calling  
20 one point of diversion has two floodgates. One is  
21 currently in existence today that we can photograph. We  
22 can touch. We can see -- we can all go out and look and  
23 experience the nature of that.

24          The other is buried and has been backfilled.  
25 And I understand the reason for that was it was starting

1 to collapse. The District together with the Woods  
2 Irrigation Company chose to backfill that and go to the  
3 more efficient use of pumps.

4 Assuming that both are 8 feet in diameter, I  
5 did some simple flow calculations assuming that the  
6 water was being removed downstream, setting the bottom  
7 of the floodgate at the low tide.

8 So this was a conservative figure. I didn't  
9 bury it down deep, even though Mr. Nomellini testified  
10 that it might have been likely deeper.

11 I set the elevation of the bottom of the 8 foot  
12 diameter floodgate at elevation minus 1.5 which is the  
13 low tide.

14 I varied the tide between low tide of 1-5 up to  
15 a high tide, say 4.5.

16 Then I looked at an extreme high side of  
17 elevation approximately 6 for this region.

18 The range of operating conditions was on the  
19 order of 40 to 90 cfs through that one barrel.

20 MR. O'LAUGHLIN: Can I ask a clarifying, real  
21 quick. The 90 cfs equates to the 4.5 or the 6?

22 MR. NEUDECK: 6. Understand, it's based on  
23 head. So the highest head would be the highest flow  
24 rate, and the lower heads, you know, would be on the  
25 average of, you know, an average tide.

1           MR. O'LAUGHLIN: Okay. So if the assumption is  
2 that one of them can move this, and we basically do  
3 another assumption that the other floodgate was similar,  
4 then they would have the capacity to move based on your  
5 calculations 80 to 180 cfs?

6           MR. NEUDECK: That's correct.

7           MR. O'LAUGHLIN: Okay. Now there's a third  
8 diversion point, correct?

9           MR. NEUDECK: That's correct.

10          MR. O'LAUGHLIN: Okay. Do you have a  
11 difference calculation for that?

12          MR. NEUDECK: I did not do calculations for  
13 those. For that one, excuse me.

14          MR. O'LAUGHLIN: Now I've given to you MSS 9  
15 and labeled it pre-1914. And what I would like you to  
16 do on that is to draw -- and you can take either one of  
17 the floodgates you want first -- draw on that map where  
18 the floodgate enters the canal and where that canal goes  
19 to. And you can do it in blue if you want.

20          MR. NEUDECK: Okay. I'm going to be very clear  
21 that I am not going to be able to retrace all of the  
22 Woods facilities. So I can give you some initial  
23 recognition of the Woods facilities throughout this  
24 area, but I was never tasked to determine where all the  
25 Woods facilities existed.

1           MR. O'LAUGHLIN:  Actually, I don't even want  
2  that.  I agree with you.  That's not what I'm driving  
3  at.  What I basically wanted to do was to get on that  
4  map originally -- Mr. Nomellini denoted two head gates.  
5  It seems to tie into the testimony that those two head  
6  gates fed into at least two canals.

7           And I just want where those canals start.  I  
8  don't care where they end or where they go or where the  
9  laterals or distribution system is.  I just want to get  
10 a general starting point of where they're headed.

11           If you could mark those in blue on that, that  
12 would be helpful.

13           MR. NEUDECK:  Okay.  The same location where  
14 Mr. Nomellini located them, which is slightly upstream  
15 of what we call the Howard Road Bridge on Middle River.

16           So it would be east of the Howard Road Bridge  
17 is where the main point of diversion is for the Woods  
18 Irrigation District, where the two 8-foot diameter  
19 floodgates existed through the levee system.

20           Currently the system is supplied by six pumps,  
21 three on each of three floodgate.

22           MR. O'LAUGHLIN:  We don't need that.

23           Here's what I'm getting at.  What I want to  
24 know, when you draw on the map, were those two head  
25 gates going into two separate canals, or were they going

1 into one main canal, prior to 1914?

2 MR. NEUDECK: They were going into two separate  
3 canals, to my knowledge. I'm basing this off of the  
4 location of them. They're very close to one another,  
5 but I'm anticipating that the current configuration was  
6 similar to what it was in 1914.

7 But regardless, they're both tied together.  
8 They're both tied together from a gravity system as well  
9 as a pump system. So there's complete flexibility from  
10 the Woods' perspective as to whether they want to feed  
11 in either direction, from either pump facility.

12 Likewise, they're tied by gravity together.

13 So in effect, one could all be diverted into  
14 the other. Vice versa, the other could be diverted into  
15 the prior.

16 MR. O'LAUGHLIN: Yeah, I'm understanding that  
17 basically you could have one tide gate shut and you  
18 could push all the water that you wanted to into one  
19 canal.

20 Conversely, you could shut the other gate, push  
21 all the water you wanted into the other canal.

22 And then vice versa, you could have them both  
23 open and have some amount of water going into each,  
24 correct?

25 MR. NEUDECK: Exactly. Very good explanation.

1           MR. O'LAUGHLIN: All right. So have you --  
2 you've drawn -- now the -- there's a third point that  
3 Mr. Nomellini noted in regards to his testimony of a  
4 location of a head gate. Can you draw on that map  
5 the -- where that head gate ties into a canal in regards  
6 to Woods Irrigation Company?

7           MR. NEUDECK: Well, again, this is located  
8 downstream of the primary point of diversion. So this  
9 is downstream of Howard Road essentially at the  
10 extension of Stark Road.

11           And this is serving the -- this is the second  
12 point of diversion for Woods.

13           MR. O'LAUGHLIN: Okay. You've drawn a blue  
14 line depicting the third head gate's connection to a  
15 canal?

16           MR. NEUDECK: Yes.

17           MR. O'LAUGHLIN: Thank you.

18           MR. NEUDECK: I circled it.

19           MR. O'LAUGHLIN: Here's my question. And I'm  
20 having difficulty. Maybe if you just say you don't  
21 know, that would be fine too.

22           I understand the location you've circled on MSS  
23 9, three blue circles depicting where the head gates are  
24 that align with Mr. Nomellini.

25           What I need is -- I have difficulty when I'm

1 looking at these maps -- is there's a bunch of lines  
2 going -- running north and south, and I need to know  
3 which one appears to be a canal that we're tying into  
4 because I don't know which way the water's going.

5 I can't tell if it's a drainage facility, a  
6 road, irrigation facility, or what.

7 And if you don't know, I'm perfectly happy with  
8 you don't know what those lines are or where that water  
9 from the head gates went.

10 I don't need you to draw it throughout the  
11 entire Woods, but I at least need to find out which main  
12 canals those waters are going into.

13 MR. NEUDECK: I am reluctant to start drawing  
14 lines because I know there is a variety of locations on  
15 this map where there's both irrigation and drainage.

16 But I do want to reflect on the fact that the  
17 canals throughout Woods are dual-purpose. They both  
18 serve as irrigation and drainage. It's been recognized  
19 throughout prior testimony, and I will say it again in  
20 mine. They're not single-purpose canals.

21 The reason the gates and the dams and so forth  
22 are in them are to back water up and to control water  
23 within them.

24 And furthermore, drainage water is again used  
25 by the downstream user as irrigation water. It's a



1 general practice that was used throughout Woods and to  
2 this day.

3 So I'm reluctant to start drawing these out and  
4 calling them irrigation canals because they are not  
5 irrigation canals.

6 I would say all canals within Woods are  
7 irrigation and drainage, and I'm going to leave it at  
8 that from the standpoint of my knowledge on their  
9 system. I know that for a fact, though.

10 MR. O'LAUGHLIN: Okay. Well, how -- given that  
11 statement, let me see if I can shortcut this.

12 Would you agree that you do not know the slope  
13 of any of the -- or the gradient, excuse me -- of any of  
14 the canals or -- I'll just call them canals. Is that  
15 okay? We can -- canal doesn't denote either drainage or  
16 irrigation or both. I mean I don't really care.

17 You don't know the slope of any of those, the  
18 gradient?

19 MR. NEUDECK: No, I do not.

20 MR. O'LAUGHLIN: Okay. And do you know -- do  
21 you have any knowledge as to the width or depth of any  
22 of those canals in Woods Irrigation Company prior to  
23 1914?

24 MR. NEUDECK: No, I do not.

25 MR. O'LAUGHLIN: Okay. Would you agree with

1 the statement if the Woods Irrigation Company was a  
2 gravity-fed system that based on gravity that Woods  
3 could only move water as high as the highest head that  
4 you could get?

5 MR. NEUDECK: I'm hesitating because you've  
6 conditioned the question. But if it's primarily based  
7 on gravity, your answer is correct -- your statement is  
8 correct.

9 MR. O'LAUGHLIN: Yes.

10 MR. NEUDECK: The only power to push water  
11 would be the energy in the height of the water;  
12 therefore, I'm answering yes, that it would only go as  
13 high as the highest tide.

14 But I'm not testifying that gravity was the  
15 only system to move water through this system.

16 MR. O'LAUGHLIN: Right. I fully gather that  
17 from your earlier testimony.

18 The tidal cycle on Middle River. How does  
19 the -- I'm -- my statement would be maybe -- let's see  
20 if you agree with this -- that the ag barriers that are  
21 currently put in on Middle River were not there in 1914,  
22 correct?

23 MR. NEUDECK: No, they were not.

24 MR. O'LAUGHLIN: Okay. And we would agree that  
25 the ag barriers that are currently put in have an

1 attenuating effect on tidal influences in Middle River;  
2 is that correct?

3 MR. NEUDECK: Yes. They tend to back water up  
4 into the system.

5 MR. O'LAUGHLIN: Okay. And those tidal --  
6 those were in existence. So how does the tidal cycle  
7 work in Middle River? Is it six hours up, six hours  
8 down, six hours up?

9 MR. NEUDECK: Two highs and two lows.

10 MR. O'LAUGHLIN: Okay.

11 MR. NEUDECK: So you're -- per day. Per  
12 24-hour period. So higher high, mean high, lower low,  
13 and low low.

14 MR. O'LAUGHLIN: Okay.

15 Two more quick questions, and I will be done at  
16 10:30. Thank you for your indulgence. I appreciate it.  
17 I know you ask a lawyer to give them 15 minutes and he  
18 takes a half hour. Sorry. Almost done.

19 Have you reviewed any of the cropping patterns  
20 for Woods Irrigation Company prior to 1937?

21 MR. NEUDECK: As I testified to Mr. Rubin, the  
22 only map I have reviewed for cropping pattern is the  
23 Gateway map.

24 MR. O'LAUGHLIN: Okay. Have you reviewed any  
25 other record, whether it be a newspaper article, a

1 county ag commissioner report, or anything else  
2 depicting what was being grown on Middle Roberts Island  
3 prior to 1914?

4 MR. NEUDECK: The reason I'm hesitating, I'm  
5 going to think out loud here for a second.

6 In the Phelps case, we did look at cropping  
7 records a little greater, but I don't believe those  
8 records went back pre-1914, so I'm going to respond no.

9 MR. O'LAUGHLIN: All right. How much -- I'm  
10 interested -- you said you had a team. How much time  
11 have you spent in preparing your testimony in regards to  
12 this matter and the Mussi matter and everything  
13 collectively, ballpark?

14 MR. NEUDECK: Myself personally or my firm?

15 MR. O'LAUGHLIN: Just you personally.

16 MR. NEUDECK: 60 to 100 hours.

17 MR. O'LAUGHLIN: Okay.

18 MR. NEUDECK: That's billed hours. I  
19 apologize. I'm a consultant, so I may very well spend a  
20 lot more time on it, but that's my billed hours. That's  
21 where I drew the conclusion -- my own preparation on  
22 weekends, I don't necessarily bill. But -- so that's a  
23 conservative number, 60 to 100.

24 MR. O'LAUGHLIN: Okay.

25 I have no further questions, and thank you for

1 your indulgence. Appreciate it.

2 CO-HEARING OFFICER PETTIT: Thank you,  
3 Mr. O'Laughlin. Let's see where we stand. Mr. Powell,  
4 do you have any cross?

5 MR. POWELL: No cross.

6 MR. O'LAUGHLIN: Mr. Ruiz?

7 MR. RUIZ: Mr. Pettit, I don't know if we do.  
8 We probably -- just a few exhibits have come into play  
9 we -- Ms. Gillick and I haven't seen yet.

10 If we could maybe take a short break. We  
11 haven't seen the depiction that's up on the board over  
12 there. Then we can determine whether or not we'd have a  
13 short cross.

14 CO-HEARING OFFICER PETTIT: Okay. Let's -- if  
15 we can do that during the break, let's take the break  
16 now and be back at a quarter to 11. Thank you.

17 (Recess)

18 CO-HEARING OFFICER PETTIT: Okay. We're back  
19 on the record, and Mr. Powell has a couple of questions  
20 for Mr. Neudeck on cross. Please proceed.

21 --o0o--

22 CROSS-EXAMINATION BY MR. POWELL

23 FOR STATE WATER CONTRACTORS

24 --o0o--

25 MR. POWELL: My name is Stan Powell, and I'm

1 representing the State Water Contractors. And I want to  
2 follow up on a couple of your responses to  
3 Mr. O'Laughlin.

4 First, do you recall indicating to  
5 Mr. O'Laughlin that the capacity of the intake structure  
6 on Middle River could range from 40 to 90 cfs?

7 MR. NEUDECK: That's correct. I made the  
8 statement that that would be a range of tides through an  
9 8-foot diameter floodgate.

10 MR. POWELL: And was one of your assumptions in  
11 doing that computation was that diversion would be by  
12 gravity?

13 MR. NEUDECK: That's correct.

14 MR. POWELL: Okay. And that capacity was  
15 specific to the intake structure?

16 MR. NEUDECK: Yes.

17 MR. POWELL: Did your analysis consider the  
18 carrying capacity of the canals downstream of that  
19 intake structure?

20 MR. NEUDECK: I did look at those as well.

21 MR. POWELL: And when you looked at those, did  
22 you conclude that the capacity, the combined capacity  
23 when you consider both the canal and the intake  
24 structure, would range from 40 to 90 cfs?

25 MR. NEUDECK: The carrying capacity of the

1 canals downstream have a larger carrying capacity as  
2 they exist today.

3           In other words, I did some similar calculations  
4 varying the tide and empirically was able to effectively  
5 say -- what I was -- what I was doing is looking at, for  
6 purposes of preparing for this testimony, looking at  
7 what it would take to carry approximately 40 cfs, and  
8 the canal would be substantially smaller than the  
9 current canal out there based on those tidal  
10 fluctuations for gravity's sake.

11           So the canal is substantially more sizable.  
12 The canal would carry something on the order of a  
13 couple, 250, 300 cfs in its current capacity at a high  
14 tide. Something more on the order of about 10 feet wide  
15 would carry something on the order of 40 cfs.

16           So I was doing some kind of what ifs.

17           MR. POWELL: So the 40 to 90 cfs would apply to  
18 taking water through that system today by gravity?

19           MR. NEUDECK: That's correct.

20           MR. POWELL: And do you know what the canal  
21 carrying capacity would have been in 1914 or earlier?

22           MR. NEUDECK: I'm assuming the canal had the  
23 capacity to carry the described diversion rates. That  
24 was -- I have nothing, no evidence to prove otherwise.

25           They had a substantial system of canals and

1 ditches, and I would assume that that had the capacity  
2 given the fact that these are not major ditches, from my  
3 calculation's sake, to carry that kind of capacity.

4 So something on the order of 10 to 15 feet wide  
5 is not a major canal.

6 Currently the canals that emanate off those two  
7 points are more on the order of 30-plus feet wide. But  
8 I demonstrated that you could have a lesser canal and  
9 still carry that capacity.

10 MR. POWELL: Would I be correct if I  
11 characterize the basis of your assumption is that if the  
12 head gate had a capacity of 40 to 90 cfs that the canal  
13 would have had an equal capacity?

14 MR. NEUDECK: That's correct.

15 MR. POWELL: So beyond making that assumption,  
16 did you have any other basis to expect those canals had  
17 those capacities?

18 MR. NEUDECK: I'm slightly confused by the line  
19 of questioning there.

20 Generally what's occurring now is that the  
21 constraining feature would be the 8 foot diameter  
22 floodgate because the canal is much more sizable, would  
23 carry much more water than what the canal could put out.

24 So it would be my opinion that the canals would  
25 be sized accordingly or likely larger, conservatively



1 larger than what the floodgate structure itself could  
2 put out.

3 An 8-foot diameter floodgate is a sizable  
4 structure through a levee.

5 MR. POWELL: So that capacity basically is you  
6 did an analysis on the gate, and your evaluation of the  
7 carrying capacity of the canal prior to 1914 is based on  
8 the assumption that the capacity -- there would be  
9 sufficient canal capacity to handle the capacity of that  
10 intake.

11 MR. NEUDECK: Yeah, I backed into it. That's  
12 correct.

13 MR. POWELL: Thank you.

14 That's all my questions. Thank you.

15 CO-HEARING OFFICER PETTIT: Mr. Ruiz?

16 MR. RUIZ: Hearing Officer Pettit, we have no  
17 cross-examination at this time.

18 CO-HEARING OFFICER PETTIT: Thank you. Ms.  
19 Gillick?

20 MS. GILLICK: County of San Joaquin has no  
21 cross-examination.

22 CO-HEARING OFFICER PETTIT: Thank you.  
23 Ms. Aue, do you have anything?

24 STAFF ATTORNEY AUE: Hi. In yesterday's  
25 testimony, Mr. Grunsky noted that your firm had done

1 investigations as to whether the individual landholders  
2 in the Woods Irrigation District had water rights,  
3 pre-1914, post-1914 or riparian rights. Is that the  
4 case?

5 MR. NEUDECK: Yes. Mr. Blake, our surveyor,  
6 will be reflecting on that riparian right nature. We  
7 have done the chain of title and nexus to, you know, the  
8 severance question.

9 STAFF ATTORNEY AUE: That's for the riparian  
10 rights. Have you also done analysis for pre-1914 rights  
11 also?

12 MR. NEUDECK: The basis of that is the 1911  
13 agreements.

14 STAFF ATTORNEY AUE: Okay. Are there currently  
15 lands that are within the service area of Woods  
16 Irrigation District now that were not in the service  
17 area in 1911?

18 MR. NEUDECK: I'm not exactly certain. I don't  
19 have an answer to that. There may be areas that -- I do  
20 not know.

21 STAFF ATTORNEY AUE: If there are, your firm  
22 has not done any investigation of whether those parcels,  
23 if they exist, would have a pre-1914 right?

24 MR. NEUDECK: We were reflecting on the  
25 pre-1914 right as it related to the irrigation company's

1 diversion points. So as it relates to the service area,  
2 I'm not certain if I can answer that question. I don't  
3 know.

4 STAFF ATTORNEY AUE: Okay.

5 MR. NEUDECK: I'm confused by your question,  
6 what I'm saying.

7 STAFF ATTORNEY AUE: Let me try to clarify.

8 You don't know if there are any parcels of land  
9 that are currently being served by Woods that were not  
10 covered by the original 1911 agreement?

11 MR. NEUDECK: That's correct. I do not know  
12 that.

13 STAFF ATTORNEY AUE: So since your work -- when  
14 I asked you about your pre-1914 analysis, you referred  
15 me back to those agreements. So I'm just clarifying  
16 that you haven't done any other work besides the  
17 analysis of the 1911 agreements to see whether anybody  
18 in the current service area has sort of a separate  
19 pre-1914 right?

20 MR. NEUDECK: No. I don't believe so.

21 STAFF ATTORNEY AUE: Okay. Thank you.

22 MR. NEUDECK: You are welcome.

23 CO-HEARING OFFICER PETTIT: Mr. Mona?

24 WATER RESOURCE CONTROL ENGINEER MONA: Hi.

25 Ernie Mona. Larry, could you put up Exhibit WIC 6S,

1 please? I have a few questions about the place of use  
2 of the 1911 agreement upon which Mr. Neudeck determined  
3 how much water is being claimed under pre-1914 water  
4 rights.

5 Are you familiar with this particular exhibit,  
6 Mr. Neudeck?

7 MR. NEUDECK: Generally this was part of  
8 Mr. Blake's testimony, so I am familiar with its  
9 configuration but I am not entirely familiar with its  
10 purpose. Mr. Blake would speak to that in his direct.

11 WATER RESOURCE CONTROL ENGINEER MONA: Okay.  
12 Well, from what you can see, do you understand that the  
13 yellow line delineates a current boundary of the Woods  
14 Irrigation Company and the turquoise lines delineate, I  
15 guess, the total boundary of the Woods based on the 1911  
16 agreements?

17 MR. NEUDECK: Yes.

18 WATER RESOURCE CONTROL ENGINEER MONA: And you  
19 testified that the pre-1914 claim of right is based on  
20 the potential irrigation of properties within the  
21 turquoise boundaries, or just limited to the yellow  
22 boundary area?

23 MR. NEUDECK: It would be the turquoise  
24 boundaries.

25 WATER RESOURCE CONTROL ENGINEER MONA: Okay.

1 You also testified that the pre-1914 claim of right  
2 would be based on the ability of Woods Irrigation  
3 Company to divert water from the two irrigation  
4 diversion facilities located on the Middle River next to  
5 Howard Road; is that correct?

6 MR. NEUDECK: There's actually two points of  
7 diversion. We have actually considered that for  
8 purposes of this hearing as one point of diversion. The  
9 site east of Howard Road upstream of Howard Road.

10 The second point of diversion is where Stark  
11 Road intersects Middle River.

12 WATER RESOURCE CONTROL ENGINEER MONA: So --

13 MR. NEUDECK: Downstream to the west.

14 WATER RESOURCE CONTROL ENGINEER MONA: Is it  
15 your testimony from those two points of diversion the  
16 entire area that's delineated within the turquoise  
17 boundary lines, would they have been able to irrigate  
18 that entire area from those two points of diversion?

19 MR. NEUDECK: It is my testimony there was one  
20 exclusion. The 1911 agreement did talk about some high  
21 lands or dry lands that did not have facilities at the  
22 time of the 1911 agreement, but the only exclusion that  
23 I noted in the minutes was that there was a 370-acre in  
24 the western reach, western area that was excluded from  
25 irrigation.

1           So as a result of that, it's my conclusion the  
2 balance of it was the remaining service area for Woods.

3           WATER RESOURCE CONTROL ENGINEER MONA: Isn't  
4 that area which is on the left side of the map which is  
5 highlighted in yellow or red cross-hatch, isn't that  
6 area the area which is currently or has been served  
7 under the Woods Robinson Vasquez irrigation agreement  
8 beginning 1925?

9           MR. NEUDECK: Yes, a portion of that is. And  
10 now that cross-hatching is demonstrative of an area  
11 currently served for drainage only.

12           WATER RESOURCE CONTROL ENGINEER MONA: And  
13 isn't that area currently served with water diverted  
14 from another point of diversion on Middle River other  
15 than those two points which you testified as being the  
16 two points upon which the pre-1914 claim of right is  
17 based?

18           MR. NEUDECK: That's correct. But that's a  
19 different district. That's the Woods Robinson Vasquez  
20 district, was not -- so that's a separate --

21           WATER RESOURCE CONTROL ENGINEER MONA: But you  
22 just testified that the pre-1914 claim of right is based  
23 on the entire area which is located within the  
24 delineated turquoise boundary lines here which it  
25 appears some of that area is within the Vasquez

1 Robinson --

2 MR. NEUDECK: Right. That was a subsequent  
3 action. That was in 1925 that the Woods Vasquez  
4 Irrigation Company -- Irrigation District was formed.

5 WATER RESOURCE CONTROL ENGINEER MONA: Was it  
6 possible to service that area from points of diversion  
7 that were being used as the basis upon which the  
8 pre-1914 claim of right is taken?

9 MR. NEUDECK: Yes. I believe it was. There  
10 was some issue as to the ability to serve that area to  
11 the extent that that -- those landowners wanted to serve  
12 it. They wanted to have more control over the system of  
13 irrigation, so they chose to build their own.

14 But you are correct that that part of the  
15 service area is the Woods Robinson Vasquez district that  
16 is now just served for drainage from the Woods  
17 Irrigation Company.

18 WATER RESOURCE CONTROL ENGINEER MONA: Okay.  
19 Thank you.

20 CO-HEARING OFFICER PETTIT: I had a question,  
21 Mr. Neudeck. You explained the use of Fresno scrapers  
22 prior to the time that power equipment became available  
23 to do the levee construction?

24 MR. NEUDECK: Yes.

25 CO-HEARING OFFICER PETTIT: Were you able to

1 offer any estimate of how much of that -- I assume that  
2 levee construction was a constant and ongoing  
3 maintenance and construction program. Do you have any  
4 knowledge of how much of it was completed before the  
5 power equipment, which I gather was the dredge in this  
6 case, came in? How much of it was basically done by  
7 hand and horsepower before the dredge became available?

8 MR. NEUDECK: No, actually I don't.

9 And I don't know how much was actually  
10 constructed by the Fresno scrapers either. There was a  
11 natural bank along that slough, and we refer to it as  
12 High Ridge Levee. Whether all of it was constructed at  
13 the same elevation, say as the dredge created, or maybe  
14 as portions were created by the hand labor and horse  
15 labor, I don't know.

16 But there was a levee there naturally  
17 regardless of any intervention of human, horse, or  
18 equipment. Just some portions of it were improved; and  
19 to what extent, I don't have knowledge of.

20 CO-HEARING OFFICER PETTIT: Thank you.

21 MR. NEUDECK: You are welcome.

22 CO-HEARING OFFICER PETTIT: It appears we're  
23 ready, Mr. Herrick, if you have any redirect for  
24 Mr. Neudeck.

25 MR. HERRICK: I do. Thank you. John Herrick



1 for Woods Irrigation Company.

2 --o0o--

3 REDIRECT EXAMINATION BY MR. HERRICK

4 FOR WOODS IRRIGATION COMPANY

5 --o0o--

6 MR. HERRICK: Mr. Neudeck, I'm going to go  
7 backwards here just to get the stuff that we did most  
8 recently.

9 Mr. Powell asked you a couple of questions  
10 about the capacity of both the channel from which the --  
11 to which the floodgates provide water and the  
12 floodgates. Do you recall those questions?

13 MR. NEUDECK: Yes, I do.

14 MR. HERRICK: If you feel competent to reply,  
15 in your experience and based on your knowledge of  
16 historic farming practices, would the farmers build a  
17 floodgate that was -- had a significantly larger  
18 capacity than the channels in which they fed?

19 MR. NEUDECK: No, that would not make any  
20 reason. I think it's the contrary. I think the  
21 channels themselves were larger, as exhibited by my  
22 current calculation, than what the floodgate was able to  
23 provide.

24 Granted there is a means now to mechanically  
25 lift and put water into that system through pumps. But

1 no, the canal systems typically would be larger than the  
2 diversion itself.

3 MR. HERRICK: And you'd say that's the only  
4 reasonable conclusion, wouldn't you? Not that -- you  
5 wouldn't conclude that somebody would build two 8-foot  
6 floodgates, and then canals off of them that wouldn't  
7 carry the water, the floodgates would transport?

8 MR. NEUDECK: No, the purpose of these canals  
9 was to convey water, not to flood.

10 MR. HERRICK: Thank you.

11 MR. NEUDECK: Not to have them overtop and  
12 flood the lands. They were to collect and convey to the  
13 individual crop land.

14 MR. HERRICK: Mr. O'Laughlin asked you a number  
15 of questions about High Ridge Levee. Do you recall  
16 those questions?

17 MR. NEUDECK: Yes, I do.

18 MR. HERRICK: And those dealt with on which  
19 side and how much materials might have been used to  
20 build up that levee; do you recall?

21 MR. NEUDECK: Yes.

22 MR. HERRICK: And the Chairman also just asked  
23 you a couple questions.

24 Isn't it correct that High Ridge Levee was a  
25 feature prior to any sort of improvement by man?

1           MR. NEUDECK: Well, that's what I just stated,  
2 that the levees along Duck Slough, being that it's a  
3 natural slough that not only extended across Middle  
4 Roberts as well onto Union Island, but it was already  
5 bordered by levees.

6           So the High Ridge Levee feature has been there  
7 in history for quite some time, at least the alignment  
8 of such.

9           MR. HERRICK: And in the manmade improvements  
10 to that feature, would you expect that there would be  
11 borrow pits created on either side of that levee or just  
12 one side?

13          MR. NEUDECK: As I explained to Mr. O'Laughlin,  
14 depending upon the methodology.

15          Certainly with regards to the use of the Samson  
16 dredge, the borrow source was on the waterside entirely  
17 where they moved the material from the waterside borrow  
18 source over and onto the levee alignment.

19          With the horse-drawn Fresno scraper, to some  
20 extent on the waterside. For the most part on the land  
21 side. That was the more readily available material. So  
22 yes, it would be on both sides.

23          MR. HERRICK: And the shape of this feature,  
24 the High Ridge Levee, doesn't that indicate that it was  
25 associated with some alluvial, other -- some alluvial

1 feature?

2 MR. NEUDECK: Correct.

3 MR. HERRICK: And that's because it's not a  
4 straight feature that man would have built, but it's a  
5 sinuous feature that followed an old watercourse; is  
6 that correct?

7 MR. NEUDECK: Yes, most definitely.

8 MR. HERRICK: In your other testimony, you  
9 listed, I don't know, a number of maps and other sources  
10 which don't suggest a watercourse there; they actually  
11 indicate a watercourse; isn't that correct?

12 MR. NEUDECK: Yes.

13 MR. HERRICK: You were also asked questions  
14 about the blue lines on a couple of assessor's parcel  
15 maps. Do you recall that?

16 MR. NEUDECK: Yes, I do.

17 MR. HERRICK: And you would agree, wouldn't  
18 you, that all of the assessor's maps do not have blue  
19 lines on them in the area -- in the position you  
20 designate as Duck Slough; is that correct?

21 MR. NEUDECK: That's correct.

22 MR. HERRICK: And of course, some of those maps  
23 deal with times when there was one landowner on both  
24 sides of the feature; is that correct?

25 MR. NEUDECK: Yes.

1           MR. HERRICK:  So there was very little  
2  incentive or reason for any assessor to mark that line  
3  if it didn't divide any properties, correct?

4           MR. NEUDECK:  It wasn't -- yeah, it wasn't a  
5  feature, exactly, dividing property.

6           MR. HERRICK:  And the question suggested that  
7  perhaps those lines were an indication of a high water  
8  mark?

9           MR. NEUDECK:  I'm not familiar with that  
10 suggestion, but it clearly is not my opinion that that's  
11 a high water mark.

12                   This feature is a very historical feature.  
13 We've got a tremendous amount of evidence in this  
14 hearing with regards to it.

15                   It unquestionably is a natural feature, like  
16 I've indicated, that extends from Burns Cutoff through  
17 Middle Roberts onto Union Island.  There is no question  
18 in my mind.  It's a natural slough.

19           MR. HERRICK:  And you're not concluding that  
20 Duck Slough exists because there's one sinuous lane on  
21 an 1876 assessor's map, are you?

22           MR. NEUDECK:  No, I'm not.

23           MR. HERRICK:  It's just that that assessor's  
24 map seems to conform to all the other information that  
25 you have developed on this, correct?

1           MR. NEUDECK:  Yes, evidence of the existence of  
2  it.  I'm building -- I'm trying to build evidence to  
3  show that beyond just one document.

4           MR. HERRICK:  You were also asked a number of  
5  questions with regards to whether or not High Ridge  
6  Levee or Duck Slough itself was a dividing line between  
7  certain properties.  Do you recall those?

8           MR. NEUDECK:  Yes, from Mr. O'Laughlin.

9           MR. HERRICK:  And Mr. Lindsay, if we could  
10 please pull up Exhibit 3D.  I believe that's from Mussi  
11 which is the included testimony in this.  It's a  
12 handwritten deed.

13           Yes.  If you could go to the next page, please.  
14 Other way.  You were correct.  Right there.  I think  
15 that's it.  Yes.

16           Now, Mr. Neudeck, going -- let me count out  
17 here.  One, two, three, four, five, six, seven, eight,  
18 nine, ten, 11, 12, 13, 14, 15, 16, 17, 18, 19 -- 20  
19 lines from the bottom, the language of this deed, which  
20 is included in your testimony, talks about a line along  
21 quote High Ridge and Duck Slough from that branch of the  
22 San Joaquin River known as Burns Cutoff to Middle River.

23           Do you see that?

24           MR. NEUDECK:  Yes, I do.

25           MR. HERRICK:  And this is in the description of

1 the deed from Fisher to Stewart, et al. Do you recall  
2 that?

3 MR. NEUDECK: I -- I recall it from the fact  
4 that I now am reading it. I didn't recall it prior when  
5 I was asked this question. But yes, my recollection has  
6 been refreshed.

7 MR. HERRICK: And so with this description,  
8 there's no distinction between whether High Ridge Levee  
9 and Duck Slough are actually being referred to as one  
10 feature or two separate features, correct?

11 MR. NEUDECK: It appears as one feature. And I  
12 need to expound on this briefly.

13 Boundary lines along levees are notoriously  
14 called out, I think, incorrectly. In many cases, most  
15 of the boundary lines extend, if it's a cut, say, is a  
16 cut through a piece of property where they dredged an  
17 entire cut, the property lines would exist to the center  
18 of that cut, and in many cases the natural boundary of  
19 this was out in the water because, as I indicated, the  
20 reclamation process of the Delta was to move these  
21 levees back which would be an artificial reclamation  
22 which would leave the original boundary out in the  
23 water.

24 But it's quite common that many times a  
25 surveyor would run a line on top of the highest point

1 because that was convenient.

2 But this particular description is a good call.  
3 It combines both of them. So I think this relates well  
4 to what I think the description should have properly  
5 done.

6 MR. HERRICK: And if one were in a court  
7 proceeding to determine the existence of a riparian  
8 parcel as of, you know, 1911, then somebody would have  
9 to actually do surveys or make decisions upon what was  
10 meant in a 130-year-old deed and go through that sort of  
11 calculation, correct?

12 MR. NEUDECK: That's correct.

13 MR. HERRICK: And without doing that, one can't  
14 draw any conclusion right now as to whether or not  
15 this -- a designation such as this is referring to  
16 something 20 foot away from a current property line or  
17 on a property line, correct?

18 MR. NEUDECK: That's correct.

19 MR. HERRICK: Mr. O'Laughlin asked you a number  
20 of questions with regard to the movement of water back  
21 and forth on Duck Slough from either end. Do you recall  
22 those questions?

23 MR. NEUDECK: Yes, I do.

24 MR. HERRICK: And we have had these lines of  
25 questions in an earlier proceeding, but I just want to



1 make sure the record's clear and your explanation is  
2 complete.

3 Is it your testimony that the Duck Slough  
4 feature you have identified corresponds to that proposed  
5 in the testimony of Mr. Lajoie and Mr. Moore?

6 MR. NEUDECK: Yes.

7 MR. HERRICK: And such if you -- if Duck Slough  
8 were originally open to both Middle River and to Burns  
9 Cutoff, that water could enter the channel through  
10 either end, correct?

11 MR. NEUDECK: That is correct.

12 MR. HERRICK: And the ability of water to enter  
13 at either end is dependent upon what tides or flows are  
14 in the channel from which it might feed, correct?

15 MR. NEUDECK: That's correct.

16 MR. HERRICK: And the fall of the land from  
17 Middle River's -- from Duck Slough's opening on Middle  
18 River down to its opening on Burns Cutoff is  
19 approximately how many feet, to your knowledge?

20 MR. NEUDECK: I would say 5 to 7 feet would be  
21 a reasonable average.

22 MR. HERRICK: And that fall of the property --  
23 of the land is independent of the height of the water at  
24 either end, correct?

25 MR. NEUDECK: That's correct.

1           MR. HERRICK:  So depending upon the height of  
2 the water at either end, and on the other end, one might  
3 determine how much water would flow in one direction and  
4 how much in the other direction?

5           MR. NEUDECK:  Yes.  That would definitely be  
6 the case.  Whether gravity could push it one direction  
7 or the other or whether flow at the upper end would  
8 serve as head to push the water to the lower end on  
9 Burns Cutoff.

10          MR. HERRICK:  So if you had high flows down the  
11 San Joaquin River which entered Middle River, that would  
12 induce flows going in a northeasterly direction into  
13 Duck Slough, correct?

14          MR. NEUDECK:  That's correct.

15          MR. HERRICK:  But conversely, if you had low  
16 flows on the San Joaquin but had high flows on the  
17 Mokelumne or other rivers that were to the north of  
18 that, you might have water flowing from the Duck  
19 Slough -- excuse me -- from the Burns Cutoff and into  
20 Duck Slough, correct?

21          MR. NEUDECK:  Yeah.  The systems, the San  
22 Joaquin system and the Sacramento drainage system, are  
23 two independent systems.  We live in a valley -- and  
24 third on top of that is the tidal action.

25          So none of this is 100 percent consistent.  We

1 are -- the tidal pool does develop at the lower end of  
2 this where we get into a fairly flat pool.

3 At the upper end on Middle River, we are  
4 affected by flows in the San Joaquin River. The lower  
5 end, we can be affected by high tides, atmospheric  
6 conditions, higher flows in the Sacramento drainage  
7 condition.

8 So the elevations can vary on either end of  
9 this Duck Slough system and therefore cause flow in  
10 either direction.

11 MR. HERRICK: But you are not suggesting that  
12 somebody living near Middle River could magically wave  
13 his fingers and make water go upstream on Duck Slough to  
14 reach his property, right? It's a function of the flows  
15 and tides and local conditions?

16 MR. NEUDECK: Yeah, I --

17 MR. HERRICK: Under normal -- under natural  
18 conditions.

19 MR. NEUDECK: I think you misstated your  
20 question. You said on Middle River upstream. So  
21 upstream of Middle River would be off the property, so.

22 MR. HERRICK: I mean coming up Duck Slough.

23 MR. NEUDECK: Okay. The answer then is  
24 correct. Yes, correct.

25 MR. HERRICK: Now after that, your testimony

1 indicates that the water in Duck Slough was manipulated  
2 by man, and specifically by the farmers of the area,  
3 correct?

4 MR. NEUDECK: That's correct.

5 MR. HERRICK: And we heard testimony from  
6 Mr. Nomellini, which was I believe reflected in your  
7 testimony, that dealt with the practice of putting  
8 floodgates or some sort of control structures where  
9 features like Duck Slough would intersect with major  
10 channels like Burns Cutoff and Middle River, correct?

11 MR. NEUDECK: Yes.

12 MR. HERRICK: And those manmade structures were  
13 put in place and operated to either control drainage in  
14 the area or to allow irrigation water to come into the  
15 area.

16 MR. NEUDECK: That's correct.

17 MR. HERRICK: Now, if the people living on  
18 Roberts Island near Duck Slough's junction with Middle  
19 River needed water, would you opine that they would go  
20 down to the Burns Cutoff area and manipulate the tide  
21 gate or would they manipulate the tide gate where Duck  
22 Slough intersects with Middle River?

23 MR. NEUDECK: Most likely the latter.

24 MR. HERRICK: So they would go to the -- they  
25 would operate their systems as -- in the easiest manner

1 possible?

2 MR. NEUDECK: Most definitely. They're  
3 farmers. They're looking for efficiency.

4 They're -- when they need water, they're, I  
5 don't think, looking out months in advance. I mean when  
6 the crop demand requires it, typically related to the  
7 atmospheric conditions, whether the heat's up, they're  
8 going to go to the most efficient source for water at  
9 that time.

10 MR. HERRICK: And so whether or not it's  
11 possible to tidally pump water from Burns Cutoff all the  
12 way up to Middle River on Duck Slough, generally  
13 speaking, any farmer who is using the system would be  
14 involved in the operations of the floodgates nearest his  
15 land, correct?

16 MR. NEUDECK: Yes.

17 MR. HERRICK: Then your testimony also  
18 connected Duck Slough not only to Middle River and Burns  
19 Cutoff, but did it not connect it to that major slough  
20 that you identified which ran from Middle River up to  
21 Kingston School?

22 MR. NEUDECK: Yes.

23 MR. HERRICK: So from your testimony then, the  
24 ability to get water into any portion of Duck Slough  
25 involved a number of potential options, not just one?

1           MR. NEUDECK: Right. Now the head conditions  
2 would not change as a result of that, but the source  
3 would have another source of water to bring water into  
4 Duck Slough.

5           MR. HERRICK: But if the flap gate or floodgate  
6 on Duck Slough at Middle River was filled in and a pump  
7 station was later installed for the service of water to  
8 the Woods Robinson Vasquez, other people relying on Duck  
9 Slough still might be able to get water through that  
10 slough going to Kingston School, correct?

11           MR. NEUDECK: Yes. That's what appeared on the  
12 1976 aerial map. That appears what that watercourse was  
13 extending over to Duck Slough.

14           MR. HERRICK: In fact, your testimony indicates  
15 that that's likely what was going on. People were  
16 taking advantage of the various interconnections of the  
17 system in order to maximize their ability to irrigate  
18 and drain their lands.

19           MR. NEUDECK: Correct. Maximize the efficiency  
20 of the system.

21           MR. HERRICK: And whether or not any particular  
22 landowner was actually operating the system, your  
23 testimony is that the Duck Slough feature had water in  
24 it and was thus a riparian feature to those lands well  
25 through the early 1900s, correct?

1 MR. NEUDECK: That is correct.

2 MR. HERRICK: Just briefly, Mr. Neudeck, with  
3 regard to Mr. O'Laughlin's MSS 8, I just want to make  
4 sure that we're clear on the drawings that have been  
5 made. You're looking at MSS 8 now, aren't you?

6 MR. NEUDECK: Yes, I am.

7 MR. HERRICK: And I believe it's being pulled  
8 up on the screen also. Now you did a cross-section; is  
9 that correct?

10 MR. NEUDECK: That's correct.

11 MR. HERRICK: A cross-section view showing the  
12 Nelson land, a feature labeled as High Ridge Levee, a  
13 Woods Robinson Vasquez irrigation ditch, and then Duck  
14 Slough, then the land of the Robinson parties, correct?

15 MR. NEUDECK: That's correct.

16 And as I look at this, there's one missing  
17 feature on this plan view that I did not show which is  
18 where the cross-section was taken.

19 Because -- and I know this isn't the line of  
20 questioning, but from an engineering perspective that  
21 cross-section is taken south of where the Woods Robinson  
22 Vasquez ditch crosses over to the west side. I just  
23 wanted to clarify that.

24 MR. HERRICK: And your drawing indicates that  
25 the water in Duck Slough is at -- is below the level of

1 the land? Or is that incorrect?

2 MR. NEUDECK: No, I'm showing it within the  
3 limits of the slough. And I show its variability.  
4 There is an arrow there showing the rise and fall that  
5 would be associated with, you know, different heights  
6 within that, that it did not stay constant.

7 MR. HERRICK: And the case that you included in  
8 your testimony talks about the defendants being the  
9 Robinsons and the other parties quote -- excuse me.  
10 That they eliminated a slough which the defendants  
11 quote:

12 Maintained full of water immediately east  
13 of the defendants' land.

14 Correct?

15 MR. NEUDECK: That's correct.

16 MR. HERRICK: Given the correction you made on  
17 the location of it, this tells us that the Duck Slough  
18 was actually artificially maintained -- artificially  
19 filled with water, does it not?

20 MR. NEUDECK: I wouldn't say artificial.  
21 Whether it was artificially or naturally. But it was,  
22 yeah, maintained full. And the purpose obviously was to  
23 irrigate out of that.

24 And that caused seepage onto the Nelson  
25 property, that's what the -- that was the efforts of



1 this case, was to resolve that seepage impact.

2 MR. HERRICK: And the Woods Robinson Vasquez  
3 ditch you've labeled, is that the cement ditch installed  
4 in 1925?

5 MR. NEUDECK: The -- yes. It was cement lined  
6 in 1925 whereas there was an exhibit drawn yesterday  
7 that showed it initially, and I stated that I wasn't  
8 certain at its initial construction whether it was  
9 cement lined. But in 1925 is when it was cement lined.

10 MR. HERRICK: And so prior to the installation  
11 of the cement-lined ditch, do you know if the Woods  
12 Robinson Vasquez group of diverters, were they using  
13 some other ditch or some other feature, if you know?

14 MR. NEUDECK: No, this is a ditch that was  
15 serving their purpose. That's where their pumps pumped  
16 into.

17 MR. HERRICK: And prior to their pumps, could  
18 they not have operated a floodgate on Duck Slough to  
19 keep it full for irrigation?

20 MR. NEUDECK: That's correct.

21 MR. HERRICK: And in fact, that sort of  
22 operation is just what caused the drainage onto Nelson,  
23 is it not?

24 MR. NEUDECK: Well, the operation of having  
25 water in Duck Slough is what caused the seepage onto

1 Nelson.

2 MR. HERRICK: Okay.

3 Could we pull up 30 please, Mr. Lindsay. Thank  
4 you.

5 Mr. Neudeck, yesterday you were questioned by  
6 Mr. Rubin with regard to 30 which is a map that includes  
7 Roberts Island and a feature marked as Duck Slough with  
8 the northeast portion of the Duck Slough feature being  
9 either thicker or wider than the line which follows to  
10 the southwest initially from that. Do you see that?

11 MR. NEUDECK: Yes, I do.

12 MR. HERRICK: And I believe you concluded that  
13 the thinner line was a continuation of Duck Slough; is  
14 that correct?

15 MR. NEUDECK: That is correct.

16 MR. HERRICK: And that's based not just on this  
17 map but on all the other maps and information you've  
18 presented, correct?

19 MR. NEUDECK: That's correct.

20 MR. HERRICK: And I believe it was suggested  
21 that this line may be High Ridge Levee and not any part  
22 of a continuation of Duck Slough, correct?

23 MR. NEUDECK: Suggestion was made, yes. I  
24 didn't agree with it.

25 MR. HERRICK: You see how that other line

1 appears to --

2 MR. NEUDECK: Sort of.

3 MR. HERRICK: -- continuing across Middle River

4 and actually go onto Union Island; do you see that?

5 MR. NEUDECK: Right. That's what I testified

6 earlier today to.

7 MR. HERRICK: Okay. Today?

8 MR. NEUDECK: Yes, I did.

9 MR. HERRICK: Okay. You've already covered

10 that?

11 MR. NEUDECK: I apologize, but yes, I did.

12 MR. HERRICK: Really?

13 MR. NEUDECK: Yes.

14 MR. HERRICK: I move to strike the question.

15 I'm sorry.

16 (Laughter)

17 MR. HERRICK: Couldn't have been sleeping.

18 MR. NEUDECK: I didn't mean to belabor the

19 issue, but I did mention it several times.

20 MR. HERRICK: You mentioned the floodgate going

21 onto Union Island?

22 MR. NEUDECK: No, I did not mention the

23 floodgate. I mentioned the feature going onto Union

24 Island.

25 MR. HERRICK: Oh, what are you screwing with me

1 for? Sorry. I'm mumbling.

2 Are you aware of the feature on Union Island  
3 being a waterway?

4 MR. NEUDECK: Yes, and that there's a floodgate  
5 as well on Union Island, historical floodgate in the  
6 alignment of Duck Slough.

7 MR. HERRICK: So that -- your knowledge of  
8 there being a floodgate on the Union Island part, does  
9 that help confirm that the line on the Roberts Island  
10 part is also a slough rather than just a levee?

11 MR. NEUDECK: Yes.

12 MR. HERRICK: All right. Mr. Neudeck, you were  
13 asked a number of questions yesterday by Mr. Rubin as to  
14 how you knew the various lines on a number of maps -- I  
15 believe we referenced J, P, and K attachments and  
16 whether or not they were irrigation ditches or drainage  
17 ditches. Do you recall that?

18 MR. NEUDECK: Yes.

19 MR. HERRICK: In your analysis of the various  
20 maps, did you not trace the lines of any particular  
21 feature back to whether or not they joined with the  
22 Woods diversion point?

23 MR. NEUDECK: Generally, yes. I mean that's --  
24 there's a host of lines that emanate from that point of  
25 diversion, yes.

1           MR. HERRICK:  So if there is a dotted line on a  
2 map, and dotted lines are listed as canals, and the  
3 dotted line goes all the way back up to the Woods  
4 diversion point, would you conclude that's an irrigation  
5 ditch or a road?

6           MR. NEUDECK:  I would conclude that's an  
7 irrigation ditch.

8           MR. HERRICK:  And whether or not drainage can  
9 be backed into that canal down flow, that would be an  
10 irrigation ditch if it comes off of the high point of  
11 the land which is the diversion point, correct?

12          MR. NEUDECK:  Correct.  And I -- those are  
13 interchangeable, irrigation and drainage.  They serve  
14 both purposes, a conveyance canal that serves both  
15 purposes.

16          MR. HERRICK:  And I believe your testimony was  
17 that the Hendersen Billwiller map in conjunction with  
18 other maps allows you to then conclude that there was a  
19 diversion system -- diversion point feeding an  
20 irrigation system that covered the Woods properties,  
21 correct?

22          MR. NEUDECK:  Correct.

23          MR. HERRICK:  And there weren't any large gaps  
24 of areas where there were no canals, were there?

25          MR. NEUDECK:  Generally speaking, no.

1           MR. HERRICK:  So your conclusion about serving  
2  the Woods brothers lands was not based on supposition;  
3  it was based upon a number of maps confirming to you  
4  connections to a diversion point on Middle River?

5           MR. NEUDECK:  Correct.

6           MR. HERRICK:  In your response yesterday to  
7  questions by Mr. Rubin, let me -- excuse me.  Let me  
8  start over.

9           Mr. Rubin asked you whether or not you knew how  
10 much water was being diverted prior to 1914 by the Woods  
11 Irrigation Company.  Do you recall that?

12          MR. NEUDECK:  Yes, I do.

13          MR. HERRICK:  And the question indicated -- the  
14 question sought to find out whether or not you knew the  
15 exact amount being diverted.  Do you recall that?

16          MR. NEUDECK:  Yes.

17          MR. HERRICK:  And of course there were other  
18 questions, but do you not agree that your testimony  
19 makes a definite conclusion about the amount of water  
20 that was being diverted prior to 1914?

21          MR. NEUDECK:  Based off the 1911 agreements, it  
22 does, yes.

23          MR. HERRICK:  And you did calculations, and  
24 there's other information involved, but you concluded  
25 that there was a diversion going on, correct?

1 MR. NEUDECK: Yes.

2 MR. HERRICK: But there are no records that  
3 anybody has located from 1911 that show people metering  
4 water flow, correct?

5 MR. NEUDECK: That is correct.

6 MR. HERRICK: And in instances like this where  
7 one's attempting to determine flows of water 100 years  
8 ago, in your experience are there records that would  
9 show exact flows?

10 MR. NEUDECK: Not to my knowledge, no. I think  
11 that would -- we're -- for this region, we're just now  
12 starting to measure flows. So no. The answer is no.

13 MR. HERRICK: And so if you were asked to draw  
14 conclusions about how much flow was being done, wouldn't  
15 you do what you have done in this proceeding, which is  
16 to investigate all the available information and then  
17 make reasonable conclusions?

18 MR. NEUDECK: Yeah, I think my conclusions are  
19 quite reasonable. I have substantial evidence that that  
20 was what was being provided. I am very pleased with the  
21 evidence that proves that.

22 MR. HERRICK: And is there any doubt in your  
23 mind that diversions were taking place prior to 1914  
24 from the Woods Irrigation Company diversion points?

25 MR. NEUDECK: No, there's -- I have no doubt.

1           MR. HERRICK: Both yesterday and today, you  
2 were asked some questions with regard to the elevation  
3 and fall of the land in Woods Irrigation Company. Do  
4 you recall those?

5           MR. NEUDECK: Yes, I do.

6           MR. HERRICK: And I believe yesterday you  
7 answered that the elevations in Woods ran from a high of  
8 plus 2 or plus 5 feet down to minus 5 or minus 7 feet?

9           MR. NEUDECK: That's correct.

10          MR. HERRICK: And from those answers, you were  
11 asked questions about whether or not a gravity feed  
12 system would get water from one end of Woods to the  
13 other. Do you recall that?

14          MR. NEUDECK: I don't know if -- that specific  
15 question, but questions related thereto, yes.

16          MR. HERRICK: Okay. Based on what you've  
17 examined so far, do you have any reason to believe that  
18 a gravity system alone would not --

19          MR. NEUDECK: No, I have no evidence to  
20 demonstrate that a gravity system could not move water  
21 completely to the north end of the system.

22          As we just testified to through this redirect,  
23 it may not have been the most efficient means, but the  
24 ability is there.

25          MR. HERRICK: And of course, it's likely that



1 pumps may have been used before 1914 too, also?

2 MR. NEUDECK: Most definitely.

3 MR. HERRICK: MSS 2 -- do we have that on --  
4 thank you. Sorry.

5 Mr. Neudeck, MSS 2 is now on the screen. I  
6 apologize if I'm beating a dead horse here, but is it  
7 not correct to say that this is a map of a proposed  
8 irrigation ditch? Correct?

9 MR. NEUDECK: Yes, that's what the map  
10 indicates.

11 MR. HERRICK: Do you read this to show the line  
12 being the proposed ditch or the line being the levee or  
13 both?

14 MR. NEUDECK: No, I read this as the line is  
15 the levee. And the numbers to the right or to the east  
16 of the -- what's denoted on this map as Cross Levee  
17 which is also known as the High Ridge Levee/Duck Slough  
18 levee, those numbers, 3.4, 4.1, 4.77, would be the  
19 profile or the elevations of the flow line of this  
20 proposed irrigation ditch along the east side of that  
21 Cross Levee.

22 MR. HERRICK: I may be messing this up then.  
23 But you don't read that as the line is the proposed  
24 ditch with elevations along points of that proposed  
25 ditch, and then just a reference to where the levee is

1 in relation to the ditch?

2 MR. NEUDECK: Can you re-ask that question?  
3 I'm a little bit confused by that question. I need to  
4 have you restate that. I apologize.

5 MR. HERRICK: I don't know if this goes  
6 anywhere but the -- is it an incorrect interpretation of  
7 this to say that the line is the proposed ditch, and the  
8 elevations along it are the elevations on that ditch  
9 where -- you know, along that ditch. And the words  
10 "Cross Levee" are just indications which side of the  
11 ditch the levee is, rather than the line being the  
12 levee?

13 MR. NEUDECK: The line is a depiction of the  
14 levee, whether it's the center line or otherwise.

15 MR. HERRICK: Okay.

16 MR. NEUDECK: And the shots are to the east  
17 where the location of the canal was, which is depicted  
18 in MSS 8.

19 MR. HERRICK: No problem.

20 I think that's all I have. Thank you very  
21 much. Appreciate your indulgence.

22 CO-HEARING OFFICER PETTIT: Thank you, Mr.  
23 Herrick. Mr. Rose, any recross?

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RECROSS-EXAMINATION BY MR. ROSE  
FOR PROSECUTION TEAM  
--o0o--

MR. ROSE: Good morning again, Mr. Neudeck.  
Just for clarification, did I hear you say in response to a question from Mr. Herrick just now that you have substantial evidence to support your calculations that you made in your testimony regarding the pre-1914 direct diversion rate, specifically from the 1911 agreements?

Does that question make sense.

MR. NEUDECK: No, it does not make sense to me. I don't recall responding in that manner.

MR. ROSE: Okay. So --

MR. NEUDECK: I think it was related to something else. I don't recall saying that.

MR. ROSE: Okay. So you're not now saying that you have substantial evidence to support the calculations you made in your written testimony regarding the direct diversion rate as delineated in the 1911 agreements?

MR. NEUDECK: Well, that is my evidence. The 1911 agreement, I think, is great evidence for the time. I mean it's clear. It's concise. There's acreages. There's diversion rates. I think that's good -- it's

1 good evidence of what was intended at that time.

2 MR. ROSE: So, but I'm just --

3 MR. NEUDECK: And beyond which I don't have  
4 other data. I'm not holding back something.

5 MR. ROSE: Right. I understand that. I  
6 just -- possibly, I didn't hear you correctly.

7 I thought you were saying that you had  
8 additional substantial evidence that supported your  
9 calculations that ended up with a different diversion  
10 rate than the one specified in the 1911 agreements.  
11 You're not saying that, are you?

12 MR. NEUDECK: No, I'm not.

13 MR. ROSE: Okay. Thank you. I just wanted to  
14 clear that up.

15 MR. NEUDECK: You are welcome.

16 CO-HEARING OFFICER PETTIT: I see I don't need  
17 to ask.

18 --o0o--

19 RE-CROSS-EXAMINATION BY MR. RUBIN

20 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

21 --o0o--

22 MR. RUBIN: Good morning, Mr. Neudeck.

23 MR. NEUDECK: Good morning, Mr. Rubin.

24 MR. RUBIN: Let me first start with MSS 8, just  
25 to make sure we're clear. Let me say it differently.

1 Let me make sure I'm clear on your opinion.

2 On MSS 8, you've depicted a feature that you  
3 have labeled as High Ridge Levee, correct?

4 MR. NEUDECK: Yes, I have.

5 MR. RUBIN: And is it your testimony today that  
6 the High Ridge Levee, to the extent it was created by  
7 scrapers, scraped dirt from the -- I guess the west and  
8 pulled it east?

9 MR. NEUDECK: Yes. Actually my -- that  
10 slightly incorrectly states my testimony.

11 My testimony is that the levee was created by  
12 several methods on the north end whereby the more larger  
13 levee was created by the Samson dredge. The borrow area  
14 would have been within the Duck Slough area itself.

15 MR. RUBIN: Just to be clear, the levee we're  
16 talking about is what's labeled the High Ridge Levee --

17 MR. NEUDECK: Yes.

18 MR. RUBIN: -- on MSS 8?

19 MR. NEUDECK: Right. Would have been the levee  
20 to the west. But that speaks as well to the levee to  
21 the east. But the borrow source at that time was within  
22 the slough itself because it was a floating dredge.

23 MR. RUBIN: And the extent of your information  
24 is there's some portion of the levee close to Burns  
25 Cutoff, but you don't know how far down towards Middle

1 River the Samson dredge was used to create the levee?

2 MR. NEUDECK: That's correct. But now to  
3 answer your first question, whereas if it was  
4 horse-drawn labor, they would have likely done most of  
5 their borrowing from the land side which would have, as  
6 a result, resulted probably in another ditch to the land  
7 side.

8 I did not depict that on this cross-section,  
9 but as they were borrowing material, they were lowering  
10 the grade of the adjoining farmland which would have  
11 then likely been another feature, another ditch.

12 But I didn't depict that. But that -- that's  
13 more likely the source for the horse-drawn labor.

14 MR. O'LAUGHLIN: Can -- if you don't mind, can  
15 we ask that the witness draw that on MSS 8 or just  
16 depict it schematically of what he's talking about in  
17 regards to lowering the lands in regards to the  
18 scrapers, if he could?

19 CO-HEARING OFFICER PETTIT: Why don't you go  
20 ahead, Mr. Neudeck. And please describe it again as  
21 you're drawing it, or after you've drawn it.

22 MR. NEUDECK: Maybe what I can do is start with  
23 a new picture. I apologize. This first one's a little  
24 bit -- I'm going to give you --

25 MR. RUBIN: Can we -- for purposes of making

1 sure that the record's clear since we already have one  
2 exhibit marked as MSS 8, would it be better for --

3 THE WITNESS: I can do it on this. I can draw  
4 it on brown. Can you scan brown?

5 MR. RUBIN: Which would you prefer, Hearing  
6 Officer Pettit? We can revise the exhibit, or it could  
7 be provided on --

8 CO-HEARING OFFICER PETTIT: Why don't you just  
9 label it MSS 8 revised or something.

10 Larry's probably got a better suggestion.

11 MR. NEUDECK: My drawing's not that good.  
12 Don't worry. It can be bumpy. It will work.

13 I'm on a new sheet which will be MSS 11.

14 MR. RUBIN: 11.

15 MR. NEUDECK: Okay. Marked MSS 11.

16 I'm going to give just a general configuration  
17 of what the slough looked like in a natural state.

18 Now what I will do is give you the initial  
19 configuration as to what would have likely occurred with  
20 the dredger, and what I'm going to do is demonstrate a  
21 cut by the dredger, and then I'm going to cross-hatch  
22 the area of excavation.

23 And then I'm going to show that this  
24 cross-hatch was thence placed on the opposing banks,  
25 then creates a new levee which I'll double-cross-hatch,

1 something similar to this.

2 Now this is the mechanical means.

3 I apologize for the audience. I'm standing in  
4 front of it, and I'm doing this rather quickly.

5 But so Samson dredge would excavate out a  
6 portion of the channel including part of the original  
7 sedimentary deposit bank and then in turn deposit that  
8 back to create the levee in a slightly widened  
9 condition.

10 I have a real propensity to draw things  
11 slanting to right. I apologize.

12 The variation now, taking that and doing this  
13 for hand-labor sake, the likeliness is they may have  
14 borrowed some of the material on this side, but most  
15 likely what they did -- and I said "this side" being the  
16 water side, for record's sake -- they came over here and  
17 borrowed material on the land side and then transferred  
18 that to create the levee here.

19 The predominant borrow source for the  
20 horse-drawn labor would be landward. The only source  
21 for the dredger would be waterward.

22 MR. RUBIN: Mr. Neudeck, you have now two  
23 diagrams on MSS 11. The second diagram you have single  
24 hashes indicating both the borrowed -- and based upon my  
25 discussion just now, you've created a cross-hatch on the



1 area where the borrowed material was placed?

2 MR. NEUDECK: For fill, yes.

3 MR. RUBIN: So fill material on both diagrams

4 are now reflected as a cross-hatch, single hatch --

5 MR. NEUDECK: Would be the borrow.

6 MR. RUBIN: For the borrow. Thank you.

7 MR. NEUDECK: Do you want me to -- maybe I can

8 do just a simple dredge, and I'll put horse-drawn,

9 Fresno scraper.

10 MR. RUBIN: Thank you.

11 MR. NEUDECK: Just trying.

12 MR. RUBIN: Now Mr. Neudeck, you are an

13 engineer, correct?

14 MR. NEUDECK: Yes, I am.

15 MR. RUBIN: And engineering is a science; is

16 that correct?

17 MR. NEUDECK: I construe it to be a science,

18 yes.

19 MR. RUBIN: And traditional scientific method

20 is to present a hypothesis and test your hypothesis; is

21 that correct?

22 MR. NEUDECK: Yes, that would be correct.

23 MR. RUBIN: In this case, did you start with a

24 hypothesis?

25 MR. NEUDECK: This was a research project to

1 put together documentation to prove a point.

2 MR. RUBIN: Okay. And what was the point that  
3 you were assigned to prove?

4 MR. NEUDECK: It was our team -- and this is  
5 not solely Mr. Neudeck. This is, as I've indicated  
6 before, was to prove the water rights of the Woods  
7 Irrigation Company.

8 MR. RUBIN: So you didn't start with a  
9 hypothesis, like whether Duck Slough existed or not?

10 MR. NEUDECK: No, I did not start with that.

11 MR. RUBIN: Again, you started to prove a  
12 point. And what you did is you understood what the  
13 points was, and you assessed information to try to  
14 support that point?

15 MR. NEUDECK: Yes. I researched information to  
16 support that point.

17 MR. RUBIN: Thank you. If we may, Mr. Lindsay,  
18 I know I asked you to be prepared to present on the  
19 overhead a document, but would it be too difficult if I  
20 ask that you present a different document first?  
21 Specifically Exhibit 3D in the Mussi matter, which I  
22 believe is a deed.

23 And Mr. Neudeck, do you recall Mr. Herrick  
24 asking you questions about the deed that's been marked  
25 as 3D in the Mussi matter?

1 MR. NEUDECK: Yes, I do.

2 MR. RUBIN: And Mr. Herrick talked to you about  
3 the reference to Duck Slough; is that correct?

4 MR. NEUDECK: That's correct.

5 MR. RUBIN: Now, it's very difficult for me to  
6 read these old deeds. Have you read this deed?

7 MR. NEUDECK: I've generally glanced at it. As  
8 I indicated, my surveyor, Mr. Landon Blake, is the one  
9 that did the, you know, the full reading of these. I  
10 generally have looked at these.

11 MR. RUBIN: Is it your view that the deed  
12 that's been marked in the Mussi matter Exhibit 3D  
13 evidences Duck Slough running from Burns Cutoff to  
14 Middle River?

15 MR. NEUDECK: I don't know that that was the  
16 purpose of that rather than to exhibit the existence of  
17 the cross -- of Duck Slough.

18 MR. RUBIN: So the deed that's been marked as  
19 Exhibit 3D in the Mussi matter just in your mind  
20 demonstrates that Duck Slough existed but not  
21 necessarily that it existed from Burns Cutoff to Middle  
22 River?

23 MR. NEUDECK: No, that wasn't -- yeah. Yes.  
24 Yes.

25 MR. RUBIN: Okay. Just to be clear: You

1 believe the deed that's been marked as 3D simply  
2 evidences the fact that Duck Slough existed but not  
3 necessarily that it ran from Burns Cutoff to Middle  
4 River?

5 MR. NEUDECK: Correct.

6 MR. RUBIN: Okay. Thank you.

7 Now, Mr. Lindsay, thank you for placing that  
8 onto the overhead.

9 Mr. Neudeck, you talked a little bit about Duck  
10 Slough and how I believe Duck Slough, the elevation of  
11 Duck Slough, changes from Burns Cutoff to Middle River.  
12 Do you recall that question from --

13 MR. NEUDECK: Well, yeah. And I -- I don't  
14 know if that clearly recounts my testimony. What I'm  
15 speaking to is the general fall of the land --

16 MR. RUBIN: Okay.

17 MR. NEUDECK: -- which Duck Slough travels  
18 through.

19 MR. RUBIN: And it's your view that Duck Slough  
20 falls about 5 to 7 feet as it travels from Middle River  
21 to Burns Cutoff?

22 MR. NEUDECK: Yes.

23 MR. RUBIN: So it's a fall from Middle River to  
24 Burns Cutoff?

25 MR. NEUDECK: Yes, that's correct. A fall in

1 elevation.

2 MR. RUBIN: Okay. Now, do you have a sense --  
3 and again, you believe it falls about 5 to 7 feet as it  
4 travels from Middle River to Burns Cutoff?

5 MR. NEUDECK: That's correct. That's the  
6 ground elevation fall.

7 MR. RUBIN: Do you have a sense of the  
8 elevation of Duck Slough at Middle River?

9 MR. HERRICK: Can I just ask for clarification?  
10 I'm little confused.

11 We're talking about the water level or the  
12 channel bottom or the land in these fall questions?

13 MR. O'LAUGHLIN: I will rephrase and ask  
14 another foundational question to clarify.

15 Your conclusion that Duck Slough falls 5 to 7  
16 feet is based upon what time frame?

17 MR. NEUDECK: Again, I think you're misstating  
18 my testimony.

19 MR. RUBIN: I apologize.

20 MR. NEUDECK: Mr. Herrick actually asked the  
21 question that I was going to ask. Because what you're  
22 stating is I have not entered into my direct testimony.

23 I have not given any direct testimony as to the  
24 actual fall of the flow line of Duck Slough, which is  
25 where I think your line of questioning is headed.

1 I'm giving you the general fall with which the  
2 ground that slough travels through. Duck Slough was  
3 suppressed. It was below these elevations.

4 MR. RUBIN: I appreciate that. Let's just -- I  
5 appreciate that clarification. I was referring to,  
6 although I should have been more specific, the ground.

7 MR. NEUDECK: Okay.

8 MR. RUBIN: What year is your conclusion about  
9 the fall of the ground for Duck Slough?

10 MR. NEUDECK: It's generally supported by the  
11 quad, so 1911 and then again the current quads. There's  
12 not substantial changes in between those elevations.  
13 That's the general fall today as well as it was back  
14 then.

15 Now I also testified that the ground has been  
16 levelled substantially over the last hundred years with  
17 the mechanism that's entered into the farming practices,  
18 but --

19 MR. RUBIN: And --

20 MR. NEUDECK: -- the general fall still remains  
21 the same.

22 MR. RUBIN: But the fall of the land within  
23 which the water of Duck Slough flowed doesn't exist  
24 today at Middle River. There is no Duck Slough today at  
25 Middle River, is there?

1 MR. NEUDECK: Well, that's not what you asked.

2 But no, there's no Duck Slough.

3 MR. RUBIN: Let's just take 1911.

4 In 1911, it's your opinion that the ground of  
5 Duck Slough changed in elevation about 5 to 7 feet?

6 MR. NEUDECK: Correct.

7 MR. RUBIN: What was the elevation of that  
8 ground at Middle River?

9 MR. NEUDECK: I estimate somewhere between zero  
10 and plus 5 because the plus 5, as I indicated to  
11 Mr. O'Laughlin -- or maybe; strike that -- to you  
12 yesterday was the high points. And the, you know -- so  
13 I average that on the order of 1 to 2 feet in elevation.

14 Now this is -- this is elevation above mean sea  
15 level. So sea level is zero.

16 So there can be confusion, and I want to make  
17 sure everyone understands we are dealing in elevation.

18 MR. RUBIN: And just again, my question was  
19 specific to Duck Slough at the place where it joined  
20 Middle River.

21 MR. NEUDECK: Are you talking about the flow  
22 line of --

23 MR. RUBIN: No --

24 MR. NEUDECK: -- Duck Slough?

25 MR. RUBIN: -- the ground.

1 (Interruption by the reporter)

2 MR. O'LAUGHLIN: The specific term is invert.

3 MR. NEUDECK: Well, or flow line. They're  
4 interchangeable.

5 MR. RUBIN: Do you understand my question,  
6 Mr. Neudeck, at this point?

7 MR. NEUDECK: Yeah, and I think I answered it.  
8 But I will re-answer it.

9 MR. RUBIN: Please.

10 MR. NEUDECK: You asked what the ground  
11 elevation was at Duck Slough, so I'm going to qualify  
12 that by saying the adjacent ground level. The farm  
13 level at that point would be between zero and plus 5,  
14 probably on an average 1 to 2 feet.

15 MR. RUBIN: And what was the elevation of  
16 the -- that would be the same elevation for the ground  
17 for Duck Slough?

18 MR. NEUDECK: Well, it's adjoining Duck Slough.  
19 So the ground at Duck Slough, are you talking about the  
20 height of the bank? Are you talking about the invert as  
21 Mr. O'Laughlin stated or the flow line?

22 MR. RUBIN: I'm speaking specifically of the  
23 invert. What is the elevation of the invert of Duck  
24 Slough at Middle River?

25 As Mr. Herrick has raised, what is an invert?



1           MR. NEUDECK:   Okay.  You didn't give me a time  
2 frame, but --

3           MR. RUBIN:    1911.  Again, my question --

4           MR. NEUDECK:   I'm not trying to be  
5 argumentative, but invert is the flow line, the  
6 bottom -- let's just say the bottom of the channel.  
7 That's the lowest point in the channel.

8           MR. RUBIN:    And Mr. Neudeck, my question:  In  
9 1911, what was the invert of Duck Slough at the place it  
10 joined Middle River?

11          MR. NEUDECK:   I don't have a survey of it.  I  
12 would assume it's something on the order of probably 5  
13 feet below sea level, maybe 6 feet below sea level.

14          It was clearly below sea level.  It was --  
15 water was being transmitted into it by gravity.  We talk  
16 about tides down to minus 1 and a half feet.  Figure a  
17 3-foot-deep ditch to 4-foot-deep ditch puts it 5 to 6  
18 feet below sea level.

19          MR. RUBIN:    And what was the invert of Duck  
20 Slough at Burns Cutoff?

21          MR. NEUDECK:   I would anticipate it would be on  
22 a similar level.  But it might have been slightly higher  
23 at that point.  I don't have -- I don't have any data to  
24 suggest otherwise.

25          MR. RUBIN:    And when you testified that the

1 gradient of Duck Slough changed 5 to 7 feet, that wasn't  
2 in reference to the invert; that was in reference to the  
3 surface level of the water?

4 MR. NEUDECK: No, was that in reference to the  
5 ground adjacent, I was referencing it to.

6 MR. RUBIN: So in terms of the change in the  
7 elevation of the invert from Middle River to Duck  
8 Slough, it's your testimony that there was a foot or two  
9 change?

10 MR. NEUDECK: No, I haven't testified to that.

11 MR. RUBIN: What do you believe was the change  
12 of the invert as you moved from Middle River to Duck  
13 Slough?

14 MR. NEUDECK: Generally it would be somewhat  
15 similar to the fall, but these ditches were not graded  
16 for fall -- graded for slope. So it might have been  
17 slightly flatter.

18 Difficult to say. I did not -- wasn't there,  
19 and we don't have surveys of the flow line, but --

20 MR. RUBIN: You don't --

21 MR. NEUDECK: -- it would be generally -- they  
22 would generally dig a consistent depth of a ditch  
23 throughout, so therefore it would follow the contour of  
24 the ground.

25 So if it was 5 feet deep at Middle River and 5

1 feet deep at Burns Cutoff, therefore it would be the  
2 same slope as the adjoining ground.

3 MR. RUBIN: So is it your opinion that the  
4 invert at Middle River dropped 5 to 7 feet as it -- as  
5 compared to the --

6 MR. NEUDECK: That would be a general  
7 conclusion of mine, yes.

8 MR. RUBIN: Just to make sure your answer, the  
9 invert at -- just to make sure the record's clear -- the  
10 invert at Middle River as compared to the invert at  
11 Burns Cutoff would drop about 5 to 7 feet?

12 MR. NEUDECK: Correct.

13 MR. RUBIN: And if you -- you've testified that  
14 the invert at Middle River for Duck Slough was 5 to 6  
15 (sic) feet below mean sea level. If my math is correct,  
16 the invert would have dropped 5 to 7 feet from that  
17 minus 5 to 7 feet at Middle River?

18 MR. NEUDECK: Yeah. I said -- yeah, on the  
19 order of minus 5 to 7, and likewise the same at the  
20 Burns Cutoff side.

21 MR. RUBIN: Thank you.

22 Now, Mr. Neudeck, I have before us MSS 8. The  
23 origin of MSS 8 is to reflect at least in part your  
24 understanding of a court of appeal decision, correct?

25 MR. NEUDECK: Well, I don't know if that

1 correctly states the origin of this.

2 Mr. O'Laughlin drew this for some schematic  
3 depictions of what he was asking me questions on. So I  
4 don't know that it was directly related to the case.

5 MR. RUBIN: Mr. Neudeck, on MSS 8, you've  
6 identified property as Nelson and property as Robinson;  
7 is that correct?

8 MR. NEUDECK: That is correct.

9 MR. RUBIN: And the Nelson and Robinson  
10 properties as depicted on MSS 8 are the location of  
11 properties that are discussed in a court of appeal  
12 decision that's attached to your testimony?

13 MR. NEUDECK: That's correct.

14 MR. RUBIN: And it's your view that in the  
15 court decision there was a complaint by Nelson that the  
16 Nelson property was being affected by seepage from the  
17 Robinson property, correct?

18 MR. NEUDECK: That is correct.

19 MR. RUBIN: And you believe that there's an  
20 error in the court of appeal decision, correct?

21 MR. NEUDECK: That is correct.

22 MR. RUBIN: There's a reference in the court of  
23 appeal decision to seepage occurring from a watercourse  
24 that's east of the Robinson property, correct?

25 MR. HERRICK: Mr. Chairman, I don't too much

1 object, but I didn't cover anything on redirect with  
2 regard to Mr. Neudeck's testimony about correcting the  
3 language in that case. That was purely on direct and  
4 cross.

5 CO-HEARING OFFICER PETTIT: I don't recall that  
6 he did, Mr. Rubin.

7 MR. RUBIN: Obviously, the -- well, I agree  
8 that Mr. Herrick did not ask questions about the court  
9 case. But he did ask questions about MSS 8.

10 MSS 8 was a figure that Mr. Neudeck drew to try  
11 to explain the concept that Mr. Neudeck cites the court  
12 of appeal decision to support, that the depiction as an  
13 example of the High Ridge Levee, the irrigation canal,  
14 Duck Slough were all to elicit information about how the  
15 seepage may have occurred.

16 And Mr. Herrick did ask questions about MSS 8,  
17 and I'm just exploring that further.

18 CO-HEARING OFFICER PETTIT: Why don't you just  
19 make the question specific to the exhibit there that's  
20 before you. If you want to ask him something about  
21 that, fine.

22 MR. RUBIN: Mr. Neudeck, did you review any of  
23 the information that Mr. Moore prepared for this  
24 proceeding?

25 MR. NEUDECK: Yes, I'm familiar with it.

1           MR. RUBIN:  And Mr. Moore provided maps that  
2 indicate where he believes natural watercourses exist;  
3 is that correct?

4           MR. NEUDECK:  Yes, he did.

5           MR. RUBIN:  Did any of the information that  
6 Mr. Moore presented in this proceeding identify a  
7 natural watercourse to the east of the Robinson property  
8 as depicted on MSS 8?

9           MR. NEUDECK:  I don't have specific  
10 recollection of that.  There was natural watercourses  
11 throughout the Woods Irrigation Company area.  I don't  
12 have a direct recollection of such.

13           But the case was quite specific to, you know,  
14 filling of a slough.  I think the evidence speaks loudly  
15 to the fact that this was the slough of substantial  
16 nature they were irrigating out of, not an old meander.

17           MR. RUBIN:  But Mr. Neudeck, the case spoke of  
18 a slough that was east of the Robinson property,  
19 correct?

20           MR. NEUDECK:  It did.

21           MR. RUBIN:  Okay.  Thank you.

22           Mr. Neudeck, Mr. Herrick asked you a question  
23 about the feature that's depicted on Exhibit 30 in the  
24 Mussi matter, 30 that was marked by Woods Irrigation  
25 Company.  Do you recall that line of questioning?

1 MR. NEUDECK: Yes, I do.

2 MR. RUBIN: And on Exhibit 30, there is a  
3 feature that's labeled Duck Slough, correct?

4 MR. NEUDECK: Yes, there is.

5 MR. RUBIN: And the feature that's labelled  
6 Duck Slough again has a darker line, and that's where  
7 the depiction of Duck Slough or the words "Duck Slough"  
8 appear above -- excuse me. Let me rephrase that.

9 In Exhibit 30, Duck Slough is written just  
10 above a dark line, correct?

11 MR. NEUDECK: Yes.

12 MR. RUBIN: There is no reference to Duck  
13 Slough above the lighter-colored line; is that correct?

14 MR. NEUDECK: It's a continuation of the same  
15 line.

16 MR. RUBIN: Do you have an explanation of why  
17 they might write Duck Slough towards the Burns Cutoff  
18 area and not in the middle of the map where the line is  
19 depicted?

20 MR. NEUDECK: It was the mapper's technique.  
21 If you look throughout this map, you'll see the  
22 designation of the sloughs do not cover the entire  
23 slough or watercourse. So I -- that doesn't bother me  
24 the least. The line is a continuation.

25 MR. RUBIN: Isn't it the technique for, on this

1 map, for the designation of a slough to appear in the  
2 middle of where the slough is depicted?

3 MR. NEUDECK: No, I wouldn't agree with that.

4 MR. RUBIN: And when you are looking at --  
5 Mr. Lindsay, if you wouldn't mind showing a little bit  
6 of the map further north.

7 Thank you. Is Whiskey Town Slough depicted on  
8 this map? Thank you. I'm sorry. Is Whiskey Slough --

9 MR. NEUDECK: I keep calling it west Wilhoit,  
10 and it's Wilhoit Douglass, so. Whiskey Slough is  
11 depicted on there, and it is not depicted in the middle  
12 of that slough. The slough continues to the north.

13 MR. RUBIN: And to the south?

14 MR. NEUDECK: And to the south.

15 MR. RUBIN: Okay. Thank you.

16 Mr. Lindsay, if you wouldn't mind, if you have  
17 been able to find assessor's parcel map from San Joaquin  
18 County for the 1882 to 1883 period.

19 Do you have, Mr. Neudeck, the 1882-1883  
20 assessor's parcel map?

21 MR. NEUDECK: Yes, I do. I need to get back to  
22 it. I apologize. I folded it back up.

23 MR. LINDSAY: Let me find it.

24 MR. NEUDECK: It's from page 5 in the stack for  
25 that exhibit.



1 MR. RUBIN: Mr. Lindsay, if you wouldn't mind  
2 focusing our attention on the area that has Section --  
3 maybe 34, depicted at the bottom of assessor's parcel  
4 map for 1882 and 1883?

5 MR. NEUDECK: Not the chair to sit in in this  
6 proceeding.

7 MR. RUBIN: Mr. Neudeck, do you now have in  
8 front of you assessor's parcel map for the 1882-1883  
9 period?

10 MR. NEUDECK: Yes, I do.

11 MR. RUBIN: There is a feature that appears in  
12 Section 34 at the bottom of the map; is that correct?

13 MR. NEUDECK: Yes, there is.

14 MR. RUBIN: That feature is depicted as --  
15 there are two dashed lines, correct? Parallel lines?

16 MR. NEUDECK: Two lanes, yes. I wouldn't  
17 necessarily -- I'm not sure they're dashed, but there's  
18 two lines.

19 MR. RUBIN: Does it appear dashed in Section  
20 27?

21 MR. NEUDECK: Yeah, it's broken a little bit.  
22 It's not a consistent dash. That's why I'm --

23 MR. RUBIN: This is a feature that we've been  
24 discussing that's been referred to in different ways.  
25 On this map, is it labeled a levee?

1           MR. NEUDECK: I don't see any label of the  
2 levee, but this is a feature of Duck Slough we've been  
3 referring to.

4           MR. RUBIN: Mr. Neudeck, let me provide you the  
5 copy that I have, and I'll draw your attention to this  
6 feature as it moves through Section 23 -- excuse me --  
7 Section 13.

8           MR. NEUDECK: (Reviewing document)

9           MR. RUBIN: Between the dotted lines in Section  
10 13, there is some writing; is that correct?

11          MR. NEUDECK: Yes, there is.

12          MR. RUBIN: And does that appear to say levee?

13          MR. NEUDECK: I'm having difficulty reading  
14 that.

15          MR. RUBIN: Let me start with maybe an easier  
16 question, given the --

17          MR. NEUDECK: It appears to say that, but I  
18 almost need a magnifying glass. I can't confirm it.

19          MR. RUBIN: Is there one word there or two  
20 words?

21          MR. NEUDECK: It appears to be one word.

22          MR. RUBIN: And it appears to be a shorter  
23 lettered word?

24          MR. NEUDECK: Yes, it does.

25          MR. HERRICK: We stipulate to that.

1 (Laughter)

2 MR. RUBIN: There was some discussion about  
3 the -- in your -- let me rephrase my question.

4 Mr. Herrick did ask you some questions about an  
5 assessor's parcel map I believe from the 1881-1882; is  
6 that correct?

7 MR. NEUDECK: That's correct.

8 MR. RUBIN: And in the 1881-82 assessor's  
9 parcel map there's a similar feature, but there's a blue  
10 line that is depicted between the dashed lines we have  
11 just been talking about?

12 MR. NEUDECK: Yes.

13 MR. RUBIN: And again, that blue line does not  
14 appear in the assessor's parcel map from 1882 or --  
15 1882-1883?

16 MR. NEUDECK: No.

17 MR. RUBIN: Have you reviewed the assessor's  
18 map for 1884? Excuse me. Yeah, 1884?

19 MR. NEUDECK: I've looked at these all at one  
20 time, but I haven't recently looked at them, so.

21 MR. RUBIN: Have you -- as you reviewed  
22 assessor's parcel maps, do you see a blue line that was  
23 depicted between the dotted lines on any other  
24 assessor's parcel map, assuming that there were dotted  
25 lines on the other assessor's parcel maps?

1           MR. NEUDECK:  No, I don't think there was  
2 consistency of that.  But that doesn't detract from my  
3 opinion that Duck Slough was there.

4           I mean these maps demonstrate it in some cases,  
5 not in others, depending upon the nature of the  
6 ownership and so forth, whether it was an important  
7 feature to identify by the assessor.

8           This is not my sole evidence for the existence  
9 of Duck Slough.  So it may or may not be on these maps,  
10 but it doesn't detract from my opinion as to the  
11 existence of Duck Slough.

12           MR. RUBIN:  Was there any assessor's parcel map  
13 that depicted a feature that was labeled Duck Slough  
14 when you reviewed them?

15           MR. NEUDECK:  No, I would have -- no.

16           MR. O'LAUGHLIN:  Mr. Pettit, do you mind if I  
17 interrupt for just a second?

18           It's 12 o'clock.  We've been going for an hour  
19 and a half.  I don't know how much longer Mr. Rubin has,  
20 but can we take a lunch break soon?

21           CO-HEARING OFFICER PETTIT:  Yes, I was just  
22 thinking about that, and I was going to ask Mr. Rubin  
23 how much more you have.

24           MR. RUBIN:  I don't think I have more than 15  
25 minutes of questions.

1 CO-HEARING OFFICER PETTIT: Is that one of  
2 Mr. O'Laughlin's 15 minutes?

3 (Laughter)

4 MR. RUBIN: No. I try to be generous with how  
5 much time.

6 CO-HEARING OFFICER PETTIT: We'll go to 12:15,  
7 and I think that will be just about an even hour and a  
8 half, and we'll stop at 12:15.

9 MR. RUBIN: Mr. Neudeck, do you recall  
10 Mr. Herrick asking you questions about a map that  
11 depicted a watercourse on Union Island?

12 MR. NEUDECK: Yes, I do.

13 MR. RUBIN: Do you recall which exhibit that  
14 was?

15 MR. NEUDECK: Yes, I do.

16 I think it's 30. Double-check -- yes. 30,  
17 1894 map labeled Stockton-Bellota Drainage District map.

18 MR. RUBIN: And you concluded or you believe  
19 that the depiction of a line that continues from Roberts  
20 Island south onto Union Island supports your conclusion  
21 that the line within Roberts Island is Duck Slough?

22 MR. NEUDECK: It -- well, I haven't ever --  
23 well, let me rephrase that.

24 The answer is yes to the extent that -- all I'm  
25 saying, this is a major feature that not only is

1 contained within Middle Roberts but continues on in an  
2 upstream direction across Union Island.

3 It's just to demonstrate that this is not  
4 happenstance that this feature existed. I'm just trying  
5 to demonstrate data to show otherwise.

6 MR. RUBIN: Do you believe that the line that's  
7 depicted on Roberts Island that has a label as close to  
8 Burns Cutoff is the same watercourse as the watercourse  
9 that flows onto Union Island?

10 MR. NEUDECK: Yes, I do.

11 MR. RUBIN: And is it a common practice for two  
12 watercourses to cross each other rather than to have a  
13 confluence and one to join completely the other?

14 MR. NEUDECK: I'm not certain if I actually  
15 understand your question.

16 MR. RUBIN: Let me try to break it up.

17 It's your testimony today that what you believe  
18 is Duck Slough was a watercourse that continued onto  
19 Union Island?

20 MR. NEUDECK: Or Union Island continued on to  
21 Roberts because that is the downstream condition.

22 MR. RUBIN: So it's your belief there was a  
23 watercourse that existed on Union Island that flowed  
24 onto Roberts Island, and as it existed on Roberts Island  
25 it was Duck Slough?

1 MR. NEUDECK: Yes.

2 MR. RUBIN: And that watercourse is bifurcated  
3 by Middle River, correct?

4 MR. NEUDECK: That's correct.

5 MR. RUBIN: And it's your belief that under  
6 natural conditions it's possible for a watercourse to  
7 continue essentially with the bifurcation of --

8 MR. NEUDECK: Well, it's essentially the  
9 same -- on the same alignment. Historically, the  
10 alignment of Middle River may have been varied in  
11 nature, but it lines up, and that's my opinion.

12 MR. RUBIN: And it's the fact that it lines up  
13 that leads you to conclude that Duck Slough existed on  
14 Roberts Island?

15 MR. NEUDECK: No, that Duck Slough existed on  
16 Union Island, and just further evidence to support my  
17 opinion on Roberts.

18 MR. RUBIN: Now, Mr. Herrick asked you a  
19 question about your opinion as to lands that were served  
20 by Woods Irrigation Company in or about 1914.

21 And specifically, I believe he asked whether  
22 you agree that there were no large areas where canals  
23 within Woods were unable to serve lands. Do recall that  
24 question?

25 MR. NEUDECK: Yes.

1           MR. RUBIN:  And I believe your answer was  
2  generally no, there were no areas that could not be  
3  served.

4           MR. NEUDECK:  That's correct.  That was my  
5  opinion.

6           MR. RUBIN:  Do you believe that there were  
7  specific areas within Woods Irrigation Company that  
8  could not receive water prior to 1914?

9           MR. NEUDECK:  Well, there was indication that  
10 there was high land/dry land in the agreement.  So there  
11 was areas that were not served by existing facilities as  
12 of the time of the 1911 agreement that were specified.  
13 But following on, the only exclusion that we have record  
14 of is the 370 acres.  So it's my opinion the balance was  
15 served.

16           MR. RUBIN:  Now when I asked you some questions  
17 on cross-examination, I believe it was your opinion that  
18 you did not know the quantity of water that was  
19 delivered to Woods Irrigation Company in or prior to  
20 1914, correct?

21           MR. NEUDECK:  I didn't know the measured  
22 quantity.  I know what the agreed-upon quantity per the  
23 agreement was.

24           MR. RUBIN:  That's what I was getting at.

25           Mr. Herrick asked you some clarifying questions



1 in response to the question that I asked of you, and you  
2 indicated that it is your understanding that a  
3 quantity -- that -- excuse me. Let me rephrase my  
4 question.

5 That you now have qualified the amount of water  
6 that was delivered in or before 1914 by Woods Irrigation  
7 Company based upon the 1911 agreement as well as some  
8 calculations that you provided to us today; is that  
9 correct?

10 MR. NEUDECK: Yes, the 1911 -- yes. The answer  
11 is yes.

12 MR. RUBIN: But the 1911 agreement doesn't  
13 indicate the quantity of water that was delivered in  
14 1914 or earlier, correct?

15 MR. NEUDECK: It doesn't indicate a measured  
16 quantity. It indicates the diversion rate with which it  
17 was to provide its users of.

18 And being that this was a, you know, highly  
19 productive agricultural area, it's my opinion that they  
20 used the water.

21 MR. RUBIN: But you don't know when they might  
22 have used the water, correct?

23 MR. NEUDECK: When being? Season? Or the --

24 MR. RUBIN: The year.

25 MR. NEUDECK: The year? I don't -- like I

1 said, I don't have any measured quantities of that.

2 MR. RUBIN: Now, you are assuming that the  
3 facilities diverted to their full capacity, is that  
4 correct, in or before 1914?

5 MR. NEUDECK: That they had the capability to  
6 do so.

7 MR. RUBIN: But you don't know if they actually  
8 diverted to that full capability?

9 MR. NEUDECK: No, I do not have a direct  
10 measure of that.

11 MR. RUBIN: And you have no knowledge of  
12 whether they did or did not?

13 MR. NEUDECK: Based on the practices and  
14 farming at that time, I believe they did from that  
15 standpoint. But I don't have a direct measure of it.

16 MR. RUBIN: And in reality, the 1911 agreement  
17 reflects an intent to divert but not an actual  
18 diversion, correct?

19 MR. NEUDECK: No, the diversion was ongoing.  
20 It was an affirmation of that -- they had the facilities  
21 in existence. This was -- this was -- I don't know the  
22 correct legal term for it, but this was a contract to  
23 serve based on, you know, the Woods properties. So they  
24 were already serving it pre-1911.

25 MR. RUBIN: And what quantity of water was

1 Woods Irrigation Company serving prior to -- or in 1911?

2 MR. NEUDECK: Well, it would be, in my opinion,  
3 the higher number, the 82 cfs. Based on the agreement,  
4 it was 77.7 cfs, so --

5 MR. RUBIN: But again, you base that simply  
6 upon the language in the 1911 agreements, correct?

7 MR. NEUDECK: That's correct, and along with  
8 the fact that it was being intensely farmed.

9 So I don't have a direct measurement, but I  
10 know that they were taking that water and putting it to  
11 use.

12 MR. RUBIN: But you don't know if they'd been  
13 taking the water. You have no evidence that farmers  
14 were taking water from Woods Irrigation Company in 1911,  
15 correct?

16 MR. NEUDECK: The --

17 CO-HEARING OFFICER PETTIT: Mr. Rubin, I think  
18 what he's --

19 MR. RUIZ: I'd like to register an objection;  
20 it's argumentative. We've been through this territory.  
21 It's repetitive and argumentative at this point.

22 CO-HEARING OFFICER PETTIT: I'm sorry; who was  
23 speaking. Mr. Ruiz?

24 MR. RUIZ: Yes, sir.

25 CO-HEARING OFFICER PETTIT: Yes.

1 MR. RUBIN: I'll move on.

2 CO-HEARING OFFICER PETTIT: Yes. I think what  
3 we know with certainty and what we can estimate is  
4 pretty clear from the record from this witness and  
5 others, and we're not going to get a result of a  
6 measurement, so.

7 MR. RUBIN: With that nice ending, I have no  
8 further questions.

9 CO-HEARING OFFICER PETTIT: Thank you, sir.  
10 Just so we can forecast what's happening,  
11 Mr. Powell, are you going to have anything?

12 (No response)

13 CO-HEARING OFFICER PETTIT: Mr. Ruiz, will you  
14 have any recross?

15 MR. RUIZ: No recross.

16 MS. GILLICK: No recross from the County.

17 CO-HEARING OFFICER PETTIT: And look who I  
18 forgot. Mr. O'Laughlin, you will have recross, I  
19 presume?

20 MR. O'LAUGHLIN: Probably no more than 5 to 10  
21 minutes.

22 CO-HEARING OFFICER PETTIT: Okay. We will  
23 resume with Mr. O'Laughlin's recross. Can we make it in  
24 45 minutes? Let's try at 1 o'clock then.

25 Thank you.

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(Lunch recess)

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AFTERNOON SESSION

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CO-HEARING OFFICER PETTIT: With that, let's go  
back on the record.

Mr. O'Laughlin.

MR. O'LAUGHLIN: Thank you, Mr. Pettit.

--o0o--

RECROSS-EXAMINATION BY MR. O'LAUGHLIN

FOR MODESTO IRRIGATION DISTRICT

--o0o--

MR. O'LAUGHLIN: I have marked two pieces --  
two documents. One is MSS-12 and one is MSS-13.  
Unfortunately, I don't have copies of these. We'll get  
copies.

I want you to look at this, and the first thing  
I'd like you to do -- is I'll represent that it's a  
profile of a drain on Woods Ranch, Roberts Island. The  
first page is a blow-up of the legend in the right-hand  
portion of the survey, and then the actual survey is the  
second piece of paper.

MR. NEUDECK: (Reviewing document)

MR. O'LAUGHLIN: Have you had a chance to  
review the legend and the accompanying survey,  
Mr. Neudeck? The survey is the second page, MSS-13.

MR. NEUDECK: I'm sorry. I missed the last

1 part of that. I missed the last part of your question.

2 MR. O'LAUGHLIN: Have you seen that survey  
3 before?

4 MR. NEUDECK: I'm not familiar with this  
5 survey. I'm familiar with Mr. Widdows' surveys at this  
6 time frame. But I have not seen this actual profile.

7 MR. O'LAUGHLIN: Okay. Do you have -- one of  
8 the things that's interesting to me, you were talking to  
9 Mr. Herrick on redirect were elevations. And on that  
10 map, it has elevations; is that correct? In the  
11 right-hand side?

12 MR. NEUDECK: Yes. These are elevations, but I  
13 have an explanation related to that.

14 MR. O'LAUGHLIN: Perfect. That's what I wanted  
15 to hear. The elevations are substantially higher than  
16 the elevations we have been talking about; is that  
17 correct?

18 MR. NEUDECK: That is correct.

19 MR. O'LAUGHLIN: Okay. Why are they higher?

20 MR. NEUDECK: Mr. Widdows added 20 feet to all  
21 of is elevations at this time frame for this survey.

22 So if you subtract 20 feet -- I think it -- in  
23 fact, without even reading it, it does make reference to  
24 that in the profile, that all elevations are 20 feet  
25 plus. That way, he doesn't end up with negative

1 elevations.

2 MR. O'LAUGHLIN: Okay. So you and I are  
3 understanding the same thing. Great.

4 Can you tell by looking at that legend, it says  
5 Township 36. Is that within Woods Irrigation Company?

6 MR. NEUDECK: Section 36.

7 MR. O'LAUGHLIN: Section 36, excuse me.

8 MR. NEUDECK: Yes, I believe it is.

9 MR. O'LAUGHLIN: Okay. Now also on that  
10 legend, it says at the end of the flume, on the  
11 left-hand side of MSS-12?

12 MR. NEUDECK: Yes.

13 MR. O'LAUGHLIN: Do you know what flume that is  
14 referring to?

15 MR. NEUDECK: No, I do not.

16 MR. O'LAUGHLIN: Okay. Also if you look at the  
17 same one on MSS-12, I think it shows it better. On the  
18 top right-hand corner, it says -- it talks about an  
19 irrigation canal. Do you see that? At the very top of  
20 the --

21 MR. NEUDECK: Right. It's labeled with the  
22 label J above it?

23 MR. O'LAUGHLIN: Yes.

24 MR. NEUDECK: Yes, I see that.

25 MR. O'LAUGHLIN: Okay. Do you know where that



1 irrigation canal was located or is located?

2 MR. NEUDECK: No. I would imagine this profile  
3 is related to a planimetric view somewhere, but I don't  
4 have the benefit of having that. So no, I don't know.

5 MR. O'LAUGHLIN: Would it be possible if we  
6 were to take the previous maps that we have looked at in  
7 this matter and identify a drainage course in that area  
8 that we would be able to take that planimetric view and  
9 apply it to that drainage course?

10 MR. NEUDECK: I wouldn't take license in doing  
11 so. I don't know -- I mean I know Mr. Widdows did  
12 surveys around this time frame. But I wouldn't take  
13 license to say I know where this profile exists.

14 I mean we could try and make it fit, but I'd  
15 rather have the -- this came from somewhere, and most  
16 surveys have a plan view associated with the profile  
17 view. So I don't know -- the answer is I wouldn't do  
18 it.

19 MR. O'LAUGHLIN: Okay.

20 MR. NEUDECK: You know. It would be a real  
21 search and -- hunt and search to try and make this thing  
22 fit, but --

23 MR. O'LAUGHLIN: If you know -- and I agree  
24 with you. Most surveys do have a plan view where you  
25 can see on a plan view where the course of the plan

1 metric is being run, correct?

2 MR. NEUDECK: The course of the profile.

3 MR. O'LAUGHLIN: Profile.

4 MR. NEUDECK: That's correct.

5 MR. O'LAUGHLIN: Okay. If you knew where the  
6 flume was and you knew where the canal was, you might be  
7 able to make it fit; is that correct?

8 MR. NEUDECK: Right. And there is locations of  
9 flumes within the Woods Irrigation Company service area.

10 MR. O'LAUGHLIN: Great.

11 I have no further questions. Thanks.

12 CO-HEARING OFFICER PETTIT: Thank you,

13 Mr. O'Laughlin. Mr. Ruiz? Ms. Gillick?

14 MS. GILLICK: No questions.

15 CO-HEARING OFFICER PETTIT: Okay.

16 Mr. Herrick, it appears that we're ready for  
17 Mr. Blake.

18 MR. HERRICK: Thank you, Mr. Pettit.

19 SCOTT LANDON BLAKE

20 Called by WOODS IRRIGATION COMPANY

21 DIRECT EXAMINATION BY MR. HERRICK

22 MR. HERRICK: John Herrick, once again for  
23 Woods Irrigation Company.

24 This witness will be Mr. Scott Landon Blake.

25 And Mr. Blake, would you please identify yourself and

1 give your business address.

2 MR. BLAKE: Scott Landon Blake, PO Box 844,  
3 Stockton, California 95201.

4 MR. HERRICK: And when these proceedings  
5 started earlier a few weeks ago, you took the oath; did  
6 you not?

7 MR. BLAKE: Yes, I did.

8 MR. HERRICK: Before you, you have WIC Exhibit  
9 No. 5; is that correct?

10 MR. BLAKE: That's correct.

11 MR. HERRICK: Is that a true and correct  
12 statement of your qualification?

13 MR. BLAKE: It is.

14 MR. HERRICK: And you also have before you WIC  
15 Exhibit 6?

16 MR. BLAKE: That's correct.

17 MR. HERRICK: And that is a copy of your  
18 testimony for this proceeding?

19 MR. BLAKE: That is correct.

20 MR. HERRICK: And as we go through your  
21 testimony, we will reach a point where you have done  
22 additional work to better explain one of your statements  
23 in order that there not be any confusion or the Board's  
24 not being misled; is that correct?

25 MR. BLAKE: That is correct.

1           MR. HERRICK:  And we'll address that.  We have  
2  copies of additional things.  Whether or not there are  
3  objections, I just want the Board to know that after the  
4  testimony was presented further work by Mr. Blake  
5  indicated there needed to be corrections, so he's  
6  prepared to correct that today.

7           CO-HEARING OFFICER PETTIT:  Thank you.

8           MR. HERRICK:  With that, Mr. Blake, would you  
9  please summarize your testimony?

10          MR. BLAKE:  I was retained in this matter and  
11  given a set of criteria to determine whether or not a  
12  parcel within the original 1911 irrigation agreements of  
13  the Woods Irrigation Company could possibly be riparian  
14  parcels.

15                 And even though I'm not an attorney, I was  
16  asked to examine some survey-related issues to assist  
17  the attorneys in determining whether or not parcels  
18  within the 1911 agreements were riparian.

19                 So the criteria I was given, there were four:

20                 Whether the parcels within that boundary had or  
21  currently have a surface connection to a waterway;

22                 If there was any previous interruption to that  
23  connection;

24                 If any facilities connected one of the parcels  
25  to a waterway before a direct service connection was

1 lost;

2 Or if there were any agreements or other  
3 documents that indicated those parcels had an ability to  
4 receive water before a surface connection was lost.

5 I was also informed that those connections or  
6 evidence of those connections may indicate that there  
7 was a pre-1914 right, even though I wouldn't be  
8 qualified to make that determination on my own.

9 As my testimony will show today, I believe that  
10 all of the lands within the original 1911 service area  
11 of Woods Irrigation Company either abutted a waterway  
12 with a direct surface connection or were connected to  
13 those waterways through irrigation canals or interior  
14 island sloughs.

15 So my summary will hopefully help the Board  
16 understand how I came to that conclusion.

17 My inquiry started with review of the San  
18 Joaquin County tax assessor maps from the year 1876 to  
19 1919. Those are the maps that are currently kept at the  
20 Micke Grove, San Joaquin County Historical Society.

21 There were several years that were missing  
22 there when we encountered missing maps or we needed  
23 clarification of the information shown on the tax  
24 assessor maps.

25 We performed chain of title research at the San

1 Joaquin County Clerk and Recorder's Office. That was  
2 either done directly by me or under my direct  
3 supervision, and I will try and clarify today when it  
4 was necessary to pull those deeds to clarify the tax  
5 assessor maps.

6 So if I can, I'd like to ask I believe it's  
7 Mr. Lindsay to pull up Exhibit 6A, kind of provide the  
8 Board with a brief overview of the area that we will be  
9 discussing today.

10 This is a 2006 map of the area currently served  
11 by Woods Irrigation Company.

12 As you can see, it includes most of Middle  
13 Roberts Island in San Joaquin County bordered by Inland  
14 Drive on the north -- west, Howard Road on the south,  
15 Santa Fe -- I'm sorry -- Santa Fe Railroad on the north,  
16 and then the eastern boundary approaches but doesn't  
17 quite touch the San Joaquin River.

18 So what I'll do now is I'll walk the Board  
19 through a series of transactions starting from the  
20 government patent that included the lands that were  
21 within the 1911 agreements to Woods Irrigation Company.  
22 The first exhibit is Exhibit 6B.

23 This is a visual representation of the patent  
24 from the State of California to J.P. Whitney. And this  
25 was drawn -- actually drawn from the deed itself, not

1 from the tax assessor maps.

2 As you can see, it includes all the lands with  
3 the current Woods Irrigation Company -- I'm sorry --  
4 within the 1911 Woods Irrigation Company service area  
5 and is clearly connected to major surface channels  
6 including Burns Cutoff, Duck Slough, and Middle River.

7 The next transaction in the chain of title for  
8 the lands in question is the transfer from J.P. Whitney  
9 to M.C. Fisher. That is Exhibit 6C.

10 If I move too fast, please slow me down.

11 So again, this visual representation of that  
12 transfer of that deed was actually drawn from the deed  
13 documents itself. You can see that it again includes  
14 all of the area in the original 1911 agreements. And  
15 again, we have direct surface connections to Burns  
16 Cutoff, Duck Slough, and Middle River.

17 The next subsequent transfer is Exhibit 6D.  
18 This is the transfer from M.C. Fisher to three  
19 gentlemen, James Reid Stewart, James C. Bunten, and  
20 James King. This exhibit was also prepared from the  
21 deed.

22 Excuse me one minute. They told me my throat  
23 would get dry. I didn't realize how much.

24 So again, as you can see, this particular deed  
25 included all the lands in the original 1911 agreements

1 for Woods Irrigation Company, and we still maintain  
2 connections to Burns Cutoff, Duck Slough, and Middle  
3 River.

4 MR. HERRICK: Mr. Blake, let me just interrupt  
5 you there.

6 You've made two references now to all of the  
7 lands within the 1911 agreements, but there are some  
8 lands to the west of Duck Slough in those original  
9 agreements that you are not examining now?

10 MR. BLAKE: That is correct. Let me clarify  
11 that.

12 There are portions of property on the other  
13 side of Duck Slough that were included in the  
14 agreements, and I believe it was a -- there's another  
15 patent on the other side of the water there that the  
16 Board has probably -- possibly seen presented in other  
17 hearings that did include some property on the other  
18 side of Duck Slough. That was later -- that property  
19 was later excluded, as was discussed.

20 Exhibit 6E. Wait for this to come up. This is  
21 a portion of property that was owned by the three  
22 gentlemen I mentioned, Stewart, Buntin, and King. That  
23 was transferred to A.C. Blossom in 1889.

24 You can see that although this piece is not  
25 connected to Duck Slough, Middle River, or Burns Cutoff,



1 that it is located on the two major interior island  
2 sloughs. And I'm going to address that issue again a  
3 little further in my testimony.

4 If we could pull up Exhibit 6F.

5 Let me just clarify for the Board. That last  
6 exhibit we looked at was also prepared from the deed,  
7 not just from the tax assessor maps.

8 This is a transfer from J.N. -- excuse me --  
9 from Stewart, et al to J.N. and E.W.S. Woods, the Woods  
10 brothers.

11 As we can see, that parcel is clearly abutting  
12 Middle River. It also includes, I will point out, the  
13 diversion point that has been under discussion at these  
14 hearings on Middle River for the Woods Irrigation  
15 Company system.

16 And I find at no time in my research when these  
17 particular lands owned by the Woods brothers were not  
18 connected to Middle River.

19 MR. HERRICK: You mean this particular parcel.

20 MR. BLAKE: In this particular parcel, yes,  
21 that we're showing here.

22 If we could pull up Exhibit 6G.

23 To make things clearer for the Board, at this  
24 point in time in 1892, this exhibit shows what's still  
25 held by the three gentlemen, Stewart, Buntten, and King.

1 So you can see we've got kind of that donut hole in the  
2 middle went out to Blossom. Some of the other property  
3 that came out Woods.

4 So this is just kind of a snapshot of what  
5 those three gentlemen owned at this time in 1892. Just  
6 to kind of clarify, they have been taking pieces out  
7 over the last couple of exhibits.

8 (Discussion between counsel and witness)

9 MR. BLAKE: Oh. Let me point that out. That's  
10 important.

11 You can see that even though there have been  
12 parcels that have come out of that ownership by the  
13 three gentlemen, that's still clearly connected to Duck  
14 Slough and Burns Cutoff there in the north as well as  
15 the interior sloughs that we're going to talk about a  
16 little bit later in my testimony. I do want to point  
17 that out.

18 That brings us to Exhibit 6H.

19 At this point, Stewart, Bunten, and King, the  
20 three gentlemen we mentioned, have transferred all of  
21 their land in Roberts Island that is relevant to this  
22 hearing to other parties.

23 So a portion of that land as we discussed has  
24 gone to the Woods brothers, solely the Woods brothers.

25 Some of the land has gone to Mr. Blossom and

1 Woods brothers together. They own that land jointly.

2 (Discussion between counsel and witness)

3 MR. BLAKE: That's the yellow land, thank you.

4 I guess it's kind of a salmon colored on the screen  
5 there. I think that's the best color. That's the lands  
6 owned solely by Woods.

7 The yellow lands are lands owned jointly by  
8 Woods and Blossom.

9 And then the bluish-gray color there in the  
10 center of the donut hole, that's the piece that came out  
11 to Mr. Blossom.

12 Now at this point -- when we originally did  
13 this work based on the tax assessor map, we were under  
14 the impression that all of that land was transferred in  
15 a single document in 1983, all the salmon-colored land  
16 there, to Woods.

17 And subsequent to the original submittal of my  
18 testimony, we went in and did some chain-of-title  
19 research and determined that it was actually a series of  
20 transactions that conveyed that land there in salmon  
21 from Stewart, Buntten, and King to the Woods.

22 And so at this point, we would like to, if it's  
23 permissible, to walk the Board through those series of  
24 transactions that happened between 1892 and 1893.

25 MR. HERRICK: Mr. Blake, let me just add to

1 that. In your efforts to clarify that, is it not  
2 correct that the deeds were not consistently listed  
3 under Stewart or Woods' names, and so it was difficult  
4 to find all the deeds for this is transaction.

5 MR. BLAKE: That's true.

6 We had some problems when we were looking at  
7 the chain of title because we were dealing with three  
8 owners. And you had to cross-check multiple names to be  
9 able to find all the documents in question.

10 I just want to be careful that when you look at  
11 the exhibit, I don't want the Board to be under the  
12 impression that all that salmon-colored land went in a  
13 single document from three gentlemen to the Woods  
14 brothers.

15 There were a number of transactions that  
16 occurred in 1892, 1893. I believe all those  
17 transactions, based on what I've seen in the chain of  
18 title, were part of an intent to transfer the larger  
19 piece of land.

20 MR. RUBIN: Hearing Officer Pettit, we have no  
21 objection for the witness clarifying the circumstances  
22 here.

23 CO-HEARING OFFICER PETTIT: Thank you,  
24 Mr. Rubin.

25 Mr. Blake, go ahead and proceed. Please just

1 bear in mind that in order to keep the record straight I  
2 don't know what form you're going to be making these  
3 corrections in, but just to make sure you keep  
4 identifying things that as we go along so that somebody  
5 subsequently will be able to know what you're talking  
6 about from the record and the exhibits. Thank you.

7 MR. HERRICK: Thank you, Mr. Chairman.

8 Mr. Blake has the mapping of each transaction  
9 that occurred in the year, and so he can go through  
10 those. And as we do, we can give copies to everyone and  
11 designate them probably as we go 6H dash something just  
12 so there's clarification -- a connection between what  
13 they're clarifying or not.

14 But there are 13 different transactions in that  
15 one year which transferred Stewart lands to Woods. So  
16 it gets a little messy, but we do want to walk through  
17 it so that his testimony is clear not that it was a  
18 single event but it was this number of events during  
19 that year.

20 CO-HEARING OFFICER PETTIT: Sounds like we need  
21 to do it.

22 MR. HERRICK: Yes. Sorry.

23 MR. BLAKE: Mr. Herrick is passing around  
24 the -- again, these are the visual representations of  
25 the deeds that we mapped from the chain of title for the

1 property that ultimately was included in the Woods  
2 Irrigation Company.

3 And I apologize. I did not bring copies of all  
4 the deeds that these visual representations were drawn  
5 from, but we'll certainly make those available, and I  
6 have copies here at the counter.

7 We can go ahead and start there with -- this is  
8 Sheet 1 of two. You can see the sheets are numbered  
9 there in the bottom right-hand corner.

10 We also have the date of transaction there,  
11 September 28, 1891.

12 And then you also notice the title block right  
13 above the date also had the book and page of the deed,  
14 and that information is included on every title block.

15 MR. HERRICK: And since Mr. Blake has labeled  
16 these sheets one of 12, two of 12, let's just label the  
17 entire packet of sheets WIC Exhibit 6H-1. Thank you.

18 MR. BLAKE: We can see on Sheet 1 -- it's going  
19 to look very familiar to the figure that we already  
20 looked at that we saw from our earlier exhibit.

21 This is the piece on Middle River that was  
22 transferred from -- the red piece. I'm sorry. The  
23 yellow -- the yellow cross-hatch is the lands owned by  
24 Stewart, Buntin, and King.

25 And the red cross-hatch parcel is the parcel

1 that was transferred to Woods on this date, and that --  
2 again that includes the current diversion structure for  
3 the Woods Irrigation Company.

4 If you turn to Sheet 2, I'll just point out  
5 that this transaction also occurred on the same date,  
6 September 28, 1891.

7 Hopefully this won't be too confusing.

8 The way these exhibits were set up, they are  
9 cumulative. So you're going to see the ownership of  
10 Woods will increase, the ownership of Stewart will  
11 decrease as we move through the exhibits. Hopefully  
12 that won't be too confusing.

13 So you can see in this transaction the Woods  
14 brothers acquired those two smaller rectangular pieces  
15 in the upper right-hand corner.

16 And I will point out that the piece to the left  
17 is connected to an interior slough as we'll see a little  
18 bit later in our testimony. And the piece to the right  
19 there is connected to one of the dendritic channels that  
20 Mr. Lajoie had mapped as part of his work for this  
21 issue.

22 Those are red parcels. I just want to be  
23 clear. The two red parcels.

24 So on Sheet 1, you get the piece that includes  
25 the diversion structure. Now on this same date in this

1 different deed, they're acquiring the two pieces in red,  
2 the two rectangles in recent.

3 CO-HEARING OFFICER PETTIT: Mr. Blake, if I  
4 could interrupt for just a moment.

5 I notice that the first of these sheets is at a  
6 slightly different scale than others. And if that  
7 confuses anybody because the parcels look a different  
8 size, I gather that's the reason.

9 MR. BLAKE: Yeah, and I apologize for that.  
10 And you may find as we move through some of these that  
11 the scale may adjust slightly because we're trying to  
12 focus on the correct parcels, and I'll try to point that  
13 out when the scale changes.

14 CO-HEARING OFFICER PETTIT: Thank you.

15 MR. BLAKE: Move to Sheet 3.

16 Again this is a transaction on the same day,  
17 just a different book and page at the Recorder's Office.

18 And we can see in the upper right-hand corner  
19 now this larger, rectangular, kind of east-west longwise  
20 rectangular parcel has been transferred. And you can  
21 clearly see through the red cross-hatch there that that  
22 includes a major interior island slough, and we'll talk  
23 about that in a minute.

24 I'd also like to point out as I move through  
25 each of these documents that the Stewart lands still



1 remain connected to Burns Cutoff, Duck Slough. And  
2 we're going to see as we go through this that will  
3 change at some point. I just want to point out that the  
4 Stewart lands are still connected.

5 We can move then to Sheet 4. Again, this is a  
6 transaction on that same date, September 28, 1891.

7 This is from Stewart, Bunten, and King to the  
8 Wood brothers. You can see the longer rectangular piece  
9 that kind of attached to the north edge of the prior  
10 piece that they had that contained the diversion  
11 structure.

12 And obviously that was riparian when it was  
13 connected to Stewart based on the criteria I was given,  
14 and it would still be riparian. It's now attached to  
15 the Woods parcel that abuts Middle River.

16 Okay. That will take us to Sheet 5. Give me  
17 just one second. Let me -- this gets a little confusing  
18 because they were doing some things here to clean up the  
19 title a little bit, so bear with me.

20 Okay. So this is a situation -- and I don't  
21 want to lose people here.

22 We have a third party enter the picture here by  
23 the name of Easton Wendell. And Easton Wendell  
24 transfers to the Woods brothers the land shown in this  
25 exhibit cross-hatched in red. And you'll notice that

1 it's exactly the same land that the Woods brothers have  
2 also gotten from Stewart, Bunten and King.

3 And I don't have any conclusive evidence of  
4 this based on my chain of title research, but we feel  
5 it's likely, based on previous experience, that there's  
6 some effort here to clean up the title. So Mr. Wendell  
7 may have had some interest in that property that was  
8 basically being quit claimed to the Woods brothers.

9 But I want -- it is a transaction in the chain,  
10 I just want to point out that he is transferring land  
11 that was already sold to the Woods by Stewart, Bunten,  
12 and King.

13 Can we move up to Exhibit No. 6?

14 MR. O'LAUGHLIN: Can I ask a question? Sorry  
15 to interrupt. Can that section that was just talked  
16 about be read back? I missed that.

17 MR. BLAKE: You just want me to repeat?

18 MR. O'LAUGHLIN: No, no. I'd rather have --  
19 the court reporter can read it back to us, just the last  
20 thirty seconds or so.

21 (Whereupon a fire drill interrupted the  
22 proceedings)

23 CO-HEARING OFFICER PETTIT: Now go ahead,  
24 Mr. Herrick.

25 MR. BLAKE: Did we need to repeat something or

1 should I move forward?

2 MR. HERRICK: Mr. Blake, you should pick up  
3 where you left off.

4 We've gone through a number of transactions  
5 that more completely -- more correctly explain transfers  
6 from Stewart et al to Woods during, what is it, 1891  
7 through 1882. And you -- I believe we left off on Sheet  
8 5 of 12 of Exhibit 6A-1.

9 MR. O'LAUGHLIN: Just before we left, I'd asked  
10 the court reporter to read back the last two or three  
11 sentences please.

12 (Record replayed)

13 MR. O'LAUGHLIN: Thank you.

14 MR. BLAKE: If we're ready to continue, I will  
15 move everyone to Sheet 6 of 12.

16 This is the document recorded as Book A of  
17 Deeds, Volume 75, page 44 on August 5th, 1892. This is  
18 a transfer from Easton -- excuse me -- from Stewart King  
19 to Easton Wendell of the lands that appear in the  
20 bluish-green color.

21 So this will be a chunk of property abutting  
22 Duck Slough in the northwest corner of Roberts Island.  
23 And then there's also another semi-rectangular piece to  
24 the immediate east of the parcels owned by Woods that  
25 contain the current irrigation diversion structure.

1           So again, that transfer went from Stewart,  
2   Bunten, and King to Easton Wendell. And I will point  
3   out that the chunk of property in the northwest of  
4   Roberts Island is still clearly connected to Duck Slough  
5   and Burns Cutoff, and that the portion immediately east  
6   of the Woods parcels containing the diversion structure  
7   are also on an interior island slough.

8           You can see the portions in yellow there still  
9   owned by Stewart, Bunten, and King abut Duck Slough on  
10  their west side. And they are also crossed in a couple  
11  different locations by some interior island sloughs  
12  which we'll discuss a little bit later.

13           That will move us to Sheet 7 of 12.

14           This is a depiction of the document recorded as  
15  Book A of Deeds, page 77 -- excuse me -- Volume 77,  
16  page 52 on November 11, 1892.

17           Let me just make sure I've got the right  
18  transaction here.

19           These are parcels that are transferred by  
20  Easton Wendell to the Woods brothers. Now this is a  
21  little bit confusing because these lands were not yet  
22  transferred from Stewart to Easton.

23           And I believe, based on my investigation, that  
24  a series of deeds all on the same date, November 11,  
25  1892, were taken to the Recorder's, and the deeds that

1 transferred the parcels from Stewart, Buntten, and King  
2 to Easton were recorded after the deeds that transferred  
3 the interest from Easton to Woods.

4 I believe that was a mistake that was made by  
5 the Recorder's Office that those deeds were recorded on  
6 the same day but slightly out of order. That does  
7 create a little bit of confusion when you're examining  
8 the title.

9 But the parcels that we're looking at here in  
10 red, there's three parcels. There's the part that we've  
11 already discussed with the diversion structure on Middle  
12 River.

13 There's the parcels to the northeast which you  
14 see have grown in size a little bit. The Woods  
15 ownership there in the cross-hatched red has grown in  
16 ownership.

17 Then we have a piece going to Woods on the west  
18 side of Roberts Island right up against Duck Slough,  
19 kind of a square piece with one of the corners cut off.

20 So again, this is transferred from Easton to  
21 Woods before Easton receives title from Stewart, Buntten,  
22 and King, and I believe that was just a mistake that the  
23 recorder made.

24 And all of the lands that we're discussing here  
25 are still connected either to Duck Slough or those

1 interior island channels or Middle River.

2           Okay. That's going to move us to Sheet 8 of  
3 12. This is the document recorded as Book A of Deeds,  
4 Volume 77, page 56. This is on November 11, 1892.

5           In this instance, all of the lands that were  
6 previously owned by Easton -- and we're talking about  
7 the large chunk of property in the northwest corner of  
8 Roberts Island abutting Burns Cutoff and Duck Slough.

9           These lands are transferred from Easton Wendell  
10 into Woods. Again, this is on the same date,  
11 November 11, 1892.

12           And just to refresh everybody's memory, when  
13 you're looking at Sheet 8 of 12, the parcels that are  
14 cross-hatched red now, that's the total cumulative  
15 ownership of the Woods brothers.

16           And the parcel hatched in yellow there is the  
17 remaining ownership of Stewart, Buntten, and King. And  
18 again, that land owned by Stewart, Buntten, and King,  
19 that strip in the middle there, is connected to those  
20 interior island sloughs.

21           We can move to Sheet 9 of 12.

22           This is the document recorded in Book A of  
23 Deeds, Volume 77, page 61, again on the same date,  
24 November 11, 1892.

25           You can see that there's a piece of property.

1 It's the west end of that -- kind of that hamburger  
2 patty in between the two buns there, that piece that was  
3 in yellow on the previous exhibit. It has now been  
4 transferred to the Woods brothers, so it's cross-hatched  
5 in red.

6           You can see again that piece clearly touches  
7 Duck Slough, and also it's crossed by those interior  
8 sloughs.

9           That will move us to Sheet 10 of 12. This is  
10 the document recorded as Book A of Deeds, Volume 77,  
11 page 63. Again on the same day, November 11, 1892.

12           You can see at this point the yellow portion of  
13 that hamburger patty there in the middle that was owned  
14 by Stewart is now transferred to the Woods brothers.

15           So the Stewart, Bunten, and King, those three  
16 gentlemen, have transferred all the lands they owned in  
17 Roberts Island for the purposes of our discussion to the  
18 Woods brothers. That's on Sheet 10 of 12.

19           This will move us to Sheet 11 of 12.

20           Now Sheet 11 of 12 and Sheet 12 of 12 picture  
21 the transactions from Stewart, Bunten, and King to Woods  
22 that I believe, based on my research, were recorded out  
23 of order.

24           So these documents convey interest from  
25 Stewart, Bunten, and King to Easton that Easton had

1 already transferred earlier that same day to Woods, and  
2 I believe that was just a mistake.

3           So you can see the first parcel there on Sheet  
4 11 is that square shaped parcel out of Duck Slough with  
5 one of the -- the northwest corner is kind of clipped  
6 off.

7           And then if you flip over to Sheet 12, this is  
8 the document in Book A of Deeds, page 78 -- I'm sorry --  
9 Volume 78, page 131. Again, same date, November 11,  
10 1892.

11           And this time if you move over to the east  
12 side, you'll see that parcel in a turquoise color that  
13 was referred from Stewart, Bunten, and King to the Woods  
14 brothers -- excuse me -- to Easton Wendell.

15           And again, that property had already been  
16 transferred to Woods. I believe that this deed was just  
17 recorded in the wrong order by the Recorder on that same  
18 date.

19           So that's the series of transactions that took  
20 place there in 1892 and 1893 transferring land from  
21 Stewart, Bunten, and King ultimately to the Woods  
22 brothers.

23           And I would just like to point out that even  
24 though we made that correction that those additional  
25 documents that we discovered do not change my ultimate



1 conclusion in my original testimony that those lands  
2 remained riparian under the criteria I was given as they  
3 were transferred from Stewart, Bunten, and King to  
4 Woods.

5 I want to make a transition here in my summary.  
6 We're going to step away from chain of title documents  
7 for a moment, and I'd like to discuss some of the other  
8 documents, maps and other documents that I examined that  
9 I believe provide evidence that the lands within the  
10 1911 irrigation agreements of Woods Irrigation Company  
11 maintained a connection to surface channels, direct  
12 connection.

13 And so if I could, I'd like to ask Mr. Lindsay  
14 if he could pull up Woods Irrigation Company Exhibit 6J,  
15 and we can discuss that for a couple of minutes.

16 This is a map of property owned by the Woods  
17 brothers, and it's difficult to see on the display here,  
18 but there's actually an outline of the properties that  
19 were owned by the two Woods brothers.

20 And then you can kind of see on the margins of  
21 this map there are annotations of the parcels that were  
22 owned by individuals that were not Woods brothers.

23 And some of the very important features on this  
24 map for this particular issue that we're discussing  
25 today is the system of canals that come off of Middle

1 River and move up through the map. And you can clearly  
2 see there's a network of channels and ditches, based on  
3 my interpretation, that are providing irrigation water  
4 to the lands that are owned by the Woods brothers, and  
5 in fact, you can even see reference to gates and dams on  
6 this map as well.

7 I would like to talk just a minute about how I  
8 was able to place an approximate date on this map  
9 because I know that those dates are critical to the  
10 issue at hand.

11 This map does not contain an explicit date on  
12 its face as we would desire in the best scenario, but I  
13 was able to date approximately the age of this map based  
14 on a couple factors.

15 The first is that we can clearly see this is a  
16 map of the lands owned by the Woods brothers. And we  
17 know that one of those Woods brothers, John Newton  
18 Woods, died on December 4, 1906. This is referenced in  
19 my testimony. And that a decree of distribution of his  
20 estate was dated December 28, 1909.

21 So based on that, we can date this map to  
22 approximately 1908, 1909, based on those facts since it  
23 obviously was written when the Woods brothers were still  
24 owning all of that property.

25 A second element or factor that I used to date

1 the map -- and it will be difficult to see. But in the  
2 upper right-hand corner of the map, there's a parcel,  
3 and the owner is identified as J.D. Peters.

4 An examination of the tax assessor maps that we  
5 mentioned earlier in my testimony reveals that this  
6 parcel was owned by J.D. Peters or the estate of J.D.  
7 Peters until 1907-1908.

8 So Mr. Peters' death certificate was dated May  
9 14, 1907, and the decree of distribution from Mr. Peters  
10 was dated 1908.

11 So obviously, this map was written when Mr.  
12 Peters still owned that property, or his estate did,  
13 because his name is clearly shown on the map.

14 The new owner that became subsequent to those  
15 years, Genevieve F.P. Six, which is shown on the tax  
16 assessor maps, is not shown as the owner this map.

17 So based on those two factors, I think we can  
18 safely date this map -- I believe we can safely date  
19 this map to the year 1907-1908. And so I believe this  
20 map provides good evidence that there was an extensive  
21 irrigation system in place at that date to provide  
22 irrigation and drainage for the Woods brothers lands  
23 that are clearly demarcated on this map.

24 If I can, I'd like to ask Mr. Lindsay if he  
25 would pull up Woods Irrigation Company Exhibit 6K.

1           This was a map July 1914 of the San Joaquin  
2 Delta produced by Hendersen and Billwiller, Civil and  
3 Hydraulic Engineers, and it shows the area in question.

4           And this map is important because it shows  
5 canals and ditches in the vicinity of the Woods  
6 Irrigation Company.

7           And I believe we should have a -- there's  
8 hopefully a couple of blows-up of this map. One is of  
9 the legend, and one is in the area of question.

10           I wonder if Mr. Lindsay --

11           MR. HERRICK: Mr. Lindsay, the following pages  
12 of this exhibit, I believe, are what Mr. Blake is  
13 talking about.

14           MR. BLAKE: Thank you very much.

15           So here's a blow-up of the legend that appears  
16 on that map. I'll just point out if you look down, the  
17 fifth line down there, you can see a dotted line type,  
18 and that's labeled canals, ditches, and small sloughs.

19           Then just a couple lines down from that, you  
20 can see two lines with some what look like little  
21 islands or berms in the middle. That's labeled  
22 channels, rivers, sloughs, and cuts.

23           So I just I wanted to take a minute to look at  
24 the legend because we're going to use this.

25           I'll ask Mr. Lindsay to move to the next page

1 of this exhibit.

2 And what we have here is a blow-up of the area  
3 in question, Woods Irrigation Company. And it's  
4 difficult to see on the quality of this print, but if  
5 you have the original map, you can clearly see that this  
6 map shows irrigation ditches and canals coming from the  
7 main irrigation or main diversion point.

8 Could you scroll down just a little bit,  
9 Mr. Lindsay, please.

10 Then if you look right in the middle of this  
11 blow-up at the bottom of the page, you can see where  
12 Middle River comes almost due north then takes that  
13 90-degree bend to the west. That's where the diversion  
14 structure is for Woods Irrigation Company.

15 So you can clearly see on the left-hand side  
16 there is some irrigation ditches or canals running  
17 north.

18 Right here. Running north. In fact, it  
19 branches off again here.

20 And you can also see if you look close -- and  
21 we're going to look at another blow-up of this. This is  
22 a slough feature that's being fed off this connection  
23 point. And you can also see irrigation canals running  
24 north.

25 Now the reason this map is important, even

1 though it's dated 1914, is it confirms the location of  
2 the same ditches and canals that we saw on the map that  
3 we looked at previously that I had dated to 1907, 1908.

4           So this is just more evidence to me that we're  
5 looking at the same lines on all these maps. And  
6 there's labels on the previous map. There's a legend on  
7 this map that clearly shows that those were irrigation  
8 and drainage canals and ditches and interior sloughs.

9           MR. HERRICK: Mr. Blake, just for clarity of  
10 the record, in your description of the feature you  
11 mentioned as a slough, you were saying a number of times  
12 "here" and "there" using the pointer.

13           Could you perhaps better describe it from where  
14 it originates and where it looks like it goes because  
15 there are a few features on there that are labeled or  
16 can be more clearly described.

17           MR. BLAKE: Certainly, let me do that.

18           So the slough feature that I'm talking about  
19 comes off the diversion point for Woods Irrigation  
20 Company. And as I discussed, that's the point, if you  
21 look at this map, when Middle River comes up due north  
22 and takes that 90-degree turn to the west. That's the  
23 diversion point.

24           And then the slough runs in a northwesterly  
25 direction to a point that's just a little bit to the

1 west of the label Fairchild School.

2           Then that slough feature ends, but you can see  
3 there's at least one irrigation ditch running  
4 north-south, another one coming off to the east.

5           And if you move back down that slough just a  
6 little ways to the west, you'll see some more ditches  
7 running off to the north.

8           And so hopefully that was sufficient  
9 clarification of the slough I was talking about. We're  
10 going to take a closer look at this on my next exhibit.

11           If I could, I'd ask Mr. Lindsay if he could  
12 pull up Exhibit 6L, and we'll get a closer look.

13           So this is a blow-up of the same map from 1914.  
14 And we're kind of zooming in here on the area right to  
15 the northeast of the Woods Irrigation diversion  
16 structure.

17           So we can see this slough here. And -- I'm  
18 sorry. You can see the slough in the location I just  
19 previously described to the northeast of the Woods  
20 Irrigation Company diversion point.

21           And you'll notice here is this road which runs  
22 east-west, just north of the diversion point. As it  
23 crosses the slough and the irrigation canals, you can  
24 see this little bridge feature. So that indicates that  
25 we're crossing a water body.

1           And also, the way the slough is drawn here with  
2 two dark lines with the thickness there in the middle,  
3 to me is obvious from the legend that we're noting a  
4 slough feature.

5           Then you can see on this particular view, this  
6 map, since we're zoomed in here, you can actually see  
7 the dotted lines that would picture the irrigation  
8 canals running north and south based on the legend.

9           And just for reference, this is the Dunkel  
10 parcel -- I know it's been discussed before at the  
11 Board -- sitting here just south on that interior island  
12 slough.

13           MR. HERRICK: Mr. Blake, just for the record,  
14 would you also describe the dotted lines on the left,  
15 more to the left of where you've been describing, and  
16 where they go or connect?

17           MR. BLAKE: Certainly.

18           So as soon as you came north from the diversion  
19 point, you have that island slough that runs  
20 northeasterly. But almost immediately after you came  
21 north off the diversion point, there is a series of  
22 irrigation ditches that run just east of the north  
23 cardinal direction.

24           And we don't have it on this map view, but if  
25 you go back to the original map view, you'll find that



1 those lines run north. If they don't run to Burns  
2 Cutoff, they run almost to Burns Cutoff.

3 Maybe I could ask Mr. Lindsay if he could  
4 quickly pull up Exhibit 6K again. Take a quick look at  
5 that. So again -- can you scroll down just a row for  
6 me, Mr. Lindsay? Thank you very much. There's good.

7 So we come from the Woods Irrigation diversion  
8 point, then we go just east and north. We can see those  
9 lines run all the way up almost to Burns Cutoff, and  
10 then you'll see there is laterals coming off of that to  
11 serve those lands.

12 And these ditches overlay extremely well on the  
13 previous map that we looked at, the dark map of the  
14 lands of Woods brothers.

15 I'd like to ask Mr. Lindsay then to open  
16 Exhibit 6M.

17 This is a 1941 map of the Woods Irrigation  
18 Company. And the reason that I would like to examine  
19 this map for just a minute is that it also shows  
20 irrigation and drainage features along the same lines  
21 that we examined on the previous two maps which  
22 demonstrates to me, when I examine these maps from  
23 different years, that not only were those canals and  
24 ditches in place in 1907 and 1908, but they were still  
25 being used in 1914.

1           Here we are all the way down in 1941. They're  
2 still being used, and they're in the same location as  
3 they were shown on the original maps.

4           Just additional evidence to me that our  
5 original interpretation or my original -- my  
6 interpretation of that original 1907-1908 Woods brothers  
7 map is correct and that that system was in place at that  
8 time.

9           To help the Board visualize the ditches and  
10 canals shown on these different maps, we've prepared an  
11 exhibit. I'd like to ask Mr. Lindsay to open  
12 Exhibit 6N.

13           And using our mapping software, we were able to  
14 digitize or digitally trace the canals shown on those.  
15 This is on the 1907-1908 map of the Woods brothers land,  
16 and it's also the 1914 map.

17           We were able to overlay that on a current  
18 aerial photo. I believe this is the 2009 aerial photo,  
19 USDA aerial photo. And we've also laid on top of this  
20 for the benefit of everyone's viewing in the orange  
21 lines the boundaries of the 1911 service agreement.

22           So it's clear to me as someone that reads and  
23 interprets maps that the two maps under discussion, the  
24 1907-1908 map and 1914 map, show an extensive system of  
25 ditches and canals running through the lands that were

1 owned by Woods brothers at the time of the 1911  
2 agreements.

3 And so this is just kind of a consolidation or  
4 an aggregation of that data on a single view with the  
5 current aerial background.

6 MR. HERRICK: Mr. Blake, would you just confirm  
7 or deny whether or not this system of canals you've  
8 overlaid on this map all trace back to the diversion  
9 points of Woods Irrigation Company or not?

10 MR. BLAKE: Yeah, that's correct.

11 You can follow these lines down essentially the  
12 same ditches today as were on the 1907 map. There have  
13 been a few changes, but you can essentially follow those  
14 same lines all the way down back to the original point  
15 of diversion where the current Woods Irrigation Company  
16 diversion structure is today, and it's easy to trace  
17 those lines.

18 One of the other things I would like to point  
19 out -- I didn't mention this earlier; I apologize -- is  
20 that many of these ditches and canals that are shown --  
21 I shouldn't say many; I should say several -- of the  
22 ditches and canals that are shown on the 1907 and 1914  
23 maps are very sinuous or wiggly, for a word that lay  
24 people would be more familiar with, which indicates to  
25 me that they likely followed the course of those

1 original interior island sloughs referenced in testimony  
2 from other parties before the Board on this matter.

3 We also as part of our work -- or I, as part of  
4 my work, examined and mapped the two 1911 agreements to  
5 provide irrigation water for Woods Irrigation Company.

6 Those exhibits are 6O and 6P. I don't think we  
7 need to examine those. They've been examined quite  
8 thoroughly.

9 If you could, Mr. Lindsay, open for me first  
10 Exhibit 6Q.

11 So just for ease of reference and  
12 visualization, this is the first 1911 agreement. This  
13 is the agreement or the contract to furnish water to  
14 E.W.S. Woods.

15 As you can see, we've gone in and interpreted  
16 that agreement on the current aerial photo, mapped that  
17 agreement on the current aerial photo.

18 And if you could, Mr. Lindsay, open up Exhibit  
19 6R, and we'll see we've done the same thing here for the  
20 contract to furnish irrigation water to Wilhoit  
21 Douglass, and that's this kind of turquoise-blue shape  
22 here.

23 And in just a just a minute here, we'll look at  
24 an exhibit that shows both of those figures put  
25 together.

1           Before we look at that last exhibit, just in  
2 summary, based on my research and the criteria that I  
3 was provided, I conclude that all the parcels that were  
4 within the 1911 Woods Irrigation Company service area  
5 defined in those two agreements are currently abutting  
6 an existing waterway, Burns Cutoff, Middle River, Duck  
7 Slough.

8           They abutted an interior island slough, as we  
9 examined, at the time the canals and ditches which  
10 predate 1911 agreements were in existence, or they  
11 abutted a main channel or interior island slough at the  
12 time the 1911 agreements secured the ability to get  
13 water from the Woods Irrigation Company system.

14           So based on the criteria that I was given, the  
15 four points that I outlined at the beginning of my  
16 testimony, I conclude that all of those lands that are  
17 within the 1911 agreement boundaries could be riparian  
18 based on the criteria that I was given even though I  
19 can't make a legal decision on that matter.

20           The final exhibit I would like to display is  
21 Exhibit 6S. I'll ask Mr. Lindsay to show that.

22           This is the exhibit that we examined earlier.

23           So we can see in yellow here, that is the  
24 combination of the two 1911 contracts to furnish water  
25 to E.W.S. Woods and to Wilhoit Douglass -- I'm sorry.

1 That's the bluish-turquoise line.

2 The yellow line is the boundary of the current  
3 Woods Irrigation Company, irrigation only.

4 And then we have the cross-hatched red areas  
5 are the parcels that are currently served by Woods  
6 Irrigation Company but for drainage only.

7 So that, this exhibit, just shows all three of  
8 those boundaries overlaid on a current aerial photo.

9 And I believe that completes the summary I had.

10 MR. HERRICK: Mr. Blake, I don't know if you  
11 mentioned that in your examination of those you called  
12 them sinuous lines or curved lines on Middle Roberts  
13 that you matched up with irrigation or drainage canals,  
14 in your testimony on page 4 you also mentioned that  
15 those matched up to the historic slough lines identified  
16 by Mr. Moore in his testimony; is that correct?

17 MR. BLAKE: That is correct.

18 MR. HERRICK: I think that's it. Okay. Thank  
19 you.

20 I think that concludes direct.

21 CO-HEARING OFFICER PETTIT: Okay. Do  
22 coordinated parties have some cross? I'm sorry. I got  
23 lost in my own chart. I think we're ready to start the  
24 prosecution cross, so.

25 MR. ROSE: We have no questions at this time.

1 CO-HEARING OFFICER PETTIT: Thank you.

2 Mr. Rubin?

3 --o0o--

4 CROSS-EXAMINATION BY MR. RUBIN

5 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

6 --o0o--

7 MR. RUBIN: Good afternoon, Mr. Blake. My name  
8 is Jon Rubin. I'm an attorney for the San Luis &  
9 Delta-Mendota Water Authority.

10 MR. BLAKE: Good afternoon, Mr. Rubin.

11 MR. RUBIN: I have a few questions for you.

12 Were you here when Mr. Neudeck testified this  
13 morning?

14 MR. BLAKE: Yes, I was.

15 MR. RUBIN: And Mr. Blake, you're an employee  
16 of the firm in which Mr. Neudeck is employed as well?

17 MR. BLAKE: Mr. Neudeck is a principal; but  
18 yes, I'm employed with that firm.

19 MR. RUBIN: And if I understand your statement  
20 of qualifications correctly, which I believe is marked  
21 as Woods Irrigation Company 5, you work under the  
22 direction of the principals within Kjeldsen, Sinnock and  
23 Neudeck?

24 MR. BLAKE: Kjeldsen, Sinnock and Neudeck, that  
25 is correct.

1           MR. RUBIN:  And did you work under  
2 Mr. Neudeck's direction as you prepared your testimony  
3 for this proceeding?

4           MR. BLAKE:  Mr. Neudeck provided direction, but  
5 as a licensed land surveyor I was in responsible charge  
6 of the work that was done in preparation.

7           MR. RUBIN:  And were you retained separately  
8 from Mr. Neudeck for purposes of this proceeding?

9           MR. BLAKE:  I'm not familiar with the contract  
10 details that we have with the client, but I believe I  
11 would probably fall under the same contract agreement as  
12 Mr. Neudeck.

13           MR. RUBIN:  I believe Mr. Neudeck testified  
14 that the client that his firm was representing was South  
15 Delta Water Agency and Central Delta Water Agency.  Is  
16 that your recollection?

17           MR. BLAKE:  I'm -- I believe that that may be  
18 the case.  It's not clear to me if we were contracted  
19 directly with Woods Irrigation Company or with South  
20 Delta Water Agency.  I had more of a technical role and  
21 less of a contract management role on this project.

22           MR. RUBIN:  Mr. Blake, if a response to my  
23 question -- it's perfectly appropriate for you to say  
24 that you don't know if you don't, and I think we all  
25 would appreciate that if that's the case.



1 MR. BLAKE: Okay.

2 MR. RUBIN: Now in your written testimony,  
3 Woods Irrigation Company Exhibit 6, I believe that you  
4 state that one of the issues in this proceeding is  
5 whether there is evidence to support a conclusion that a  
6 riparian right exists for parcels of land within Woods  
7 Irrigation Company; is that correct?

8 MR. BLAKE: Maybe if you could point that  
9 statement out to me.

10 MR. RUBIN: The second complete paragraph on  
11 the first page of your --

12 MR. BLAKE: Yes.

13 MR. RUBIN: -- written testimony?

14 MR. BLAKE: That is correct.

15 MR. RUBIN: And who is the person that informed  
16 you that that was an issue in this proceeding?

17 MR. BLAKE: That would be Mr. John Herrick.

18 MR. RUBIN: And do you know if the hearing is  
19 intended to identify water rights that may be held by  
20 Woods Irrigation Company as opposed to landowners within  
21 Woods Irrigation Company?

22 MR. BLAKE: I don't know that I'm aware of the  
23 specific legal issues involved.

24 I was asked to do a very simple thing, and that  
25 was to examine the parcels within the 1911 agreements

1 and determine based on criteria I was provided if those  
2 were riparian or not.

3 MR. RUBIN: Okay. Do you know if Woods  
4 Irrigation Company can hold a water right that --

5 MR. BLAKE: That is not my area of expertise.  
6 I do not know.

7 MR. RUBIN: And I assume that you don't know  
8 whether, based upon that answer, that you do not know if  
9 Woods Irrigation Company can hold a riparian water  
10 right?

11 MR. BLAKE: That's correct. I am not aware of  
12 the legal issues there.

13 MR. RUBIN: Your analysis is not based on a  
14 review of title records for all parcels within Woods  
15 Irrigation Company, is it?

16 MR. BLAKE: That is correct.

17 MR. RUBIN: Mr. Blake, did you prepare Woods  
18 Irrigation Company Exhibit 6B?

19 MR. BLAKE: I didn't prepare the patent. I  
20 prepared the exhibit that visualizes the patent, yes.

21 MR. RUBIN: Okay. So there is a foundational  
22 map upon which you imposed kind of the hashmark?

23 MR. BLAKE: Yeah, that's correct.

24 MR. RUBIN: And is that -- did you -- is that  
25 the same technique that you used to prepare exhibit,

1 Woods Irrigation Company Exhibit 6C?

2 MR. BLAKE: I believe that is, yes.

3 MR. RUBIN: Is the same true for Exhibit 6D  
4 through 6I?

5 MR. BLAKE: Well, I believe at one point some  
6 of those exhibits were prepared on an aerial photo  
7 background, not on that historic map background.

8 But yes, there were several of the exhibits  
9 that were prepared on that map background.

10 MR. RUBIN: But all these exhibits were either  
11 prepared by you or at your direction?

12 MR. BLAKE: Prepared by me or directly under my  
13 supervision; that is correct.

14 MR. RUBIN: Okay.

15 Mr. Blake, if I understand your testimony  
16 correctly, Exhibits 6B through 6I involve transfers of  
17 title that occurred between 1876 and 1903; is that  
18 correct?

19 MR. BLAKE: That's correct.

20 MR. RUBIN: Do you know when Woods Irrigation  
21 Company was formed as a political -- excuse me -- as an  
22 corporate entity?

23 MR. BLAKE: I don't know the exact date. I  
24 believe it was in the 1910 time frame.

25 MR. RUBIN: So the information that you

1 provided in Exhibits 6B through 6I predate the existence  
2 of Woods Irrigation Company?

3 MR. BLAKE: I believe that is correct.

4 MR. RUBIN: Mr. Blake, I was looking through  
5 your testimony and was trying to find an exhibit that  
6 demonstrated or reflected facilities that may have  
7 existed in 1889. I was having trouble.

8 I was wondering if you might be able to  
9 identify the exhibit that shows the facilities that  
10 existed within Roberts Island in 1889?

11 MR. BLAKE: I don't believe I prepared an  
12 exhibit showing facilities that existed in 1889.

13 MR. RUBIN: Okay. In your written testimony, I  
14 believe it's on page 2, last complete paragraph, you  
15 discuss a transfer that occurred in 1889; is that  
16 correct?

17 MR. BLAKE: That is correct.

18 MR. RUBIN: And I believe it's your conclusion  
19 that as a result of the transfer that occurred in 1889  
20 there was a parcel that abutted at least two interior  
21 island sloughs; is that correct?

22 MR. BLAKE: That is correct.

23 MR. RUBIN: And upon what do you base that  
24 statement?

25 MR. BLAKE: I base that statement on subsequent

1 maps in later years that show the either irrigation  
2 ditches or sloughs at those locations.

3           There are obviously to me, as someone that  
4 interprets maps, following natural watercourse features.  
5 And based on the testimony of Mr. Lajoie and my  
6 knowledge of the Delta area, I believe that those  
7 sloughs were based -- or the sloughs were existing in  
8 1889 when that parcel was separated. But I do not have  
9 a specific document that shows that.

10           MR. RUBIN: Now, what maps did you rely upon  
11 that reflected irrigation canals or ditches that ran  
12 either through or abutted the parcel that resulted from  
13 the 1889 transfer that's described in the last complete  
14 paragraph on page 2 of your written testimony?

15           MR. BLAKE: That would be the map of Woods  
16 brothers lands dated -- which I dated 1907-1908 that was  
17 discussed in my testimony and also the 1914 map.

18           MR. RUBIN: Are those marked as Woods  
19 Irrigation Company Exhibits J and K, 6J and 6K?

20           MR. BLAKE: That is correct.

21           MR. RUBIN: Now, Mr. Blake, is there anything  
22 on Woods Irrigation Company Exhibit 6J that is labeled  
23 an irrigation canal as opposed to a canal?

24           MR. BLAKE: Can -- thank you, Mr. Lindsay, for  
25 pulling that up.

1 I don't believe I see anything on the map  
2 labeled explicitly irrigation canal.

3 MR. RUBIN: And on 6K, is there any feature  
4 that's labelled specifically an irrigation canal?

5 MR. BLAKE: I guess that would depend,  
6 Mr. Rubin, on your definition of label. As a land  
7 surveyor --

8 MR. RUBIN: Let me be more specific.

9 MR. BLAKE: Okay.

10 MR. RUBIN: There is a key for Exhibit 6K,  
11 correct?

12 MR. BLAKE: A legend, yes.

13 MR. RUBIN: In that legend, there is a  
14 depiction of features that could be a canal, correct?

15 MR. BLAKE: I believe it says irrigation ditch  
16 or canal or slough, yeah, small slough.

17 MR. RUBIN: Mr. Lindsay, if you wouldn't mind  
18 placing the second page of Exhibit 6K which is the  
19 legend.

20 Mr. Blake, does the legend include a  
21 description of a feature that is an irrigation canal?

22 MR. BLAKE: No, you're correct. It says  
23 canals, ditches, and small sloughs.

24 MR. RUBIN: So based upon this legend, is it  
25 appropriate to conclude that Exhibit 6K does not depict

1 any feature as an irrigation canal?

2 MR. BLAKE: In my professional opinion, based  
3 on this legend and the location of the line shown on the  
4 map, I believe those were used for irrigation and  
5 drainage.

6 MR. RUBIN: Do you know if a specific canal was  
7 used for irrigation as opposed to drainage? Or could it  
8 be used for one or the other?

9 MR. BLAKE: It could be used for one or the  
10 other.

11 MR. RUBIN: And you don't know whether a  
12 specific canal was used for drainage or irrigation in  
13 1914 or earlier, do you?

14 MR. BLAKE: Other than based on the  
15 interpretation of this map, no, I do not.

16 MR. RUBIN: And do you have the expertise to  
17 interpret a map and determine whether a canal was used  
18 for irrigation purposes prior to 1914 as opposed to a  
19 canal being used for drainage prior to 1914?

20 MR. BLAKE: Well, Mr. Rubin, my business is to  
21 create, analyze, and interpret maps, so I feel that I am  
22 qualified.

23 MR. RUBIN: Mr. Blake, I believe the parcel  
24 that resulted from the 1889 transfer that's described in  
25 the last complete paragraph on page 2 of your written

1 testimony is depicted in Exhibit 6E; is that correct?

2 MR. BLAKE: That is correct.

3 MR. RUBIN: And can you describe for me the two  
4 interior sloughs that you believe abutted the parcel at  
5 the time it was transferred?

6 MR. BLAKE: Certainly. Let me start at the  
7 diversion point. That's usually the best place to  
8 start, the current Woods Irrigation Company diversion  
9 point.

10 Then you can see as I move northeasterly up  
11 this first line, then run through the west edge of the  
12 parcel. That's the first. Starting again at the Woods  
13 Irrigation Company --

14 MR. RUBIN: Mr. Blake, just so the record is  
15 clear: I believe you used the pointer to trace a line  
16 that ran on the westerly border of the parcel, and if  
17 you were to continue it past the parcel runs -- would  
18 run through the designation of the Barba Road? Is that  
19 correct?

20 MR. BLAKE: Yeah, I believe that's correct.

21 MR. RUBIN: Then your description discusses a  
22 second interior slough?

23 MR. BLAKE: Yeah. Let me just -- let me make a  
24 correction on the record. There's a typo. That's Borba  
25 Road, not Barba Road. I don't want somebody looking for



1 the wrong road.

2 MR. RUBIN: Thank you.

3 MR. BLAKE: Would you like me to describe that  
4 second?

5 MR. RUBIN: Please.

6 MR. BLAKE: If we start at the Woods Irrigation  
7 canal diversion point -- excuse me; Woods Irrigation  
8 Company diversion point, and this time instead of moving  
9 in a more northerly direction we move in a more  
10 northeasterly direction, you come up to a point that's  
11 just above the W on the Howard Road label.

12 Then you run almost due north.

13 Then as soon as you hit the south edge of the  
14 Blossom parcel, you can kind of trace the sinuous curves  
15 of that canal as it moves northward through the parcel.

16 MR. RUBIN: Okay. Now, Mr. Blake, I think you  
17 described for us the map, how it was produced,  
18 Exhibit 6E. But what you've done is you've imposed a --  
19 what you've described as a parcel that resulted from the  
20 1889 transfer onto a photograph, correct?

21 MR. BLAKE: I took the legal description in the  
22 deed for the Blossom parcel, and based on calls in the  
23 deed overlaid that on a current aerial photo. That is  
24 correct.

25 MR. RUBIN: And you've described the photograph

1 as a current photograph. Do you know when the  
2 photograph was taken?

3 MR. BLAKE: I believe that's a 2009 USDA NAIP  
4 image.

5 MR. RUBIN: Now, I believe it's your testimony  
6 that the two inland sloughs that you just described for  
7 us are also depicted on Exhibit 6K; is that correct?

8 MR. BLAKE: I believe that is correct.

9 MR. RUBIN: And I believe you've also testified  
10 that they are depicted on Exhibit 6J?

11 MR. BLAKE: That is correct.

12 MR. RUBIN: Turning to Exhibit 6K -- I  
13 apologize, Mr. Lindsay -- and specifically the third  
14 page of Exhibit 6K: How are the two inland sloughs that  
15 you've described in your written testimony described on  
16 this third page of Exhibit 6K?

17 MR. BLAKE: Well, they're not described but  
18 they're shown. So let me point them out. Again, we'll  
19 start at our favorite spot in the Delta.

20 MR. RUBIN: Mr. Blake, I apologize for  
21 interrupting you. My question was probably not as clear  
22 as it should have been.

23 MR. BLAKE: Okay.

24 MR. RUBIN: What I would like to know is:  
25 Based upon the legend, the two -- what you've describe

1 as two interior sloughs, how are those depicted based  
2 upon the legend?

3 MR. BLAKE: They are depicted as ditches,  
4 canals, or small sloughs.

5 MR. RUBIN: Okay. And do you know what the  
6 definition of a slough is?

7 MR. BLAKE: I do based on Mr. Neudeck's  
8 testimony from this morning.

9 MR. RUBIN: And based upon his testimony, what  
10 is a slough?

11 MR. BLAKE: A slough is smaller than a river.  
12 It's a channel off of a main river stream.

13 MR. RUBIN: Okay. Do you know if a slough  
14 suggests that water can move in more than one direction?

15 MR. BLAKE: I don't know that I'm qualified to  
16 comment on that, Mr. Rubin.

17 MR. RUBIN: Is it possible that the two inland  
18 features that you've described are actually canals?

19 MR. BLAKE: I think they became canals at one  
20 point. I think they were converted from natural bodies  
21 of water into canals.

22 MR. RUBIN: Upon what do you base that  
23 conclusion?

24 MR. BLAKE: I base that conclusion on the  
25 configuration of those lines. I don't know if the ditch

1 digger was drinking a lot of whiskey that day, but I  
2 can't think of another reasonable explanation as to why  
3 that line would wander all over the map other than that  
4 they were following a natural body of water that was  
5 already present.

6 MR. RUBIN: And do you have a sense of why  
7 somebody would invest money in establishing a canal if  
8 there's already a natural water body in existence?

9 MR. BLAKE: Certainly. It could be that that  
10 body of water had pools or needed to be mucked out. It  
11 could have been certainly straightened, some of the  
12 bends straightened when they started going in there to  
13 maintain the ditch.

14 MR. O'LAUGHLIN: But that couldn't have been  
15 the case here because you've made the conclusion that  
16 there's a natural water feature here based on its lack  
17 of linearity?

18 MR. HERRICK: I would just object to that as  
19 argumentative.

20 The testimony was not that it was all straight  
21 or all wiggly. It's a combination of both, and he  
22 described each.

23 MR. RUBIN: Mr. Blake, have you ever reviewed a  
24 map other than Exhibit 6J that identifies the two  
25 features that you have described as a slough as a

1 slough?

2 MR. BLAKE: Yeah. Exhibit 6J.

3 MR. RUBIN: Aside from -- well, in Exhibit 6J,  
4 the two features that you've -- that we've been  
5 describing are designated sloughs?

6 MR. BLAKE: They are not designated sloughs,  
7 but based on my interpretation of the map, I believe  
8 they were water features.

9 MR. RUBIN: Thank you.

10 Mr. Blake, you do not make any conclusions as  
11 to the quantity of water that may have been provided by  
12 Woods Irrigation Company prior to 1914, correct?

13 MR. BLAKE: Correct.

14 MR. RUBIN: And you make no conclusions as to  
15 the quantity of land that might have received water from  
16 Woods Irrigation Company prior to 1914?

17 MR. BLAKE: I did not determine any numerical  
18 calculation; that is correct.

19 MR. RUBIN: And you make no conclusions as to  
20 the season of diversion by Woods Irrigation Company  
21 prior to 1914?

22 MR. BLAKE: That is correct.

23 MR. RUBIN: Mr. Blake, would you agree that  
24 prior to 1914 there were lands within Woods Irrigation  
25 Company that may have been cultivated but not irrigated

1 with surface water?

2 MR. BLAKE: I don't think I'm qualified to  
3 agree or disagree with that statement.

4 MR. RUBIN: Thank you.

5 Now Mr. Blake, I do have some questions  
6 regarding Exhibit 6S. Mr. Lindsay, if you wouldn't mind  
7 putting Exhibit 6S on the overhead, I would appreciate  
8 that.

9 Mr. Blake, if I understand this map correctly,  
10 there's a yellow line that depicts what you believe is  
11 the service area of Woods as of -- is it 1995?

12 MR. BLAKE: That's actually -- that's 2006.  
13 That may be a typo, I apologize.

14 MR. RUBIN: And I'm not sure how you would  
15 describe -- there's another line on the map that's  
16 intended to reflect the boundary as depicted in the 1911  
17 agreements?

18 MR. BLAKE: Yeah, there's a collection of three  
19 lines -- they're a bluish or bluish-turquoise color --  
20 that represent the boundaries of the 1911 agreements;  
21 that's correct.

22 MR. RUBIN: And in the 1911 agreements, there  
23 were some lands that were identified as not able to  
24 receive irrigation water; is that correct?

25 MR. BLAKE: I believe that is correct.

1           MR. RUBIN:  And this map does not distinguish  
2  between lands that may have been identified for  
3  furnishment of water by Woods Irrigation Company as  
4  opposed to lands that would be just receiving drainage  
5  service?

6           MR. BLAKE:  That is correct.  There is some  
7  board minutes, I believe 1913, that identify 300-some  
8  acres that were excluded because they couldn't be  
9  irrigated.  I did not denote those lands on this map,  
10 but we did map them.

11          MR. RUBIN:  One of the 1911 agreements that  
12 we're talking about is an agreement that concerns the  
13 western portion of Woods Irrigation Company; is that  
14 correct?

15          MR. BLAKE:  I believe, yeah, there's an eastern  
16 portion and a western portion; that's correct.

17          MR. RUBIN:  Do you have the -- is the agreement  
18 for the western portion an exhibit to your testimony?

19          MR. BLAKE:  I believe it is.  Hang on one  
20 second.  I think it's O or P, 6O or 6P.

21          Mr. Lindsay, could you pull up 6O?  I think  
22 that's one of them.

23          MR. RUBIN:  Mr. Blake, on the last page of  
24 Exhibit 6O, Woods Irrigation Company, is a map; is that  
25 correct?

1 MR. BLAKE: That's correct.

2 MR. RUBIN: And do you understand what the area  
3 that's blacked out is intended to represent?

4 MR. BLAKE: You know, Mr. Rubin, I don't know  
5 that I specifically remember what that is intended to  
6 represent.

7 MR. RUBIN: And when you prepared Exhibit 6S, I  
8 assume based on your answer to my last question that  
9 Exhibit 6S does not reflect any differences that are  
10 reflected in the last page of Exhibit 60?

11 MR. BLAKE: I think I can answer your question,  
12 Mr. Rubin. The lines that I prepared that are shown on  
13 Exhibit 6S include the shaded portions of this map.

14 MR. RUBIN: Mr. Blake, in your analysis, you do  
15 make a -- you do make conclusions as to whether property  
16 maintained a connection to watercourses, correct?

17 Excuse me. Let me rephrase my question.

18 In your written testimony, you draw conclusions  
19 as to whether property, as ownership changed, whether  
20 the property maintained a connection to a waterway?

21 MR. BLAKE: That is correct.

22 MR. RUBIN: And you understand that Woods  
23 Irrigation Company's current diversion facility is on  
24 Middle River?

25 MR. BLAKE: That is correct.



1           MR. RUBIN: Do you know if there is any legal  
2 consequence of a parcel that may have maintained  
3 connectivity to say Burns Cutoff if Woods is currently  
4 diverting from Middle River?

5           MR. BLAKE: Can I have you repeat your question  
6 one more time?

7           MR. RUBIN: Is there a legal -- do you know if  
8 there is a legal effect of a parcel that may have been  
9 maintained a connection to Burns Cutoff if Woods  
10 Irrigation Company is diverting from Middle River?

11          MR. BLAKE: I would have to ask an attorney  
12 about the legal issues, but I can tell you that I did  
13 consider Burns Cutoff in my analysis.

14          MR. RUBIN: Okay. And you may have drawn a  
15 conclusion that a parcel maintained a connection to  
16 Burns Cutoff, and that would be your conclusion, not  
17 whether that justified a diversion at Middle River?

18          MR. BLAKE: That is correct. I did not look at  
19 legal issues related to Burns Cutoff, just simply  
20 whether there was a connection to the parcel or not.

21          MR. RUBIN: I have no further questions. Thank  
22 you, Mr. Blake.

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CROSS-EXAMINATION BY MR. O'LAUGHLIN  
FOR MODESTO IRRIGATION DISTRICT  
--o0o--

MR. O'LAUGHLIN: Good afternoon. My name is Tim O'Laughlin. I represent Modesto Irrigation District.

Can you put 6S back up on the board please?

CHIEF LINDSAY: S?

MR. O'LAUGHLIN: S as in Sam.

I'm confused about -- I understand the legend is depicted in the lower left-hand corner, and the blue line is the 1911 amendments boundaries. So that's how Woods Irrigation District looked in 1911, correct?

MR. BLAKE: Those were the lands covered in the 1911 contracts, yes.

MR. O'LAUGHLIN: Okay. Then it's -- is it a -- what year is that service area boundary?

MR. BLAKE: The yellow?

MR. O'LAUGHLIN: Yeah.

MR. BLAKE: That's -- I believe that's a typo, Mr. O'Laughlin. That's from a 2006 map of the area served by Woods Irrigation Company.

MR. O'LAUGHLIN: So that's a typo?

MR. BLAKE: I believe that is a typo.

1           MR. O'LAUGHLIN:  Okay.  So that's -- that would  
2 be the 2006 -- yellow is the current boundary, correct?

3           MR. BLAKE:  Of the irrigation only parcels,  
4 that's correct.

5           MR. O'LAUGHLIN:  Perfect.  Okay.

6           So now help me here because there's some lines  
7 that get intersected, and I don't know what happens to  
8 them.

9           MR. BLAKE:  No problem.

10          MR. O'LAUGHLIN:  Okay.  So my first question  
11 is:  There's a little blue triangle in the northwest  
12 corner of where the current Woods service area boundary  
13 is.  So is it your understanding that that little blue  
14 triangle -- sorry -- is no longer receiving water from  
15 Woods Irrigation Company?

16          MR. BLAKE:  I can't speak to whether or not  
17 they were receiving water.  All I know is that that land  
18 was included in the 1911 contracts, and on the current  
19 map I have, 2006, it wasn't included.

20          MR. O'LAUGHLIN:  Okay.  Then my next one where  
21 I have problems following the line is there is a blue  
22 line right here that runs across.  And there's no blue  
23 line running in a westerly direction from this blue  
24 line, and then it intersects this yellow line.

25          My understanding is the Douglass Wilhoit

1 transfer is basically all the lands that were below this  
2 blue line, and actually anything above that was not in  
3 the original Woods Irrigation Company 1911 agreements;  
4 is that correct?

5           This area here? And you can refer to -- take  
6 your time -- refer to 6P which is the actual 1911 and  
7 Douglass Wilhoit map.

8           And see any confusion is you did the eastern  
9 side of it, but it doesn't appear that you did the  
10 western side of it.

11           MR. BLAKE: Maybe we can pull that -- let me  
12 see which number it is.

13           MR. O'LAUGHLIN: Sure.

14           MR. BLAKE: I understand your question.

15           MR. O'LAUGHLIN: Oh, do you?

16           MR. BLAKE: Can we look at -- Mr. Lindsay, can  
17 we pull up 6Q for just a minute?

18           MR. O'LAUGHLIN: Okay. 6Q.

19           MR. BLAKE: Now can we go back to 6S?

20           I think I understand your question,  
21 Mr. O'Laughlin. Let me see if I can answer it.

22           MR. O'LAUGHLIN: Okay.

23           MR. BLAKE: The blue line that starts at the --  
24 on the east side of the current boundary, right at the  
25 -- and the 90-degree angle point?

1 MR. O'LAUGHLIN: Yes.

2 MR. BLAKE: Okay. That blue line then moves  
3 west, oh, probably a mile and then turns 90-degree turn  
4 to the south.

5 MR. O'LAUGHLIN: Okay.

6 MR. BLAKE: That's the boundary between the two  
7 1911 contracts.

8 MR. O'LAUGHLIN: Okay.

9 MR. BLAKE: So the land immediately north of  
10 that and kind of the corn-colored, gold-colored fields.

11 MR. O'LAUGHLIN: Yes.

12 MR. BLAKE: I believe that is included in the  
13 1911 agreement on the west half. We can --

14 MR. O'LAUGHLIN: On the west half.

15 MR. BLAKE: Yeah. We can go back and look at  
16 that exhibit if you want.

17 MR. O'LAUGHLIN: No, that's fine.

18 MR. BLAKE: Okay.

19 MR. O'LAUGHLIN: Now moving southward on the  
20 east side of the map again, we get about halfway down,  
21 and I notice there's a solid blue line on the eastern  
22 side here, and then a solid yellow line to the east,  
23 approximately halfway down.

24 Is it your statement then that this parcel here  
25 or parcels was added after 1911?

1 MR. BLAKE: I did not infer that conclusion.  
2 One could infer that conclusion. I would have to look  
3 at some additional evidence.

4 What I can clearly state is that the current  
5 2006 boundary of parcels being served for irrigation by  
6 Woods Irrigation Company is clearly east of the boundary  
7 of the original 1911 agreement.

8 Why that line moved east, I cannot specifically  
9 state. I haven't looked into that.

10 MR. O'LAUGHLIN: Okay. But based on your  
11 statement, those two parcels there -- there appears to  
12 be two parcels; I don't know how many there are -- now  
13 are in Woods Irrigation District, whereas in 1911 they  
14 were not in Woods Irrigation District?

15 MR. BLAKE: Based on the 1911 agreements and  
16 the 2006 map I had in my possession, yes, that is  
17 correct.

18 MR. O'LAUGHLIN: Okay. Same question. Right  
19 below there, there's a larger chunk. It kind of forms  
20 like a little strange L.

21 Would your answer to that be the same, is that  
22 the original 1911 boundary has now moved to the east for  
23 2006?

24 MR. BLAKE: Yeah. My answer would apply to all  
25 that area in between the blue line and yellow line in

1 that portion of the map.

2 MR. O'LAUGHLIN: Okay. And then if you could  
3 scroll down just a little bit, that would be helpful.  
4 Thank you.

5 Now, as well, there is a small triangular piece  
6 at the lower left-hand corner right down where the  
7 pumping station appears in that area.

8 If this blue line would depict that in 1911 it  
9 was in Woods Irrigation District company, and now with  
10 this yellow line here, it would depict that it's no  
11 longer in Woods Irrigation Company as of 2006?

12 MR. BLAKE: Based on those maps, that is  
13 correct.

14 MR. O'LAUGHLIN: The other one I didn't  
15 understand -- and I don't -- maybe you just did this  
16 because you wanted to.

17 There is a blue line on the far west side of  
18 the map commonly out toward the pocket area. And I  
19 notice that you denoted a red coloring off to the left.

20 Is there a reason why you had the red coloring  
21 outside the blue lines if you're only depicting the  
22 Woods Irrigation Company boundaries?

23 MR. BLAKE: Yeah, that's a little confusing.  
24 Let me explain.

25 MR. O'LAUGHLIN: Sure.

1           MR. BLAKE: The cross-hatched red areas are  
2 parcels that are served only for drainage by Woods  
3 Irrigation Company.

4           So the parcels in question there I believe are  
5 served by the Woods Robinson Vasquez irrigation  
6 district, but they are served by drainage through Woods.

7           So the only parcels I included within the  
8 yellow line are served irrigation and drainage.

9           So the parcels outside of the yellow line are  
10 drainage only, and that did include several parcels that  
11 were not in the original 1911 agreements to furnish  
12 water.

13           MR. O'LAUGHLIN: Now in looking at this map --  
14 and thank you. Your responses have been very helpful.

15           In looking at this map, other than the 1911  
16 agreement and other than the 2006, did you do any  
17 independent evaluation to see if other lands had been  
18 added or subtracted from Woods Irrigation Company in the  
19 intervening years?

20           MR. BLAKE: I was provided by Woods Irrigation  
21 Company a copy of board minutes, I believe dated 1913,  
22 that removed approximately 300 acres from the Woods  
23 Irrigation Company service area.

24           Aside from that document, no, I did not verify  
25 any other records.



1           MR. O'LAUGHLIN:  And is the 300 acres that was  
2 deleted in 1913 denoted on the map someplace?

3           MR. BLAKE:  No, it's not.  It's not noted on  
4 the map.  You can see it.

5           MR. O'LAUGHLIN:  Okay.  Let me ask it  
6 differently.

7           Is the 300 acres that was deleted included  
8 within the blue area boundary of Woods Irrigation  
9 District receiving irrigation water?

10          MR. BLAKE:  It is on this map, but you can see  
11 if you look at the map closely that I indicate that it's  
12 not being served for irrigation or drainage because it's  
13 neither within the yellow line or in the red  
14 cross-hatch.

15          MR. O'LAUGHLIN:  Is this --

16          MR. BLAKE:  No.  It's -- go upper left.  If you  
17 come to the north symbol, then just move to the left and  
18 drop down a little bit.

19          So the area within the blue line but outside of  
20 the red cross-hatch; that is correct.

21          MR. O'LAUGHLIN:  Okay.  This area in the far  
22 left-hand corner of the blue line is an area that was  
23 deleted after -- in 1913 and as far as you know received  
24 no irrigation or drainage water from Woods Irrigation  
25 District?

1 MR. BLAKE: I believe that is correct.

2 MR. O'LAUGHLIN: Okay. Were you here earlier  
3 today when Mr. Neudeck testified, right?

4 MR. BLAKE: Yes, sir. I was.

5 MR. O'LAUGHLIN: Okay. He -- were you here --  
6 you weren't here when Mr. Nomellini testified, but  
7 Mr. Neudeck affirmed that he was aware of three  
8 diversion points on Middle River.

9 And what we've done for purposes is that we  
10 call one diversion point with two separate head gates,  
11 and then there's another one that's a little bit  
12 downstream and to the west.

13 Would you agree with those?

14 MR. BLAKE: Mr. O'Laughlin, I'm only familiar  
15 with the main irrigation -- or excuse me, the main  
16 diversion point, the two gates that we've been  
17 considering as one. I'm not familiar with the third.

18 MR. O'LAUGHLIN: Okay.

19 MR. BLAKE: I apologize.

20 MR. O'LAUGHLIN: All right. Now you did  
21 testify that you have an opinion on the movement of  
22 irrigation water in Woods Irrigation Company prior to  
23 1914; is that correct?

24 MR. BLAKE: I don't remember specifically  
25 stating an opinion on the movement of water. Maybe if

1 you can point that out in my testimony, I could look at  
2 that.

3 MR. O'LAUGHLIN: Well, maybe what we'll do is  
4 draw lines. And I like drawing lines on maps. Your  
5 partner couldn't do this, so maybe you can effectuate  
6 this task for us.

7 There are two headworks on Middle River at the  
8 main point of diversion, correct?

9 MR. BLAKE: That is correct.

10 MR. O'LAUGHLIN: Okay. I'm going to hand to  
11 you a document that's been titled MSS 9, and there are  
12 two previous blue circles on there put by Mr. Neudeck.  
13 I've written on it pre-1914.

14 And what I'd like you to do is on the -- one --  
15 just one of the headworks, because -- let me ask a  
16 different question.

17 Is it your understanding that the two separate  
18 head gates went to two separate canals? Or did they go  
19 to one main canal?

20 MR. BLAKE: We're talking about the blue circle  
21 on the southeast?

22 MR. O'LAUGHLIN: Yes, southeast. Because you  
23 said you don't know anything about the one that is  
24 downstream to the west; is that correct?

25 MR. BLAKE: That's correct.

1           MR. O'LAUGHLIN: Okay. So right at the point  
2 where the larger circle is on MSS 9, there are two head  
3 gates there, correct?

4           MR. BLAKE: That is correct.

5           MR. O'LAUGHLIN: Okay. Now is it your  
6 understanding that those two head gates go to two  
7 separate canals? Or do they go to one main canal?

8           MR. BLAKE: Currently.

9           MR. O'LAUGHLIN: No. Prior to 1914.

10          MR. BLAKE: Prior to 1914, I do not know if it  
11 went to one canal or two.

12           I don't believe it's clear from the maps. I  
13 mean there's clearly a separation as you move to the  
14 northeast. But because of the scale of the maps, it's  
15 difficult to tell when you get closer to the river.

16           If I remember from my visit to the site, those  
17 two canals are very close together. I think with maps  
18 of this scale it would be very difficult to show that  
19 separation without a detail.

20           So it's difficult to say if there were a single  
21 canal or two canals there that maps with this scale in  
22 the early 1900s.

23           MR. O'LAUGHLIN: Okay. Let's take it a  
24 different way. At some point in time, moving away from  
25 this juncture box, whether it's two canals or one

1 canals, do you have an understanding of water being  
2 diverted from Middle River, surface water being diverted  
3 from Middle River and moving through -- I don't care  
4 what you want to call them, canals, ditches, sloughs, to  
5 deliver irrigation water into Middle Roberts Island?

6 MR. BLAKE: The only knowledge I have of that  
7 is based on my interpretation of the historic maps and  
8 my current limited knowledge of the irrigation practices  
9 today.

10 MR. O'LAUGHLIN: Okay. Now, what I want to do  
11 first is -- is it your opinion -- you testified earlier  
12 that there appears to be a natural slough. On MSS 9,  
13 it's the blue circle, and coming off from the main  
14 diversion point there appears -- you testified there was  
15 a natural slough going in a north and easterly direction  
16 toward the San Joaquin River. Do you see that?

17 MR. BLAKE: Yes.

18 MR. O'LAUGHLIN: Okay. Now, is it your opinion  
19 that that slough was used to provide surface water  
20 deliveries from Middle River prior to 1914?

21 MR. BLAKE: I don't know that I can jump to  
22 that conclusion.

23 What I can safely state is that based on the  
24 1914 map you can clearly see canals, ditches, and small  
25 sloughs running from what is clearly drawn as a larger

1 slough with -- that even has bridges across it in that  
2 area.

3 I don't know that I'm qualified enough of an  
4 irrigation expert to draw a conclusion as to which way  
5 they were moving water.

6 MR. O'LAUGHLIN: Well, maybe -- let me make a  
7 statement, and then maybe we can cut to the chase here.

8 What I'm trying to get at is I understand the  
9 assertion that there are canals, ditches, drains,  
10 sloughs, a whole myriad of things happening out here on  
11 this island.

12 But what I'm trying to get a handle on is  
13 how -- what water is moving from the diversion point on  
14 Middle River and through what portion of the sloughs,  
15 canals, or ditches to provide water to what areas on  
16 this island?

17 Because -- and I'll just be real blunt about  
18 it. You know, I look at this map, and you could look at  
19 this map and say that there's nine or ten or 12 canals,  
20 but I don't know if all the canals are moving water from  
21 Middle River. Are they drainage canals? Are they roads  
22 or whatever?

23 And the other thing is, it's helpful to us to  
24 try to understand how water moved from those places so  
25 that we could understand what lands were actually

1 irrigated.

2 MR. BLAKE: I think I understand your question.  
3 Let me address two points I think you raised.

4 First of all, in my mind when I look at the  
5 maps that we've been discussing today, there's no  
6 confusion to me on what's a road, what's a ditch or  
7 canal.

8 MR. O'LAUGHLIN: Okay.

9 MR. BLAKE: So I want to state that.

10 Secondly, the only basis I have for making any  
11 conclusion about the flow of the water from -- from  
12 Middle River northwards towards Burns Cutoff is, number  
13 one, that ground surface elevation shown on the 1913  
14 Quad and, number two, my knowledge of the way the water  
15 moves today.

16 Other than those two bases of evidence, I did  
17 not -- I do not have any other evidence indicating which  
18 way water flowed in 1913.

19 MR. O'LAUGHLIN: Now if I understand this, on  
20 MSS 9 where the large circle is, is it your assertion  
21 that this dotted line going up the middle is the  
22 conveyance facility that you're talking to Burns Cutoff?

23 Or is it the one immediately to the left that's  
24 a little bit skinnier that goes all the way up to -- or  
25 heads to Burns Cutoff, that's the irrigation canal

1 you're talking about?

2 MR. BLAKE: Well, there -- I think there was a  
3 number of conveyances. Maybe if you could give me a  
4 specific reference to what canal are we talking about,  
5 and maybe I can clear that up.

6 MR. O'LAUGHLIN: Okay. And it's just a simple  
7 question.

8 I'm looking down at this diversion point down  
9 here in the lower left.

10 MR. BLAKE: Yes.

11 MR. O'LAUGHLIN: And you've talked about a  
12 slough going to the north and east. You've talked  
13 about is this the canal that you're talking about that  
14 had gates and dams on it, correct?

15 MR. BLAKE: That's correct.

16 MR. O'LAUGHLIN: Okay. And then there's  
17 another one right to the left of it that runs pretty  
18 much all the -- parallel to the one with gates and dams  
19 on it, all the way up to the upper boundary of the  
20 system. Is this a canal that's delivering water?

21 MR. BLAKE: Well, on the 1941 map, which I  
22 believe is what we're looking at, it's clearly labeled  
23 there for irrigation. That line you described to the  
24 west.

25 MR. O'LAUGHLIN: This line right here is



1 clearly irrigation, correct?

2 MR. BLAKE: No, I'm sorry. The next one over.

3 MR. O'LAUGHLIN: This one is clearly  
4 irrigation?

5 MR. BLAKE: Yeah.

6 MR. O'LAUGHLIN: Okay.

7 MR. BLAKE: No. No, no. The one in the  
8 middle. In between those two. That one.

9 MR. O'LAUGHLIN: This one here?

10 MR. BLAKE: Go left. That one right there.

11 MR. O'LAUGHLIN: That one's clearly irrigation?

12 MR. BLAKE: Yep.

13 MR. O'LAUGHLIN: Okay. Where does it get water  
14 from from Middle River if it's stuck out in the middle  
15 of Woods Irrigation Company?

16 MR. BLAKE: Well, I don't know what map you're  
17 looking at. Could I borrow the pointer for a minute?

18 MR. O'LAUGHLIN: Yeah.

19 MR. BLAKE: Then I can show you.  
20 This line right here labeled irrigation --

21 MR. O'LAUGHLIN: Yeah.

22 MR. BLAKE: -- comes down and then takes a  
23 swing to the -- I guess that's to the east there and  
24 ties into this line here which is also labeled  
25 irrigation on this map.

1           MR. O'LAUGHLIN:  Okay.  So we have one canal --  
2  would you mind drawing in blue for me one canal that you  
3  feel comfortable that's providing irrigation water prior  
4  to 1914?  Or is this only as of 1941?

5           MR. BLAKE:  Give me a minute to think about  
6  your question.

7           I believe, and just for the sake of maybe  
8  saving time, that I've already drawn those lines in the  
9  exhibit in my testimony labeled 6N.  So maybe we could  
10 just pull that up on the screen.

11          MR. O'LAUGHLIN:  Sure.  That would be helpful.

12          Okay.  We've put 6N up on the screen.  It  
13 appears to be -- is that a 2006 map, or --

14          MR. BLAKE:  No, that's a 2009 USDA NAIP aerial  
15 photo.

16          MR. O'LAUGHLIN:  Okay.  Now, are those the  
17 irrigation canals and laterals as they exist today?

18          MR. BLAKE:  No.  Those are the canals and  
19 ditches that I believe are shown on the 1907-1908 Woods  
20 brothers map and also the 1914 map.

21          MR. O'LAUGHLIN:  Okay.  Great.  Okay.  This is  
22 really helpful to me then.  Okay.

23          So it appears that we have -- coming off the  
24 main diversion point, we have a solid orange line  
25 running up the middle of Woods Irrigation Company.  Is

1 that what you would call a main canal, for lack of  
2 better terminology?

3 MR. BLAKE: That's correct. The -- just so  
4 everybody's clear, the orange lines that are shown on  
5 here are the boundaries of the 1911 contracts to furnish  
6 water. But there is a yellow line that's kind of laid  
7 underneath that. It's a little difficult to see.

8 MR. O'LAUGHLIN: Right.

9 MR. BLAKE: That is the main canal.

10 MR. O'LAUGHLIN: Okay. So now have you --  
11 based on this, have you determined the amount of acreage  
12 served by any one of these laterals that comes off the  
13 main canal?

14 MR. BLAKE: No, I did not.

15 MR. O'LAUGHLIN: Have you determined based on  
16 this configuration -- and one of the areas I was very  
17 much interested in is the area to the far west in Woods  
18 Irrigation Company. There appears to be little or no  
19 canals or laterals intersecting this entire portion of  
20 Woods Irrigation Company. Do you know how they got  
21 irrigation water?

22 MR. BLAKE: Well, it's reasonable to me that  
23 when they drew those maps they only showed the more  
24 permanent and major canals and ditches.

25 And it's quite possible, although I don't know

1 this for a fact, it's quite possible that there were  
2 smaller ditches or even seasonal ditches that were  
3 within that area that weren't shown on the map, the  
4 1907-08 map and the 1914 map.

5 MR. O'LAUGHLIN: Based on this map that you've  
6 put together and based on the headworks that were  
7 installed to push water into the main canal with  
8 Mr. Neudeck's calculation, can you tell me what the  
9 rotation would be for lands within Woods Irrigation  
10 Company to receive water?

11 MR. BLAKE: No, I cannot.

12 MR. O'LAUGHLIN: Would you agree that there  
13 would not be an on-demand system in Woods Irrigation  
14 Company in 1914 to receive water from such a system?

15 MR. BLAKE: I don't know the answer to that  
16 question.

17 MR. O'LAUGHLIN: You're not providing any  
18 testimony today regarding whether or not the water that  
19 was delivered by Woods Irrigation Company was a riparian  
20 water, are you?

21 MR. BLAKE: No, I'm not.

22 MR. O'LAUGHLIN: Okay. And you're not opining  
23 about whether or not any of the water delivered prior to  
24 1914 was pre-14 water to individual landowners within  
25 Woods Irrigation Company, are you?

1 MR. BLAKE: No, I'm not.

2 MR. O'LAUGHLIN: Were you present when we  
3 talked about the four irrigations occurring during the  
4 irrigation season?

5 MR. BLAKE: I believe I was, yes.

6 MR. O'LAUGHLIN: Okay. Given this system of  
7 canals and laterals that are depicted in your 6N, can  
8 you tell me how much water would have to be delivered in  
9 order to meet the 77.7 cfs requirement and have  
10 productive agriculture in Woods Irrigation Company?

11 MR. BLAKE: I'm sorry; I didn't look at any of  
12 that.

13 MR. O'LAUGHLIN: Has anybody on your side of  
14 the aisle looked at that, if you know?

15 MR. BLAKE: I do not know. I'd have to defer  
16 to Mr. Herrick on that question, I think.

17 MR. O'LAUGHLIN: Okay. And as we look at these  
18 canals, you can't tell by looking at this canal  
19 schematic on 6N how much water is being -- or how much  
20 land is being served from any individual canal system in  
21 this schematic; is that correct?

22 MR. BLAKE: That is correct.

23 MR. O'LAUGHLIN: Do you know -- you were  
24 talking in your earlier testimony about a Mr. Easton in  
25 the chains of title. Who was Mr. Easton?

1           MR. BLAKE: I'm not sure who Mr. Easton was.  
2 All I can tell you is that he appears in the chain of  
3 title in several different locations in the chain.

4           MR. O'LAUGHLIN: Okay. Do you know what his  
5 relationship at all, if any, was with Mr. Fisher?

6           MR. BLAKE: I do not.

7           MR. O'LAUGHLIN: With the Glasgow Company?

8           MR. BLAKE: I do not.

9           MR. O'LAUGHLIN: Okay. How many chain of  
10 titles prior to working on this case had you performed?

11          MR. BLAKE: Complete chains of title from  
12 patent to current document, none. But researching  
13 portions of chains of title is a regular part of my job  
14 duties as a boundary surveyor.

15          MR. O'LAUGHLIN: Can you tell me the amount of  
16 time you have spent researching the chain of titles and  
17 coming up with the work that you've done?

18          MR. BLAKE: I think I can safely say I've had  
19 at least four visits to the County Clerk and Recorder's.  
20 And I can't give you exact numbers, but altogether I  
21 think conservatively I've easily invested 120 hours on  
22 this particular project.

23          MR. O'LAUGHLIN: Do you have the original  
24 grants in your possession?

25          MR. BLAKE: Yes, sir, I do.

1           MR. O'LAUGHLIN:  Okay.  Just a couple quick  
2  ones on these interior sloughs.  Do you know what the  
3  depth of any of those interior Delta sloughs were?

4           MR. BLAKE:  I do not.

5           MR. O'LAUGHLIN:  Do you know their width?

6           MR. BLAKE:  I do not.

7           MR. O'LAUGHLIN:  Okay.  Do you know what type  
8  of plant material existed in those sloughs naturally?

9           MR. BLAKE:  I do not.

10          MR. O'LAUGHLIN:  I have a question that  
11  nobody's asked yet, and it's kind of perplexing to me.  
12  Prior to 1914, how did they keep this maze of canals and  
13  irrigation districts and ditches and sloughs clear of  
14  weeds and plant growth and tules and everything, if you  
15  know?

16          MR. BLAKE:  I don't.  I think you'd probably  
17  have to ask a farmer that question.

18          MR. O'LAUGHLIN:  Do you know the amount of flow  
19  or rate to these interior sloughs from Middle River?

20          MR. BLAKE:  Other than the amounts specified in  
21  the 1911 agreements, no, I do not have any indication of  
22  that.

23          MR. O'LAUGHLIN:  Okay.  Do you have any  
24  understanding if any of these interior Delta sloughs  
25  were just natural drainage courses that filled up with

1 water in the winter and went dry in the summer?

2 MR. BLAKE: I don't have any knowledge of that.

3 MR. O'LAUGHLIN: And conversely, you don't have  
4 any knowledge that they were full of water year around,  
5 do you?

6 MR. BLAKE: No, I can't state if they were full  
7 of water year around.

8 MR. O'LAUGHLIN: So based -- who gave you the  
9 criteria, the four criteria that you used to assess your  
10 work?

11 MR. BLAKE: That was provided by the legal  
12 counsel for Woods Irrigation Company.

13 MR. O'LAUGHLIN: That's Mr. Herrick?

14 MR. BLAKE: Yes, that is correct.

15 MR. O'LAUGHLIN: Okay.

16 Thank you for your time, and thank you for  
17 clarifying with these maps. It's been very helpful.  
18 Appreciate it.

19 CO-HEARING OFFICER PETTIT: I think we probably  
20 better take a ten-minute break now. And Mr. Powell, do  
21 you have any questions?

22 MR. POWELL: No questions.

23 CO-HEARING OFFICER PETTIT: Mr. Ruiz, Ms.  
24 Gillick?

25 MS. GILLICK: No.



1 CO-HEARING OFFICER PETTIT: Okay. Thank you.  
2 We'll resume at about 20 minutes to 4:00 then.

3 (Recess)

4 CO-HEARING OFFICER PETTIT: Are we ready to  
5 resume? Mr. Herrick, Ms. Aue had one question, a  
6 clarification on one of the maps, so.

7 STAFF ATTORNEY AUE: Hi.

8 On 6S, in the far westerly portion, there is a  
9 section that's all in blue, and then right next -- is  
10 outlined in blue. And half of it's cross-hatched red,  
11 and half of it's not.

12 And that's separated from a section that's in  
13 blue and cross-hatched red to the east.

14 I was wondering why are those separated? Are  
15 they both under the 1911 agreement? Sorry. That's two  
16 questions.

17 Why are they separated?

18 MR. BLAKE: If I understand your question, this  
19 is a little confusing.

20 One of the 1911 agreements to furnish water, in  
21 the legal description that we mapped, had three  
22 independent parcels that made up the whole.

23 So this line that you see common to the two,  
24 that was the line between the two pieces. And in  
25 hindsight, it probably would have been less confusing I

1 had left that line out.

2 STAFF ATTORNEY AUE: Okay. Thank you.

3 CO-HEARING OFFICER PETTIT: Do you have any  
4 redirect, Mr. Herrick?

5 MR. HERRICK: Just a little, Mr. Chairman.

6 --o0o--

7 REDIRECT EXAMINATION BY MR. HERRICK

8 FOR WOODS IRRIGATION COMPANY

9 --o0o--

10 MR. HERRICK: Mr. Blake, I've given you a  
11 larger copy of what is your Exhibit 6M.

12 If we could have 6M on the Board please?

13 And your copy, being larger and more clear, is  
14 easier to read than the one on the screen or perhaps  
15 even the one attached to your testimony.

16 You were looking at this map in answer to some  
17 of the questions from Mr. O'Laughlin, correct?

18 MR. BLAKE: That's correct.

19 MR. HERRICK: And you were using it to  
20 differentiate between different lines, labels of  
21 irrigation or drainage, correct?

22 MR. BLAKE: That's correct.

23 MR. HERRICK: And could you just briefly tell  
24 us, you know, the number of lines that are designated  
25 irrigation or drainage just so there is clarity and the

1 record doesn't suggest that they're not labeled, that  
2 they are labeled.

3 MR. BLAKE: I don't have an exact count, but  
4 there's one, two, three, four, five -- at least five  
5 lines that are listed clearly as irrigation on the map.  
6 This is the 1941 map of Woods Irrigation Company.

7 MR. HERRICK: And when you say five lines,  
8 you're talking about north and south?

9 MR. BLAKE: North and south courses, yeah.  
10 And then there is also maybe three north-south  
11 courses listed at drains.

12 And then also on the north end of the map --  
13 this is right next to the parcel of Manuel F. Perry.  
14 It's in the northeast corner of Section 19.

15 MR. HERRICK: For ease of the people watching,  
16 perhaps you could use a pointer as you describe this.

17 MR. BLAKE: So right in here -- it's really  
18 hard to read on the screen, but there's also a label  
19 that says "old slough" and then it looks like in  
20 parentheses it says "irrigation."

21 So I used the information shown on this map as  
22 well as the 1914 map to confirm my professional opinion  
23 that the dark map, the black map of the Woods brothers  
24 lands that I dated to 1907-1908, clearly shows the same  
25 irrigation and drainage features that also line up with

1 the natural sloughs that Mr. Moore outlined in his  
2 testimony.

3           So based on the review of those pieces of  
4 evidence, there's no doubt in my mind that the only  
5 reasonable conclusion is that those features shown on  
6 the map that we dated 1907-1908 are irrigation and  
7 drainage ditches.

8           MR. HERRICK: And part of your analysis was  
9 that the north-south lines -- generally; I don't want to  
10 overstate this -- the north-south lines all terminate  
11 with some other line that directly connects to the point  
12 we understand as the main diversion point of Woods,  
13 correct?

14           MR. BLAKE: That's correct. And I may have  
15 mentioned before, I have been to the site, and I have  
16 seen the old floodgates at the diversion point, the two  
17 very large floodgates that Mr. Neudeck mentioned in his  
18 testimony this morning.

19           It's my understanding that the lines shown on  
20 this 1941 map and the 1907-1908 map and 1914 map, that  
21 those lines fed into the two diversion structures at  
22 Middle River.

23           MR. HERRICK: And that is what you tried to  
24 depict on a 6N, correct, when you overlaid a number of  
25 lines?

1 MR. BLAKE: That is correct.

2 MR. HERRICK: Now, in answer to a question by  
3 Mr. Rubin, while looking at Exhibit -- I believe 6E, you  
4 were asked to and traced what you believed were  
5 north-south lines that you designated or said  
6 corresponded to old sloughs; is that correct?

7 MR. BLAKE: That is correct.

8 MR. HERRICK: And the purpose of your original  
9 testimony being clarified by Mr. Rubin was to say that  
10 when this piece of land was separately sold it was still  
11 connected to sloughs, correct?

12 MR. BLAKE: That is correct.

13 MR. HERRICK: Now, you traced a couple of  
14 lines. I'm not sure you traced the correct lines based  
15 upon your written testimony.

16 And isn't one of the old sloughs that you  
17 connect to this property the one that is on the far  
18 right and above this parcel which is the sinuous line  
19 which is labeled as "old slough" on the 1941 map?

20 MR. BLAKE: Yeah. I'd like an opportunity to  
21 correct my previous statement.

22 There is actually technically three canals. So  
23 you have this first one, runs up right here on the west  
24 edge. There is this other wiggly one right here in the  
25 middle. And then the one Mr. Herrick referred to moves

1 over this east edge, and you can see it peeking out the  
2 north edge here that kind of runs up north to State  
3 Route 4.

4 MR. HERRICK: And again, that last sinuous line  
5 you just followed with your pointer on this map is the  
6 one that's designated "old slough" on the 1941 map,  
7 correct?

8 MR. BLAKE: That is correct.

9 MR. HERRICK: And in your testimony, you  
10 connect that old slough to the old floodgates located on  
11 Middle River further south of that?

12 MR. BLAKE: That is correct.

13 MR. HERRICK: So when you were asked questions  
14 about the distribution or flow of water in the Woods  
15 area, I'll say, you were not testifying about any  
16 amounts or any specific deliveries to specific spots,  
17 but you were trying to state that your map reading has  
18 led you to conclude that the area was traversed by  
19 numerous old slough and/or irrigation ditches, correct?

20 MR. BLAKE: That's correct.

21 So I guess another way to word it is I was  
22 trying to make clear that all the points along these  
23 sloughs were connected to the diversion structure at  
24 Middle River, and that I believe water moved from Middle  
25 River along those conveyances.

1 MR. HERRICK: I believe that's all I have.  
2 Thank you.  
3 CO-HEARING OFFICER PETTIT: Mr. Rose, any  
4 recross?  
5 MR. ROSE: No.  
6 CO-HEARING OFFICER PETTIT: Thank you.  
7 Mr. Rubin?  
8 MR. RUBIN: Mr. Pettit, I have no further  
9 questions.  
10 MR. O'LAUGHLIN: No questions.  
11 MR. POWELL: No questions.  
12 MR. RUIZ: No questions.  
13 MS. GILLICK: No questions.  
14 CO-HEARING OFFICER PETTIT: That was fast.  
15 That appears we -- go ahead.  
16 MR. HERRICK: If I may, Mr. Chairman.  
17 I don't have the complete list of everyone's  
18 exhibits, but that does complete my case-in-chief. And  
19 without making the record look bad, I would then move at  
20 this point that all of the exhibits submitted by Woods  
21 Irrigation Company including those additional ones we  
22 added today be accepted into evidence.  
23 CO-HEARING OFFICER PETTIT: Okay. Let's hear  
24 the objections.  
25 MR. ROSE: If necessary, just renew the

1 objection we made at the beginning of the proceeding as  
2 to relevance for testimony and exhibits regarding  
3 riparian status of rights.

4 I believe it was brought out that Woods doesn't  
5 own any land, so I don't see the relevance of that. So  
6 I'll renew that objection now.

7 CO-HEARING OFFICER PETTIT: Thank you.

8 Mr. O'Laughlin?

9 MR. O'LAUGHLIN: Yes. I have three separate  
10 objections. And I have a handout for each one.

11 And I realize that you're probably going to  
12 deny each one, but if we can just go through it and I  
13 can make a brief record, it will probably go pretty  
14 quickly if that's okay.

15 CO-HEARING OFFICER PETTIT: That's fine, thank  
16 you.

17 MR. O'LAUGHLIN: Okay.

18 The first one, Mr. Pettit -- you'll be getting  
19 these documents -- first one is a motion to strike the  
20 testimony of Christopher Neudeck in regards to anything  
21 having to do with the Delta pool, and the assertion for  
22 this is in order -- Water Right Order 2004-004.

23 The very testimony that Mr. Neudeck has already  
24 entered into the record under his 4A was rejected by  
25 this body under -- the respondents assert that to the



1 extent that lands are severed from the stream but  
2 overlying the subterranean flow, they have riparian  
3 rights to the stream.

4 The State Board rejected it both on a legal  
5 grounds and on a factual ground. That was upheld at the  
6 superior court, and that was also upheld on appeal.

7 So in regards to anything having to do with the  
8 Delta pool in regards to Mr. Neudeck's testimony or  
9 Mr. Nomellini's testimony, that portion of the record  
10 should be stricken because this Board has already found  
11 based on the previous testimony that it was not legally  
12 or factually sound.

13 CO-HEARING OFFICER PETTIT: And the objection  
14 just goes to strictly to the parts of his testimony that  
15 appear or attempt to support a Delta pool concept?

16 MR. O'LAUGHLIN: Yes. That's it.

17 CO-HEARING OFFICER PETTIT: I have a little  
18 general familiarity with that case, just from reading  
19 the appellate court decision, but I certainly wasn't  
20 here and wasn't involved in it.

21 I'm going to ask Ms. Aue's advice on that  
22 before I make a ruling.

23 MR. O'LAUGHLIN: Okay. Thank you.

24 The next one is a motion to strike the  
25 testimony of -- in its entirety of Timothy Grunsky.

1           And the reason to strike the motion (sic) of  
2 Timothy Grunsky is it is entirely hearsay and  
3 speculation.

4           He talks in his testimony as to how he's  
5 reviewed the documents. And this is one of those -- and  
6 he's reviewed the documents, and he asserts an opinion  
7 based on a review of documents.

8           But the rule in this court is that's hearsay  
9 because the best evidence and the only evidence is the  
10 actual documents themselves which were never produced by  
11 Mr. Grunsky. And to the extent that they were, there  
12 were only three, and that was the 1909 and two 1911  
13 agreements.

14           So anything else in Mr. Grunsky's testimony  
15 should be stricken as hearsay, not supported by  
16 collaborating evidence; and under the best evidence  
17 rule, the actual documents to support his opinion should  
18 be included in the record.

19           CO-HEARING OFFICER PETTIT: Okay. What's the  
20 third one?

21           MR. O'LAUGHLIN: The third one is a motion in  
22 limine against Woods Irrigation Company itself based on  
23 the Woods Irrigation Company versus Department of  
24 Employment case.

25           This has to do with a legal issue of res

1     judicata or collateral estoppel.

2             Our assertion is, depending on which way you  
3     want to look at this -- or declaration against  
4     interest -- is that Woods Irrigation Company has already  
5     asserted in a previous proceeding that it has no water  
6     rights.

7             So for Woods Irrigation Company to come in and  
8     now assert that it does have water rights would defeat  
9     the res judicata and collateral estoppel arguments.

10            Or, if it is let in, then the case should be  
11    let in as well, and we'll get to that in a minute,  
12    because it should be a declaration against interest that  
13    they in fact have previously argued that they don't have  
14    any water rights.

15            So those are our three motions.

16            MS. KINCAID:   Hearing Officer Pettit, this is  
17    Valerie Kincaid, San Luis & Delta-Mendota Water  
18    Authority.  We also have a number of objections.

19            I don't know if you want to hear them or rule  
20    on Mr. O'Laughlin's objections first and then hear them.  
21    But it's your pleasure.

22            CO-HEARING OFFICER PETTIT:  Let's do them  
23    sequentially and deal with them as they come up, so I'd  
24    like to address Mr. O'Laughlin's first.

25            MR. O'LAUGHLIN:  You know, and I have no Pettit

1 (sic), Hearing Officer Pettit, if the Board -- the  
2 hearing team wants to take the matter under submission,  
3 and then subject to determination by you either today,  
4 tomorrow, or on the weekend or on Monday, coming back  
5 and making a determination, and then we can address what  
6 documents do or don't come in and the scope and extent  
7 of them.

8 CO-HEARING OFFICER PETTIT: Sounds reasonable.  
9 Give me time to look at them anyway.

10 MR. O'LAUGHLIN: Okay. Yeah, that's what I  
11 figure as well.

12 CO-HEARING OFFICER PETTIT: Okay.

13 MR. O'LAUGHLIN: Thank you.

14 MR. HERRICK: Mr. Pettit, I would hope that we  
15 would get the chance to comment on the motions before  
16 any decision is made.

17 CO-HEARING OFFICER PETTIT: You will. Do you  
18 want to do that now, or would you need more time than we  
19 want to take now?

20 MR. HERRICK: If you're willing to let us wait  
21 till Monday to do it, that would be very helpful.

22 We have addressed these a bit along the way,  
23 but we could give a more complete reason why the motions  
24 are unsupported on Monday if you'd like.

25 CO-HEARING OFFICER PETTIT: And we would have a

1 better chance, I think, to see what's in them before we  
2 hear the responses, so I think that's correct.

3 MR. O'LAUGHLIN: Thank you.

4 MR. HERRICK: Thank you.

5 MR. ROSE: Board Member Pettit, for what it's  
6 worth, and I haven't gone completely through these  
7 motions that were just passed out, but we would ask that  
8 at least the oral testimony of Timothy Grunsky as  
9 regards to information that is within his direct  
10 knowledge such as whether Woods owns any lands within  
11 its service area, those don't seem to go to the point  
12 that Mr. O'Laughlin has raised. And we would ask that  
13 testimony such as that remain in the record.

14 CO-HEARING OFFICER PETTIT: Thank you.

15 Ms. Kincaid, I don't know if you had any  
16 documents or just wanted to summarize what your  
17 objections were?

18 MS. KINCAID: I don't. I'm planning on stating  
19 my objections for the record. And I don't know if you  
20 want me to go objection-by-objection or if you'd prefer  
21 to hear them all at once, but you can tell me what's  
22 easiest.

23 CO-HEARING OFFICER PETTIT: Okay. Let's see  
24 who else we've got. Is there anything else? Anybody  
25 else?

1           MR. RUIZ:  Mr. Pettit, I just have a point of  
2 clarification and a question with respect to the motion  
3 in limine.  There also at one point was a motion for  
4 directed verdict.

5           Is this a different motion, a supplemental  
6 motion?  And also was that -- does this encompass that  
7 so that there's not going to be a ruling or need to  
8 respond to that one, or do we have two separate motions?

9           CO-HEARING OFFICER PETTIT:  Was that in this  
10 proceeding, Mr. Ruiz?

11          MR. O'LAUGHLIN:  No, that -- my motion for  
12 directed verdict was in another case, was not in this  
13 case.  I haven't done that yet.

14          I will, but it's not going to happen yet  
15 because it's not the time and place for it.  That was in  
16 a different matter.

17          CO-HEARING OFFICER PETTIT:  Okay.  Ms. Gillick,  
18 did you have anything?

19          MS. GILLICK:  I have no objections to that.

20          CO-HEARING OFFICER PETTIT:  Thank you.

21          Ms. Kincaid, why don't you summarize yours  
22 then?

23          MS. KINCAID:  Sure.

24          I'm going to go witness by witness if that's  
25 okay, and I'm going to start with Mr. Moore.

1           The Authority would object to Mr. Moore's  
2 exhibits, Woods Irrigation Company 2E through 2K on the  
3 basis of lack of foundation and hearsay.

4           The original photos were not provided.  
5 Mr. Moore was very clear in his testimony that he relied  
6 completely on the stereo strip analysis, stereo pairs  
7 analysis, and the original unaltered photos, none of  
8 which were presented or provided.

9           And again, I don't know if you want me to run  
10 through or if you want to take under submission, but I  
11 can keep going.

12           CO-HEARING OFFICER PETTIT: Why don't you run  
13 through the rest of them, and we'll do the same thing.  
14 We'll consider those over the weekend and rule on all of  
15 these at the same time.

16           MS. KINCAID: Great.

17           MR. O'LAUGHLIN: Okay. And then just for point  
18 of clarification, Modesto Irrigation District joins in  
19 these objections.

20           CO-HEARING OFFICER PETTIT: Thank you.

21           MS. KINCAID: Woods Irrigation Company Exhibit  
22 2L and 2M, lack of foundation and hearsay.

23           The original photos were not provided, and it  
24 was very clear in Mr. Moore's testimony that he was  
25 relying on the analysis of Atwater and Lajoie, neither

1 of which were called as witnesses in this matter.

2 Moving on to Mr. Neudeck. We would object to  
3 the entrance of Woods Irrigation Company Exhibit 4,  
4 paragraph three through six on the basis of irrelevant  
5 and untimely evidence.

6 It's very clear in his written testimony that  
7 this is an attempt to bolster evidence in another  
8 matter.

9 Also we would object to paragraph 21. It's  
10 irrelevant and outside the scope of the hearing. Any  
11 riparian rights preserved by 1911 agreements would be  
12 those of individual landowners and not Woods Irrigation  
13 Company itself.

14 We would also object to Woods Irrigation  
15 Company 4D, testimony in the Phelps hearing. And  
16 without admitting the entire record of -- the  
17 administrative record in that matter, Mr. Neudeck's  
18 testimony is an advocacy piece and one-sided, and we  
19 would object to just the entrance of that one piece of  
20 evidence without admitting the entire administrative  
21 record.

22 Moving on to Mr. Blake's testimony.

23 We would object to the entire testimony. We  
24 believe it's outside the scope of the hearing. Again,  
25 it's based on Woods Irrigation riparian rights, and any



1 riparian rights established would only be the riparian  
2 rights of individual landowners and could not be  
3 riparian rights of the Woods Irrigation Company.

4 Mr. Nomellini. We would move to strike  
5 paragraph four of his written testimony. It's a legal  
6 conclusion that's unsupported.

7 Paragraph seven, it's a legal argument which  
8 lacks supporting evidence.

9 Paragraph ten, outside his expertise.  
10 Mr. Nomellini is neither a geologist or hydrologist.

11 Paragraph 20, irrelevant. Evidence regarding  
12 Duck Slough does not provide Woods Irrigation Company  
13 with any riparian rights.

14 Paragraph 21, outside his expertise.  
15 Mr. Nomellini again is neither a geologist nor  
16 hydrologist.

17 CO-HEARING OFFICER PETTIT: Ms. Kincaid, can  
18 you let our note-keeping catch up for a second, please.

19 MS. KINCAID: Sure. Sorry.

20 CO-HEARING OFFICER PETTIT: Would you repeat  
21 that last?

22 MS. KINCAID: Sure.

23 Paragraph 21, it's outside Mr. Nomellini's  
24 expertise. It's testimony that only an expert geologist  
25 or hydrologist could provide, neither of which Mr.

1 Nomellini is.

2 CO-HEARING OFFICER PETTIT: Okay.

3 MS. KINCAID: Paragraph 32 for the same reason,  
4 outside expertise.

5 And Exhibits 8B as in boy, D as in dog, F, G,  
6 as in goat, H and J on the basis that these documents  
7 cannot be admitted for the truth of the matter asserted.

8 If Mr. Nomellini would like to resubmit them  
9 and ask the Board to take official notice of these  
10 documents, we would accept that. But they lack  
11 foundation as entered as evidence.

12 Mr. Prichard. We would just like to preserve  
13 our objection previously that pending any corroborating  
14 rebuttal evidence his testimony is unsupported by any  
15 evidence and would be based entirely on hearsay.

16 Finally, we would move to strike Mr. Grunsky's  
17 written testimony in its entirety. It's hearsay and not  
18 the type of evidence that the State Water Board can rely  
19 on based on Government Code 11513.

20 We would also like to join in the motions filed  
21 today by Modesto Irrigation District.

22 CO-HEARING OFFICER PETTIT: Okay. Thank you.

23 MR. POWELL: State Water Contractors.

24 CO-HEARING OFFICER PETTIT: Yes, Mr. Powell.

25 MR. POWELL: We would also like to join in the

1 objections filed today by Modesto Irrigation District  
2 and the Authority.

3 CO-HEARING OFFICER PETTIT: Okay. I think  
4 we've got them. Is that it then?

5 MS. KINCAID: We would like to move into  
6 evidence exhibits MSS 3, 4, 5, 7, through 13. If you  
7 would like, I can provide a brief description of each if  
8 there are any objections pending.

9 CO-HEARING OFFICER PETTIT: Any objections?

10 MS. GILLICK: I request that we get a copy. We  
11 did get some of them but, you know, I don't recall what  
12 those exhibits were so maybe --

13 CO-HEARING OFFICER PETTIT: I can't hear you,  
14 Ms. Gillick.

15 MS. GILLICK: I would request we actually get a  
16 copy of those MSS exhibits that they have identified.  
17 Maybe they could post it on the website or something --

18 CO-HEARING OFFICER PETTIT: Before we act?

19 MS. GILLICK: -- so we know what it is we're  
20 addressing.

21 CO-HEARING OFFICER PETTIT: Can we do that,  
22 Ms. Kincaid?

23 MS. KINCAID: We can do that. I can coordinate  
24 with Mr. Mona or Mr. Lindsay to see if they need any of  
25 the exhibits and if we're all on the same page what they

1 are.

2 CO-HEARING OFFICER PETTIT: Thank you.

3 MR. RUBIN: Mr. Pettit, I just wanted to make  
4 sure I heard Ms. Gillick's statements correctly.

5 I wasn't sure if she was preserving an  
6 objection or if she was willing to allow them to be  
7 admitted but she wanted to make sure she received a  
8 copy.

9 MS. GILLICK: As I sit here today, I don't know  
10 what these exhibits are referring to. I think they  
11 haven't been distributed to all the parties or  
12 necessarily identified.

13 So I'd like to know what the exhibits are  
14 before I make an opinion whether or not I object.

15 CO-HEARING OFFICER PETTIT: I'm having trouble  
16 hearing you, but I took that to mean you'd like to see  
17 them before we decide.

18 MS. KINCAID: And that's fine with us.

19 WATER RESOURCE CONTROL ENGINEER MONA: All I  
20 would like to ask for is a nice index.

21 MS. KINCAID: I can provide that.

22 CO-HEARING OFFICER PETTIT: Okay. Anything  
23 else to do with the Woods case-in-chief then? For the  
24 moment, anyway.

25 MR. O'LAUGHLIN: They're done, I'm assuming, so

1 we're next?

2 CO-HEARING OFFICER PETTIT: That's what I was  
3 trying to establish. As far as I know, you are.

4 MR. O'LAUGHLIN: Yes, and we have -- Mr. Rubin  
5 would like to make an opening statement, and then we  
6 have Mr. Wee here to put on our sole testimony on  
7 direct.

8 CO-HEARING OFFICER PETTIT: Okay.

9 And let me ask about potential schedule here  
10 before we get into that.

11 MR. O'LAUGHLIN: We're doing good.

12 CO-HEARING OFFICER PETTIT: We're doing good.  
13 How long do you think Mr. Wee's testimony will take.

14 MR. O'LAUGHLIN: Mr. Wee's testimony will  
15 probably take two to three minutes on direct. And I  
16 don't know how much cross there should be, but probably  
17 not much.

18 (Discussion off the record)

19 MR. O'LAUGHLIN: I don't know how long Jon is  
20 going to talk, but we should be done by 5:00.

21 MR. RUBIN: With my opening statement and the  
22 representation made by Mr. O'Laughlin, I would expect  
23 that it will take us no more than ten minutes to  
24 complete our opening statement and our direct.

25 CO-HEARING OFFICER PETTIT: That's good to

1 hear, thank you. Go ahead.

2 MR. RUBIN: Thank you. Jon Rubin for the San  
3 Luis & Delta-Mendota Water Authority.

4 This proceeding involves an accusation by the  
5 State Water Resources Control Board that Woods  
6 Irrigation Company has diverted water and is threatening  
7 to divert water without or in excess of a valid water  
8 right.

9 The San Luis & Delta-Mendota Water Authority  
10 supports the State Water Board's accusation.

11 This proceeding is necessary to reduce the  
12 uncertainty that currently exists with the quantity and  
13 timing of water that is legally diverted from the Delta.

14 Woods Irrigation Company could have immediately  
15 rendered the State Water Board's accusations unfounded  
16 by answering the principal question presented by the  
17 State Water Board in its Draft Cease and Desist Order  
18 and now raised in this proceeding, the question being:

19 What water right, if any, does Woods Irrigation  
20 Company possess?

21 Woods Irrigation Company should have quickly,  
22 concisely and unambiguously answered the question.

23 It should have explained what right or what  
24 rights it holds as opposed to those rights possibly held  
25 by landowners within its service area.

1           And Woods Irrigation Company should have  
2 presented clear and convincing evidence to support the  
3 right or rights that it holds.

4           However, the initial reaction by Woods  
5 Irrigation Company to the State Water Board's  
6 accusations did neither.

7           On January 11, 2010, and through a letter from  
8 its counsel, Woods Irrigation Company reacted to the  
9 Draft Cease and Desist Order.

10           Woods Irrigation Company did not answer the  
11 question presented by the State Water Board. It did not  
12 identify the water right or rights Woods Irrigation  
13 Company possesses.

14           Woods Irrigation Company did not explain the  
15 relationship between the water rights it believes it may  
16 hold and any water rights held by landowners.

17           The response to the Draft Cease and Desist  
18 Order only presented a red flag. Incredibly, the  
19 response suggested Woods Irrigation Company had no idea  
20 what rights, if any, it held.

21           During this proceeding, Woods Irrigation  
22 Company now asserts it possesses riparian and pre-1914  
23 water rights. Woods Irrigation Company cannot possess a  
24 riparian water right as it does not own any irrigated  
25 lands.

1           Woods Irrigation Company has not explained how  
2 it could establish a pre-1914 water right concurrent  
3 with a landowner within its service area.

4           And most egregious, Woods Irrigation Company  
5 has not presented significant evidence to support a  
6 pre-1914 water right.

7           Woods Irrigation Company asserts a pre-1914  
8 water right based upon theories long rejected by the  
9 State Water Resources Control Board and the courts.

10           Woods Irrigation Company also asserts a  
11 pre-1914 water right based upon conclusions that are  
12 drawn by its witnesses, conclusions that are based on  
13 assumptions and beliefs.

14           In order to accept its conclusions, Woods  
15 Irrigation Company asks that you assume all lands within  
16 its service area were irrigated with surface water prior  
17 to 1914 even though there is no evidence to support that  
18 assumption.

19           In fact, the record contains and will be  
20 supplemented with additional evidence that contradicts  
21 the assumptions that Woods Irrigation Company is asking  
22 that you make.

23           In order to accept its conclusions, Woods  
24 Irrigation Company also asks that you assume features  
25 that are labeled on maps as levees and roads are really



1 watercourses.

2           And in order to accept its conclusions, Woods  
3 Irrigation Company is asking that you find historic  
4 documents contain a number of errors.

5           Woods Irrigation Company asks that you conclude  
6 a court and a large farming entity made mistakes when  
7 preparing important legal documents.

8           The State Water Resources Control Board must  
9 find insufficient previously rejected theories and  
10 conclusions that are based on assumptions and beliefs  
11 that are not supported and in fact contradicted by the  
12 evidence in the record.

13           In the end, the State Water Resources Control  
14 Board must adhere to the evidentiary bar established by  
15 law. The showing required under the laws of the state  
16 to support a pre-1914 water right are clear.

17           To support a pre-1914 water right, a water user  
18 must present evidence that demonstrates:

19           The quantity of water appropriated prior to  
20 1914;

21           The purpose of use for which the water was  
22 appropriated;

23           The season that the water was appropriated;

24           And the place upon which the water was applied.

25           Woods Irrigation Company has not made each of

1 those showings.

2 As a result, Woods Irrigation Company has not  
3 refuted the allegations by the staff of the State Water  
4 Resources Control Board that Woods Irrigation Company  
5 has diverted water and is threatening to divert water  
6 without or in excess of a valid water right.

7 The State Water Resources Control Board has and  
8 will continue to have sufficient evidence to find that  
9 Woods Irrigation Company has committed and is  
10 threatening to commit a trespass.

11 Accordingly, a Cease and Desist Order should  
12 issue.

13 The San Luis & Delta-Mendota Water Authority  
14 does not believe the Draft Cease and Desist Order  
15 proposed by the State Water Resources Control Board is  
16 adequate and will propose an alternative as part of its  
17 closing brief, assuming the Hearing Officers allow us to  
18 file such a brief.

19 Thank you.

20 CO-HEARING OFFICER PETTIT: Thank you, Mr.  
21 Rubin.

22 We're ready to proceed with Mr. O'Laughlin's  
23 direct of Mr. Wee. And Mr. Wee, did you take the oath  
24 the other day?

25 MR. WEE: I have.

1 CO-HEARING OFFICER PETTIT: Thank you.

2 --o0o--

3 STEPHEN R. WEE

4 Called by MODESTO IRRIGATION DISTRICT

5 DIRECT EXAMINATION BY MR. O'LAUGHLIN

6 --o0o--

7 MR. O'LAUGHLIN: Mr. Wee, you previously  
8 submitted your statement of qualifications to the State  
9 Water Resources Control Board in this matter?

10 MR. WEE: Yes, I have.

11 MR. O'LAUGHLIN: What is it numbered?

12 MR. WEE: It is numbered Exhibit 1A.

13 MR. O'LAUGHLIN: Okay. Can you -- and that is  
14 a true and correct copy of your statement of  
15 qualifications; is that correct?

16 MR. WEE: It is.

17 MR. O'LAUGHLIN: And you have provided  
18 testimony to the State Water Resources Control Board in  
19 this matter; is that correct?

20 MR. WEE: In the Woods matter?

21 MR. O'LAUGHLIN: Yes.

22 MR. WEE: Not yet.

23 MR. O'LAUGHLIN: Well, you are -- written.

24 MR. WEE: Oh, written testimony. Yes.

25 MR. O'LAUGHLIN: Thank you. Can you briefly

1 summarize your written testimony that you previously  
2 submitted?

3 MR. WEE: Yes.

4 I was asked to do research to determine whether  
5 or not Woods Irrigation Company had filed a Notice of  
6 Appropriation under the 1872 Water Code.

7 We conducted research in Stockton at the San  
8 Joaquin County Recorder's Office. Initially, we were  
9 told they didn't have any water filings, but we  
10 subsequently discovered that they're included in a book  
11 called Miscellaneous G.

12 So we -- unfortunately, the Miscellaneous G  
13 book has no index, so the only way to access those  
14 records is to page through them, and there are some 40  
15 plus volumes. Excuse me. 31 volumes up to 1914.

16 We reviewed the book from January 1915  
17 backwards through 1909, looking for a filing by Woods  
18 Irrigation Company and we found none.

19 There are other water filings in that book  
20 which I -- one of which I summarize in my testimony.  
21 There was a filing by a T. C. McChesney in August of  
22 1911 for a water right for I think it was 200 cfs on the  
23 San Joaquin River.

24 That was later transferred to a company that he  
25 was president of, the River View Land & Water Company,

1 in 1912.

2 That -- the water right as well as the  
3 irrigated lands were subsequently incorporated into the  
4 Banta-Carbona Irrigation District which was organized in  
5 1921, and the water rights were transferred to them in  
6 1924.

7 That serves as an example of one of the water  
8 filings for an entity similar to Woods Irrigation  
9 District.

10 MR. O'LAUGHLIN: When you found out from the  
11 County Clerk that there was in fact a book containing  
12 water filings, was that before or after you submitted  
13 your written testimony to the State Water Resources  
14 Control Board?

15 MR. WEE: It was before, but just slightly  
16 before, so we were able to cover the chronological  
17 period from 1915 to 1909 at that time.

18 MR. O'LAUGHLIN: Have you subsequently gone  
19 back and looked at records prior to 1909?

20 MR. WEE: Yes, we have.

21 We have actually looked from where we left off  
22 in 1909 back to 1883 which includes the period of time  
23 in which the two Woods brothers acquired all their  
24 property on Roberts Island as well as Blossom and the  
25 others that were acquired through Stewart, et al.

1           And none of those parties filed for a water  
2 right -- or filed a Notice of Appropriation under the  
3 Civil Code with San Joaquin County.

4           MR. O'LAUGHLIN: Thank you.

5           I have no further questions.

6           MR. ROSE: We have no questions for Mr. Wee.

7           CO-HEARING OFFICER PETTIT: Mr. Ruiz?

8           MR. HERRICK: Mr. Chairman, if you don't mind,  
9 we're going to go a little out of order on cross to save  
10 some time, and I believe Mr. Ruiz and Ms. Gillick would  
11 go first.

12          CO-HEARING OFFICER PETTIT: Thank you.

13          MR. RUIZ: Actually, Ms. Gillick's going to  
14 have a few questions, then I'll have a few questions.

15          CO-HEARING OFFICER PETTIT: Mr. Ruiz, we'll  
16 have to do some checking, but I think your microphone  
17 may be malfunctioning.

18          I don't know about anybody else, but I've been  
19 having a lot of trouble hearing everything from that mic  
20 for some time. So we're almost done today possibly, but  
21 we need to do something about that.

22        ///  
23        ///  
24        ///  
25        ///  
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CROSS-EXAMINATION BY MS. GILLICK  
FOR SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY FLOOD  
CONTROL & WATER CONSERVATION DISTRICT

--o0o--

MS. GILLICK: Good evening. DeeAnne Gillick on behalf the County of San Joaquin.

Mr. Wee, isn't it true that you've also done some research of title documents in addition to the title documents presented in your direct testimony in this case?

MR. WEE: Yes I have.

MS. GILLICK: Let me be more specific: Research of title documents regarding the area served by the Woods Irrigation Company?

MR. WEE: Yes.

MS. GILLICK: And in your previous research of title documents, isn't it true that you have identified several agreements from 1911 specifically related to the Woods Irrigation Company?

MR. O'LAUGHLIN: Object; vague and ambiguous. What documents or what agreements are you talking about?

MS. GILLICK: Isn't it true that there's four recorded documents from 1911 specific to the Woods Irrigation Company?

1 MR. O'LAUGHLIN: If you know.

2 MR. WEE: Yeah, there are at least four. Yes.

3 MS. GILLICK: And those are documents that you  
4 have previously -- that you looked at in the title  
5 record or under your direction, obtained from the title  
6 records?

7 MR. WEE: The documents that you are referring  
8 to, if they're the agreements to furnish water, and I  
9 think there's two others, yes. We collected those from  
10 the Recorder's Office.

11 MS. GILLICK: And I know they're exhibits in  
12 this case, but I don't have those numbers before me  
13 either. But I think you correctly described that there  
14 was contracts and agree with me, contracts to furnish  
15 water as well easement documents; that is correct?

16 MR. RUBIN: I'm going to object to the  
17 question. I think it misstates the testimony. I don't  
18 think Mr. Wee referenced contracts.

19 MR. O'LAUGHLIN: And I'm going to object  
20 because it's vague and ambiguous. What contracts are --  
21 documents are we talking about?

22 MS. GILLICK: Then maybe we can just identify  
23 the documents. I think the record's clear, but if we  
24 want to refer specifically to those documents, we can  
25 pull those agreement numbers.



1 I'm sorry I don't have them here. I just have  
2 MSS testimony, so.

3 CO-HEARING OFFICER PETTIT: I think it would  
4 help if you specifically identify the documents you want  
5 to talk about.

6 MS. GILLICK: Yes. And I'm sorry; I don't have  
7 the numbers before me. I need to --

8 MR. RUIZ: I think it's 60 and 6P you're  
9 looking at, the agreements to furnish water, the 1911  
10 agreements.

11 CO-HEARING OFFICER PETTIT: Okay.

12 MS. GILLICK: Why don't we look at those,  
13 Mr. Lindsay. 60 and 6P.

14 CO-HEARING OFFICER PETTIT: And your microphone  
15 seems to be working, Mr. Ruiz. Thank you.

16 MR. O'LAUGHLIN: Can you see that?

17 MS. GILLICK: And Mr. Lindsay, can you identify  
18 which document you are pulling up for the record?

19 CHIEF LINDSAY: I'm sorry. This is 60.

20 MS. GILLICK: So we're looking at what has been  
21 identified in the record as document 60. And do you  
22 recognize this document?

23 MR. WEE: Yes.

24 Although I'm having -- I have difficulty seeing  
25 it and reading it, but I can identify it.

1 MS. GILLICK: And I believe it reads: Contract  
2 to Furnish Water Between Woods Irrigation Company and  
3 E.W.S. Woods; is that correct?

4 MR. WEE: Yes.

5 MS. GILLICK: And is this a document that you  
6 identified and obtained from the title records at San  
7 Joaquin County?

8 MR. WEE: Yes, we obtained that record.

9 MS. GILLICK: Okay. Mr. Lindsay, can we please  
10 pull up the other exhibit and identify the number?

11 CHIEF LINDSAY: This is Exhibit 6P.

12 MS. GILLICK: Thank you, Mr. Lindsay.

13 So we're now referring to Exhibit 6P, and  
14 Mr. Lindsay's going to zoom in.

15 And I believe the title of the document reads:  
16 Contract to Furnish Water Between the Woods Irrigation  
17 Company and Jessie Lee Wilhoit and Mary L. Douglass; is  
18 that correct?

19 MR. WEE: Yes.

20 MS. GILLICK: And do you recognize this as a  
21 document that you obtained from the San Joaquin County  
22 Recorder's Office or a copy of the document?

23 MR. WEE: It looks like it, yes.

24 MS. GILLICK: Now were these -- if you recall,  
25 isn't it true that these weren't the only documents

1 recorded at this time, 1911, between these parties? If  
2 you know.

3 MR. WEE: I know there were others. I couldn't  
4 quote to you what the title of them was, but they were  
5 between the same parties.

6 MS. GILLICK: Without knowing the title, and I  
7 don't believe those documents are in this record, were  
8 they regarding easements for a water distribution  
9 system?

10 MR. WEE: That's correct.

11 What I recall about them is that they -- they  
12 described the land within two -- the two sides or two  
13 divisions of the Woods Irrigation Company.

14 And I can't remember to what degree they  
15 described any -- I don't think they described any  
16 specific canals other than by mention, and there was a  
17 map included on one of these.

18 MS. GILLICK: And I believe, Mr. Lindsay, if  
19 you'll scroll down on the exhibit before us, is there a  
20 map attached to the exhibit we're looking at, 6P?

21 Is that one of the maps that you were  
22 recollecting? Does that look -- is that what you are  
23 referring to?

24 MR. WEE: Yes.

25 MS. GILLICK: And that is a map that's actually

1 attached to the document recorded as Exhibit 6P; is that  
2 correct?

3 MR. WEE: I believe it is, yes.

4 MS. GILLICK: Mr. Wee, if you know, isn't it  
5 true that in 1910 -- well, let's look at -- you refer in  
6 your testimony and exhibits to a document identified as  
7 1B. And the date of the exhibit identified as 1B, is  
8 that August 11, 1911? Is that correct?

9 MR. WEE: Yes.

10 MS. GILLICK: Isn't it true that in 1911 there  
11 were legal ways to obtain appropriative water rights  
12 other than filing a notice similar to the one that's  
13 presented as Exhibit 1B?

14 MR. O'LAUGHLIN: Objection; calls for a legal  
15 conclusion, clearly outside the scope of his testimony  
16 and his expertise. So this one has -- we're --

17 MS. GILLICK: I believe I asked "do you know"  
18 if in 1911 --

19 MR. O'LAUGHLIN: No. We're not going to answer  
20 any do you know questions.

21 This is clearly outside the scope of the  
22 testimony, clearly isn't designed to lead to admissible  
23 testimony, and it's clearly outside his scope and  
24 expertise in which he's been offered.

25 I see no relevance to that question, nor

1 anything that will lead to the admissibility of relevant  
2 testimony.

3 CO-HEARING OFFICER PETTIT: Ms. Gillick, I  
4 don't think it's relevant to what he's furnished, and  
5 I'd have to agree with Mr. O'Laughlin.

6 MR. HERRICK: Mr. Chairman, I would just like  
7 to comment that the qualifications of Mr. Wee indicate  
8 that he is qualified to make conclusions about riparian  
9 lands, diversions of water, and such.

10 So whether or not you address the relevance  
11 issue, I don't think we could with a straight face say  
12 that Mr. Wee can't answer a question about how you might  
13 create -- how water rights might be obtained prior to  
14 1914.

15 CO-HEARING OFFICER PETTIT: Let's back up.

16 And Ms. Gillick, would you see if you can  
17 structure that question to meet Mr. Herrick's objection?

18 MS. GILLICK: Yeah, and I'm not certain exactly  
19 how I asked the previous question, but I'll try again  
20 and see how I am.

21 Do you know, Mr. Wee, that in 1911, isn't it  
22 true that creating a water right was not dependent upon  
23 filing a notice like the one in Exhibit 1B?

24 MR. WEE: My understanding is that an  
25 appropriative right -- that an appropriative right was

1 established by beneficial use.

2 MS. GILLICK: So do you know, Mr. Wee, if -- I  
3 think do you want to read back the question, because I  
4 don't think he was responsive to it. So instead of  
5 misstating it slightly different, if the court reporter  
6 would read it back.

7 MR. O'LAUGHLIN: Well, she can say it's  
8 nonresponsive. He answered the --

9 MS. GILLICK: I want to ask my question again  
10 then.

11 MR. O'LAUGHLIN: Well, you can ask it again,  
12 and I'm going to object as asked and answered. He's  
13 given the response that he said it's reasonable and  
14 beneficial use.

15 If she's looking for something else, then she  
16 can ask another question.

17 MS. GILLICK: Okay. If we could move on.

18 I believe my question was that whether or not a  
19 water right could be created in 1911 in a manner other  
20 than recording a document similar to the one in 1B. He  
21 did not respond to that.

22 MR. O'LAUGHLIN: That wasn't your question.

23 Go ahead.

24 MS. GILLICK: If you know.

25 MR. WEE: I would say that the answer is yes,

1 through beneficial use.

2 CO-HEARING OFFICER PETTIT: I'll go with that.  
3 So go ahead, Ms. Gillick.

4 MS. GILLICK: Thank you.

5 CO-HEARING OFFICER PETTIT: I have to comment,  
6 Mr. O'Laughlin, I have a little reservation here because  
7 I think a number of us who aren't quote legally  
8 qualified probably have some ideas about how you had to  
9 perfect rights in those days, so.

10 MR. O'LAUGHLIN: That's true.

11 MS. GILLICK: We might be discussing it later.  
12 Okay.

13 Mr. Wee, in your written testimony, however you  
14 did not discuss it today in your oral summary, you refer  
15 to a document identified as Exhibit 1E, and that  
16 document -- well, let's see how you describe it.

17 MR. WEE: Yes.

18 MS. GILLICK: And is this Exhibit 1E? Is that  
19 correct?

20 I believe in your written testimony you refer  
21 to an exhibit marked -- okay -- Exhibit 1E. I saw the  
22 PT10. I didn't see the reference to 1E. I apologize.

23 That it is a transcript that you obtained from  
24 the State Archives from a trial on September 16, 1955 in  
25 Sacramento Superior Court; is that correct?

1           MR. WEE:  It's a reporter's transcript from  
2 that trial, yes.

3           MS. GILLICK:  The proceeding that this is a  
4 transcript from, was that proceeding a quiet title  
5 action?

6           MR. RUBIN:  I'm going to object to the question  
7 on relevance grounds.  I think the document speaks for  
8 itself.

9           MR. O'LAUGHLIN:  Not only that, we have the  
10 court case and judgment, and the court case speaks for  
11 itself.  It's already been determined what this case is.

12           CO-HEARING OFFICER PETTIT:  I agree.

13           MR. O'LAUGHLIN:  I don't know why we have to  
14 have the witness answer that question.

15           CO-HEARING OFFICER PETTIT:  I've read the  
16 conclusion at the end of the case which seems to be the  
17 central point of this discussion, and basically I'm not  
18 sure there is a conclusion there.  And if anybody  
19 else -- if Mr. Wee wants to offer an opinion, well, I --

20           MS. GILLICK:  I just think there's been lots of  
21 representations in this case -- if I can just for the  
22 record -- and representations to the effect of that case  
23 and --

24           MR. RUBIN:  Hearing Officer Pettit --

25           MR. HERRICK:  Can Ms. Gillick finish, please?



1 MS. GILLICK: I can make my record, please. I  
2 have an objection to my question and I'd like to make my  
3 record.

4 MR. RUBIN: I apologize.

5 MS. GILLICK: There's been lots of  
6 representations to the effect of that case. So if I can  
7 on the record, I would like to explain and investigate  
8 what that lawsuit was and was not.

9 MR. RUBIN: Well, Mr. Pettit, Mr. Wee's  
10 testimony does not provide any explanation about the  
11 case, any explanation about the transcript.

12 All that his testimony does is attest to how he  
13 obtained the document.

14 Now she could spend as much time as you're  
15 willing to provide to her because under your rules she  
16 can probe to anything that may be relevant, but I think  
17 it's outside of his testimony. It's outside of his  
18 expertise.

19 If she wants to do that simply to make a point,  
20 I guess we're going to sit here and see where that goes.  
21 But I don't know how that is going to produce any  
22 probative evidence for you that may help your  
23 decision-making.

24 MS. GILLICK: Well, Mr. Wee was the one that  
25 reviewed the transcripts, and the rest of us didn't go

1 to the State Archives. So I think I have the witness  
2 before me that actually reviewed the documents at the  
3 State Archives, and I can ask, you know, what we don't  
4 have before us that he may know.

5 MR. HERRICK: Mr. Chairman, I'm sorry for  
6 delaying this more than we're doing now.

7 But as I understand the MSS parties' objection  
8 is that their witness can provide documents, but nobody  
9 can cross-examine them on them.

10 Of course she can ask questions about the  
11 documents that he's presented to see why he's presenting  
12 them if he doesn't have any description about them.

13 CO-HEARING OFFICER PETTIT: Let's back up a  
14 minute.

15 Ms. Aue just reminded me that the one question  
16 you asked to start this was whether or not this was a  
17 quiet title action. Did you get a response?

18 MS. GILLICK: I have not.

19 CO-HEARING OFFICER PETTIT: Okay. I think  
20 that's a legitimate question.

21 MR. O'LAUGHLIN: Okay. You can answer.

22 MR. WEE: It's not a quiet title action, no.

23 MS. GILLICK: Was this a water right  
24 adjudication action, if you know?

25 MR. WEE: No, it was not.

1 MS. GILLICK: I have no further questions of  
2 Mr. Wee.

3 CO-HEARING OFFICER PETTIT: Thank you.

4 Mr. Ruiz? Well, Mr. Herrick, what order were  
5 you going to go in. Mr. Ruiz next?

6 MR. HERRICK: Yes, I believe Mr. Ruiz will go  
7 next. Thank you.

8 CO-HEARING OFFICER PETTIT: Thank you.

9 --o0o--

10 CROSS-EXAMINATION BY MR. RUIZ

11 FOR CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY

12 --o0o--

13 MR. RUIZ: Good afternoon, Mr. Wee. Dean Ruiz  
14 for Central and South Delta Water Agency. Just a couple  
15 of quick questions.

16 Referring to your -- what you've included as  
17 Exhibit 1B, do you have that? I'll refer to it as  
18 the --

19 MR. WEE: I do.

20 MR. RUIZ: -- 1911 McChesney notice I guess  
21 would be a fair way to describe it. Does that make  
22 sense to you?

23 MR. WEE: Yes.

24 MR. RUIZ: What I had is a one-page notice that  
25 discusses a 1911 notice from Mr. McChesney or by

1 Mr. McChesney. Is that -- I want to make sure I have  
2 the same document that you have. It's one page in  
3 length?

4 MR. WEE: Yes, page 569 at the top upper  
5 right-hand corner.

6 MR. RUIZ: And I'm trying to understand your  
7 reasoning for including this as an exhibit to your  
8 testimony. What was the relevance in your mind of  
9 including this as an exhibit?

10 MR. WEE: In my mind, there were two purposes  
11 really.

12 One was that when we began research we were  
13 told by the County Recorder's Office that there were no  
14 water right filing books in San Joaquin County.

15 And I found that hard to believe because I have  
16 worked probably doing water right studies in half the  
17 counties in California, and I've always found a book  
18 that recorded water rights in the pre-1914 period.

19 So we continued to ask questions and were told  
20 that we would find them in among the deeds.

21 Well, after we had done quite a bit of  
22 research, we never saw a water -- a pre-1914 water right  
23 Notice of Appropriation or filing in these deed books.  
24 So I thought they have to be somewhere.

25 This is offered, one, as proof that in fact

1 water right filings are recorded, Notices of  
2 Appropriation were recorded, and we do -- and they  
3 survive and still exist among the records in San Joaquin  
4 County.

5           The second purpose was just to show that there  
6 were -- that somebody did make a filing, that this book  
7 does exist, that a company, a person who ran a company  
8 very similar to the Woods Irrigation Company, made  
9 filings, transferred them to the company, and then they  
10 went on to become part of the water rights of an  
11 existing irrigation district.

12           MR. RUIZ: Okay. Thank you.

13           And as part of your research, I believe you  
14 indicated to Ms. Gillick you also found at least four  
15 documents, recorded documents, with respect to Woods  
16 Irrigation Company including what we identified as  
17 Exhibits 6O and 6P; is that right?

18           MR. WEE: I did see those documents, yes.

19           MR. RUIZ: You found those as recorded  
20 documents as part of your research?

21           MR. WEE: Yes, I did.

22           MR. RUIZ: Okay. Now moving back to Exhibit  
23 1B, it doesn't state a specific season of diversion,  
24 does it?

25           MR. WEE: No, it does not.

1           MR. RUIZ:  And it doesn't describe the types of  
2  crops or where the crops are, where the water supposedly  
3  is going to be irrigated to or diverted upon, does it?

4           MR. WEE:  No, it doesn't.

5           MR. RUIZ:  And it doesn't describe specifically  
6  a location of canals or canals where the water's going  
7  to be put to use, does it?

8           MR. WEE:  It does not describe specific canal  
9  locations, no.  It describes the size of the canal.

10          MR. RUIZ:  Okay.  And it does indicate that he  
11  is providing notice of 200 cubic feet per second  
12  diversion; isn't that right?

13          MR. WEE:  That's correct.

14          MR. RUIZ:  And are you familiar with the  
15  contents at all of the agreements with respect to Woods  
16  Irrigation Company, the 1911 agreements, in terms of  
17  whether they provide a specific diversion rate or cfs  
18  amount?

19          MR. WEE:  I think that one of the -- two of the  
20  four documents say something about an assumption about  
21  how much water was going to be needed per acre or  
22  something like that.  I don't have the -- I haven't read  
23  those documents in a while.

24          MR. RUIZ:  Okay.  That's fair.

25                 And other than the information that's provided

1 in this notice which is MSS 1B, you don't have any other  
2 information, or rather you didn't find any other  
3 recorded information about the specifics of the  
4 diversion to which this notice pertains to, did you?

5 MR. WEE: I didn't attempt to research this  
6 issue any further than just having found this notice.

7 MR. RUIZ: Thank you, Mr. Wee.

8 --o0o--

9 CROSS-EXAMINATION BY MR. HERRICK

10 FOR WOODS IRRIGATION COMPANY

11 --o0o--

12 MR. HERRICK: Mr. Wee, your testimony says that  
13 you provided a true and correct copy of the transcript  
14 you obtained from the State Archives, correct?

15 MR. WEE: Correct.

16 MR. HERRICK: The copy I received starts on  
17 page 34 and ends on page 144, and I think there's  
18 some -- there are a few pages missing. It goes from 81  
19 to 107, is that correct? Or did I just not get the  
20 correct copies in the mail?

21 MR. WEE: No, that is correct. I can explain  
22 that if you want me to.

23 MR. HERRICK: I would just like to know why you  
24 didn't provide the entire transcript when you did this.

25 MR. WEE: When I did it initially, I was -- it

1 was just a few days before the testimony that -- the  
2 first hearings that we were undertaking. And I had  
3 ordered the copies from the State Archives, the entire  
4 document.

5 They told me that they couldn't provide me with  
6 copies for everything that -- but if I were to downsize  
7 my order, that they might be able to get them to me in  
8 time so that I could produce them for these hearings.

9 So that's what we did. We left out all of the  
10 material that was related to the labor issues involved  
11 and tried to give you just a sense of what the case was  
12 about and the materials out of the case that might be  
13 relevant to this hearing.

14 That's the best I could do at the time.

15 MR. HERRICK: Wasn't the hearing about labor  
16 issues? Wasn't that the gravamen of the case, was  
17 whether or not employment compensation needed to be paid  
18 by Woods Irrigation Company?

19 MR. WEE: It was -- yeah. It involved the  
20 characterization of the type of labor being agricultural  
21 labor and what constituted a company that was engaged in  
22 agriculture or not agriculture.

23 And the issues related to irrigation were  
24 discussed in that vein.

25 MR. HERRICK: So you left out the part that



1 dealt with the main part of the case?

2 MR. WEE: Had nothing -- yeah, that had nothing  
3 to do with the issues that we're dealing with here.  
4 It -- a lot of it had to do -- do you want me to  
5 continue?

6 MR. HERRICK: Whatever you think answers the  
7 question.

8 MR. WEE: Well, I'm done. I've answered the  
9 question.

10 MR. HERRICK: Turning to your Exhibit MSS 1B,  
11 and the upper half of the page is the McChesney filing,  
12 correct?

13 MR. WEE: That's correct.

14 MR. HERRICK: And it's labeled Water  
15 Appropriation Notice, correct?

16 MR. WEE: That's correct.

17 MR. HERRICK: And in that it identifies a  
18 person who is filing it, correct?

19 MR. WEE: Yes.

20 MR. HERRICK: And it says he intends to divert  
21 water, correct?

22 MR. WEE: Yes.

23 MR. HERRICK: And says he intends to divert it  
24 from the San Joaquin River, correct?

25 MR. WEE: Yes.

1           MR. HERRICK:  And it says that they intend to  
2 divert at a certain place?

3           MR. WEE:  Yes.

4           MR. HERRICK:  And it says they intend to divert  
5 a certain amount or up to a certain amount or whatever?

6           MR. WEE:  That's correct.

7           MR. HERRICK:  And it says what he wants to use  
8 it for:  Irrigation, domestic power, and all other uses,  
9 correct?

10          MR. WEE:  That's correct.

11          MR. HERRICK:  You were asked a few questions  
12 about the 1911 agreements which are Exhibits 60 and P in  
13 this.  And I would just like to go through the same  
14 questions regarding those filed notices.

15                 They're not labeled Water Appropriation Notice,  
16 are they?

17          MR. WEE:  No.

18          MR. HERRICK:  But they are labeled Agreement to  
19 Furnish Water, correct?

20          MR. WEE:  Two of them are, yes.

21          MR. HERRICK:  I'm sorry.  The two we're talking  
22 about are 60 and P which are those two to furnish water?

23          MR. WEE:  Okay.

24          MR. HERRICK:  I just mean I'm not referring to  
25 the other agreements that deal with related but other

1 subjects. So as long as you understand that.

2 And those two 1911 agreements, which are 60 and  
3 P, designate who going is going to divert water, doesn't  
4 it? Or intends to divert water?

5 MR. WEE: Yes.

6 MR. HERRICK: And it designates where the water  
7 will go, doesn't it?

8 MR. WEE: To be used within the lands that were  
9 serviced by the company, yes.

10 MR. HERRICK: And it designates an amount of  
11 water they intended to divert, correct?

12 MR. WEE: Yes. They provide, as I recall, an  
13 equation for how much water can be used per acre, and  
14 they mention the number of acres that are in their  
15 service area.

16 MR. HERRICK: And just to make the record clear  
17 and to try to help your recollection, it references a  
18 diversion rate rather than how to calculate it, although  
19 there's been discussions about how that rate was  
20 determined. Would you agree with that? If you recall?

21 MR. WEE: Yes. Cfs per acre.

22 MR. HERRICK: Then the two 1911 agreements  
23 also -- what's -- is there an objection?

24 And the two 1911 agreements, although they  
25 don't have a legal description or township range

1 description of the diversion points, they both have maps  
2 which show the diversion points for the service of  
3 water; is that correct?

4 MR. WEE: Yes, they both have maps.

5 MR. HERRICK: So would you conclude that the  
6 only material difference between the water appropriation  
7 notice and the two 1911 agreements is the title of the  
8 document?

9 MR. O'LAUGHLIN: I'm going to object to that.  
10 That calls for a legal conclusion.

11 MR. HERRICK: I did not ask for a legal  
12 conclusion. I just asked him the only difference  
13 between the two.

14 MR. O'LAUGHLIN: Yeah, but is the difference  
15 basically the type, the font, the page?

16 Or is it the substantive legal issue of filing  
17 under the Civil Code or not filing under the Civil Code?  
18 The latter calls for a legal conclusion whereas the  
19 former is a discussion of type.

20 MR. RUBIN: I would also object on the grounds  
21 of ambiguity. I think Mr. O'Laughlin's objection  
22 provided additional explanation of why the question is  
23 ambiguous.

24 CO-HEARING OFFICER PETTIT: I'm going to uphold  
25 that objection, Mr. Herrick because I think there are

1 two different processes.

2 MR. HERRICK: That's fine. I'm done. Thank  
3 you very much.

4 Oh, I'm sorry. I have two more questions.

5 Mr. Wee, while you're being coached on your  
6 answers, I would like to ask you two more.

7 MR. HERRICK: Don't -- don't do that. I don't  
8 do that to you --

9 MR. HERRICK: I don't give my clients answers.

10 CO-HEARING OFFICER PETTIT: Gentlemen --

11 MR. O'LAUGHLIN: Don't do that, John. That is  
12 entirely rude and unprofessional.

13 CO-HEARING OFFICER PETTIT: Let's get back to  
14 the --

15 MR. HERRICK: I have two remaining questions.

16 At the time of the McChesney notice which is  
17 dated -- I'm sorry -- 1904 or something. 1911, I'm  
18 sorry. Do you know whether or not Mr. McChesney was  
19 actually diverting water?

20 MR. WEE: Well, I think that taken in totality  
21 with the other documents that I produced, he did make  
22 beneficial use of water because it was passed on to his  
23 company and then to the irrigation district, and that  
24 became part of their water right.

25 MR. HERRICK: I appreciate that answer, but I

1 was -- maybe I didn't make it clear in my question.

2 I was asking whether you knew at the time of  
3 the notice whether he was diverting water or this  
4 expressed an intent to do it in the future.

5 MR. WEE: Well, it was a filing -- it was a  
6 Notice of Appropriation, meaning he was putting people  
7 on notice that he intended to appropriate water. That  
8 was the purpose of it.

9 MR. HERRICK: I'm not trying to trick you. I  
10 just mean he could have been diverting at the time and  
11 then filed a notice. I'm just asking if you know that.

12 MR. WEE: That is a possibility.

13 MR. HERRICK: Do you know whether or not at the  
14 time the 1911 agreements were filed, which I believe was  
15 September 29, 1911, that the Woods Irrigation Company  
16 was diverting water?

17 MR. WEE: I know that they had diverted water  
18 at some point, you know, prior to that. Whether they  
19 were -- I would -- I know that they were appropriating  
20 water before that, yes.

21 MR. HERRICK: I have no further questions.  
22 Thank you for your consideration.

23 CO-HEARING OFFICER PETTIT: Mr. Herrick, wait  
24 just a moment please.

25 That ruling I made upholding that objection was

1 in error because I was looking at the wrong document,  
2 and I was looked at the contract provisions, not the  
3 Notice of Appropriation.

4 So the basis I gave for upholding the objection  
5 was entirely incorrect, so.

6 MR. HERRICK: That's fine. I don't need to  
7 pursue new questions or anything like that.

8 CO-HEARING OFFICER PETTIT: Thank you.

9 Do you have any redirect, Mr. O'Laughlin?

10 MR. O'LAUGHLIN: None.

11 CO-HEARING OFFICER PETTIT: Then I guess we  
12 won't have any recross.

13 MR. O'LAUGHLIN: No, we won't.

14 I'd like to move into evidence Mr. Wee's  
15 testimony and his statement of qualifications and the  
16 exhibits attached thereto.

17 CO-HEARING OFFICER PETTIT: Any objections?

18 Not hearing any, they are accepted.

19 MR. O'LAUGHLIN: Thank you.

20 CO-HEARING OFFICER PETTIT: We will see you all  
21 Monday morning at 9 o'clock, and I appreciate your  
22 forbearance and patience and all.

23 MR. HERRICK: Mr. Chairman, before we leave, in  
24 the heat of battle, I forgot yesterday you asked us to  
25 make copies of the Gateway map which was in another

1 proceeding which we used from that proceeding while we  
2 discussed Mr. Grunsky -- Mr. Prichard's testimony.

3 I made 20 copies. I labeled them with an  
4 exhibit number because that's what we gave it yesterday.  
5 I'll distribute it now. If we need other things, we can  
6 do that when the time comes.

7 CO-HEARING OFFICER PETTIT: Thank you. Hang on  
8 just a second please.

9 Unless there are any concluding questions or  
10 comments, we will see you again Monday morning at  
11 9 o'clock, and thank you all.

12 \* \* \*

13 (Thereupon the WATER RESOURCES CONTROL  
14 BOARD hearing adjourned at 5:02 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 8, 2010.

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\_\_\_\_\_  
LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196

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