

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./CalePA BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA  
VOLUME IV  
MONDAY, JUNE 28, 2010  
9:03 A.M.

LINDA KAY RIGEL, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

A P P E A R A N C E S

CO-HEARING OFFICERS

Walter G. Pettit

Frances Spivy-Weber, Vice-Chair

HEARING TEAM:

Marianna Aue, Staff Counsel

Ernest Mona, Water Resource Control Engineer

Charles (Larry) Lindsay, Hearings Unit Chief

PROSECUTORIAL TEAM:

David Rose, Staff Counsel

State Water Resources Control Board

1001 I Street

Sacramento, CA 95814

APPEARANCES continued

WOODS IRRIGATION COMPANY

John Herrick, Esq.  
4255 Pacific Ave  
Stockton, CA 95207  
209.956.0150  
jherrlaw@aol.com

CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY

Harris, Perisho & Ruiz  
By: Dean Ruiz, Esq.  
3439 Brookside Road, Suite 210  
Stockton, CA 95219  
dean@hpllp.com

SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY FLOOD  
CONTROL & WATER CONSERVATION DISTRICT

Neumiller & Beardslee  
By: DeeAnne M. Gillick  
509 W. Weber Avenue  
Stockton, CA 95201  
209.948.8200  
dgillick@neumiller.com

MODESTO IRRIGATION DISTRICT

O'Laughlin & Paris LLP  
By: Tim O'Laughlin  
117 Meyers Street, Suite 110  
Chico, CA 95927-9259  
towater@olaughlinparis.com

APPEARANCES continued

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, WESTLANDS  
WATER DISTRICT

Diepenbrock, Harrison  
BY: Jon D. Rubin  
Valerie Kincaid  
400 Capitol Mall, Suite 1800  
Sacramento, CA 95814  
916.492.5000  
jrubin@diepenbrock.com

STATE WATER CONTRACTORS

Kronick, Moskovitz, Tiedemann & Girard  
BY: Stanley C. Powell  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814  
916.321.4500  
spowell@kmtg.com

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P R O C E E D I N G S

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CO-HEARING OFFICER PETTIT: Good morning. It's approximately 9 o'clock on the 28th of June, and I'm reconvening the Woods Irrigation Company CDO hearing that we recessed on Friday about 5 o'clock, so I believe we are ready to go.

MR. O'LAUGHLIN: Excuse me, Mr. Pettit.

MR. HERRICK: We can't hear you.

MR. O'LAUGHLIN: Can't hear you at all.

CO-HEARING OFFICER PETTIT: Can you hear now?

MR. O'LAUGHLIN: Perfect.

CO-HEARING OFFICER PETTIT: Looks like I have to chew on this thing.

As I mentioned, I'm reconvening the hearing that we recessed at about 5 o'clock on last Friday. And despite the fact that -- I should also mention that Ms. Spivy-Weber is not with us again today, and if we have to go till tomorrow, I don't think she'll be here then either.

But Ms. Aue and Mr. Mona, as usual, are with me here.

(Whereupon the Co-Hearing Officer delineated emergency evacuation procedures.)

1 CO-HEARING OFFICER PETTIT: We received a  
2 number of motions at the end of the day on Friday, and  
3 the first thing I'd like to do this morning is possibly  
4 ask for clarification on one or two of those and ask if  
5 there are responses ready to any of those motions at  
6 this point.

7 So does anybody have any comment with respect  
8 to proceeding in that manner?

9 (No response)

10 CO-HEARING OFFICER PETTIT: In that case, I'd  
11 ask Mr. Herrick if he has any responses to the motions  
12 that were prepared.

13 MR. HERRICK: Thank you, Mr. Chairman. John  
14 Herrick for the South Delta Water Agency (sic). If you  
15 don't mind, Mr. Dean Ruiz and Ms. DeeAnn Watkins -- or  
16 Gillick, sorry -- I think they'll take the lead in  
17 responding to those motions, and then I'll just follow  
18 up by mostly just joining in.

19 CO-HEARING OFFICER PETTIT: Thank you.

20 MR. HERRICK: In opposition to the motions.

21 MR. RUIZ: Good morning, Hearing Officer  
22 Pettit. Dean Ruiz for Central and South Delta Water  
23 Agencies.

24 We received, as everybody heard Friday  
25 afternoon, a number of objections and several motions.

1 Some of the objections I was trying to scribble down  
2 late Friday afternoon that were being recited by  
3 Ms. Kincaid I had some questions about and some  
4 uncertainty about.

5           Given that, you know, I have some response that  
6 we can provide orally, verbally at this time, but I'm  
7 also aware that you've indicated your indication to --  
8 the Board has the ability to accept the evidence and  
9 assign the proper weight to it as the Board sees fit.

10           Given that, I don't know that now would be the  
11 time to try and go through and respond to some of that  
12 stuff orally.

13           I would request that it probably would be most  
14 appropriate to get some clarification to some of the  
15 questions, and then to have several days after the  
16 hearing closes to provide written responses.

17           I do have one written response to the motion in  
18 limine, written opposition to the motion in limine.

19           The other ones we can address sort of ad hoc at  
20 this point, or also I think it would be appropriate to  
21 do so several days after the hearing closes.

22           CO-HEARING OFFICER PETTIT: Did you want to  
23 make any specific comments with reference to them now,  
24 Mr. Ruiz?

25           MR. RUIZ: Well, as far as the motion in

1 limine, I have a written opposition that I'll pass out I  
2 can share with the others.

3 CO-HEARING OFFICER PETTIT: Thank you.

4 And I was not proposing to make rulings on  
5 those motions this morning in any event. I certainly  
6 haven't had much time to coordinate with Ms. Aue on the  
7 review of the motions.

8 And I also haven't had any time to coordinate  
9 with Ms. Spivy-Weber, and I would like to have her  
10 thoughts on those motions before we make a decision.

11 So one thing that occurred to me, and maybe  
12 this is consistent with Mr. Ruiz's suggestion that we do  
13 some of this by letter in the future, one thing that  
14 occurred to me that we might do is make the rulings by  
15 letter some time in the next days and make sure that you  
16 have that letter with the rulings before you have to  
17 prepare briefs, and I would be --

18 MS. GILLICK: I'm sorry, Hearing Officer  
19 Pettit. We're having a very difficult time hearing you,  
20 and I apologize for asking again, but it's very  
21 difficult.

22 CO-HEARING OFFICER PETTIT: That's fine. I  
23 guess close means close with this thing. Is that any  
24 better?

25 MS. GILLICK: Yes.

1 CO-HEARING OFFICER PETTIT: Okay.

2 MR. O'LAUGHLIN: Hearing Officer Pettit, Tim  
3 O'Laughlin, Modesto Irrigation District.

4 As long as the Hearing Team has the motions,  
5 has the responses, and as long as prior to us having a  
6 time frame in which to file briefs, I have no problem if  
7 you take in whatever responses you need to from Woods  
8 and South Delta and Central Delta, get that in front of  
9 you and make a record, and then get a response out.

10 Because one of the things that concerns us from  
11 our side of the aisle is, as you know in these types of  
12 matters, when this matter goes to the superior court, it  
13 will be reviewed de novo.

14 So it's very important that the record be clear  
15 as to what you did or didn't receive into evidence and  
16 what you did or didn't accept and the basis for it.

17 So I don't -- I'm in agreement. I don't want  
18 to rush through these things. And it was a short  
19 weekend, and if they need time to respond, they should  
20 respond, get that to you, you get your responses out,  
21 and then we have a clear record. Then based on that  
22 clear record, we draft our closing briefs.

23 MR. RUBIN: Hearing Officer Pettit, Jon Rubin  
24 for San Luis & Delta-Mendota Water Authority.

25 I agree with Mr. O'Laughlin's statement as it

1 addressed the motions that were filed. I have a  
2 different view in terms of the objections to the  
3 evidence.

4 We raised those objections. I think that we  
5 are entitled to hear any opposition that may exist.

6 I'm not sure if that is -- should be subject --  
7 our objections should be subject to a written response.  
8 It's a bit out of the ordinary approach.

9 If you are going to allow briefing on  
10 evidentiary objections, we may want an opportunity to  
11 prepare in writing our objections as well.

12 Again, the way we've approached this proceeding  
13 is the standard process which you have an opportunity to  
14 object as exhibits are moved into evidence, the party  
15 that's moving has an ability to respond, and generally  
16 the Hearing Officer will rule at that time.

17 CO-HEARING OFFICER PETTIT: I appreciate that.

18 As I indicated before, my expectation is that  
19 I'll be pretty liberal about, with Ms. Spivy-Weber's  
20 concurrence, of course, but would be liberal about  
21 letting things into evidence.

22 And I have the same concern that Mr. O'Laughlin  
23 expressed, that as this case moves forward into  
24 different venues I'd like to at least be as clear and  
25 well-thought-out on our reasons for doing things as we

1 possibly can.

2           And if that deviates a little bit from  
3 conventional practice in a court, about all I can say is  
4 we're an administrative agency, not a court, and I would  
5 hope we could be flexible in some of those rules.

6           So I had the same concern that was expressed  
7 earlier, and that's part of the reason for this is we  
8 want to make sure that what we do decide is as  
9 well-founded and as well-thought-out as we can make it.  
10 That's why I'm reluctant to make any rulings in a rush.

11           MR. O'LAUGHLIN: Mr. Chairman, the other thing  
12 is if they do have questions concerning the objections,  
13 I would like to hear those now so -- if there's any  
14 miscommunication -- so we can get very clearly what the  
15 objections were and if they have questions regarding the  
16 objections so that we can handle that right now and get  
17 it done and then we can move forward with the hearing.

18           As I let the Hearing Officer know, my first  
19 witness ran into a slight problem this morning and is  
20 running a couple minutes late. I would expect him here  
21 between 9:20 and 9:25.

22           So if we can get the clarifications on the  
23 objections, and we might have to take a small  
24 five-minute break and then start, and then he'll be  
25 available for the rest of the day.

1 CO-HEARING OFFICER PETTIT: Okay. Thank you,  
2 Mr. O'Laughlin.

3 Mr. Ruiz -- Ms. Gillick, did you want to say  
4 something?

5 MS. GILLICK: I was going to respond to the  
6 comments by Mr. O'Laughlin and Mr. Rubin as well, you  
7 know, on behalf of the County, join in the request on  
8 the motions that we have some time after the conclusion  
9 of the hearing to submit something in writing.

10 We had also initially wanted to request to put  
11 something in writing regarding the objections if that  
12 was your desire.

13 We do oppose and can respond to all the  
14 objections, at least our understanding of those, made by  
15 Ms. Kincaid.

16 We can do it orally. I think for clarity of  
17 the record and for ease of responding to that for the  
18 record that something in writing would be appropriate.

19 Mr. O'Laughlin -- I believe Mr. O'Laughlin  
20 asked for clarification on our clarifications on what  
21 the objections were.

22 I would not be opposed for them to list that in  
23 writing, but I do know that our confusion or uncertainty  
24 regarding the oral objections were in regard to the  
25 testimony of Mr. Neudeck as well as the testimony of



1 Mr. Nomellini.

2           There were several references to pages and  
3 paragraphs in the testimony, one of which I don't think  
4 makes sense from my notes when I look at the testimony.

5           The others I can run through for confirmation  
6 from Ms. Kincaid if we actually did note down the  
7 correct objections on which paragraphs of those  
8 testimony.

9           So if you wanted me to go through my specific  
10 questions, I can. Or whenever it's appropriate.

11           CO-HEARING OFFICER PETTIT: Let me back up just  
12 a moment to make sure that Mr. Ruiz was finished.

13           And as I understand it, Mr. Ruiz, you have a  
14 written objection or response that you were intending to  
15 pass out today?

16           MR. RUIZ: Yes. That's to the motion in  
17 limine.

18           CO-HEARING OFFICER PETTIT: That was the extent  
19 of what you wanted to do at the moment?

20           MR. RUIZ: That's right.

21           And I had a couple other questions as far as  
22 clarification as to some of the objections introduced by  
23 Ms. Kincaid Friday evening just in terms of, as  
24 Ms. Gillick said, it references paragraphs, certain  
25 paragraphs, and the paragraphs aren't in pleading form

1 where they're numbered. They're just more of a prose  
2 and, you know, sometimes there's excerpts and there's  
3 quotes, and I'm not sure exactly which paragraph in some  
4 cases she's referring to, and I wanted to be clear --

5 MR. O'LAUGHLIN: Well, let's make --

6 MR. RUIZ: -- before we speculate.

7 MR. O'LAUGHLIN: Sorry.

8 Let's make this easy for everyone. Or  
9 hopefully. We'll try. It's Monday morning.

10 We will -- why don't we do this. We'll draft  
11 up -- the motions by Modesto were in writing, so those  
12 are -- hopefully there's no confusion regarding those.

13 And then what we'll do is we'll have  
14 Ms. Kincaid draft up her objections in a written format  
15 with the pages, the numbers, the text. And then we'll  
16 have that specifically in the record, and then the  
17 reason for the objections.

18 And then we'll file that in the next couple  
19 days or two, hopefully, and then you, the Hearing  
20 Officer, can set a time for the other side to respond,  
21 and then we'll have it all in nice clean prose and  
22 everything cleaned up.

23 CO-HEARING OFFICER PETTIT: I'm going to hold  
24 off on that for a moment because I'd like Mr. Ruiz to go  
25 through and summarize the clarifications he would like

1 because we might be able to shortcut some of this if he  
2 does that.

3           If he has questions and Ms. Gillick has  
4 questions about exactly what was intended with some of  
5 the motions, I think it might be useful to spend a  
6 little time going through those one by one.

7           So I was going to ask Mr. Ruiz to proceed, and  
8 Ms. Gillick. And I haven't forgotten the rest of you.  
9 I'll get to all the other parties also.

10           But unless somebody has an objection to that  
11 process, I would like to hear any requests for  
12 clarifications on the motions that were filed.

13           MR. RUIZ: Actually, just to be clear for the  
14 record, as Mr. O'Laughlin said, the confusion isn't with  
15 respect to the motions, just the objections.

16           And to save a little bit of time, Ms. Gillick  
17 will go through her questions, and to the extent there's  
18 still some confusion, I'll add and I'll chime in.

19           CO-HEARING OFFICER PETTIT: Okay, thank you.  
20 And please excuse my nonlegal terminology.

21           MS. GILLICK: And just for point of  
22 clarification, Ms. Kincaid made several objections to  
23 Mr. Neudeck's testimony as well as Mr. Nomellini's. And  
24 in counting the paragraphs, I counted them to not  
25 include as a new paragraph any quotations from any other

1 sources.

2           So I just wanted to confirm that my  
3 understanding on counting paragraphs is correct, and  
4 then I can go through the paragraphs that I have noted  
5 that she commented upon. Or it might be easier for her  
6 to just comment again, and we could see if our notes are  
7 consistent with what she indicated.

8           There were two objections I had to  
9 Mr. Neudeck's and about six or seven to Mr. Nomellini's.

10           MR. RUBIN: Hearing Officer Pettit, I  
11 apologize. Maybe we need to go through this exercise.

12           I'm concerned at this point that we have clear  
13 objections. If there's this -- if the number of issues  
14 that Ms. Gillick has is in the order of approaching ten,  
15 I think we could very quickly note the basis for the  
16 objection and either cut and paste the paragraph that  
17 we're raising the objection to and do that in fairly  
18 quick order.

19           I would imagine that either -- if we finish  
20 today, we can get it by close of business tomorrow; or  
21 if we finish tomorrow by close of business on Wednesday  
22 to you.

23           I just want to make sure that we have a very  
24 clear record, and I'm a little bit concerned at this  
25 point that we might not.

1 CO-HEARING OFFICER PETTIT: I guess your point  
2 is that that might shortcut this back-and-forth at the  
3 moment and we could skip that?

4 MR. RUBIN: Well, yeah. And we might go back  
5 and forth now for five, ten minutes and still have an  
6 unclear record.

7 And the clearest way, given the importance, I  
8 think, of some of these objections, is to put them in  
9 writing, particularly given the number of questions that  
10 Ms. Gillick has.

11 MR. RUIZ: We would support that as well.

12 (Discussion off the record)

13 CO-HEARING OFFICER PETTIT: Here's what I think  
14 we'll try.

15 I'm going to ask Ms. Gillick and others to  
16 summarize their questions as to the evidence and the  
17 motions. And to the extent that that can be responded  
18 to quickly or clarified easily, maybe we can do it as we  
19 go along.

20 To the extent that it requires further  
21 clarification, I think we'd take Mr. Rubin's suggestion  
22 and have the originator of the motion or objection file  
23 something in writing in the next couple of days, and we  
24 can decide on time frames later.

25 So Ms. Gillick, if you would proceed.

1           And perhaps Ms. Kincaid and Mr. Rubin could  
2 keep track of your comments and see what they can  
3 respond to that might clear things up now and what might  
4 require some written clarification.

5           I think the advantage of the written  
6 clarification is that it makes the record a lot clearer  
7 as to what we've actually got before us. As I see it,  
8 the advantage of clearing up what we can orally now  
9 might speed up the process a little bit.

10           So let's give it a try. If it doesn't work,  
11 maybe we'll have to fall back.

12           So Ms. Gillick, would you go ahead, please.

13           MS. GILLICK: Great.

14           As to Mr. Neudeck's testimony, I have two  
15 objections.

16           The first, which is the one I'm unclear on,  
17 what I have is an objection on page 4 to paragraphs  
18 three and six. And I'm not certain if that is the  
19 correct reference to the objection of the material.

20           The second is an objection to paragraph 21  
21 regarding relevance.

22           So those are my two objections that I noted  
23 regarding Mr. Neudeck's testimony from Ms. Kincaid.

24           Then I have several from Mr. Nomellini's. The  
25 paragraphs which I noted that --

1 MR. O'LAUGHLIN: Can we do -- can we do --  
2 let's do Neudeck first. Let's get Neudeck done.

3 CO-HEARING OFFICER PETTIT: Yes. I'd suggest  
4 we do them one at a time.

5 MS. GILLICK: Great. Those were my two  
6 comments or noted objections to Mr. Neudeck's testimony.

7 MS. KINCAID: Valerie Kincaid for San Luis &  
8 Delta-Mendota Water Authority. I think those can be  
9 cleared up pretty easily.

10 Objections to paragraphs three through six --  
11 three, four, five, six. Paragraph three starts on  
12 page 1 with the word: Briefly.

13 Paragraph four starts on the bottom of page 1  
14 with: That order -- excuse me -- that other evidence.

15 Paragraph four begins page 2: The facts of the  
16 case.

17 Paragraph six, second paragraph on page 2  
18 beginning: At the very end.

19 And those were all of Woods Irrigation  
20 Exhibit 4, Mr. Neudeck's testimony.

21 CO-HEARING OFFICER PETTIT: Does that suffice  
22 to clarify things, Ms. Gillick?

23 MS. KINCAID: And there's one more, if I could  
24 address, Hearing Officer.

25 CO-HEARING OFFICER PETTIT: Oh, excuse me.

1 MS. KINCAID: Paragraph 21 is the very last  
2 paragraph. It's on page 5 beginning: In addition to  
3 this number.

4 MS. GILLICK: Great. Then we have the  
5 clarifications for Mr. Neudeck's testimony.

6 Then there were several paragraphs objected to  
7 in Mr. Nomellini's testimony. I have them noted as  
8 paragraphs four, six, ten, 20, 21, and 32.

9 Can I confirm if my paragraphs are correct?

10 MS. KINCAID: We can go through those as well,  
11 similarly. This is Woods Irrigation Exhibit 8.

12 And just to be clear, Ms. Gillick, we objected  
13 to a number of paragraphs that you didn't list. Is your  
14 question just whether we objected to paragraphs four,  
15 six, ten, 20, 21, and 32?

16 MS. GILLICK: I'm sorry. That's all the  
17 paragraphs I have noted that you objected to, so if  
18 there were more, I missed them.

19 MS. KINCAID: I think if it's easier at this  
20 point, I'll go through our objections just by paragraph,  
21 and I'll identify them in the testimony so we have an  
22 exhaustive list.

23 CO-HEARING OFFICER PETTIT: Thank you.

24 MS. KINCAID: Sure. Starting with paragraph  
25 four, Woods Irrigation Company Exhibit 8.



1 Paragraph four starts on page 1: With the  
2 artificial construct.

3 MS. GILLICK: If you will wait a second. Let  
4 me get that in front of me. Thank you.

5 MS. KINCAID: The next objection was to  
6 paragraph seven, Woods Irrigation Company Exhibit 8.

7 Paragraph seven is the last paragraph on page 2  
8 beginning: Because the subject parcel.

9 MS. GILLICK: Okay.

10 MS. KINCAID: We also objected to paragraph ten  
11 of Woods Irrigation Company Exhibit 8. Paragraph ten,  
12 in the middle of page 3, beginning: Early reclamation  
13 essentially followed.

14 We objected to paragraph 20, Woods Irrigation  
15 Company Exhibit 8. Paragraph 20 is the end of page 6:  
16 The borrow areas, particularly in the Delta.

17 Paragraph 21, we also objected to. It's the  
18 next paragraph on page 6: The passage of time.

19 We objected to paragraph 32, which is the very  
20 last paragraph on page 8 beginning with: I have  
21 compared.

22 And then we objected to a number of exhibits,  
23 but that was the end of the paragraphs we objected to in  
24 Woods Irrigation Company Exhibit 8.

25 MS. GILLICK: Okay. Thank you for that

1 clarification. It looks like I had one off. So that's  
2 clarification.

3 I'm aware there were objections to several  
4 exhibits. I have them noted in Mr. Nomellini's  
5 testimony as Exhibits 8B as in boy, 8D is in David, 8F  
6 as in Frank, 8G as in Gillick, 8H as in help, 8J as in  
7 Jack.

8 We do oppose those objections. I believe the  
9 objections were that they -- that it would be acceptable  
10 for them to be introduced under official notice.

11 I believe that these are proper exhibits as  
12 evidence in the case of an expert and also references.  
13 I'd like to refer to -- and I can address the issues in  
14 more detail now on the record, or we can put it in  
15 writing -- but refer to the actual hearing notice by the  
16 State Board where it indicates that evidence can be  
17 received that is a publication of a State agency or a  
18 publication of the State Board if it's in the hearing  
19 record -- if it's in the records of the State Board  
20 prior to the hearing, and that evidence can be received  
21 by reference.

22 Some of these documents fit that bill. And  
23 instead of just introducing them as an exhibit and  
24 including them, we certainly could do it by reference.

25 There's a couple of other documents, the

1 Settlement Geography of the Delta and the History of San  
2 Joaquin. I believe that it's appropriate and proper for  
3 those to be introduced also as evidence and not in the  
4 form of official notice.

5 So we can address those in more detail in  
6 writing or now if that needs to be addressed.

7 And I want to confirm that my exhibit numbers  
8 are correct.

9 MS. KINCAID: That's correct; your exhibit  
10 numbers as listed into the record are correct.

11 CO-HEARING OFFICER PETTIT: Okay. Anything  
12 else, Ms. Gillick?

13 MS. GILLICK: Not for clarification basis of  
14 the objections stated by Ms. Kincaid on Friday.

15 CO-HEARING OFFICER PETTIT: Okay. Thank you.

16 And back again, Mr. Ruiz, just to make sure I  
17 don't skip over anything. Did you have anything in  
18 addition at the moment with regard to clarification?

19 MR. RUIZ: No. I was missing a couple of the  
20 Nomellini objections as well, and I had one of the  
21 Neudecks misnumbered. I had it numbered differently per  
22 paragraphs, so I think I'm clear now.

23 CO-HEARING OFFICER PETTIT: Thank you.

24 Mr. Rose, did you have anything?

25 MR. ROSE: I just wanted some clarification if

1 necessary. We made our objection early on, and it was  
2 not specific to any particular paragraphs.

3 But if it would be useful, we can put it in  
4 writing. We objected to essentially all of the evidence  
5 that was presented regarding riparian rights as not  
6 relevant to this proceeding.

7 Now if it's necessary for the parties to go  
8 through those paragraph by paragraph, I can submit  
9 something in writing identifying which paragraphs from  
10 the written testimony of all parties we think fall into  
11 that category.

12 Otherwise, it's our blanket objection that we  
13 raised at the beginning and then reiterated upon motions  
14 to move the evidence into testimony -- or testimony into  
15 evidence.

16 CO-HEARING OFFICER PETTIT: I don't think  
17 that's necessary at the moment. I just want to make  
18 sure at the present that we are clear as to what those  
19 motions and objections consist of.

20 Okay. Mr. O'Laughlin?

21 MR. O'LAUGHLIN: One other housekeeping -- my  
22 witness is here, so we're ready.

23 But one other housekeeping thing since we're  
24 here is what thought does the Hearing Team have in  
25 regards to two items. One, the timing --

1 MS. GILLICK: Mr. Chairman, if we could finish  
2 the objection issues before we move on to another issue?

3 MR. O'LAUGHLIN: Oh.

4 MS. GILLICK: I'd like to -- I don't think  
5 we've responded to or addressed any response to  
6 Prosecution Team's objection regarding the riparian  
7 status.

8 Mr. Rose just brought that up, and I can  
9 respond to that right now. Or again, that can be  
10 something that is put in writing.

11 I am aware the Prosecution Team objected to any  
12 and all testimony regarding the riparian status of lands  
13 within Woods Irrigation Company. I can respond to that  
14 or put that in writing.

15 CO-HEARING OFFICER PETTIT: Is his objection  
16 clear to your satisfaction at the moment?

17 MS. GILLICK: It is.

18 CO-HEARING OFFICER PETTIT: Okay. Then I don't  
19 think we need to go into the merits of it because that  
20 will probably depend on what we do with the objections  
21 themselves subsequently.

22 MS. GILLICK: And thank you, Mr. O'Laughlin,  
23 for that. I just thought that we should finish the  
24 objection conversation before started another one.

25 CO-HEARING OFFICER PETTIT: Okay. Before we

1 get to Mr. O'Laughlin then, does anybody else need  
2 clarifications as to what the intent of the objections  
3 or motions were?

4 If not, Mr. O'Laughlin, sorry for the  
5 interruption. Let's go ahead.

6 MR. O'LAUGHLIN: Not a problem.

7 Two questions for the Hearing Team. One is  
8 what thought the Hearing Team had given to briefing, how  
9 the briefing would be scheduled, page limits, all those  
10 rudimentary, boring details.

11 It would be helpful to know because we're going  
12 to have to have a transcript, and I'm assuming the  
13 transcript is probably going to take a couple weeks to  
14 get out as well.

15 And then I don't like saying this in front of  
16 you, but we're somewhat concerned about timing because  
17 you haven't been confirmed on affirmed yet. I'm not  
18 saying you won't be, but I don't want a Hearing Team to  
19 be gone and we don't have this matter concluded.

20 Then the second thing would be, we've talked to  
21 the Woods Irrigation Company, South Delta and Central  
22 Delta et al, and it does seem to make sense to us that  
23 some merger or coordination of the record that is taking  
24 place in the Mussi Pak Young matter occur with this  
25 matter so that -- I'll give -- if I can use the

1 example -- I'm not being prejudicial to anybody in their  
2 testimony or anything when I say this; I'm going to try  
3 to use it as an example.

4 Mr. Lajoie was talked about in this testimony,  
5 in the Woods matter. He gave an extensive discourse in  
6 the Pak Young Mussi matter.

7 It would just be helpful, I think, for the  
8 parties and for the Hearing Team that they have full and  
9 complete coordinated records in front of them so we  
10 don't have to bring in everything from Mussi Pak and  
11 Young and have you listen to it again, but if there's  
12 certain things we want to draw from from that record  
13 that we bring them in, and that we try to coordinate  
14 those records as much as possible so that if and when  
15 this matter goes in front of a superior court that we  
16 have a complete record rather than kind of looking at it  
17 in a bifurcated way.

18 Otherwise, I think we're going to run into a  
19 problem where we have gaps in the record and/or people  
20 citing to things that have occurred in other instances  
21 that really didn't take place in the Woods matter.

22 CO-HEARING OFFICER PETTIT: Was that all of  
23 them Mr. O'Laughlin?

24 MR. ROSE: Board Member Pettit, if it's  
25 relevant, I just want to note my disagreement with that

1 particular motion or whatever we would be calling that  
2 request from Mr. O'Laughlin as beyond the scope of the  
3 original notice and on the grounds of relevance.

4 Some things that were referenced in other  
5 proceedings may very well need to be brought into this  
6 proceeding because they were mentioned.

7 But in general, lots of the things brought up  
8 in the other proceedings, with lots of overlap with my  
9 previous objection, are not relevant to this proceeding  
10 and would go beyond the scope of the original notice.

11 So I would just note my disagreement with that  
12 suggestion.

13 CO-HEARING OFFICER PETTIT: Thank you.

14 Did you have any other issues that you were  
15 curious about the Hearing Team's thinking,  
16 Mr. O'Laughlin?

17 MR. O'LAUGHLIN: Not at this time. Thank you.

18 CO-HEARING OFFICER PETTIT: Okay. Let's take  
19 them in order then.

20 First, I think your concern is well justified  
21 because, as you indicated, I'm still on probation and  
22 there is a very good chance I won't be here much longer.

23 For that reason I'd like to -- well, that's  
24 just one of the reasons I would like to move this thing  
25 along because, for better or for worse, I think you're



1 entitled to as prompt an answer as you can get from  
2 somebody who at least heard the testimony.

3           So I'm hoping we can get this on its way while  
4 I'm still around. There are certainly no guarantees of  
5 that, and there is absolutely no certainty that I will  
6 be confirmed, so it's a valid concern.

7           That's -- yeah. And that's, as Ms. Aue just  
8 reminded me, another of the reasons I was concerned  
9 about keeping Ms. Spivy-Weber involved in this process  
10 because we not only have that continuity but she has  
11 been confirmed and is good for a few more years yet.

12           So I think it's valuable to keep her in the  
13 loop on this.

14           With regard to the second issue, Mr. Rose's  
15 objection, I think my response to that is probably on a  
16 couple of levels.

17           If the parties get together and think that  
18 certain elements of the other hearings are appropriate  
19 for introduction in this one, that could probably be  
20 accomplished.

21           My concern was, however it's done, that in  
22 those future venues and assuming some trial court judge  
23 is going to get this, that without knowing at all how  
24 we're going to do this, I would just like to make that  
25 record as clear as possible for whoever has to look at

1 it in the future, which is another reason why I'm  
2 reluctant to make rash rulings on the objections and  
3 would prefer we do that in a thought-out process.

4           So I don't know if that's responsive to your  
5 questions or not, but I'd be receptive to any  
6 suggestions you have to how we could make that happen.  
7 I don't have any plan at the moment other than trying to  
8 make it as clear as possible.

9           MR. O'LAUGHLIN: My task -- my office has been  
10 tasked with drafting a stipulation, so why don't we do  
11 this: I'll finish the stipulation. We'll figure out  
12 what evidence we think we need to take from either  
13 Mussi, Pak or Young to move into this. We'll list it.

14           Then if Mr. Rose still has the same objections,  
15 he can make those for the record, and we'll have a clear  
16 understanding of what's in or out, much like we do with  
17 the motions that you've heard on the other testimony.

18           And so I'll get that done, and I'll coordinate  
19 with Woods Irrigation Company, South Delta and Central  
20 Delta.

21           MR. ROSE: Board Member Pettit, I have no  
22 problems with that. My disquiet or objection was to  
23 merging both records in both directions as to all  
24 proceedings.

25           But certainly if I could look at what's

1 proposed, then I'll make any objections I have specific  
2 to what they're proposing.

3 CO-HEARING OFFICER PETTIT: Yes. And I'm at  
4 least minimally aware of the legal concern we would have  
5 about just merging records without any forethought, and  
6 I appreciate that we can't do that.

7 I don't think that precludes us from trying to  
8 figure out how to make this thing as amenable to  
9 interpretation as possible for the future.

10 Okay. Let's consider that the game plan for  
11 the moment. And when we get through with the rebuttal  
12 testimony, we can talk about the subjects of briefings  
13 and time frames and so on.

14 So are we ready for -- were you about to say  
15 something, Ms. Gillick?

16 MS. GILLICK: I have one more procedural  
17 question to raise. I apologize.

18 I do anticipate several documents to be  
19 requested for official notice. And, you know, that's  
20 something we can do orally; or similar to the  
21 objections, if we'd be given a few days after the  
22 hearing or after this week's proceedings to make those  
23 objections for the record and -- not objections -- make  
24 those motions for official notice in the record and  
25 distribute to the parties, that would be appreciated if

1 that is at all possible.

2 CO-HEARING OFFICER PETTIT: Can we do that with  
3 the other procedural stuff after we hear this rebuttal?

4 MS. GILLICK: Yeah. My concern is, as I  
5 indicated on Friday, I'm not going to be here tomorrow  
6 because I do have a prior commitment that I have to  
7 attend to.

8 So this might, you know, appropriately come up  
9 tomorrow, and I just want to get it on the record today  
10 that I do anticipate several documents to be requested  
11 for official notice.

12 CO-HEARING OFFICER PETTIT: Okay. And if we  
13 need to discuss that further in consideration of the  
14 fact that you won't be here tomorrow, remind me before  
15 the end of the day if we need to talk about it some  
16 more.

17 MS. GILLICK: Thank you.

18 CO-HEARING OFFICER PETTIT: Thank you.

19 MR. O'LAUGHLIN: Okay. Mr. Chairman, if we  
20 could take a two-minute break or three-minute break  
21 while we get set up and documents get handed out, and  
22 then we can come back on the record and we're ready to  
23 go.

24 CO-HEARING OFFICER PETTIT: Okay. And just  
25 before we do that, have I skipped anything else that we

1 ought to discuss before we start rebuttal?

2 Mr. Herrick.

3 MR. HERRICK: Thank you, Mr. Chairman.

4 I was going to do these procedural things when  
5 we put on our rebuttal case, but I'll just mention them  
6 now in case you want to address something.

7 Number one, Mr. Nomellini wrote some notations  
8 on a map which is now an MSS exhibit.

9 Pursuant to discussion with counsel, he's  
10 gotten a few Google maps so his notations are more  
11 clear. I'll pass that out. I believe there's no  
12 objection to that. He's numbered them as an exhibit.

13 Then a number of the objections made Friday  
14 with regard to testimony and exhibits dealt with the  
15 lack of the one or more underlying original documents  
16 having not been provided.

17 It's our position that those documents have  
18 already been provided, both in the other hearings or  
19 through public -- through records requests -- or  
20 production of documents, excuse me.

21 And along those lines, I have brought with me a  
22 lot of those documents. We'll go through them when the  
23 time comes.

24 If the parties don't want to take copies or the  
25 Board doesn't want electronic copies, then we will be

1 asking for official notice of those documents at a later  
2 time.

3 CO-HEARING OFFICER PETTIT: So to make sure I'm  
4 clear, are you suggesting that you're going to go  
5 through these as part of rebuttal?

6 MR. HERRICK: I was just going to do it prior  
7 to starting rebuttal.

8 CO-HEARING OFFICER PETTIT: And your proposal  
9 is that you would pass these things out which I gather  
10 are just copies of maps that have already been referred  
11 to?

12 MR. HERRICK: Aerial photos, maps, things like  
13 that.

14 CO-HEARING OFFICER PETTIT: The one thing I  
15 wasn't clear on is are some of these that were  
16 introduced in other hearings not yet in this hearing  
17 record?

18 MR. HERRICK: They have been referred to in  
19 this hearing record, but they aren't all -- they haven't  
20 been previously offered as exhibits themselves or as  
21 documents themselves here, but they have been discussed.

22 CO-HEARING OFFICER PETTIT: Okay. Can we  
23 anticipate comments from other parties when they see  
24 those?

25 MR. HERRICK: They may. I don't know. They

1 have them from other proceedings and through the  
2 production of documents request.

3 But again, if there are objections, we will  
4 then just be asking for the Board to take notice of  
5 official documents.

6 MR. RUBIN: Hearing Officer Pettit, Mr.  
7 Nomellini provided me with a copy of what's been marked  
8 as Woods Irrigation Company Exhibit 8J, 8J A through D,  
9 which I believe are Mr. Nomellini's depictions of where  
10 he took photographs that have been previously marked as  
11 exhibits for Woods Irrigation Company.

12 I have no objections if my understanding of  
13 these documents is correct.

14 I do have an objection on the map that  
15 Mr. Herrick was referencing I believe as the Gateway map  
16 that we discussed on Friday. I do object to the map  
17 being entered into evidence. I don't believe a proper  
18 foundation has been laid for that map. And if it's a  
19 document that's appropriate for official notice, I think  
20 that's the appropriate course.

21 Frankly, I don't know enough about that map to  
22 determine whether it is or is not a map that can be  
23 officially noticed or not.

24 CO-HEARING OFFICER PETTIT: Since Mr. Herrick  
25 mentioned that process as an alternative, does that

1 solve that issue, Mr. Herrick?

2 MR. HERRICK: I think that will solve all the  
3 objections. There may be specifics.

4 And I have one last thing.

5 CO-HEARING OFFICER PETTIT: Go ahead.

6 MR. HERRICK: We've proposed before --  
7 there's not unanimity in that, but we would like to  
8 propose again that prior to rendering a decision or  
9 considering the briefs the Board and staff take a site  
10 visit with all the parties out to the Woods Irrigation  
11 Company's diversion points for a better understanding of  
12 just what is there.

13 We've had a lot of descriptions and pictures of  
14 facilities, and in our opinion the understanding or  
15 effect of those is not as great just by looking at the  
16 documents being presented.

17 So we would encourage the Board to do that, but  
18 again that's just a request.

19 CO-HEARING OFFICER PETTIT: Thank you, and  
20 we'll take that under consideration. Hold for just a  
21 moment, please.

22 (Discussion off the record)

23 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin, we  
24 will go off the record for a couple of minutes while you  
25 get organized. Oh, I'm sorry, Mr. Rubin.



1           MR. RUBIN: Just so the record is clear, San  
2 Luis & Delta-Mendota Water Authority would object to a  
3 site visit.

4           I don't think it's relevant to the issues at  
5 hand. I think it's a use of resources that probably  
6 would be better served focusing on briefing and trying  
7 to get a decision out as quickly as possible.

8           MR. O'LAUGHLIN: I -- let me -- one other  
9 thing.

10           I don't think that really tells the whole  
11 story. A site visit is -- most site visits -- I know  
12 we're an administrative body, but most site visits in a  
13 trial court setting are not allowed because the problem  
14 is they're highly prejudicial.

15           A lot of the stuff that we're talking here,  
16 both factually and legally, doesn't have anything to do  
17 with what's out there now. In fact, what's out there  
18 now is, quite frankly, irrelevant from our viewpoint.

19           So going out and looking at what's existing is  
20 highly prejudicial, not very probative, and we would  
21 object strenuously to any site visit and especially an  
22 uncontrolled site visit by the State Board members or  
23 the Hearing Team at the facilities.

24           We think the record's clear. And if it's not  
25 clear, then it's incumbent upon Woods Irrigation Company

1 and them to make it clear.

2 But site visits should not be allowed, and the  
3 State Board should not even take it under consideration.

4 CO-HEARING OFFICER PETTIT: Okay. My leaning  
5 is in the same direction for possibly other reasons.

6 I'm concerned about whether the usefulness  
7 would be worth the resource investment on the part of  
8 all of us. And with all due respect, Mr. Herrick, my  
9 present thought is we probably won't do that, but I'll  
10 defer that decision for the moment. So, okay.

11 Are we ready to go off the record so you can  
12 get set up?

13 MR. O'LAUGHLIN: Absolutely.

14 (Recess)

15 CO-HEARING OFFICER PETTIT: Let's go back on  
16 the record. We have a couple of minor items to clear up  
17 yet before we start the rebuttal.

18 Ms. Gillick wanted to express an objection.

19 And also Mr. Mona distributed, I think it was  
20 just this morning, PDF copies of some of the MSS  
21 exhibits, and I think that was at least partially in  
22 response to Ms. Gillick's concern at the end of the week  
23 that she had not had a chance to look at some of those.

24 I don't know if you have copies of them now or  
25 have had a chance to look at them or not, Ms. Gillick.

1 MS. GILLICK: I saw the e-mail this morning,  
2 but that's the extent.

3 CO-HEARING OFFICER PETTIT: Okay. Well,  
4 perhaps you can get a chance to look at them sometime  
5 during the day then, so.

6 And also since we've changed the order, I just  
7 want to confirm that the order I jotted down for this  
8 rebuttal is what your current plan is.

9 I've got Mr. O'Laughlin, Mr. Herrick, Mr. Rose,  
10 Mr. Ruiz, and Ms. Gillick in that order. Is that the  
11 current plan?

12 MR. ROSE: The Prosecution Team would go last  
13 if nobody has any objection to that. We don't  
14 anticipate doing anything other than a few oral  
15 questions, if at all. That's our request if nobody has  
16 any objection.

17 MR. O'LAUGHLIN: We have no objections.

18 CO-HEARING OFFICER PETTIT: Okay. Ms. Gillick,  
19 go ahead.

20 MS. GILLICK: I'd like to make an objection to  
21 the scope of the rebuttal testimony, and I'd like to  
22 make an objection to, you know, strike or not allow any  
23 testimony or evidence that challenges the existence of a  
24 pre-1914 water right by Woods Irrigation Company up to  
25 77.7 cfs.

1           That is directly based upon the Cease and  
2 Desist Order and the issues at issue in this hearing  
3 based on the Cease and Desist Order.

4           And just for clarification, I'd like to read  
5 the first sentence of the Cease and Desist Order to make  
6 that very clear to the extent and basis of my objection.

7           It states:

8           It is hereby ordered pursuant to section  
9           1831 through 1836 of the Water Code that  
10           Woods cease and desist from diverting  
11           water in excess of 77.7 cfs at any time.

12           So this cease and desist disorder only pertains  
13 to any diversions by Woods Irrigation Company in excess  
14 of 77.7 cfs. Therefore, Woods Irrigation Company has  
15 not presented any evidence that necessarily documents or  
16 supports the existence of a pre-1914 water right below  
17 77.7 cfs.

18           So if there's any challenges or evidence  
19 challenging the existence of a pre-1914 water right up  
20 to 77.7 cfs, it's not the scope of this hearing. It is  
21 not properly noticed.

22           There has been serious due process violations  
23 for the Woods Irrigation Company if this hearing  
24 addresses any of those issues in any decisions or if  
25 there's evidence submitted in the form of rebuttal

1 testimony.

2 CO-HEARING OFFICER PETTIT: Ms. Gillick, my  
3 reading of the CDO also requests that parties submit  
4 possible revisions to that CDO; and given the direction  
5 of some of this testimony, I think that's well within  
6 the scope. I'm going to overrule that objection.

7 MR. RUBIN: Hearing Officer Pettit, I  
8 appreciate your ruling.

9 Just to make sure the record is clear,  
10 Ms. Gillick made a number of misstatements. One of them  
11 I want to address, and that is the notice for this  
12 proceeding.

13 She suggested that the notice would be -- was  
14 drafted in a way that was much more narrow. I think  
15 your ruling alluded to this. But just so the record is  
16 clear, the notice provided the purpose for this hearing,  
17 and the purpose is stated as -- the purpose for each  
18 hearing, one of which is the Woods Irrigation Company  
19 hearing that we're involved in right now, is for the  
20 State Water Resources Control Board to receive evidence  
21 relevant to determining whether to adopt with or without  
22 revisions a Draft Cease and Desist Order.

23 Nothing in the notice suggests that the hearing  
24 is limited to the terms of the proposed Cease and Desist  
25 Order that the Prosecution Team or the State Water

1 Resources Control Board issued to Woods.

2 CO-HEARING OFFICER PETTIT: Thank you,  
3 Mr. Rubin, and I'll reiterate the ruling. Thank you.

4 MS. GILLICK: And just so the record's clear,  
5 my objection is for the basis of any rebuttal testimony  
6 in evidence as well the scope of this hearing and the  
7 extent that there can be any ruling made on any pre-1914  
8 water rights up to 77.7 cfs.

9 I believe there's serious due process  
10 violations with that notice and with what is at issue at  
11 this hearing. So that's it.

12 MR. RUBIN: Hearing Officer Pettit, you ruled  
13 on this issue, and so I don't want to belabor the point.

14 To the extent Ms. Gillick is raising an issue  
15 now regarding the scope of this proceeding, I would  
16 question whether it's not been waived since she's  
17 participated in the proceeding for I think four or five  
18 days now and hasn't raised it previously.

19 MS. GILLICK: But I believe --

20 CO-HEARING OFFICER PETTIT: I think I'm going  
21 to cut this off because I haven't seen any basis to  
22 change the ruling.

23 I think this somewhat relates to Ms. Gillick's  
24 original due process objection at the start of the  
25 hearing, and we're going to proceed. But as I said, I'm

1 going to overrule that objection.

2 Mr. O'Laughlin.

3 MR. O'LAUGHLIN: Thank you.

4 --o0o--

5 STEPHEN R. WEE

6 Called on rebuttal by MODESTO IRRIGATION DISTRICT

7 DIRECT EXAMINATION BY MR. O'LAUGHLIN

8 --o0o--

9 MR. O'LAUGHLIN: Mr. Wee, can you -- were you  
10 present and did you take the oath of affirmation for  
11 this proceeding?

12 MR. WEE: I did.

13 MR. O'LAUGHLIN: Okay.

14 And can you please state your name and your  
15 address for the record, please?

16 MR. WEE: Steven R. Wee. Address is 2850  
17 Spafford Street, Davis, California.

18 MR. O'LAUGHLIN: Mr. Wee, have you prepared  
19 rebuttal testimony in the Woods Irrigation Company  
20 matter?

21 MR. WEE: I have.

22 MR. O'LAUGHLIN: And is that testimony in  
23 regards to the testimony submitted by Mr. Neudeck?

24 MR. WEE: It is.

25 MR. O'LAUGHLIN: And also, you have done

1 rebuttal testimony in regard to Mr. Scott Landon Blake;  
2 is that correct?

3 MR. WEE: That is also correct.

4 MR. O'LAUGHLIN: I understand that there's an  
5 issue you'd like to raise at the beginning about the  
6 numbering since Mr. Neudeck's testimony is both from the  
7 Mussi matter as well as in the Woods Irrigation Company  
8 matter.

9 Can you explain that to the Hearing Team and  
10 the participants, please?

11 MR. WEE: Yes, I could.

12 My rebuttal testimony related to the written  
13 testimony submitted by Mr. Neudeck in the Mussi matter  
14 is a response on a paragraph-by-paragraph basis.

15 And it's just a -- it's a response that is with  
16 the paragraphs numbered sequentially starting with 1 and  
17 just numbering each paragraph throughout his exhibits.

18 So I will be referring in my rebuttal to  
19 specific paragraphs from the Mussi testimony.

20 With respect to Mr. Neudeck's testimony in  
21 Woods, I have -- let me go back just for a minute here.

22 The numbers on the -- my rebuttal testimony as  
23 to Mr. Neudeck's Mussi testimony are documents 12  
24 through 55. Is that clear?

25 CO-HEARING OFFICER PETTIT: No, sir.



1 MR. WEE: Okay. Since I am responding to the  
2 testimony that Mr. Neudeck gave in the Woods matter and  
3 in his written testimony, he refers to his testimony in  
4 the Mussi matter and repeats that testimony and  
5 submitted it in this matter.

6 So my rebuttal to the Mussi testimony, which we  
7 thought was going to come before this one, is I  
8 organized my rebuttal based upon the numbers of the  
9 paragraphs I have assigned to his Mussi testimony.

10 So if you look at, for instance, the second  
11 part of my Exhibit 1, you'll see that in the left-hand  
12 margin each paragraph has a number. There are numbers 1  
13 through 42, just numbering the paragraphs sequentially.

14 MR. O'LAUGHLIN: Can you see on the left-hand  
15 side of -- it says testimony of Christopher Neudeck in  
16 the Woods Irrigation Company, and then it's numbered  
17 1-1. And then in the Mussi Pak number... did we number  
18 those? Yeah.

19 Why don't we just do this. Why don't we just  
20 go through and start with Duck Slough, and then as we go  
21 through call out the paragraph.

22 MR. WEE: Okay.

23 CO-HEARING OFFICER PETTIT: Mr. Wee.

24 MR. WEE: Yes.

25 CO-HEARING OFFICER PETTIT: Are you referring

1 to the material that starts on page 12 with the  
2 reference to paragraph 20? Otherwise I'm having trouble  
3 tracking just where we're starting.

4 MR. WEE: Apparently those materials haven't  
5 been handed out yet, I've been informed.

6 CO-HEARING OFFICER PETTIT: That might be part  
7 of the confusion.

8 (Discussion between counsel and witness)

9 MR. O'LAUGHLIN: Let's see if we can skin the  
10 cat another way. We tried to separate out the Mussi  
11 from the Woods Irrigation Company, so the testimony you  
12 have is the Woods Irrigation Company testimony. So  
13 we're going to go through that.

14 But what happened was we also -- just to kind  
15 of relatively put it to you -- you have the Woods  
16 Irrigation Company rebuttal. This is the Wood Pak  
17 rebuttal next to it.

18 So we didn't prepare that for the day, for  
19 today, because we were going to do the Woods Irrigation  
20 Company.

21 There will be citations in Mr. Wee's testimony  
22 to the numbering in the Neudeck testimony in Duck Slough  
23 since he incorporated that. I think it was Exhibit 4A  
24 or something. And we'll try to make that clear as we go  
25 through this process today about what that specifically

1 looks like. Okay.

2 CO-HEARING OFFICER PETTIT: Okay. And I want  
3 to ask Ms. Aue to kick me if it looks like we're having  
4 any cross-procedural issues here from translating from  
5 one to the other.

6 MR. ROSE: Board Member Pettit, briefly, since  
7 this is new, new information just submitted -- we're  
8 just looking at it right now -- I'll renew or make again  
9 my objection on the grounds of relevance as to anything  
10 relating to riparian status of any of the lands within  
11 the Woods Irrigation Company.

12 It seems as though much of this rebuttal  
13 testimony is directed to that point.

14 So I'm going to renew or make again objection  
15 as to this material which my objection previously did  
16 not encompass this rebuttal material. So I would make  
17 that again.

18 CO-HEARING OFFICER PETTIT: Okay. I could go  
19 into some detail, but I'm just going to overrule that  
20 objection for the moment, so.

21 MR. HERRICK: Mr. Chairman, I'm not sure how  
22 we're proceeding here.

23 The written testimony that's been handed out  
24 references numerous exhibits, but I don't have exhibits  
25 yet. I'm not trying to delay this, it's just that as he

1 goes through it and we're trying to prepare questions,  
2 we need to be able to see what he's referencing each  
3 time.

4 CO-HEARING OFFICER PETTIT: I'm going to go  
5 back off the record for a moment and let's let  
6 Mr. O'Laughlin and his witness decide in what manner  
7 they want to proceed.

8 So let's go off the record for a moment, give  
9 them a chance to get organized.

10 (Recess)

11 CO-HEARING OFFICER PETTIT: We're back on the  
12 record again.

13 MR. O'LAUGHLIN: Let's go back on the record,  
14 and hopefully we can agree on the labeling.

15 The first item is State of California Water  
16 Resources Control Board. It's the June 25th, 2010 by  
17 Mr. Steven R. Wee, the testimony of Mr. Neudeck and  
18 Mr. Scott Landon Blake. And we will label that  
19 MSS-R-14. And the beauty of putting the R in is that  
20 you'll know exactly where the rebuttal testimony starts.

21 And then the second packet that you will have  
22 received we will label MSS-R-14A.

23 And when Mr. Wee cites to the numbers in  
24 Mr. Neudeck's testimony, we will then go 14A, and then  
25 he will say 1. Then we jump to number 12, and then it

1 will be 12 through 55. Okay?

2 MR. HERRICK: Because there isn't anything  
3 between 1 and 12?

4 MR. O'LAUGHLIN: Well, there is stuff between 1  
5 and 12, but that's specifically applicable to the Mussi  
6 Pak matter and is not applicable to the Woods Irrigation  
7 Company matter. Okay?

8 MR. RUBIN: And just again, Mr. O'Laughlin, I  
9 apologize, to be clear, we're not offering 2 through 11  
10 into evidence at this time. It's not part of the  
11 package that we've distributed.

12 CO-HEARING OFFICER PETTIT: Understood.

13 Mr. Rose, are you okay?

14 MR. ROSE: Yeah, we're fine. I'll pay  
15 attention.

16 (Laughter)

17 CO-HEARING OFFICER PETTIT: Okay.

18 Mr. O'Laughlin, please proceed. All right.

19 MS. GILLICK: I'm sorry. I mean, it's okay if  
20 you want to proceed without me having it, but I don't  
21 think everything has been distributed because I don't  
22 have anything yet.

23 MR. O'LAUGHLIN: We'll wait. I have no problem  
24 waiting.

25 MR. RUBIN: She has it now.

1 MR. O'LAUGHLIN: She has it now? Does  
2 everybody have a copy?

3 CO-HEARING OFFICER PETTIT: Mr. Rose doesn't,  
4 right?

5 MR. ROSE: No, we do have a copy. It was, I  
6 believe, Ms. Gillick and Mr. Nomellini who didn't have  
7 copies. I believe I have copies of everything.

8 CO-HEARING OFFICER PETTIT: I guess we are  
9 ready to proceed then.

10 MR. O'LAUGHLIN: Okay, let's start.

11 Mr. Wee, can you summarize for the Board -- and  
12 let's break this into sections. Let's do part one, the  
13 historical background related to Duck Slough and the  
14 High Ridge Levee and their proximity to Woods Irrigation  
15 District service area.

16 Can you briefly summarize your testimony.

17 And just so the Hearing Officer is aware of  
18 this, this testimony tracks the Neudeck testimony and  
19 it's in four parts. So we'll take all four parts, and I  
20 believe we'll be done right around twelve-ish sometime.  
21 It will take about an hour and a half, hour and 45  
22 minutes.

23 Go ahead, Mr. Wee.

24 MR. WEE: All right. My initial comments  
25 relate to paragraph 12 of Exhibit MSS-R-14, Exhibit 1,

1 which is Mr. Neudeck's testimony, his written testimony  
2 in the Mussi matter, which has been incorporated into  
3 this matter by reference and by testimony.

4 Mr. Neudeck refers to the San Joaquin County  
5 assessor's map, plat maps for 1876 through 1919,  
6 documents that are held at the Gerald D. Kennedy  
7 Reference Library in San Joaquin County Historical  
8 Society Museum at Micke Grove in Lodi.

9 The county tax assessor kept rural plat maps  
10 that would show land ownership and acreage of each  
11 parcel and other information for the purposes of  
12 assessing taxes on land and improvements.

13 In this paragraph, Mr. Neudeck addresses only  
14 one of these maps specifically, and that is the 1876 map  
15 which is the oldest of the plat maps.

16 He asserts that this map contains a blue line  
17 which designates what he calls the Duck Slough/High  
18 Ridge Levee. According to Mr. Neudeck, his belief is  
19 that this blue line indicates, and I quote:

20 Indicates that Duck Slough had water in  
21 it at the time the tax assessor's map was  
22 drawn.

23 Unquote; i.e., he says that Duck Slough ran  
24 along the alignment of the High Ridge all the way from  
25 Burns Slough (sic) to Middle River.

1           There are a number of problems with his  
2           assertion as to what the blue pencil mark, the blue line  
3           on the levee means.

4           And I would refer you to my Exhibit 12 which is  
5           the 1876 assessor's map for Township 1 North, Range 5  
6           East.

7           MR. O'LAUGHLIN: And Mr. Wee, when you say 12,  
8           that would be MSS-R-14A-12; is that correct?

9           MR. WEE: That is correct.

10          MR. O'LAUGHLIN: Okay.

11          MR. WEE: On this same assessor's map you can  
12          see Burns Cutoff which is in the upper right-hand  
13          corner, also a little portion -- well, the San Joaquin  
14          River at the upper -- extreme upper right-hand corner,  
15          and Middle River which is at the bottom of the map. And  
16          all of these watercourses are noted in black, not blue.

17          You can go to the Exhibit 13.

18          MR. HERRICK: For ease of purpose say  
19          MSS-R-14A-13.

20          MR. WEE: Okay. MSS-R-14A-13.

21          This is a copy of the 1876 assessor's map for  
22          T1N, R6E. That is the range that's immediately to the  
23          east.

24          On that map you can see the San Joaquin River,  
25          Burns Cutoff, Stockton Channel, French Camp Slough are



1 all drawn in black, not blue.

2 MSS-R-14A, Exhibit 14 -- or excuse me -- yes,  
3 Exhibit 14, is a copy of the 1876 assessor's map for  
4 T2N, R5E which is immediately to the north of the  
5 original map we saw showing the blue line.

6 And it shows the Calaveras River, Ten Mile  
7 Slough, Twelve Mile Slough, Fourteen Mile Slough,  
8 Twenty-One Mile Slough, Disappointment Slough and Black  
9 Slough. They're all drawn in black as well.

10 In Exhibit 15 which is the 1876 assessor's map  
11 for T2N, R4E, likewise Whiskey Slough and Latham Slough  
12 are drawn in black.

13 Furthermore, these watercourses are  
14 consistently depicted by two parallel lines indicating  
15 the two banks of a watercourse, not a singular line as  
16 in the case of the High Ridge Cross Levee, which is what  
17 that blue line represents on the first 1876 map which  
18 was Exhibit MSS-R-14A-12.

19 The colors that are used by the assessor in  
20 mapping the watercourses does not support Mr. Neudeck's  
21 contention that the color blue represents water, at  
22 least not on these assessor's maps.

23 None of the other watercourses, some or all of  
24 which probably had water in them in March of 1876 when  
25 the assessor collected his tax information, are drawn in

1 blue. None of them.

2           So if you'll turn now to MSS-R-14A, number 16,  
3 on this exhibit I have summarized the evidence on the  
4 High Ridge Levee and Duck Slough as depicted on the  
5 available assessor plat maps which are available for the  
6 years 1876 to 1919 with the exclusion of a few years  
7 where they don't exist.

8           When you look at the assessor maps for the  
9 other years, the High Ridge Cross Levee is rarely shown  
10 in blue.

11           In fact, for the 40 years that we have historic  
12 county assessor's maps, the High Ridge Levee is shown as  
13 a blue line only two times, and as both a blue and red  
14 line once. The other 37 years it is shown as red or  
15 black. Sometimes dashed, double or single lines, but  
16 most often as a single solid line.

17           Importantly, the lines are drawn by the  
18 assessor along the alignment of High Ridge Levee and are  
19 never in any instance identified as Duck Slough, not on  
20 any of the 40 maps.

21           In 13 of those 40 years, there is no indication  
22 made by the assessor to specifically identify what the  
23 feature -- what that line represents on the map.

24           However, in the other 27 years, the line  
25 running from Burns Cutoff to Middle River across the

1 center of Roberts Island is identified explicitly as a  
2 levee 19 times and as the Cross Levee eight times.

3 Again, in no instance is any part of the Cross  
4 Levee on these assessor's maps labeled as Duck Slough.

5 And furthermore, on several of the maps the  
6 Cross Levee is not just labeled once but is labeled  
7 multiple times as a levee. And it is labeled so near  
8 Middle River, in the middle of the island as well as  
9 near to Burns Cutoff.

10 Now, the last point I'd like to make with  
11 reference to these assessor's maps is that the assessor  
12 frequently identifies other prominent sloughs in  
13 Township 1 North, R5E such as Black Slough, Whiskey  
14 Slough and Trapper Slough by name, but never identifies  
15 Duck Slough by name.

16 If Duck Slough was the major watercourse  
17 connecting Burns Cutoff and Middle River, as Mr. Neudeck  
18 asserts, one would certainly expect that would have  
19 warranted the same indication on the plat maps as the  
20 other major sloughs on the island. And it was never so  
21 identified.

22 Mr. Neudeck also asserts that unidentified,  
23 quote, other documents confirm or suggest, unquote, that  
24 the route of Duck Slough was along the alignment of the  
25 High Ridge Levee.

1           I would assert that there is no map that labels  
2 Duck Slough as being in existence along the alignment of  
3 the High Ridge Levee and running from Burns Cutoff to  
4 the Middle River.

5           In fact, when one looks at the pre-reclamation  
6 era mapping of Duck Slough, and when I use that word  
7 "pre-reclamation" I mean mapping prior to 1875 when the  
8 Roberts Island in the middle division and upper division  
9 were reclaimed. And when I use the term "historical," I  
10 mean the period from 1850 forward.

11           So the mapping of Duck Slough in the  
12 pre-reclamation era showing the slough in more or less  
13 its natural state during the historic period, when the  
14 subject slough is shown at all on maps, the depiction is  
15 quite consistent from one map to the other.

16           I located in the course of my research seven  
17 different historic maps of the pre-reclamation period  
18 that show sloughs on the island, on Roberts Island and  
19 other adjacent islands, and of those only three showed a  
20 slough where we know the location of Duck Slough to have  
21 been. However, the slough is not named on any of these  
22 maps, is not labeled Duck Slough.

23           In each instance the slough has the mouth at  
24 Burns Cutoff, it runs inland along a southwesterly  
25 trajectory for a distance of approximately one to two

1 miles, and then abruptly bends to the southeast where it  
2 divides into small channels and is lost in the tules.

3           The three maps dated from 1850 to 1872 were  
4 prepared by the US General Land Office, the reclamation  
5 company that owned Roberts Island, and by a commander in  
6 the US Navy. And I'll take these up in chronological  
7 order.

8           MSS-R-14A-17 A, B, and C, are all the 1850 map  
9 by Cadwalader Ringgold, Commander of the US Navy. The  
10 title of the map is: A general chart embracing surveys  
11 of the Farallones, entrance to the Bay of San Francisco,  
12 Bays of San Francisco and San Pablo, Straits of  
13 Carquines and Suisun Bay, and Sacramento and San Joaquin  
14 Rivers to the cities of Sacramento and San Joaquin:  
15 California, 1850.

16           This pre-reclamation era map which is shown in  
17 its entirety on the map 17-B shows Burns Cutoff. It's  
18 unlabeled, but -- well, let me just go back.

19           The image 17-B shows the entire map that was  
20 made by Cadwalader Ringgold.

21           And the area of Roberts Island you can see in  
22 the lower right-hand corner. On the most extreme  
23 right-hand side of the map, the channel there is what  
24 was known at the time as the east channel of the San  
25 Joaquin River and now known as just the main branch of

1 the San Joaquin.

2           Then there is a channel that runs in the  
3 middle, and that is what we call now Middle River. They  
4 called it at the time Middle River.

5           And then to the left is Old River at the time  
6 called the east -- or west channel of the river.

7           You can see, I believe, in that -- you can see  
8 the city of Stockton on the extreme right-hand side.  
9 And you can -- the Rough and Ready Island is between the  
10 main channel of the San Joaquin, and Burns Slough (sic)  
11 is that looping channel that is to the left, and Duck  
12 Slough is the little slough that's coming off that  
13 looping channel.

14           It can be seen in better detail on a close-up  
15 on 17-C.

16           So you can see the words East Channel up at the  
17 top center of the map. At -- there's a split in the  
18 channel. The fork to the right is the main San Joaquin  
19 River; the fork to the left is Burns Cutoff.

20           And the slough that is at the center of Burns  
21 Cutoff would be Duck Slough or what's been called Duck  
22 Slough in this matter.

23           As you can see, the Duck Slough runs in a sort  
24 of southwesterly trajectory, veers abruptly to the  
25 southeast, and then is lost in the tules.

1           Importantly, it does not connect to Middle  
2 River which is the stream that you can see that runs  
3 from the center left-hand side of the map down through  
4 the bottom center of the map.

5           And it does not follow along the alignment of  
6 the later High Ridge Cross Levee which would -- which  
7 connects to Middle River about where the one, two,  
8 three, four -- there are -- the number 2 is in the  
9 channel of Middle River running from left to right,  
10 about the fourth one over on that strait, the east-west  
11 horizontal line of the channel is about where the High  
12 Ridge Levee meets with Middle River.

13           Importantly also, you'll note that the map does  
14 not depict on any slough on Middle River in the stretch  
15 of the river where the High Ridge Levee would later in  
16 1875 connect to Middle River.

17           MR. O'LAUGHLIN: Mr. Wee, really quick, in  
18 looking at Middle River there are numbers depicted in  
19 Middle River. You see the numbers?

20           MR. WEE: Yes.

21           MR. O'LAUGHLIN: Do you know what those numbers  
22 depict? If you know.

23           MR. WEE: No, I don't.

24           MR. O'LAUGHLIN: Okay.

25           MR. WEE: The next document would be

1 MS-R-14A-18, and there's an A, B, and C parts to this  
2 exhibit as well. A shows the legend of the map. B  
3 would be the full map. C is a close-up of the area  
4 we're most interested in.

5 This pre-reclamation era map shows Burns Cutoff  
6 once again. It is unlabeled. We can just, I think,  
7 turn to 18-C.

8 Burns Cutoff is unlabeled. It's along the west  
9 side of Rough and Ready Island. And the slough  
10 connecting to Burns Cutoff in the approximate location  
11 of Duck Slough is the slough that's unlabeled on this  
12 map.

13 Again, the depiction of the course of the  
14 slough is generally consistent with the Ringgold 1850  
15 map.

16 The slough runs for a short distance, in this  
17 case about a mile, into the island on a southwesterly  
18 trajectory and abruptly turns southeast and breaks into  
19 small channels disappearing into the swamps.

20 The slough runs through sections 12, 13, and 24  
21 in T1N, R5E, and sections 19 and 30 in T1N, R6E.

22 However, it does not connect to Middle River,  
23 nor does it follow along the alignment of the later High  
24 Ridge Cross Levee which connects with Middle River in  
25 section 34 of T1N, R5E.



1           And you can see on the map where that is. It's  
2 far to the south and the west of Duck Slough.

3           Important also, this map does not depict any  
4 slough on Middle River in the general stretch of the  
5 river where the later High Ridge Cross Levee connected  
6 to Middle River.

7           We will move on to MSS-R-14A, Exhibit 19-A, and  
8 an enlargement of that Exhibit 19-B.

9           CO-HEARING OFFICER PETTIT: Mr. Wee, excuse me  
10 for the interruption here, but we have one map which in  
11 computer terms I'll describe as being a portrait view.  
12 It's the 8 1/2 x 11 longways. It's labeled 18C.

13           And then there's another one which I'll call a  
14 landscape view that's also labeled 18C.

15           MR. WEE: Oh, yes. The first one, the full  
16 map, should be 18-B. That's mislabeled.

17           CO-HEARING OFFICER PETTIT: Because we went  
18 from A, so this one should be B, right?

19           MR. O'LAUGHLIN: Right.

20           CO-HEARING OFFICER PETTIT: Okay. If that  
21 wasn't clear, I think Mr. O'Laughlin just clarified that  
22 second map in that series after the title page which is  
23 labeled 18-A, as I understand it, should be 18-B.

24           MR. O'LAUGHLIN: Correct, not C.

25           CO-HEARING OFFICER PETTIT: And then the third

1 one should be 18-C; is that correct?

2 MR. O'LAUGHLIN: That is correct. Thank you.

3 CO-HEARING OFFICER PETTIT: Thank you. Okay.

4 MR. WEE: The third map, that pre-reclamation  
5 era map we'll look at, is a map by J.R. Hardenbergh,  
6 Surveyor General of California. It is entitled: A Plat  
7 showing the subdivision of the two bodies of land  
8 "Notoriously Swampy & Overflowed," from 1872.

9 This pre-reclamation era map shows sloughs on  
10 Roberts Island and the surrounding areas of the Delta.

11 It depicts Duck Slough unnamed in the same  
12 configuration as the Ringgold map of 1850 and the  
13 Tideland Reclamation Company map of 1869.

14 That is, once again, it is a short slough  
15 connecting to Burns Cutoff, starts into the interior in  
16 a southwest direction about a mile and bends sharply to  
17 the southeast. The slough does not connect to Middle  
18 River. It does not follow along the alignment of what  
19 became High Ridge Levee just three years later.

20 This map is particularly important in my mind  
21 because it was made by the General Land Office. This is  
22 the federal agency that was responsible for surveying  
23 and platting the public domain and approving the list of  
24 swamp and overflow lands submitted by the State of  
25 California to the Surveyor General of California.

1           As noted on the map, the plat of the  
2 notoriously swampy and overflowed land was, quote,  
3 carefully compiled from maps of official surveys on file  
4 in this office.

5           The evidence from these three pre-reclamation  
6 era maps are consistent and suggest that in 1850 and  
7 thereafter there was no slough running from Middle River  
8 across Roberts Island connecting to Burns Cutoff.

9           MR. O'LAUGHLIN: Mr. Wee, really quickly, did  
10 you find additional maps prior to pre-development other  
11 than these three maps?

12           MR. WEE: I did.

13           MR. O'LAUGHLIN: How many other pre-1875 maps  
14 other than these three maps did you find?

15           MR. WEE: Well --

16           MR. O'LAUGHLIN: How many?

17           MR. WEE: I found -- well, there are numerous.

18           I found four that show other sloughs that are  
19 enough detailed that they show sloughs in the Delta, and  
20 none of those other maps showed Duck Slough at all.

21           MR. O'LAUGHLIN: So those four maps if we were  
22 to bring those would show Roberts Island but show no  
23 connotation of a slough coming from Burns Cutoff running  
24 in a southeasterly direction at all, correct?

25           MR. WEE: That is correct.

1 MR. O'LAUGHLIN: Thank you. You can continue.

2 We're going to do High Ridge Levee now?

3 MR. WEE: We're going to continue with Duck  
4 Slough and High Ridge Levee.

5 MR. O'LAUGHLIN: Okay.

6 MR. WEE: In paragraph 14 of Mr. Neudeck's  
7 Mussi testimony, which is MSS-R-14A-1, paragraph 13, he  
8 talks about methods by which levees were constructed in  
9 the Delta, and he relies upon a series of assumptions in  
10 speculating on, quote:

11 Methods by which the levees such as High  
12 Ridge Levee were created.

13 Unquote. At the center of this assumption is  
14 that a slough existed next to the natural High Ridge  
15 which was built up by excavating the existing slough,  
16 using it as a borrow pit for levee material and thereby  
17 creating what he calls, and I quote:

18 A larger source of open water fed by the  
19 main channel to which the slough  
20 connected.

21 Unquote. The whole scenario here presupposes  
22 that there was a Duck Slough that ran to the High Ridge  
23 and extended -- ran along parallel to the High Ridge and  
24 extended to Middle River, which is simply from the  
25 historical record not the case.

1           In addition, his scenario of how this  
2 particular levee was built is based upon speculation.  
3 It is not supported by the historical record which will  
4 become amply apparent in the following sections.

5           Now turning your attention to paragraphs 14  
6 through 19 of MSS-R-14A-1, Mr. Neudeck's testimony in  
7 the Mussi matter.

8           If we look at an exhibit he prepared produced  
9 for that testimony, which is MSS-R-14A-20, that exhibit  
10 is a single page, page 267, that's found in John  
11 Thompson's PhD dissertation entitled The Settlement  
12 Geography of the Sacramento-San Joaquin Delta 1958.

13           Mr. Neudeck concludes from this account that  
14 steam-powered floating dipper dredges, Samson and  
15 Goliath, were used to, quote, create/improve, unquote,  
16 the High Ridge Levee between Burns Cutoff and Middle  
17 River.

18           Neudeck states that Thompson confirms the  
19 process -- the -- quote, confirms the process of using  
20 the slough itself as a borrow pit, and the deepening of  
21 the slough along High Ridge Levee, Duck Slough, unquote.

22           Then he continues, quote:

23           The deepening of the existing slough was  
24 necessary to transport the floating  
25 dredge which was improving the levee.

1           Unquote. And because they used the dredge, he  
2 asserts that Duck Slough became a more substantial  
3 watercourse, 30 feet wide by 7 feet deep.

4           Now, I understand that he has maybe somewhat  
5 changed his testimony in his oral testimony saying that  
6 he wasn't sure how far this Duck Slough or the -- excuse  
7 me, the dredges worked on Duck Slough, how far down they  
8 went.

9           But in looking at Thompson's account, I think  
10 it's important to keep in mind that Thompson was not  
11 writing about the reclamation of Roberts Island when he  
12 was writing the section of his dissertation.

13           Instead, it's a section of the dissertation  
14 that's on the evolution of the technology of dredging.  
15 And his point is that the Samson and Goliath were early  
16 dredges and they were of a novel type. And that's  
17 really his point here.

18           Mr. Neudeck does not appear to have conducted  
19 any independent investigation of the historic record to  
20 support his version of how the Roberts Island Cross  
21 Levee was built. His assumption about the role of the  
22 dredgers is entirely misplaced.

23           What the historic record shows is clearly that  
24 the High Ridge Levee was constructed in 1875 and 1876 by  
25 a combination of white laborers using plows and scrapers

1 and by Chinese laborers using wheelbarrows and shovels.

2           The Cross Levee was not constructed by dredges  
3 digging a borrow pit in the bed of a slough.

4           The details on the planning and construction  
5 are contained in the following sections and are based  
6 not on speculation but upon contemporary accounts by  
7 civil engineers and surveyors who were actually involved  
8 in the levee construction on both Roberts and Union  
9 Islands in the 1870s and on eye-witness accounts of  
10 newspaper reporters who were covering the reclamation of  
11 the island for local Stockton newspapers of the era.

12           I will first comment generally on the role of  
13 the dredges on Duck Slough and then focus on the full  
14 story of how the High Ridge Levee was planned and  
15 constructed across Roberts Island.

16           Mr. Neudeck maintains Duck Slough was a natural  
17 body of water that connected Burns Cutoff on the San  
18 Joaquin River with Middle River.

19           He further maintains the dredger Samson widened  
20 and enlarged the natural channel of Duck Slough from  
21 Burns Cutoff to the Middle River in 1875 to a depth of 7  
22 feet and width of 30 feet.

23           This is what he had maintained in his written  
24 testimony, and I understand he may have partially  
25 retracted that story as to the extent of the work done

1 by the dredgers on the levee in 1875.

2           Thus, according to Mr. Neudeck, Duck Slough was  
3 tributary to both Middle and San Joaquin Rivers, and he  
4 suggested the properties bordering on High Ridge Levee  
5 then were riparian to these rivers and the slough that  
6 served as a source of irrigation water to neighboring  
7 farms.

8           The historical evidence suggests otherwise.

9           The bottom line is that Duck Slough, as I've  
10 said, only extended a few miles, a mile or two, to what  
11 was known as -- a mile or two inland from Burns Cutoff  
12 to what was known as Honker Lake Mound and then took an  
13 abrupt turn to the southeast.

14           The dredger Samson, as we will see, worked  
15 around the mouth of Duck Slough and Burns Cutoff for a  
16 short time in the fall of 1875.

17           The experiment to use a dredger to build a  
18 levee near the mouth of the slough was unsuccessful, and  
19 it was withdrawn with the reclamation near the  
20 confluence of Burns Cutoff and Duck Slough not being  
21 completed.

22           The flood water poured into the island of the  
23 uncompleted levee and in late November of 1875 flooded  
24 the upper division of Roberts Island.

25           The Whitney dredgers were not involved in the



1 repair or reconstruction of the breached levee the  
2 following year. They were deployed for work on Grand  
3 Island in the Sacramento Delta.

4 The remainder of the High Ridge Levee  
5 constructed across the island to Middle River was not  
6 built with the Whitney dredgers. And in fact, it was  
7 largely completed except for the short distance on the  
8 eastern end of the island near the mouth of Duck Slough  
9 before the dredgers were even launched in 1875.

10 The High Ridge Levee was built again by common  
11 road scrapers pulled by horses. They plowed the  
12 adjacent ground that was composed of sedimentary soils  
13 and they piled it up to form the levee.

14 Now, this story is not based on any  
15 speculation; it's based upon detailed information. And  
16 I will run through the exhibits one-by-one to prove how  
17 the levee was built and what the role of Duck Slough in  
18 it was.

19 The story of the construction of High Ridge  
20 Cross Levee on Roberts Island begins in February of  
21 1875. This was the same month in which Whitney had  
22 acquired the island.

23 Charles Drayton Gibbes, who was the son of a  
24 plantation owner, came to California from South Carolina  
25 via Mississippi in the late 1840s. He was a civil

1 engineer and a surveyor by profession and later became  
2 the Curator of Mineralogy at the California Academy of  
3 Sciences.

4           Joel Parker Whitney, who had acquired Roberts  
5 Island from the Tideland Reclamation Company, hired  
6 Gibbes in February of 1875 to develop a plan of  
7 reclamation for what we now call Upper and Middle  
8 Roberts Island. Back then they just called it Upper  
9 Roberts Island.

10           MR. O'LAUGHLIN: Mr. Wee, what exhibit number  
11 are you referring to now?

12           MR. WEE: Oh. MSS-R-14A Exhibit 21. It is a  
13 copy of the Stockton Daily Independent April 15, 1875,  
14 and it includes Gibbes' letter report to Whitney dated  
15 April 10, 1875 that was published in the Stockton Daily  
16 Independent under the title of "General Report of  
17 Charles D Gibbes, Civil Engineer, on the Examination of  
18 Roberts Island, San Joaquin County, for the Purpose of  
19 Reclamation."

20           At the request of Whitney, Gibbes proceeded to  
21 Roberts Island in February 1875 to study the Upper and  
22 Middle or the southern portion of the island which had  
23 been targeted for the initial phase of reclamation by  
24 Whitney.

25           I prepared a map which is MSS-R-14A,

1 Exhibit 22, which shows the route that Mr. Gibbes took  
2 on his survey of the island in 1875 along with comments  
3 at different locations as to what he was observing while  
4 he was out there.

5 MR. O'LAUGHLIN: Let me real quickly -- on  
6 Exhibit MSS-R-14A-22, are the arrows depicting the  
7 course that Mr. Gibbes took in his survey?

8 MR. WEE: Yes. Yes, it is. He began up near  
9 the confluence of Burns Slough (sic) near the San  
10 Joaquin River and proceeded southerly.

11 MR. O'LAUGHLIN: Did Mr. Gibbes when he was  
12 doing this survey find any slough in the location of  
13 Middle River where the current -- where the Cross Levee  
14 was subsequently built?

15 MR. WEE: No, he did not.

16 MR. O'LAUGHLIN: Did Mr. Gibbes find a ridge, a  
17 geographic feature called a ridge, extending into the  
18 interior of the island located on Middle River  
19 approximately where the High Ridge Levee was built?

20 MR. WEE: Yes, he did.

21 MR. O'LAUGHLIN: And those are denoted in the  
22 previous description regarding what he found out there;  
23 is that correct?

24 MR. WEE: That is correct.

25 MR. O'LAUGHLIN: Okay. I just had one other

1 question in regards to that. Did they find any other  
2 sloughs on Middle River either north or south of where  
3 it's alleged that Duck Slough entered into Middle River  
4 in this survey?

5 MR. WEE: He traveled all the way from the head  
6 water or from the confluence of Old River and Middle  
7 River up to the High Ridge Levee and six miles beyond it  
8 up Middle River.

9 He recorded seeing two, and only two, sloughs  
10 in that whole stretch of the river. One was a Willow  
11 Slough which was located far to the south of the Woods  
12 Irrigation Company property. And the other one was in  
13 Section 1 where he found a slough that was 16 1/2 feet  
14 wide and 6 feet deep.

15 MR. O'LAUGHLIN: Okay. We've had marked as  
16 Exhibit MSS-R-14A Exhibit 23 a Stockton Daily  
17 Independent, August 18, 1875.

18 Is this the first notation that you find for  
19 the Samson dredge?

20 MR. WEE: Yes.

21 MR. O'LAUGHLIN: Okay. Also in the newspaper  
22 report does it depict that in fact a levee was being  
23 constructed already on Roberts Island at this time?

24 MR. WEE: Yes.

25 MR. O'LAUGHLIN: Go ahead.

1           MR. WEE:  Yes, there was a levee that was  
2  already under construction with individuals using road  
3  scrapers, excavators with carts and plows, with drapers,  
4  and this work was being conducted on the ridge that's  
5  extended across the island near the center consistent  
6  with where High Ridge Levee is.

7           MR. O'LAUGHLIN:  Okay.  We've next had marked  
8  as Exhibit 24 a Stockton Daily Independent,  
9  September 18, 1875.  That would be MSS-R-14A-Exhibit 24.

10           This is also a newspaper account; is that  
11  correct?

12           MR. WEE:  That is correct.

13           MR. O'LAUGHLIN:  Okay.  The best way to clarify  
14  this was this is an account of an outing where  
15  Mr. Whitney invites certain people to look at the  
16  construction of the High Ridge Levee; is that correct?

17           MR. WEE:  That is correct.

18           MR. O'LAUGHLIN:  So if you read the article in  
19  detail, you would get the whole flavor of what they saw  
20  on that day when they went out to the High Ridge Levee;  
21  is that correct?

22           MR. WEE:  Yes.

23           MR. O'LAUGHLIN:  Okay.  In fact, they had a  
24  number of camps located on the island where men were  
25  living and working on the High Ridge Levee at this time,

1 correct?

2 MR. WEE: That is correct.

3 MR. O'LAUGHLIN: Okay. The next exhibit that  
4 we've had marked is Exhibit MSS-R-14A-Exhibit 25,  
5 Stockton Daily Independent, September 30th, 1875.

6 Is that a newspaper account?

7 MR. WEE: That is correct.

8 MR. O'LAUGHLIN: Now, this actually talks about  
9 the Samson being launched; is that correct?

10 MR. WEE: Yes. It was launched in order to  
11 have its boilers installed.

12 MR. O'LAUGHLIN: Okay. All right. And then  
13 we've next had marked MSS-R-14A Exhibit 26, a Pacific  
14 Rural Press. Where is the Pacific Rural Press from?  
15 What city?

16 MR. WEE: San Francisco.

17 MR. O'LAUGHLIN: Okay. Dated October 2nd,  
18 1875. It's a discussion again on the use of the  
19 dredges; is that correct?

20 MR. WEE: That is correct.

21 MR. O'LAUGHLIN: Okay. And what were the  
22 dredges or what was denoted in the article the purpose  
23 of the dredges?

24 MR. WEE: Well, they noted that the dredgers  
25 would be used primarily to work on the rivers and to

1 bring mud up from the bottom of the rivers.

2           And they had -- there was a dipper dredge so  
3 they would dip into the river, into the sediment at the  
4 bottom of the river, and pull the mud up and then swing  
5 it over and deposit it on top of the levee.

6           MR. O'LAUGHLIN: Okay. Now, this is the  
7 interesting one is we've had marked as -- I'm going to  
8 skip Exhibit 27 and go to 28. So MSS-R-14A Exhibit 28  
9 is the Stockton Daily Independent, November 3rd, 1875.

10           And now we see for the first time a mention  
11 that the Samson dredge is working on Roberts Island; is  
12 that correct?

13           MR. WEE: That is correct.

14           MR. O'LAUGHLIN: Okay. Is there a statement as  
15 to where it is working on Roberts Island?

16           MR. WEE: Well, it's at Duck Slough, and it  
17 says it's strengthening the levee that had been  
18 constructed along the slough for the reclamation of the  
19 eastern portion of the island.

20           So it's at the eastern -- on the eastern edge  
21 of the island working what we'll find out was in the  
22 mouth of Duck Slough.

23           MR. O'LAUGHLIN: Okay. Exhibit MSS-R-14A,  
24 Exhibit 29. It's a Stockton Daily Independent article  
25 of November 5th, 1875.

1           Why is it that 120 Chinese laborers are going  
2 out to Roberts Island?

3           MR. WEE: Well, because of low water conditions  
4 in the river, the dredges couldn't operate effectively.  
5 So in order to get the work done which had been  
6 scheduled for completion by the end of November,  
7 additional workers had to be brought in in order to try  
8 to close the levee on that eastern end where the mouth  
9 of Duck Slough is and along the Burns Cutoff.

10          MR. O'LAUGHLIN: Okay. Turning now to Exhibit  
11 MSS-R-14A, Exhibit 30, it talks once again about Chinese  
12 laborers building in the vicinity of Duck Slough. Is  
13 this the same 100 to 150 Chinese laborers that were  
14 talked about in Exhibit 29?

15          MR. WEE: Yes. That makes reference to them  
16 returning to Stockton.

17          MR. O'LAUGHLIN: Now, at this time, in reading  
18 this article, had the levee been completed from Burns  
19 Cutoff along Duck Slough and tying into what is the High  
20 Ridge Levee, if you know?

21          MR. WEE: There's reports that people were  
22 continuing to try to finish up that work during this  
23 time period.

24          MR. O'LAUGHLIN: MSS-R-14A, Exhibit 31 is  
25 another Stockton Daily Independent article dated



1 November 10, 1875.

2 This talks about a potential flooding problem  
3 on the island.

4 MR. WEE: Yeah, there was apparently a  
5 severe --

6 MR. HERRICK: Mr. Chairman, I'm sorry for  
7 interrupting. As we go through these pages with very  
8 fine print, would it be possible for Mr. Wee to give us  
9 an idea on what portion of the page he's referring?

10 MR. O'LAUGHLIN: You know what we can do --  
11 actually that's an interesting suggestion. The print is  
12 pretty fine.

13 What we might do, John, to make it easier is  
14 that in regards to the newspaper articles, if the  
15 parties don't mind, we'll blow up those sections of  
16 where specifically that print is and put it -- blow it  
17 up and make it readily available rather than try to read  
18 each little independent article. Is that okay?

19 MR. HERRICK: That's helpful, but as I'm trying  
20 to follow along --

21 MR. O'LAUGHLIN: Okay.

22 MR. HERRICK: -- I'm trying to see where he's  
23 reading.

24 MR. O'LAUGHLIN: Okay.

25 MR. HERRICK: It's not that I don't trust his

1 summary of what it says.

2 MR. O'LAUGHLIN: No, I understand exactly what  
3 you're saying. That's very fair. I'm just trying to  
4 make it easy.

5 We will try to denote where specifically in the  
6 article it is, and then we'll try to get blow-ups for  
7 people additionally so that they can have it in front of  
8 them.

9 CO-HEARING OFFICER PETTIT: Thank you. I think  
10 both would be helpful.

11 MR. O'LAUGHLIN: Not a problem.

12 Okay, so let's try for the first time on  
13 Exhibit 31. Can you denote on Exhibit 31 or point to us  
14 on Exhibit 31 the comments of the effects of the storm?

15 MR. WEE: Yes. That article is the first  
16 article on the right-hand side in column one. And what  
17 they point out is that there was heavy rains, that the  
18 river rose rapidly and threatened the reclamation work  
19 that was being undertaken.

20 And as a result, they pulled off the workers  
21 from the site, and the work on the upper island in the  
22 vicinity of Duck Slough and Burns Cutoff was not  
23 completed.

24 MR. O'LAUGHLIN: Okay. All right. Moving on  
25 then, Exhibit MSS-R-14A-32, Stockton Daily Independent,

1 November 13, 1875.

2 Can you denote on the exhibit where it is, in  
3 what column they are talking about the work that's  
4 currently occurring out on Roberts Island regarding the  
5 levee construction?

6 MR. WEE: Yes, it's at the top of column one,  
7 an article entitled Reclamation of Roberts Island.

8 MR. O'LAUGHLIN: Right under the heading  
9 Stockton Daily Independent, correct?

10 MR. WEE: That is correct.

11 MR. O'LAUGHLIN: Thank you. Okay. Can you  
12 briefly summarize what this article says?

13 MR. WEE: Yes. They were very close to  
14 finishing their work, and they had to abandon it because  
15 of the rain, and now they come back out with even a  
16 larger force, 500 to 600 Chinese workers who were spread  
17 out along all portions of the levee trying to finish it  
18 up.

19 And it notes when he had intended to close the  
20 gap at Burns Slough (sic) and at Duck Slough using large  
21 dredgers that were lost in Stockton but that problems  
22 with the construction delayed their usefulness and this  
23 is why the additional Chinese laborers were brought in.

24 And it also explains the reference to  
25 Mr. Neudeck's discussion of the 30-foot-wide 7-foot-deep

1 channel, and that's when the water was low and Samson  
2 was trying to approach the site, it actually had to dig  
3 its way up Burns Cutoff, and it had to create its own  
4 channel in order to float and to do its work.

5 CO-HEARING OFFICER PETTIT: Mr. Wee and  
6 Mr. O'Laughlin, it appears that 30 and 31 are the same  
7 document, so for anybody trying to follow, you probably  
8 only need to look at one of them, and that's backing up  
9 one from where you were just talking about, so.

10 MR. O'LAUGHLIN: Okay.

11 Can you tell from that newspaper article that  
12 occurred if, if at all, the Samson dredge ever entered  
13 Duck Slough?

14 MR. WEE: It did enter Duck Slough, but the  
15 intent of using it in Duck Slough, as we would see in  
16 the work that was done the following year, was to  
17 actually close the mouth of the channel, was what they  
18 were attempting to do. And they just didn't get it done  
19 this year, and so the next year they had to come out and  
20 finish that work.

21 MR. O'LAUGHLIN: So if I understand that  
22 correctly, the purpose of the Samson dredger was to  
23 close the mouth of Duck Slough where it entered Burns  
24 Cutoff; is that correct?

25 MR. WEE: Yes, and to build a levee along

1 the -- let's see -- the west bank of Burns Cutoff.

2 MR. O'LAUGHLIN: Okay. In fact, that gap was  
3 not in fact closed in the year of 1875; that is correct?

4 MR. WEE: That is correct.

5 MR. O'LAUGHLIN: Okay. The next exhibit that  
6 is marked is Exhibit 33, and these are denoted as Tucker  
7 SED Field Notes Book No. 90, Book No. 2, summer of 1878,  
8 page 15.

9 First of all, can you tell me who Mr. Tucker  
10 was?

11 MR. WEE: Yes. Mr. Tucker was an  
12 engineer/surveyor. He was -- in the fall of 1875, he  
13 would have been the levee superintendent on Colonel  
14 Naglee's reclamation work on Union Island which is the  
15 island immediately to the south of Roberts Island.

16 MR. O'LAUGHLIN: Okay. And was Mr. Tucker  
17 charged with the reclamation of Roberts Island in 1875?

18 MR. WEE: No, he wasn't.

19 But two years later, he was in charge of  
20 reclamation on Roberts Island. During this entire time  
21 period, he was out in the Delta on Union Island which  
22 was, as I said, right next door to Roberts Island, and  
23 would have witnessed the construction of the levee works  
24 on Roberts Island.

25 MR. O'LAUGHLIN: Was Mr. Tucker an engineer?

1 MR. WEE: Yes.

2 MR. O'LAUGHLIN: And what are these -- what is  
3 depicted in Exhibit 33?

4 MR. WEE: Well, after he finished his work on  
5 Roberts Island, Mr. Tucker went to work for the state  
6 engineer's office, and in 1878 he was on a field survey  
7 on the San Joaquin River.

8 And in his notes he recounts how this six-mile  
9 Cross Levee was constructed on upper Roberts Island in  
10 the summer of 1875. And he does so in the second to the  
11 last paragraph on the page, the page marked 15 in  
12 Exhibit 33.

13 He writes that four miles of Roberts Island  
14 Cross Levee on Honker Ridge -- that's another name for  
15 High Ridge at that time -- was built running, quote,  
16 from Middle River to Honker Mound at the head of Duck  
17 Slough.

18 So he places Duck Slough, the head of Duck  
19 Slough, at a place called Honker Mound which is four  
20 miles from the Cross Levee and Middle River.

21 He notes that the work was done with horses and  
22 machinery, and some of it was experimental, but he also  
23 notes that this experimental machinery, which was all  
24 scrapers and things that were used in road construction,  
25 was replaced with common road scrapers which was what

1 worked the best, and most of the levee was constructed  
2 using those tools.

3 He describes the levee as being 6 foot high,  
4 and he describes the slopes. But more importantly what  
5 he does note is that there were only two miles of levee  
6 along Duck Slough from Honker Mound, which is the head  
7 of Duck Slough, to Burns Cutoff.

8 And he notes that the construction in this area  
9 was started but was left unfinished as we previously  
10 documented.

11 MR. O'LAUGHLIN: Okay. So the work is still  
12 unfinished, and now we turn to Exhibit 34, MSS-R-14A-34,  
13 another Stockton Daily Independent September 21st, 1877  
14 article.

15 Can you point to us where -- I think it's  
16 pretty evident -- where on this document you will be  
17 discussing?

18 MR. WEE: Yes. A little more than halfway down  
19 the page on the first column under the heading Stockton  
20 Independent, there's an article with bold type entitled  
21 Roberts Island.

22 MR. O'LAUGHLIN: Okay.

23 MR. WEE: That if you --

24 MR. O'LAUGHLIN: That's fine, you've located  
25 it.

1           What I'm interested in, have you ever -- when  
2 you were doing your work in regards to the High Ridge  
3 Levee, did you ever try to ascertain why it is that they  
4 were building this levee in the first place?

5           MR. WEE: Well, in part it was because the  
6 island had been divided up into different ownerships  
7 with this.

8           There is a natural high ridge across the island  
9 at this point which was the High Ridge Levee, and that  
10 was a boundary line between the property that was owned  
11 by Whitney and then passed on to Fisher versus the area  
12 that was sold to the Glasgow California Land Company.

13          MR. O'LAUGHLIN: Okay. Now, this article talks  
14 about the work that had begun in the fall wasn't  
15 completed, so when was it that they were able to go out  
16 and start working again on the High Ridge Levee on the  
17 island?

18          MR. WEE: Well, it wasn't -- the island  
19 flooded, and they had to wait for it to dry out. So it  
20 wasn't really until the fall of 1876 that they were  
21 actually able to resume work on the unfinished levee.

22          MR. O'LAUGHLIN: Okay. Let's skip down to --  
23 it's denoted in your testimony October 11, 1876, and  
24 it's Exhibit 36, the Stockton Daily Independent,  
25 October 11, 1876, talking about the damming of Duck



1 Slough.

2 Can you point on the article or what column  
3 we're generally talking about?

4 MR. WEE: Yes. We're again in column one, and  
5 on the first page of the exhibit, we're about two-thirds  
6 of the way down, the article entitled Reclamation Works.

7 The second page of the exhibit is actually a  
8 blow-up of the article, so it would be easier to see if  
9 you would turn to page 2.

10 MR. O'LAUGHLIN: Okay. So this denotes that in  
11 1876 that the connection between Duck Slough and Burns  
12 Cutoff was dammed off; is that correct?

13 MR. WEE: That is correct. And also it  
14 indicates just how it was accomplished.

15 MR. O'LAUGHLIN: Can you describe that for us  
16 please.

17 MR. WEE: Well, I think it's important enough  
18 we probably should read to quote from the newspaper  
19 itself.

20 MR. O'LAUGHLIN: Okay.

21 MR. WEE: The Independent reports on the work  
22 at Burns Cutoff and Duck Slough and they say, quote:

23 A large force of Chinamen are at work  
24 filling the gap on Burns Cutoff and  
25 building the earthen dam at the mouth of

1 Duck Slough. Two self-acting floodgates,  
2 3 feet square and 40 feet long, have been  
3 put in near the dam at low water mark,  
4 and are so arranged that whenever the  
5 tide falls lower than the level of the  
6 water inside, the gates will open and  
7 drain it off. Whenever the water on the  
8 outside rises higher than on the inside,  
9 the gates will close and shut it out.

10 So the floodgates constructed at the mouth of  
11 Duck Slough in 1876 were clearly for the purpose of  
12 draining the island, not irrigating it.

13 MR. O'LAUGHLIN: And in fact based on this  
14 description, the gates only operated in one way; is that  
15 correct?

16 MR. WEE: That is correct.

17 MR. O'LAUGHLIN: Thank you.

18 The last one is Exhibit 37, and this is another  
19 Stockton Daily Independent article dated October 29,  
20 1877. Can you point out to the participants where on  
21 this document your testimony is taken from?

22 MR. WEE: Yes. It would be on the first page.  
23 It would be the third column over, about one-third of  
24 the way down the page, an article entitled Reclamation.

25 MR. O'LAUGHLIN: Does this article depict work

1 on Duck Slough or the condition of Duck Slough at that  
2 time?

3 MR. WEE: Yes. It notes that the work was  
4 being completed, that they had closed Roberts Island  
5 finally, that it was done by Chinese laborers, and that  
6 they had then moved to the downstream from Duck Slough  
7 to start to reclaim the lower part of the island and  
8 that Duck Slough had been successfully dammed.

9 MR. O'LAUGHLIN: Okay. We've been through  
10 Exhibit MSS-R-14A-38 earlier in your testimony; is that  
11 correct?

12 MR. WEE: That's correct.

13 MR. O'LAUGHLIN: Okay.

14 Let's skip to the testimony regarding -- we've  
15 been through the assessor's maps, so we're not going to  
16 do that again. Let's go to your Exhibit MSS-R-14A-43A,  
17 43B and 43C.

18 MR. WEE: Exhibits 43A, B and C are all Hall's  
19 1888 map, a topographical and irrigation map of the San  
20 Joaquin Valley.

21 Part A shows the legend on the map or title of  
22 the map. Part B shows the entire map. And part C shows  
23 the relative portion of the map that pertains to Roberts  
24 Island and the middle and lower part of the island,  
25 actually of all the island.

1           MR. O'LAUGHLIN: Now, in regards to this, is  
2 Duck Slough labeled on Exhibit 43A, B, or C?

3           MR. WEE: Yes. It appears on part B, but you  
4 can't see it at this scale that it's produced, so it's  
5 enlarged on part C. And the Duck Slough is labeled.  
6 It's --

7           MR. O'LAUGHLIN: Excuse me. Sorry. Does Duck  
8 Slough extend in this depiction all the way to Middle  
9 River?

10          MR. WEE: No, it does not.

11          MR. O'LAUGHLIN: Okay. Moving on, the next one  
12 is Exhibit 44A, B, and C. It is what's previously been  
13 marked as the Stockton-Bellota Drainage District Map.

14          Can you tell us why this map in here and what  
15 purpose you put it in for?

16          MR. WEE: Yes. Mr. Neudeck in his testimony,  
17 paragraph 23, claims that this 1894 Stockton-Bellota  
18 Drainage District Map, quote, shows Duck Slough  
19 extending from Burns Cutoff.

20          Now, it's a somewhat uncharacteristically vague  
21 statement by Mr. Neudeck, but then he goes on to  
22 elaborate and says that this map demonstrates that Duck  
23 Slough ran from Burns Cutoff to Middle River.

24          But if you look at Exhibit 44C, and I think  
25 that it's probably clear enough on this that we can see

1 it, there is a line that extends from Burns Cutoff to  
2 Middle River.

3           But if you look at it closely, what is revealed  
4 is that there are parallel lines along the route of the  
5 slough and levee just where it's labeled Duck Slough, up  
6 very close to Burns Cutoff. And that would be the area  
7 that would be consistent with the early mapping of the  
8 one to two miles of Duck Slough.

9           And I don't know if you can see it on this map  
10 that well, but in addition to the parallel solid lines  
11 there is a dashed line that runs on the northern border  
12 very close to that -- the double lines between the words  
13 Duck Slough and the lines themselves.

14           That dashed line continues whereas the double  
15 solid lines end, and the dashed line alone runs all the  
16 way down to Middle River.

17           Not only that, but the dashed line continues  
18 along both sides, both directions along Middle River.  
19 It continues in both directions along Burns Slough (sic)  
20 -- or excuse me, Burns Cutoff. So clearly in this map  
21 that dashed line is a levee, and the levee alone extends  
22 to Middle River, not Duck Slough.

23           The depiction of Duck Slough as the solid  
24 parallel lines is consistent with the way that sloughs  
25 are shown everywhere else in the map. There's not any

1 slough on this map that is a dashed line.

2 MR. O'LAUGHLIN: When you were doing your work,  
3 were you limited at all in looking for evidence of Duck  
4 Slough going to Middle River?

5 MR. WEE: No, I was not.

6 MR. O'LAUGHLIN: Okay. In all the newspaper  
7 articles that you saw in the Stockton Daily Independent,  
8 did you see any mention at all of people boating on Duck  
9 Slough after 1875?

10 MR. WEE: No, nor before 1875.

11 MR. O'LAUGHLIN: Okay. Did you find any  
12 notation in the Stockton Daily Independent or any other  
13 document denoting people diverting water from Duck  
14 Slough?

15 MR. WEE: I did not.

16 MR. O'LAUGHLIN: Did you have any mention of  
17 any works or improvements other than the damming of Duck  
18 Slough that took place on Duck Slough to improve the  
19 conveyance of water on Duck Slough?

20 MR. WEE: I did not.

21 MR. O'LAUGHLIN: And if you had found those,  
22 you would have made those available; is that correct?

23 MR. WEE: I would have, yes.

24 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin,  
25 just to make sure I understand this, the scale of this

1 map on 44C, I think I understood what Mr. Wee said with  
2 respect to dashed line, but I just want to make sure  
3 because on this map it appears more like a solid line  
4 than a dashed line, the part of it that goes from the D  
5 in Duck Slough down towards Middle River.

6 And if that's in fact a dashed line, I just  
7 want to make sure that's what he was referring to  
8 because it appears to be a solid line.

9 And up where it's in the Duck Slough area, are  
10 you saying that one of those double lines is actually  
11 the dashed line, or is there a double line plus a dashed  
12 line?

13 MR. WEE: It's the latter. There is a double  
14 line plus a dashed line just to the north of the double  
15 line.

16 CO-HEARING OFFICER PETTIT: Thank you. I just  
17 want to make sure I understand what you're saying  
18 because at this scale it's not really clear.

19 MR. O'LAUGHLIN: We've tried, and we'll try  
20 again. Maybe we'll bring it back later. The resolution  
21 on this map is pretty difficult, and we'll try blowing  
22 it up so you can actually see the dash. But we've had  
23 technical difficulties getting that.

24 If you look at it with a magnifying glass on  
25 the original map you can see it. But it's very

1 difficult with the coloring and gray and the white and  
2 the oldness of the map to get it coming out on a copy.  
3 But we'll endeavor to do that and make that available to  
4 the Hearing Team and other parties.

5 CO-HEARING OFFICER PETTIT: I appreciate it's  
6 hard to get it clear. I just wanted to make sure that I  
7 understood his description of what we were looking at,  
8 so.

9 MR. O'LAUGHLIN: Okay. So from 1875 until this  
10 map is made, is there any other maps that are in  
11 existence depicting Duck Slough running from Burns  
12 Cutoff to Middle River?

13 MR. WEE: I have seen no map showing Duck  
14 Slough running the length of Burns Slough (sic) to  
15 Middle River.

16 MR. O'LAUGHLIN: Let's see if we can -- I think  
17 we should be able to get through Duck Slough here pretty  
18 quick.

19 Next that we've had marked is 46A and B --  
20 sorry 45A and B is the USGS Holt Quadrangle map.

21 Is Duck Slough labeled as a slough on this map?

22 MR. WEE: No, it is not.

23 MR. O'LAUGHLIN: Are other sloughs depicted on  
24 this map?

25 MR. WEE: Yes, they are.



1 MR. O'LAUGHLIN: Are they labeled?

2 MR. WEE: Yes.

3 MR. O'LAUGHLIN: Okay. What, if anything, can  
4 you depict by this USGS quadrangle map of what is  
5 running along the High Ridge levee or what is depicted  
6 along the High Ridge Levee?

7 MR. WEE: Well, there is an intermittent stream  
8 or ditch that runs along the east and south edge of the  
9 High Ridge Levee for a segment of it that is at the  
10 north end, begins on the south side of the railroad and  
11 then runs down to near where -- well, if you look at the  
12 Cross Levee above Kingston School, you'll see the  
13 western terminus of that facility.

14 But it does not connect, apparently, to either  
15 Burns Slough (sic) or Middle River, and it's really  
16 wholly within the area that was the Woods Irrigation  
17 Company which had been incorporated in 1909 which is two  
18 to three to four years before this map -- or -- yeah,  
19 before this map was made.

20 MR. O'LAUGHLIN: Okay. Then on 46A and 46B are  
21 the 1913 USGS Stockton Quadrangles, and the purpose of  
22 this is to depict what?

23 MR. WEE: Well, the first page, 46A, is the  
24 image of the entire map. And then 46B is a blow-up of  
25 the location where Duck Slough had met the Burns Cutoff.

1 And if you go to page 2 and you look at the word Holt  
2 and go north from there, you'll see a road that is on a  
3 levee, and that road and levee are -- that would have  
4 been the north bank of the levee adjacent to Duck  
5 Slough.

6 And we can see by this time there is just a  
7 short little area that shows a depression of 5 feet or  
8 so that is along the historical alignment of Duck  
9 Slough.

10 So it appears that it had been filled in and  
11 was not connected to the river anymore, nor did it  
12 extend any length inland. And there is no slough  
13 depicted all the way down to the railroad crossing for  
14 the Atchison, Topeka and Santa Fe Railroad.

15 MR. O'LAUGHLIN: In fact, looking at this map  
16 there appears to be no irrigation course on the east  
17 side of the High Ridge Levee running in a southwesterly  
18 direction; is that correct?

19 MR. WEE: What map are you referring to?

20 MR. O'LAUGHLIN: Exhibit 46B.

21 MR. WEE: Yeah, there is no indication that  
22 there is any watercourse on either side of that road,  
23 the road being on the levee.

24 MR. O'LAUGHLIN: Let's turn to Exhibit 47. So  
25 this is MSS-R-14A-47. What is the purpose of this map?

1           MR. WEE: Mr. Neudeck seemed to think that this  
2 map indicated that there was a ditch, slough or cut that  
3 could have serviced -- it was -- he called it a large  
4 interior island slough that could have served the lands  
5 within Woods Irrigation Company.

6           But I just want to point out that this map, it  
7 clearly shows that that slough or inlet or cut, whatever  
8 it is, that is off of Middle River, it's clearly shown  
9 as being west of the pocket area which is -- it's a  
10 tract that intervenes between Drexler Tract and Roberts  
11 Island. And this slough is actually on Drexler Tract.

12           So it's a whole tract removed, a half a mile or  
13 so away from Roberts Island. And I don't understand  
14 what the significance of this ditch or tract would be in  
15 terms of irrigating Roberts Island.

16           MR. O'LAUGHLIN: Okay. Exhibit 48 regarding --  
17 it's a map of Woods Irrigation District talking -- and  
18 the purpose of this in your testimony is?

19           This would MSS-R-14A-48.

20           MR. WEE: Again, this map shows what I was  
21 speaking of before, is that that slough or ditch,  
22 whatever it is, is on the west side of the Western  
23 Pocket Levee, which means it's on Drexler Island.

24           And as you can see, it continues up to Drexler  
25 Island all the way up to Trapper Slough on Drexler

1 Island. And there is no indication here that there is  
2 any connection to Roberts Island at all on this map.

3 MR. O'LAUGHLIN: Okay. And moving on now to --  
4 this is an interesting one -- is the Denny's Pocket Map  
5 of San Joaquin County dated 1913. It's MSS-R-14A-49.

6 And why did you put this map into your  
7 testimony?

8 MR. WEE: Well, Mr. Neudeck looks at this map  
9 and concludes that the solid black line that follows the  
10 alignment of the High Ridge Levee really depicts Duck  
11 Slough/High Ridge Levee and is, quote, clearly  
12 identified as a canal or canals on the map as are, he  
13 claims, the slough running past Kingston School.

14 He says that these are connected by an  
15 east-west tunnel from the school location; in other  
16 words, that that slough over there on Drexler Island, I  
17 guess, where the USGS and the state engineer department  
18 maps show water in Duck Slough.

19 Certainly, the state engineer maps, as we saw,  
20 do not -- does not extend up Duck Slough down that far,  
21 and the USGS map does not indicate that that  
22 intermittent stream or ditch intersects with this  
23 so-called slough at the school location.

24 MR. O'LAUGHLIN: Okay.

25 MR. WEE: Furthermore, the Denny map, which

1 really is showing transportation features, primarily,  
2 when it wants to call out a canal, it labels them all  
3 canals. And there is no label of canal on any of these  
4 lines that are where we know the levees were.

5 So to interpret this map that it is showing  
6 Duck Slough just is, to me, not supported by anything on  
7 this map as well any of the other historic documentation  
8 that I have seen for this period.

9 MR. O'LAUGHLIN: In the Denny map, did the  
10 Denny map label sloughs if they saw sloughs?

11 MR. WEE: Yes, they do. They label a number of  
12 sloughs.

13 MR. O'LAUGHLIN: Did they label Duck Slough?

14 MR. WEE: No.

15 MR. O'LAUGHLIN: Okay. Next is Exhibit 50. So  
16 this is MSS-R-14A-50, which is a map of Woods, Wilhoit &  
17 Douglass Lands, and you put this in your testimony for  
18 what purpose, Mr. Wee?

19 MR. WEE: Just to show that here we have a map  
20 of the Woods area, and it clearly is labeling the cross  
21 -- the High Ridge Levee and does not indicate any Duck  
22 Slough or any waterway being adjacent to it. This map  
23 is dated 1909.

24 MR. O'LAUGHLIN: I noticed on this 1909 map  
25 that it labels a main irrigation canal running down the

1 approximate center of the map; do you see that?

2 MR. WEE: I do.

3 MR. O'LAUGHLIN: Are there any canal features  
4 located or depicted running parallel to High Ridge  
5 Levee?

6 MR. WEE: There is not.

7 MR. O'LAUGHLIN: Okay. And actually the  
8 watercourses for the Middle River and the San Joaquin  
9 River are depicted on this map as well; is that correct?

10 MR. WEE: That is correct.

11 MR. O'LAUGHLIN: Is there any labeling of a  
12 Duck Slough extending from Burns Cutoff to Middle River  
13 on this map?

14 MR. WEE: No.

15 MR. O'LAUGHLIN: Okay. Exhibit 51, please.  
16 The purpose of this map -- oh, this is MSS-R-14A-51.  
17 And this is a map of Woods brothers land and Reclamation  
18 District 524?

19 MR. WEE: That is correct.

20 MR. O'LAUGHLIN: And the purpose of this is?

21 MR. WEE: Once again, as on the other Woods  
22 brothers map, the High Ridge Levee is labeled, and  
23 there's nothing on it labeled Duck Slough.

24 MR. O'LAUGHLIN: Exhibit 52.

25 MSS-R-14A-52 is an Areal Geology Sacramento-San

1 Joaquin Delta, and the purpose of this in your testimony  
2 is what?

3 MR. WEE: Well, I really couldn't make out this  
4 map, what it showed very well, but I do have an  
5 objection to how it -- what it represents to do.

6 Mr. Neudeck says that this map offers proof  
7 that Middle River was connected to old Duck Slough in  
8 the historic period prior to 1914 and continued to  
9 remain so connected even as late as 1976.

10 This kind of statement is made frequently in  
11 Mr. Neudeck's testimony, and it's objectionable because  
12 it extrapolates backwards in time with an assumption of  
13 a presumed earlier condition, that that presumed earlier  
14 condition existed.

15 This is sort of a chief case in point of that  
16 fallacy and historical argument. Because something was  
17 present in 1976 does not mean it was present in 1914, or  
18 1890 or any other time. And that's my objection to this  
19 map submitted as evidence for the purpose that it was.

20 MR. O'LAUGHLIN: Okay. Why don't you give us a  
21 conclusion in regards to your view of the historical  
22 documents that you found in the assertion that Duck  
23 Slough ran from Burns Cutoff to Middle River and was  
24 hydrologically connected from 1850 onward, if you could.

25 MR. WEE: Well, I think the historical evidence

1 can only support a conclusion that there was no slough  
2 connecting Middle River at its junction with High Ridge  
3 Levee during the historic period.

4           The historic evidence is compelling that Duck  
5 Slough was a natural waterway during the historic period  
6 but it ran into the interior of the island from Burns  
7 Cutoff no more than a mile or two along the alignment of  
8 the High Ridge Cross Levee.

9           We know that the slough was dammed at the mouth  
10 in 1876 and automatic floodgates were installed to  
11 support the drainage of the island.

12           We have compelling witness from -- compelling  
13 evidence from eye-witnesses that were civil engineers  
14 during the period as well as people that were  
15 knowledgeable of the reclamation works on Roberts  
16 Island.

17           These were 19th century eye-witnesses that are  
18 attesting to those facts. Their testimony is  
19 consistent, and it supports my conclusion.

20           There is no evidence in the historical record  
21 that supports the notion that a natural body of water  
22 extended along the High Ridge connecting Burns Cutoff  
23 with Middle River and abutting the WIC service area.

24           MR. O'LAUGHLIN: You would agree at one time  
25 Duck Slough did exist and based on your review of the



1 evidence appeared to go inland a short distance and then  
2 go in a southeasterly direction ending up in a tule  
3 swamp; is that correct?

4 MR. WEE: That is correct.

5 MR. O'LAUGHLIN: Okay.

6 If you want, we can take a break and then we're  
7 done with -- we've killed Duck Slough, and then we're  
8 going to move to two other items and they should go  
9 fairly quickly. It will probably take about a half hour  
10 or so to get through the remaining testimony, but  
11 unfortunately we had to go back and do all of the other  
12 stuff, the Duck Slough stuff.

13 CO-HEARING OFFICER PETTIT: Okay. So sounds  
14 like we may as well take our lunch break then. It's a  
15 little after 12:00.

16 MR. O'LAUGHLIN: We can be back at 1:00 if you  
17 want.

18 CO-HEARING OFFICER PETTIT: Sound good. Okay.

19 (Lunch recess)

20

21

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1 AFTERNOON SESSION

2 --o0o--

3 CO-HEARING OFFICER PETTIT: Mr. Herrick.

4 MR. HERRICK: Thank you, Mr. Chairman. I  
5 thought I'd stand up so if anybody wants to throw darts  
6 at me it makes it easier.

7 But a number of things have presented  
8 themselves now that this is taking so long. No slight  
9 to the witness, it is a lot of material.

10 On Friday, I didn't raise any objections to  
11 continue to tomorrow because I thought we had an hour of  
12 testimony, we'd be done by 10:00, we'd cross-examine at  
13 noon and we'd put our guys on and we'd stay as late as  
14 we could.

15 We're now faced with not finishing until  
16 sometime this afternoon on the direct. And as you know,  
17 there's a lot of -- there are a lot of materials, and my  
18 cross-examination alone marching through these things,  
19 unfortunately, would take hours just because there's so  
20 many things.

21 Without the ability to prepare for the  
22 cross-examination, I'm afraid we're going to go real  
23 long.

24 That leads me to the unfortunate situation  
25 where two of my witnesses which I guaranteed would go on

1 today and we'd be done are now getting ready to shoot me  
2 because they cannot be here tomorrow.

3           So I appreciate -- you know, I should have said  
4 this on Friday. I thought we'd be okay. But there's  
5 virtually no chance to finish today or continue  
6 tomorrow. So I have to ask for some sort of new day to  
7 finish or continue on.

8           I'm not trying to put the other side at any  
9 disadvantage. Depending on when that day is, we'll try  
10 to get our rebuttal typed up and sent to them so it's  
11 not that we're getting time to prepare and they're not.  
12 But we simply can't -- I can't go on tomorrow with  
13 witnesses for rebuttal.

14           My suggestion then is we finish the direct  
15 testimony of rebuttal today and then pick some day as  
16 soon as we can, and we'll come back and I'll try and  
17 guarantee that my witnesses are there when it's our turn  
18 and we finish that day.

19           I apologize for not saying this Friday. I was  
20 sure that we would finish today, and I was wrong,  
21 obviously.

22           CO-HEARING OFFICER PETTIT: We may not be able  
23 to avoid that situation, so let's continue with the  
24 rebuttal and we'll try and figure out what we might be  
25 able to do during the afternoon.

1           And I'll ask Mr. Mona to be thinking, if he  
2 isn't already, about trying to pick future dates. But  
3 at the rate we're going, I share your concern, and if  
4 your witnesses will not be available tomorrow, that's  
5 understandable, too, so.

6           MR. HERRICK: I apologize again, and thank you.

7           CO-HEARING OFFICER PETTIT: As much as I hate  
8 to think of it, we may be looking for more days.

9           MR. O'LAUGHLIN: Can I -- sorry. You mind if I  
10 make a suggestion?

11          CO-HEARING OFFICER PETTIT: Mr. O'Laughlin, go  
12 ahead.

13          MR. O'LAUGHLIN: I understand what Mr. Herrick  
14 is saying. I support what he's saying. But from  
15 scheduling-purposes-wise, why don't we try to make the  
16 most efficient use of time. I also have a witness who  
17 can't show up tomorrow.

18          So maybe what we can do is get in all of our  
19 direct rebuttal. They can do what -- and if they have a  
20 witness here or two witnesses and they want to put on a  
21 direct rebuttal now, and then try to get as much of the  
22 rebuttal testimony in directly right now as possible.

23          I have no problem just putting Wee on. I have  
24 two other witnesses that I have to put on on direct  
25 rebuttal, and just put in all my direct rebuttal, see

1 where we are and then go from there. Whatever makes  
2 sense to the hearing officer. Because one of my  
3 witnesses can't make it tomorrow.

4 CO-HEARING OFFICER PETTIT: Can't make it  
5 tomorrow?

6 MR. O'LAUGHLIN: Cannot.

7 CO-HEARING OFFICER PETTIT: Okay.

8 MR. RUBIN: Mr. Pettit, I support  
9 Mr. O'Laughlin's approach, and it may be a nice way of  
10 making the process a little bit more efficient.

11 If we have all of the direct testimony on  
12 rebuttal both for MID, the Authority, State Water  
13 Contractors as well as Woods Irrigation Company, if the  
14 Prosecution Team has any rebuttal, have that all come  
15 in, we'll have the opportunity to be better prepared for  
16 cross-examination. That process may go a bit faster  
17 than it otherwise would.

18 It also puts a level playing field down in  
19 terms of having that time to prepare based upon the  
20 rebuttal direct coming in.

21 CO-HEARING OFFICER PETTIT: So we would save  
22 all the recross and the rebuttal for later rather than  
23 doing it serially now?

24 MR. RUBIN: Unless we have time, yes. Unless  
25 we have time today.

1 CO-HEARING OFFICER PETTIT: Okay, but -- did  
2 you have something to say?

3 (Discussion off the record)

4 CO-HEARING OFFICER PETTIT: So we'll proceed  
5 and try and get all the direct in that we can, right?

6 MR. O'LAUGHLIN: Okay. I think that's great.

7 MS. GILLICK: And Mr. Pettit, just so we know  
8 when we listen to the direct, is it clear that the  
9 cross-examination of any of the rebuttal witnesses will  
10 not go on today, but there will be another time -- and  
11 not tomorrow either -- another time to come back and do  
12 this cross-examination?

13 Because it makes a difference listening to the  
14 testimony whether or not we're going to have some time  
15 to prepare for cross-examination.

16 MR. O'LAUGHLIN: Well, it's pretty clear that a  
17 lot of the witnesses can't be back tomorrow and some  
18 counsel can't be back tomorrow.

19 And as Mr. Herrick said, even if we get all the  
20 direct in, we won't be able to cross-examine people  
21 tomorrow. I mean, Mr. Wee will be available and we  
22 could start his cross-examination tomorrow if you wanted  
23 to.

24 In fact, actually, I have no problem stopping  
25 right now with Mr. Wee, putting on my second witness, or

1 I could finish Mr. Wee up, get my second witness,  
2 Mr. Herrick could put on his witnesses. I don't care.  
3 I just want to try not to -- I want to use as much time  
4 as possible.

5 CO-HEARING OFFICER PETTIT: I think both from  
6 the standpoint of what we would be able to get done this  
7 afternoon and from the standpoint or the point that a  
8 couple of you have made about the ability for everybody  
9 to back up and have time to think about this before  
10 starting any recross, that we probably should just  
11 proceed with all the direct. And I'd suggest you finish  
12 with Mr. Wee and then we'll go with the others.

13 MR. O'LAUGHLIN: I will do so.

14 Mr. Wee, turning to pages 17 and 18 of your  
15 testimony, part two, historic irrigation and drainage  
16 practices, do you have that in front of you?

17 MR. WEE: I do.

18 MR. O'LAUGHLIN: Really, this is more of a  
19 summary, once again, of your thoughts and concepts  
20 regarding Duck Slough and High Ridge Levee in regards to  
21 what drainage practices are occurring out in the area;  
22 is that correct?

23 MR. WEE: That's correct.

24 MR. O'LAUGHLIN: Have you seen any discussion  
25 in the documents that you have reviewed, the newspaper

1 articles, et al, depicting irrigation on Middle Roberts  
2 Island prior to 1900?

3 MR. WEE: Yes.

4 MR. O'LAUGHLIN: Item number three, Part III,  
5 rebuttal to Mr. Neudeck's testimony specific to the  
6 Woods Irrigation Company CDO, I want to spend some time  
7 on this one.

8 In regards to this, there was a discussion in  
9 Mr. Neudeck's testimony about Nelson, et al. vs.  
10 Robinson, et al., the case dated 1941.

11 Have you reviewed that case, Mr. Wee?

12 MR. WEE: Yes, I have.

13 MR. O'LAUGHLIN: Okay. And do you have an  
14 analysis of that case?

15 MR. WEE: Yes, I do.

16 MR. O'LAUGHLIN: Okay.

17 MR. WEE: The case involved seepage from the  
18 Vasquez-Robinson property on the extreme western edge of  
19 Roberts Island across to the pocket area on the other  
20 side of the High Ridge Levee and whether or not  
21 irrigators in the Woods-Robinson-Vasquez Irrigation  
22 District were responsible for the seepage and flooding  
23 of the property in the pocket area.

24 The court argued that the defendants, being  
25 Woods-Robinson-Vasquez, were negligent because when they



1 constructed the ditch they constructed it on porous  
2 ground and they failed to adopt methods that would  
3 prevent the seepage, being to use concrete or some  
4 similar material to prevent the escape of water.

5 They also point out that the properties on both  
6 sides lacked proper drainage and that the plaintiff on  
7 the west side as well as the defendants on the east side  
8 of the levee didn't have lands that were properly  
9 draining.

10 It was only after the irrigation ditch was  
11 constructed in 1926 that this seepage became visible.  
12 The defendants spent time and money trying to remedy the  
13 problem by, quote, leveling the plaintiff's land and  
14 eliminating a slough -- and the court said --  
15 immediately east of the defendant's land during 1926.

16 Now, Neudeck claims that this is a typo on the  
17 part of the court, that they obviously meant to say that  
18 the slough was on the west side of the property. That  
19 would mean the slough was parallel to the new ditch and  
20 that that slough had to be Duck Slough.

21 And I just want to point out that the court may  
22 very well have been right that this slough they were  
23 talking about was on the eastern edge of the property as  
24 they stated.

25 If you look at the exhibit WIC -- or excuse me,

1 MSS-R-14A, it would be Exhibit 2, WIC 2. I just wanted  
2 to show there is a map from 1927 that does show a  
3 drainage ditch having been built along the east  
4 boundaries of those properties that could easily have  
5 been the solution to eliminating the slough, and the  
6 court may very well have been right that in fact that  
7 slough and the solving of the drainage problem entailed  
8 construction of that drainage ditch on the east side of  
9 the property.

10 MR. O'LAUGHLIN: Did you review the  
11 calculations done by Mr. Neudeck in regards to what  
12 lands were or weren't included or excluded from Woods  
13 Irrigation District Company?

14 MR. WEE: Yes. Mr. Neudeck stated that the  
15 examination of WIC records had not revealed any  
16 information about direct measurements of water applied  
17 to the Woods property before 1914. And he calculates  
18 how much acreage was being irrigated.

19 And I just wanted to point out that the numbers  
20 that he comes up with don't seem to add up. He argues  
21 that the 4,480 acres, or not all the land is on the west  
22 division of the WIC property that is the land that was  
23 owned by E.W.S. Woods, and that that 4,480 acres is only  
24 one of several parcels that one needs to take into  
25 account to determine how much land was being irrigated.

1           So he adds to the area a 12.74 acre parcel at  
2 the north end of the property and 769.32 acres on Honker  
3 Lake Tract, thereby concluding that the WIC and the  
4 agreement of 1911 really intended to include the sum of  
5 these parcels or 5,262.06 acres.

6           However, in the 1941 map of the lands that are  
7 served by Woods Irrigation Company, which is the base  
8 map on which I've based my exhibit -- what would this  
9 be? -- Exhibit 3, would indicate that the 12.74 acres at  
10 the north end located along the Atchison, Topeka and  
11 Santa Fe Railroad in Section 14 are not included among  
12 the lands served by WIC at that time.

13           One half of the 370 acres -- that is one half  
14 of the 600 and -- 769.32 acres, which is 730 acres  
15 (sic), was also noted on the 1941 map as being located  
16 outside the boundary of the WIC service area, and that's  
17 the tract in blue at the far upper left-hand corner of  
18 my map.

19           MR. O'LAUGHLIN: And that's denoted in your  
20 Exhibit 3?

21           MR. WEE: Yes. And there are also 1300 acres  
22 that were noted in the 1911 agreement that were lands  
23 that, quote, were not within reasonable possibilities of  
24 irrigation of the company's canals and which therefore  
25 were determined dry lands.

1           These dry lands are shown in blue, and 530  
2 acres of that total are within the 4,480 acre tract.

3           MR. O'LAUGHLIN: After 1925 have you done any  
4 additional work to determine the lands within Woods  
5 Irrigation Company?

6           MR. WEE: None other than to look at the maps  
7 that I have in my possession.

8           MR. O'LAUGHLIN: Thank you.

9           Did you review the map found in the WIC vs.  
10 Mark K. Allen complaint to quiet title?

11          MR. WEE: Yes.

12          MR. O'LAUGHLIN: Why did you look at that map  
13 and for what purpose?

14          MR. WEE: Well, Mr. Neudeck references the  
15 exterior boundaries of the tract in 1957 as a measure of  
16 the area irrigated by Woods Irrigation District since  
17 1911. And he had earlier calculated that there were  
18 8178.43 acres that were in the service area that were  
19 served with irrigation water.

20                 And I just wanted to point out that gross  
21 acreage appears not to be accurate with what the totals  
22 are in the 1957 suit, because they include a list of the  
23 names of the customers, the acreage, the lots or  
24 sections owned, and those total acres add up to only  
25 6,314 acres, but nevertheless Mr. Neudeck states in his

1 Woods testimony at paragraph -- on page 4, paragraph 4,  
2 that the evidence from the '57 complaint, from that  
3 evidence he could conclude that, quote, WIC had been  
4 providing water for all the Woods Brothers Lands since  
5 at least 1911 through 1957.

6 And the evidence, I just wanted to point out,  
7 in that case doesn't seem to support his conclusion.

8 MR. O'LAUGHLIN: Let's go to the review of  
9 Mr. Scott Blake's testimony. My understanding is your  
10 review included two areas of inquiry.

11 One was the various interior sloughs that  
12 maintained hydraulic or hydrologic connection to Middle  
13 River, and then the other one was on the title work that  
14 Mr. Blake had done; is that correct?

15 MR. WEE: That's correct.

16 MR. O'LAUGHLIN: Okay. Would it be safe to say  
17 in summarizing your testimony that we've pretty well  
18 gone through the Duck Slough analysis in terms of both  
19 Mr. Blake and Mr. Neudeck?

20 MR. WEE: Yes, I think that's fair.

21 MR. O'LAUGHLIN: Is there any other thing you'd  
22 like to say about scope and extent of the interior Delta  
23 sloughs raised by Mr. Blake's testimony that you have  
24 not previously responded to?

25 MR. WEE: Yes. Mr. Blake also identifies a

1 whole series of north-south trending, what he calls  
2 interior island sloughs within the WIC service area.

3           According to Mr. Blake's testimony, these  
4 interior island sloughs were connected to Middle River  
5 in 1911 at the single point of diversion for the Woods  
6 Irrigating Company, which was a head gate located in  
7 Section 1, in T1S R5E.

8           This particular location was the point where  
9 the Woods brothers, in fact, around the turn of the  
10 century, had established a point of diversion for a  
11 gravity-fed irrigation system that utilized the head  
12 gate through the -- a head gate built through the levee  
13 and connected to about a half-mile-long canal that  
14 conveyed the water into the interior of the island.

15           MR. O'LAUGHLIN: Is there a citation for  
16 denoting that the Woods brothers had constructed a head  
17 gate in 1898 and a half-mile canal?

18           MR. WEE: Yes. I produced two documents that  
19 relate to the development of this early irrigation  
20 system of the Woods BROTHERS, and they are MSS-R-14A,  
21 Exhibit 5, and Exhibit 6.

22           Both of them are articles from the Pacific  
23 Rural Press, Exhibit 5 dated April 23rd, 1898 and  
24 Exhibit 6 dated March 11, 1899.

25           MR. O'LAUGHLIN: Are you able to find Exhibits

1 5 and 6? MSS-R-14 -- oh, he meant 14. 14, Exhibits 5  
2 and 6.

3 STAFF ATTORNEY AUE: Not 14A.

4 MR. O'LAUGHLIN: So 5 should be the Pacific  
5 Rural Press dated April -- oh, shoot.

6 MR. WEE: 23.

7 MR. O'LAUGHLIN: April 23, 1898. Okay.

8 MR. WEE: Let me add so that people can follow,  
9 the article in Exhibit 5 is located in the second  
10 column, the central column towards the bottom of the  
11 page under the heading San Joaquin. And I provided a  
12 blow-up of that section of the article on the following  
13 two pages.

14 And for Exhibit 6, the relevant article is  
15 located in column three at about the middle of the page,  
16 and I've also provided on the following page a blow-up  
17 of that particular article.

18 Those articles indicate that the Woods brothers  
19 were primarily growing winter wheat and barley on  
20 Roberts Island in the 1890s, that they had harvested a  
21 few thousand acres in 1897, that the winter barley and  
22 wheat crops were largely dependent on spring rains for  
23 moisture, and during this period most of California's  
24 wheat and barley was dry farmed, but some farmers did  
25 build irrigation works to provide for a more regular,

1 consistent harvest if they could manage to build systems  
2 that were inexpensive enough to make it work, make it  
3 profitable.

4           The Woods began construction on their gravity  
5 flow system in 1898 after having a survey of their lands  
6 done in which they understood that the property was  
7 shaped somewhat like a bowl in that the lands that were  
8 near to the river and the levees were higher than the  
9 lands in the middle of the interior, and so that by  
10 installing a head gate they could attach it to what was  
11 described in these articles as one-half-mile-long canal.  
12 Water could flow by gravity to irrigate a portion of  
13 their landholdings.

14           This gravity system was complete, apparently,  
15 by the end of 1898 when and they grew a crop of wheat  
16 and barley that year.

17           And in Exhibit 6 we have a report from the  
18 traveling correspondent of the Pacific Rural Press who  
19 was out in the spring of 1899 on the island, and he  
20 states that the irrigation of the Woods land would  
21 commence in March unless it rained.

22           So they still depended upon natural rainfall to  
23 raise their crops, but they had the capability to  
24 irrigate at least part of their crop.

25           MR. O'LAUGHLIN: Did you find -- excuse me for



1 interrupting.

2           When you were doing your research, did you find  
3 any notation of approximately how many acres were under  
4 irrigation by this gravity system, the sum?

5           MR. WEE: No.

6           MR. O'LAUGHLIN: Did you find any  
7 quantification of the amount of water that was diverted  
8 and put to use on these lands in any of the articles  
9 that you had reviewed?

10          MR. WEE: No.

11          MR. O'LAUGHLIN: Okay. Let's talk a little bit  
12 about interior islands.

13          Who is Charles D. Gibbes? We talked about him  
14 earlier today. Who was Mr. Gibbes?

15          MR. WEE: Right. Mr. Gibbes was the individual  
16 who was hired by J.P. Whitney in 1875 to plan the system  
17 of reclamation for Upper and Middle Roberts Island.

18          MR. O'LAUGHLIN: When he did his survey, did  
19 Mr. Gibbes find any sloughs on Middle River; and if so,  
20 where were they located?

21          MR. WEE: Yes. He located two sloughs. One  
22 was Willow Slough, which is, I believe, in Section 24 of  
23 T1 South, R5E, which is several miles south of the WIC  
24 service area.

25          The other one was in Section 1 on the right

1 bank of Middle River, and it's -- you know, Section 1 is  
2 the same section that the point of diversion for the  
3 Woods Brothers gravity system was located.

4 So the old slough which was cut off by the  
5 reclamation project in 1875 was probably close to, maybe  
6 perhaps even the same location as the subsequent point  
7 of diversion for the Woods Brothers irrigation system.

8 MR. O'LAUGHLIN: Okay. Do you have any other  
9 analysis in regards to the interior island sloughs in  
10 regards to the testimony by Mr. Blake?

11 MR. WEE: Well, we know that in 1875 they  
12 dammed the slough in Section 1. We know that it was  
13 then closed from that date forward, and the fact that  
14 the Woods Brothers created a head gate and built a  
15 system to allow water to come in at that location in  
16 1898 would lead me to believe that from 1875 to 1898  
17 that slough had been cut off.

18 And what effect that it may have had on the  
19 interior island sloughs, I can't say exactly what  
20 effect, but they would have been cut off from their  
21 water supply.

22 MR. O'LAUGHLIN: Let's talk a little bit about  
23 the development of Middle Roberts Island.

24 Have you reviewed the chains of title in the  
25 development and the transfers that occurred in the time

1 period from 1875 to 1898?

2 MR. WEE: Yes, I have.

3 MR. O'LAUGHLIN: Okay. Can you briefly  
4 describe for us -- do you have an exhibit that shows the  
5 transfers that had occurred?

6 MR. WEE: Yes, I do. I prepared a map showing  
7 the conveyances. It would be MSS-R-14-7A.

8 MR. O'LAUGHLIN: Okay. And what is summarized  
9 on this map, MSS-R-14-7A?

10 MR. WEE: This map shows the conveyances that  
11 were made from Stewart and his British associates who  
12 owned the area that later became Woods Irrigation  
13 Company service area, the conveyances out of the hands  
14 of Stewart between 1889 and 1892. That was the window  
15 in which all of the land was conveyed to others.

16 I have mapped each of those transactions, and I  
17 have also put on the map the instrument that -- the  
18 instrument -- the number of the book and page that  
19 conveyed that land, the date of the conveyance, as well  
20 as in the lower right-hand corner of each of those  
21 parcels. I put the sequential number of the conveyance.  
22 So number one is the earliest conveyance and number ten  
23 is the latest conveyance.

24 MR. O'LAUGHLIN: So -- sorry to interrupt. So  
25 if we are looking at the conveyances, the number one is

1 denoted in a blue or red outline. It appears to be in  
2 the middle of the map and has a one. Then you could --  
3 and that was the first transfer that occurred; is that  
4 correct?

5 MR. WEE: That's correct.

6 MR. O'LAUGHLIN: Then if we went to two, that  
7 would be sequentially the next one and we would move on  
8 down the line, correct?

9 MR. WEE: That's correct.

10 MR. O'LAUGHLIN: Okay. And you have supporting  
11 documents for all these conveyances and transfers?

12 MR. WEE: I do. The supporting documents are  
13 Exhibits MSS-R-14. They would be C through -- 7C  
14 through 7M.

15 MR. O'LAUGHLIN: Then you did a table that's  
16 attached to the map setting forth the instrument, the  
17 date and the grantor as a summary sheet; is that  
18 correct?

19 MR. WEE: That's correct.

20 MR. O'LAUGHLIN: So in looking at this map, as  
21 of 1892, in your opinion what lands if any are still  
22 riparian to either the San Joaquin, Burns Cutoff or  
23 Middle River?

24 MR. WEE: Riparian to Middle River is the tract  
25 number two at the extreme southern end of my map. It's

1 the conveyance that is noted A 74, page 289. The  
2 instrument date is June 8, 1891.

3 And the other would be 8A, which is instrument  
4 number A 75, page 484, April 22, 1892.

5 MR. O'LAUGHLIN: So as of 1892, those were the  
6 two tracts that you believe, based solely on conveyance  
7 and continuity -- or continuity -- or contiguity to a  
8 watercourse were riparian?

9 MR. WEE: That is correct.

10 MR. O'LAUGHLIN: Did you review any other title  
11 work done by Mr. Blake?

12 MR. WEE: I reviewed all of the title work that  
13 he had -- well, I take that back.

14 I didn't independently study his title work by  
15 going back and trying to collect documents that I may  
16 not have, but I did my own independent search of the  
17 title records.

18 MR. O'LAUGHLIN: Okay. Noted on that map is an  
19 area in a triangular-shaped parcel that's shaded gray.

20 Why did you denote that area in gray on  
21 Exhibit 7?

22 MR. WEE: Well, what we were charged with doing  
23 was to do the riparian analysis on the properties within  
24 WIC's service area, and that gray area is outside of  
25 WIC's service area.

1           But it was impossible to complete the riparian  
2 analysis without studying that parcel which lies, like I  
3 say, outside the service area but was part of the larger  
4 parcel A 75, page 484.

5           MR. O'LAUGHLIN: When the railroad came in, did  
6 the railroad sever that parcel from Burns Cutoff?

7           MR. WEE: There was granted to the railroad a  
8 strip of land as a right-of-way that did cause that land  
9 to be physically separated from the rest of that parcel  
10 to the south of the railroad.

11          MR. O'LAUGHLIN: Okay. Were there subsequent  
12 transfers of that parcel that's denoted as 8A in its  
13 treatment?

14          MR. WEE: Yes, there were.

15          MR. O'LAUGHLIN: Go ahead and describe that.

16          MR. WEE: When John N. Woods died in 1896, his  
17 estate was later settled in 1909.

18                 And when his estate was settled, that gray area  
19 above the railroad became a separate parcel, and it was  
20 owned by Jessie Wilhoit and Mary Douglass who also owned  
21 property on the east side of that drainage canal.

22                 However, intervening between those two lands  
23 were lands that were owned by E.W.S. Woods as a result  
24 of that 1909 decree of distribution of the estate of  
25 John N. Woods.

1           MR. O'LAUGHLIN: So if I understand your  
2 statement correctly, then the lands of E.W.S. Woods were  
3 basically running parallel to the railroad which severed  
4 that parcel from its hydraulic connection to Burns; is  
5 that correct?

6           MR. WEE: That is correct. And I have prepared  
7 a map showing that.

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

9           MR. WEE: That is map MSS-R-14-8A.

10          MR. O'LAUGHLIN: Can you go through that map  
11 and describe what you were just talking about?

12          MR. WEE: Well, yes.

13          The map depicts the land that was held after  
14 the Woods estate was distributed, and the area outlined  
15 in green is the area that retained its connectedness  
16 with Burns Cutoff.

17          The south boundary of that land is the railroad  
18 right-of-way. The land that is outlined in blue is the  
19 land owned by E.W.S. Woods. And then the land in red  
20 below it are the lands that were retained by Wilhoit and  
21 Douglass.

22          MR. O'LAUGHLIN: Can you state your conclusion  
23 of your review of the work done in regards to Mr. Blake?

24          MR. WEE: Well, I disagree with his analysis  
25 and with his conclusions.

1           In part, it's due to the fact that my analysis  
2 would indicate that those interior island sloughs were  
3 cut off from Middle River in 1875, which is well before,  
4 14 years before any of these conveyances were made.

5           And the -- so I considered those inland sloughs  
6 to be no longer live surface streams for the purposes of  
7 my riparian analysis.

8           And then other than that, I disagree with the  
9 way that he characterizes the property being  
10 distributed. My research indicates that there were  
11 probably four different parties who received land, not  
12 two. Or I guess he may have said three.

13           My research also shows that Mr. Easton, who was  
14 involved in selling these tracts, was subdividing  
15 tracts, acquiring them, subdividing them and passed on a  
16 few of these tracts to the Woods Brothers.

17           That there is just -- the only tract that I see  
18 that retains its riparian rights, certainly beyond the  
19 1909 to 1912 period, is the 790-acre parcel at the  
20 extreme southern end, the one that was the second parcel  
21 sold, and that's the sole remaining riparian parcel.

22           MR. O'LAUGHLIN: A couple quick questions. Who  
23 is Mr. Easton?

24           MR. WEE: Mr. Easton, he started buying land  
25 from the Stewarts. You see, Stewart and his associates



1 were British. They didn't live in California. And they  
2 had put up the mortgage on the property that was on  
3 Middle River, and they were not paid back. They tried  
4 to foreclose. They started trying to sell the land.

5 And Easton & Eldridge were a firm in San  
6 Francisco that specialized in subdividing and selling  
7 lands. They also subdivided all the lands around Golden  
8 Gate Park, for instance. They were a big firm,  
9 well-known firm. And several of these parcels Easton  
10 bought and later transferred to the Woods Brothers.

11 MR. O'LAUGHLIN: In regards to the testimony  
12 that you prepared today, are the exhibits attached to  
13 those and research done, were those at your direction?

14 MR. WEE: Yes, they were.

15 MR. O'LAUGHLIN: Okay. And you have done some  
16 of this work, research yourself; is that correct?

17 MR. WEE: That is correct.

18 MR. O'LAUGHLIN: Okay. And you have associates  
19 in your offices assisting you in your development of  
20 this work?

21 MR. WEE: I do.

22 MR. O'LAUGHLIN: Are the documents that you  
23 have copied and attached to your exhibits true and  
24 correct copies of the exhibits that you -- of the  
25 documents that you have reviewed in this matter?

1 MR. WEE: Yes, they are.

2 MR. O'LAUGHLIN: Thank you. That concludes  
3 Mr. Wee's rebuttal.

4 So what is the Hearing Officer's pleasure?  
5 What would you like to do next?

6 CO-HEARING OFFICER PETTIT: Do you want to  
7 proceed with your next witness, Mr. O'Laughlin?

8 MR. O'LAUGHLIN: We can. If you give me a  
9 couple minutes to get set up and then we can get going.

10 CO-HEARING OFFICER PETTIT: And does that  
11 conflict with anything anybody understood earlier?

12 I understand we want to get through all the  
13 direct. Mr. Herrick indicates that's okay, I guess.  
14 Anybody else? Okay, let's proceed that way.

15 MR. O'LAUGHLIN: Give me one or two minutes and  
16 we'll get set up.

17 CO-HEARING OFFICER PETTIT: We'll be off for a  
18 minute.

19 (Recess)

20 CO-HEARING OFFICER PETTIT: Back on the record.  
21 Mr. Rubin?

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PHILIP JOHNSON

Called on rebuttal by

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

DIRECT EXAMINATION BY MR. RUBIN

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MR. RUBIN: Good afternoon, Hearing Officer Pettit, members of the Hearing Team. My name is Jon Rubin. I'm an attorney for the San Luis & Delta-Mendota Water Authority. We'll be presenting a witness for our rebuttal case, Mr. Philip Johnson.

Mr. Johnson, could you please state your name and spell that for the court reporter.

MR. JOHNSON: My name is Philip Johnson, P-h-i-l-i-p J-o-h-n-s-o-n.

MR. RUBIN: Mr. Johnson, can you state your qualifications.

MR. JOHNSON: I am a Registered Geologist and Certified Engineering Geologist in the state of California. I have a bachelor's degree and master's degree in geology, and I've been working as an engineering geologist for 28 years, approximately.

MR. RUBIN: Mr. Johnson, were you here when Hearing Officer Pettit administered the oath?

MR. JOHNSON: No, I was not.

1 CO-HEARING OFFICER PETTIT: Stand please. Do  
2 you promise to tell the truth in these proceedings?

3 MR. JOHNSON: I do.

4 CO-HEARING OFFICER PETTIT: Thank you.

5 MR. RUBIN: And thank Mr. Mona for reminding me  
6 to ask Mr. Johnson that question.

7 Mr. Johnson, did you prepare some analysis for  
8 purposes of presentation during this proceeding?

9 MR. JOHNSON: Yes, I did.

10 MR. RUBIN: And generally, what did you  
11 analyze?

12 MR. JOHNSON: I reviewed the 1937 aerial  
13 photographs for the Woods Irrigation Company service  
14 area and put together a map showing land uses that are  
15 represented on those aerial photos.

16 MR. RUBIN: Mr. Johnson, did you prepare any  
17 demonstrative figures for purposes of showing the  
18 analysis that you did conduct?

19 MR. JOHNSON: Yes, I did.

20 I prepared some exhibits showing examples of  
21 different land uses from those 1937 air photos and then  
22 several maps showing the area of the Woods Irrigation  
23 District, for one, and then a photomosaic of those air  
24 photos and then a land use map showing my air photo  
25 interpretation.

1           MR. RUBIN:  And, Mr. Johnson, I don't know if  
2  it makes sense to you to start with your  
3  photointerpretive map of 1937 land uses within the Woods  
4  Irrigation Company service area?

5           MR. JOHNSON:  We could do that.  It might be  
6  best just to start with the map showing the area and  
7  kind of work toward that land uses map.

8           MR. O'LAUGHLIN:  Then let's do that.  I believe  
9  you've provided electronic copies to the Hearing Team  
10 that are available?

11          MR. JOHNSON:  That is correct.

12          This is a USGS seven and a half minute quad  
13 scale map showing just the service area of the Woods  
14 Irrigation District.

15          MR. RUBIN:  And for identification purposes, I  
16 believe this or we request this be marked MSS-R  
17 Exhibit 16?  15?

18          And just for the record, Mr. Philips, MSS --  
19 excuse me -- Mr. Johnson, Exhibit MSS-R-15 has a title  
20 on the map that's Woods Irrigation Company Service Area;  
21 that is correct?

22          MR. JOHNSON:  That's correct.

23          MR. RUBIN:  Maybe we can move to the next map  
24 that you provided.

25          MR. JOHNSON:  The photomosaic map is next.

1 MS. GILLICK: Excuse me, Hearing Officer  
2 Pettit. I only have one map that's been presented. I  
3 don't know -- and the title of the document I have is  
4 not the title that was just shown, so I don't know what  
5 happened.

6 MR. RUBIN: Unfortunately, Mr. Pettit, we did  
7 not have the ability or time to make copies of some of  
8 these maps, and it is why we have them electronically  
9 available.

10 We can distribute those to the parties after  
11 today, but for purposes of the direct rebuttal testimony  
12 we were unable to provide hard copies of all of the  
13 exhibits to the parties.

14 CO-HEARING OFFICER PETTIT: I think we're in  
15 the same shape. We're going to have to just look at the  
16 screen for the moment.

17 MS. GILLICK: Then just for clarification, the  
18 map that was passed out previously has not been  
19 identified? It was not number 16?

20 MR. RUBIN: I believe the map that we've  
21 distributed is a color image of what is appearing on the  
22 screen currently.

23 MS. GILLICK: Thank you.

24 CO-HEARING OFFICER PETTIT: Okay.

25 MR. RUBIN: Mr. Johnson, before us is a map

1 that I will ask to be identified as MSS-R Exhibit 16,  
2 and it is titled Photomosaic of 1937 aerial photographs,  
3 Woods Irrigation Company Service Area; is that correct?

4 MR. JOHNSON: That's correct.

5 MR. RUBIN: Can you explain what's depicted on  
6 MSS-R Exhibit 16?

7 MR. JOHNSON: It's a photomosaic taken from  
8 1937 aerial photographs that were flown, I think,  
9 primarily during August 1937. I think some of them may  
10 have been flown in September '37, but I'm certain at  
11 least most were August 1937.

12 What was done was these aerial photographs as  
13 TIF files were entered into GIS or RGIS software and  
14 were rectified and mosaicked to make a complete map from  
15 these numerous flight lines.

16 MR. RUBIN: And I apologize, Hearing Officer  
17 Pettit. The map that we did distribute is not the same  
18 map that you're seeing before you now. As Mr. Johnson  
19 described, this is a photomosaic. There is a different  
20 exhibit which is the figure that we distributed to the  
21 parties.

22 So for purposes of the record, the photomosaic  
23 that we're showing now is Exhibit MSS-R-16, and we will  
24 get to the exhibit that we distributed in a minute.

25 Mr. Lindsay, maybe the next image.

1 MR. JOHNSON: The land uses map.

2 MR. RUBIN: Mr. Johnson, could you please  
3 describe for us what you're seeing and what we're  
4 showing to the participants?

5 MR. JOHNSON: This is the photointerpretive map  
6 of the 1937 land uses in the Woods Irrigation Company's  
7 service area as taken from my air photo interpretation  
8 from those 1937 aerial photographs.

9 MR. RUBIN: And the photointerpretive map is  
10 the map that we've distributed to the parties, and I'll  
11 ask that it be marked for identification purposes as  
12 MSS-R Exhibit 17.

13 Mr. Johnson, can you explain in a little bit  
14 more detail what Exhibit MSS-R-17 depicts?

15 MR. JOHNSON: Sure.

16 It shows several land uses identified from  
17 aerial photograph interpretation. Those land uses are  
18 shown in yellow dry farmed.

19 And then in green are the row crops which would  
20 be irrigated lands.

21 In orange or sort of brownish orange are fallow  
22 lands.

23 And then the light gray is burned, which would  
24 also be fallow.

25 And then the sort of orange color would be a



1 disturbed, noncultivated land such as staging areas,  
2 roads, areas that were not under cultivation.

3 MR. RUBIN: Mr. Johnson, there is a land use  
4 key that appears on MSS-R Exhibit 17, correct?

5 MR. JOHNSON: That's correct.

6 MR. RUBIN: And the colors on the map  
7 correspond to the key land use?

8 MR. JOHNSON: That's correct.

9 MR. RUBIN: And Mr. Johnson, were there other  
10 figures that you prepared for purposes of your testimony  
11 today?

12 MR. JOHNSON: Yes. There are a number of  
13 examples of those land uses, and if we could look first  
14 at the fallow example. Maybe if you could zoom out a  
15 little bit.

16 Based on the light tones, the generally dry  
17 appearance, I interpreted this type of land to be  
18 fallow; that is, it may have at one time been under  
19 cultivation but was not at the time of the aerial  
20 photographs.

21 MR. RUBIN: Therefore, it's your conclusion  
22 that at the time the photographs were taken in 1937 the  
23 land that's depicted on this exhibit was fallow?

24 MR. JOHNSON: That's correct.

25 MR. RUBIN: For identification purposes I would

1 ask this figure be marked as MSS-R Exhibit 18, and it's  
2 a diagram that has the word Fallow at the bottom center  
3 of the figure.

4 Mr. Johnson, you also prepared an exhibit for  
5 today that depicts dry farming; is that correct?

6 MR. JOHNSON: That is correct.

7 If you could zoom out a little bit. A little  
8 bit more, please. That's good.

9 MR. RUBIN: Mr. Johnson, can you please explain  
10 what this exhibit depicts.

11 MR. JOHNSON: I believe this shows a good  
12 example of the dry farming practices we see in the 1937  
13 aerial photographs.

14 We see this kind of concentric plowing pattern  
15 with this sort of polygon shape to it that's very  
16 typical of dry farming.

17 MR. RUBIN: And for identification purposes we  
18 would ask this exhibit be marked as MSS-R Exhibit 19,  
19 and it's a figure that is labeled Dry Farming at the  
20 bottom center of the figure.

21 Mr. Johnson, were there any other figures that  
22 you had prepared for discussion today?

23 MR. JOHNSON: Yes. A couple of examples of row  
24 crops that appear to be irrigated. Could we look at  
25 example number one?

1           This just simply looks to be a well-irrigated  
2 or well-vegetated area where it's under cultivation and  
3 it appears to be row crops.

4           MR. RUBIN: And I would ask that the figure  
5 that we're discussing now be marked MSS-R Exhibit 20.  
6 This is a figure that has the designation Row Crops at  
7 the bottom center.

8           And I believe that there's another figure.  
9 Before we move to that, Mr. Johnson, can you describe  
10 what appears as a vertical line on the left side of this  
11 figure?

12          MR. JOHNSON: I believe that's a road.

13          MR. RUBIN: And therefore, at this point, to  
14 distinguish MSS-R Exhibit 20 from the next exhibit,  
15 MSS-R Exhibit 20 depicts a road as a vertical line?

16          MR. JOHNSON: That's correct.

17          Row crops example number two, please. You  
18 could zoom out a little bit. That's good.

19          This shows again row crops where we actually  
20 see standing water in some of these irrigation canals  
21 and the sun reflected off of that.

22          Most of the areas that we interpreted as row  
23 crops did not have this type of obvious reflection off  
24 the standing water, but in this case this confirmed that  
25 irrigation was taking place just due to the sun angle.

1           MR. RUBIN: I would like to have the figure  
2 that we are discussing now marked as MSS-R Exhibit 21,  
3 and it depicts the words Row Crops at the bottom center.

4           Mr. Johnson, there is a brighter kind of  
5 circular depiction. Is that what you deem to be a  
6 reflection in water of sunlight?

7           MR. JOHNSON: Yes, that seems to be sun  
8 reflected from the water from a flooded area.

9           MR. RUBIN: Mr. Johnson, have you prepared any  
10 other exhibits for purposes of your testimony today?

11          MR. JOHNSON: I've got a couple more.

12          Next, the disturbed example, please. You can  
13 zoom out a little bit. Yes.

14          This is an area that's -- in the center of the  
15 cropped aerial photograph, shows an area that's being  
16 used for staging for the farming as well as other  
17 noncultivated purposes. This is obviously not an  
18 irrigated area.

19          MR. RUBIN: If we could mark the figure that  
20 has the words Disturbed, Not Cultivated at the center  
21 bottom of the image as MSS-R Exhibit 22.

22          And I believe, Mr. Johnson, you have one last  
23 exhibit?

24          MR. JOHNSON: That's correct. It's the one at  
25 the very top, the burned example.

1           MR. RUBIN: Can you describe for us,  
2 Mr. Johnson, the figure that we're looking at now.

3           MR. JOHNSON: In the center of this cropped  
4 aerial photograph there is a very dark black appearance  
5 that is very irregular, kind of blotchy, and we  
6 interpret that to be an area that has been burned, the  
7 fallow area that had been burned in the -- somewhere  
8 along the line of the farming process.

9           MR. RUBIN: For identification purposes we ask  
10 this be marked as MSS-R Exhibit 23, and again it's an  
11 image that has the word Burned at the bottom center.

12           And just to complete your testimony,  
13 Mr. Johnson, if I understand correctly, you looked at  
14 MSS-R Exhibit 16, which is a black-and-white photomosaic  
15 of photographs taken in 1937, and looked at the images  
16 as we've been discussing and reflected in MSS-R Exhibit  
17 18 through 23, interpreted the photographs and produced  
18 MSS-R Exhibit 17; is that correct?

19           MR. JOHNSON: That's correct. I've looked at  
20 the individual frames, not just the photomosaic, to  
21 produce the aerial photo interpretation.

22           MR. RUBIN: And the process that you used to  
23 interpret MSS-R Exhibit 16 is a standard practice within  
24 your field of expertise?

25           MR. JOHNSON: Yes, it is.

1 MR. RUBIN: I have no further questions.

2 MR. HERRICK: Mr. Chairman, is the memorandum  
3 page that was passed out part of the exhibits, or does  
4 it need to be numbered, or is it not part of the  
5 testimony?

6 MR. JOHNSON: Oh, that's --

7 CO-HEARING OFFICER PETTIT: Which page are you  
8 referring to, Mr. Herrick?

9 MR. HERRICK: It was handed out with the color  
10 map to us labeled a memorandum that the gentleman sent  
11 to Mr. --

12 MR. RUBIN: Thank you, Mr. Herrick. We have  
13 distributed that. We will mark it as MSS-R Exhibit 24.

14 And Mr. Johnson, can you describe the  
15 memorandum that's been marked MSS-R Exhibit 24?

16 MR. JOHNSON: Yes.

17 This summarizes my interpretation of irrigation  
18 practices and land use practices that I was able to see  
19 within the Woods Irrigation Company service area on the  
20 1937 aerial photographs.

21 Based on the August 1937 aerial photography we  
22 identified that 36.4 percent of the service area  
23 appeared to be fallow agriculture land; 27.6 percent  
24 appeared to be planted with row crops; 25.3 percent  
25 appeared to be dry farmed; 8.1 percent appeared to be

1 disturbed land that was not under cultivation; and  
2 2.6 percent appeared to be burned/fallow land. And that  
3 was based on our use of GIS software to calculate those  
4 areas.

5 MR. RUBIN: And who prepared this memorandum,  
6 Mr. Johnson?

7 MR. JOHNSON: I did along with Patrick Shires,  
8 company president.

9 MR. RUBIN: Okay. And Mr. Johnson, there's a  
10 reference in the second paragraph of this memorandum to  
11 your air photointerpretation. Is that reference to the  
12 Exhibit MSS-R 17?

13 MR. JOHNSON: Is that the land use map? R 17?  
14 Yes. Yes, that is.

15 MR. RUBIN: Thank you. I have no further  
16 questions.

17 CO-HEARING OFFICER PETTIT: Okay. That  
18 memorandum Mr. Herrick referred to is MSS-R 24; is that  
19 correct?

20 MR. RUBIN: That's correct.

21 CO-HEARING OFFICER PETTIT: Ms. Kincaid is  
22 indicating --

23 MR. RUBIN: That is correct.

24 CO-HEARING OFFICER PETTIT: Okay. If we're  
25 going to proceed with the -- Mr. O'Laughlin? Were you

1 about to say something?

2 MR. O'LAUGHLIN: I was going to get my next  
3 witness up.

4 CO-HEARING OFFICER PETTIT: Okay. Fine.

5 MR. O'LAUGHLIN: Okay. Given the lateness of  
6 the retention of this expert, we have no written  
7 submittal for his testimony.

8 --o0o--

9 RANDY HOPKINS

10 Called on rebuttal by MODESTO IRRIGATION DISTRICT

11 DIRECT EXAMINATION BY MR. O'LAUGHLIN

12 --o0o--

13 MR. O'LAUGHLIN: Can you please state your name  
14 for the record and your address, please.

15 MR. HOPKINS: My name is Randy Hopkins.  
16 Address is 2505 East Alluvial Avenue, Clovis,  
17 California.

18 MR. O'LAUGHLIN: What is your profession,  
19 Mr. Hopkins?

20 MR. HOPKINS: I'm a licensed civil engineer.

21 MR. O'LAUGHLIN: Briefly give us your  
22 curriculum vitae and background, please.

23 MR. HOPKINS: I have a bachelor's of science  
24 degree from Cal Poly San Luis Obispo in ag engineering  
25 and a master's of science in engineering with a



1 specialization in water engineering from San Luis  
2 Obispo.

3 MR. O'LAUGHLIN: What? Oh, yes. You're  
4 correct. You're going to have to stand up and take the  
5 oath.

6 CO-HEARING OFFICER PETTIT: I presume you have  
7 not taken the oath, Mr. Hopkins?

8 MR. HOPKINS: No.

9 MR. O'LAUGHLIN: I'm sure he's probably not  
10 telling the truth about the dates when he got his  
11 degrees, either. Go ahead.

12 CO-HEARING OFFICER PETTIT: Do you swear to  
13 tell the truth in these proceedings?

14 MR. HOPKINS: Yes.

15 CO-HEARING OFFICER PETTIT: Thank you.

16 MR. O'LAUGHLIN: All right. Mr. Hopkins,  
17 everything you said previously was true and correct; is  
18 that correct?

19 MR. HOPKINS: That's correct.

20 MR. O'LAUGHLIN: Okay. How long have you been  
21 working in the irrigation and water resource engineering  
22 field?

23 MR. HOPKINS: A little over nine years.

24 MR. O'LAUGHLIN: And what firm do you currently  
25 work for?

1 MR. HOPKINS: Provost & Pritchard Engineering.

2 MR. O'LAUGHLIN: Okay. I'm going to give you  
3 some various factual situations, and if you could help  
4 me understand whether or not -- how water moves and what  
5 is entailed in the movement of -- in the calculation of  
6 the movement of water.

7 One of the issues we've been talking about,  
8 have you -- let me go another way.

9 Have you reviewed the testimony of Mr. Neudeck  
10 in this matter?

11 MR. HOPKINS: Yes.

12 MR. O'LAUGHLIN: Have you reviewed the  
13 testimony of Mr. Nomellini in this matter?

14 MR. HOPKINS: Yes.

15 MR. O'LAUGHLIN: One of the issues raised in  
16 this matter is Duck Slough. And I'm going to go through  
17 some basic things.

18 Is it true that you need to know the width of  
19 the channel when you are calculating the movement of  
20 water?

21 MR. HOPKINS: Yes.

22 MR. O'LAUGHLIN: Do you need to know the depth  
23 of the channel when you are calculating the movement of  
24 water?

25 MR. HOPKINS: Yes.

1 MR. O'LAUGHLIN: Do you need know the  
2 Manning's n of the channel in regards to the movement of  
3 water?

4 MR. HOPKINS: Yes.

5 MR. O'LAUGHLIN: Can you describe for the  
6 Hearing Team what Manning's n is and what its  
7 applicability is in regards to the movement of water?

8 MR. HOPKINS: Manning's n is a factor used in  
9 the Manning's equation for open channel hydraulics. The  
10 larger the number, the rougher the channel is, and  
11 therefore it's a more of a friction factor, essentially.

12 For a concrete canal section it might be a  
13 factor of .15. For kind of a natural river system it  
14 may be as high as .1 or higher. So it's the higher the  
15 number the rougher the channel.

16 MR. O'LAUGHLIN: And as the channel gets higher  
17 and more rougher, is it more difficult to move water?

18 MR. HOPKINS: Yeah. You would need a larger  
19 channel the rougher the Manning's n.

20 MR. O'LAUGHLIN: Okay. Do you also need to  
21 know the gradient of a channel when you're describing  
22 the movement of water from one point to the other?

23 MR. HOPKINS: Yes, I need to know the gradient  
24 of the channel. And if it's not normal to the channel  
25 slope, I would need to know the slope of the water

1 surface as well.

2 MR. O'LAUGHLIN: And one other final factor.  
3 Would you need to know what the head is in regards to  
4 the water surface elevation?

5 MR. HOPKINS: Yes, I'd need to know essentially  
6 the depth of the canal or the head at which the starting  
7 point and ending points are.

8 MR. O'LAUGHLIN: One of the issues that's  
9 arisen in this case is the configuration regarding Duck  
10 Slough. And I'm going to give you some numbers that I  
11 think I've gotten correctly from the testimony, and  
12 we'll go through an analysis of how water can move in  
13 Duck Slough.

14 If Middle River in the ground surface elevation  
15 on Middle River is 5 to 7 feet higher than the ground  
16 surface elevation on Burns Cutoff, and the invert of the  
17 channel on Middle River is anywhere from zero to minus  
18 1 1/2 feet, is it possible if the water surface  
19 elevation in Middle River is minus 1 1/2 to plus 6 feet  
20 to move water from Middle River to Burns Cutoff?

21 MR. HOPKINS: Yeah, it's possible.

22 MR. O'LAUGHLIN: It is possible. Okay, thank  
23 you.

24 Can you tell me the quantity of water that  
25 could be moved in such a channel?

1           MR. HOPKINS: Not without knowing any other  
2 parameters such as the channel dimensions or  
3 Manning's n.

4           MR. O'LAUGHLIN: Would you be able to tell the  
5 rate of which you could move water in that channel?

6           MR. HOPKINS: No.

7           MR. O'LAUGHLIN: Now, if the invert of the  
8 channel on Duck Slough is lower and the ground surface  
9 elevation is zero and the general fall is from Middle  
10 River to Burns Cutoff, is it possible to move water from  
11 Burns Cutoff to Middle River?

12           MR. HOPKINS: It's possible if there are  
13 certain facilities in place such as levees to constrain  
14 the flow. Essentially, you'd have to run the higher  
15 elevation from Burns Cutoff to Middle River.

16           MR. O'LAUGHLIN: Okay, let's talk about that.  
17 You said you would need systems in place.  
18 Let's talk about the levees.

19           What would you need? One levee? Two levees?

20           MR. HOPKINS: You need --

21           MR. O'LAUGHLIN: How many levees would you  
22 need?

23           MR. HOPKINS: You'd need to have two levees,  
24 one each side of the canal, essentially a raised canal  
25 section, across the ground, in order to get it back to

1 the Middle River side.

2 MR. O'LAUGHLIN: Okay. And when you talked  
3 about head, you're saying that the water surface  
4 elevation then in Burns Cutoff would need to be higher  
5 than the water surface elevation on Middle River; is  
6 that correct?

7 MR. HOPKINS: That's correct.

8 MR. O'LAUGHLIN: Okay. And once again, without  
9 knowing the gradient, width, depth or Manning's n,  
10 you're not able to opine the quantity of water one would  
11 be able to move from Burns Cutoff on Middle River; is  
12 that correct?

13 MR. HOPKINS: No, I cannot. Or it's correct,  
14 yes.

15 MR. O'LAUGHLIN: Would any reasonable  
16 scientific -- or engineer be able to opine about the  
17 ability to move water in such a facility without knowing  
18 those parameters?

19 MR. HOPKINS: Not to the rate and quantity, no.

20 MR. O'LAUGHLIN: Now I'd like to turn your  
21 attention to another instance of movement of water. And  
22 I'm going to give you again some facts, and I'm not  
23 saying these are a complete set of facts. I tried to  
24 write them down correctly. I may have gotten wrong and  
25 other people will ask you further questions on these.

1           A head gate is installed through a levee. It's  
2 approximately 8 feet tall. It's made out of brick. It  
3 appears to be 4 feet wide. The invert is set at minus  
4 1 1/2, and it appears that it goes up from there. And  
5 it operates on Middle River, and it's subject to tidal  
6 fluctuations.

7           Can you tell us how much water would be able to  
8 move through that head gate in cfs?

9           MR. HOPKINS: Only if I knew what we were --  
10 what the downstream water conditions were.

11          MR. O'LAUGHLIN: Okay. Now, it would be safe  
12 to say that just given the orifice of that facility one  
13 could opine that at a certain head you would be able to  
14 push a certain amount of water through that orifice  
15 without any limiting factors downstream; is that  
16 correct?

17          MR. HOPKINS: Correct.

18          MR. O'LAUGHLIN: And the calculation basically  
19 is you'd look at the 4 feet by 8 feet, and let's just  
20 call that a rectangle. That would be roughly 32 feet  
21 square, correct?

22          MR. HOPKINS: Correct.

23          MR. O'LAUGHLIN: And then you would apply how  
24 many second feet you could get through 32 feet given a  
25 certain amount of head, correct?

1 MR. HOPKINS: Right.

2 MR. O'LAUGHLIN: And if there is little or no  
3 head, let's say it's at minus 1 1/2 feet elevation and  
4 the invert of the channel is 1 1/2 feet, you're not  
5 going to move any water through there, right?

6 MR. HOPKINS: No.

7 MR. O'LAUGHLIN: Okay. But then if the head  
8 goes up 6 to 8 feet you would be maybe able to move 3  
9 second feet per second through there, so roughly about  
10 96 cfs?

11 MR. HOPKINS: Yes, you could, depending on --  
12 yes.

13 MR. O'LAUGHLIN: Okay. Now, is it true that in  
14 a tidal fluctuation the water surface elevation in the  
15 river would be going up and down at where this head gate  
16 is located, correct?

17 MR. HOPKINS: Yes.

18 MR. O'LAUGHLIN: And now, how is it that the --  
19 why is it -- well, let me ask it a different way.

20 Why is the water surface elevation on the  
21 inboard side of the levee where the head gate connects  
22 to the canal important?

23 MR. HOPKINS: Basically, to determine how much  
24 energy is available to move water through that  
25 structure. It depends if there is -- if they're



1 essentially static, you can't move any water through  
2 there. The more head loss you have across that, the  
3 more you can move through there.

4 MR. O'LAUGHLIN: Okay. So let's say  
5 hypothetically that if the head gate was open and the  
6 water surface elevation on the inboard side was 4 feet  
7 and the water surface elevation in the river was 4 feet,  
8 what would be the quantity of water that you could move  
9 through the head gate?

10 MR. HOPKINS: Same elevation, zero.

11 MR. O'LAUGHLIN: Okay. So even if the water  
12 surface elevation on the river side is higher than minus  
13 1 1/2 feet, it still has to be higher than the water  
14 surface elevation on the inboard side of the levee where  
15 water is in the canal; is that correct?

16 MR. HOPKINS: Correct.

17 MR. O'LAUGHLIN: Now, if water goes into this  
18 canal, you would need to know, once again, the width of  
19 the canal; is that correct?

20 MR. HOPKINS: Yes.

21 MR. O'LAUGHLIN: The depth of the canal?

22 MR. HOPKINS: Yes.

23 MR. O'LAUGHLIN: Now, there's some discussion  
24 that this canal had been improved and had actually been  
25 constructed of dirt. Is there a Manning's n that would

1 equate to an open dirt channel?

2 MR. HOPKINS: About a Manning's n of .03 would  
3 work.

4 MR. O'LAUGHLIN: Okay. It's unknown what the  
5 slope or gradient of this channel is. Is that necessary  
6 to know in regards to the movement of water?

7 MR. HOPKINS: Yes. To calculate the channel  
8 flow I would need to know both.

9 MR. O'LAUGHLIN: So Manning's n in and of  
10 itself -- knowing the Manning's n in and of itself  
11 without knowing the other parameters, you cannot  
12 hypothesize how much water this canal could move; is  
13 that correct?

14 MR. HOPKINS: No.

15 MR. O'LAUGHLIN: Okay. Let's talk about this  
16 head gate a little bit. I'm visualizing a tidal cycle  
17 up and down, up and down, up and down.

18 In your opinion, if the -- let's say it's  
19 summertime, and we're not expecting any floods, and  
20 there's not any drainage problems, and one was to go out  
21 and just leave the tide gate open, all the way cranked  
22 open, in a gravity-fed system.

23 What would be the effect on water moving in and  
24 out of the canal?

25 MR. HOPKINS: If the gate was left open and

1 unmanned, the water would just move back and forth  
2 between -- would act as an extension of the river, so to  
3 speak, so it would move back and forth, up and down with  
4 the tide.

5 MR. O'LAUGHLIN: So actually if the tide was  
6 really high, let's say it was like 6 feet, you could  
7 move water into the canal up to an elevation of  
8 approximately 6 feet, but as the tide ebbed and started  
9 going out, that water surface elevation in the canal  
10 would drop, and water would actually be moving out of  
11 the canal back into the river; is that correct?

12 MR. HOPKINS: Correct.

13 MR. O'LAUGHLIN: Okay. So another way of  
14 looking at how you operate the head gate is that you  
15 would look at cranking the head gate down to some  
16 elevation where you could be assured that water would  
17 come in but water would not go out; is that correct?

18 MR. HOPKINS: Yes. It would restrict the head  
19 and allow you to keep some of that water in.

20 MR. O'LAUGHLIN: So let's say in this zone  
21 where this -- so we can explain this maybe a little bit  
22 better -- is if you crank down on the head gate and you  
23 go from elevation 6 down to elevation, let's say,  
24 3 feet, so you have an opening from minus 1 1/2 to  
25 3 feet, what happens to the calculation that we've made

1 that you could move 90 cfs through or 96 cfs through at  
2 plus 6?

3 MR. HOPKINS: The water would need to  
4 essentially speed up to get through that opening over  
5 the full open condition. You'd have a greater head loss  
6 through there. And so not knowing the downstream  
7 elevation, I don't know that I could calculate what that  
8 flow would be.

9 MR. O'LAUGHLIN: But just from a theoretical --  
10 and we'll talk about the downstream in a bit -- but just  
11 from the purely, without any limitation downstream at  
12 the inboard side of the levee, just from the pure  
13 operation of shutting down that head gate, you're going  
14 to have a head loss there and you're going to have  
15 difficulty moving water through --

16 MR. HOPKINS: You going to --

17 MR. O'LAUGHLIN: -- that --

18 MR. HOPKINS: A reduced flow.

19 (Interruption by the reporter)

20 MR. O'LAUGHLIN: You've got to wait.

21 MR. HOPKINS: I'm sorry. A reduced flow.

22 MR. O'LAUGHLIN: Now, once again, even if we  
23 crank down the head gate, we still need to know what the  
24 water surface elevation is in the canal on the inboard  
25 side; is that correct?

1 MR. HOPKINS: Yes, that's correct.

2 MR. O'LAUGHLIN: Okay. And without knowing  
3 that, we still can't arrive at a rate of water through  
4 that head gate; is that correct?

5 MR. HOPKINS: No, I could not.

6 MR. O'LAUGHLIN: And you can't tell me a  
7 quantity either, can you?

8 MR. HOPKINS: No.

9 MR. O'LAUGHLIN: Now, one of the other things  
10 is that if we are on a gravity-fed system, is it safe to  
11 say that water cannot be applied to lands that are  
12 higher than the water surface elevation on Middle River?

13 MR. HOPKINS: Yes, that's safe to say.

14 MR. O'LAUGHLIN: All right. That's it.

15 I have no further questions for this witness.  
16 Thank you. And I believe from our side of the aisle  
17 that that concludes our rebuttal testimony.

18 CO-HEARING OFFICER PETTIT: Okay. Thank you.  
19 If we proceed with the direct as we talked about  
20 earlier, Mr. Herrick, were you going to go next?

21 MR. HERRICK: Yes, Mr. Chairman, if we could  
22 just have ten minutes and we'll put our -- we have three  
23 people on a panel then we'll be done fairly quickly.

24 CO-HEARING OFFICER PETTIT: Fine. Thank you.  
25 We'll go off for a few minutes.

1 (Recess)

2 CO-HEARING OFFICER PETTIT: Let's go back on  
3 the record. Before we start with your witnesses,  
4 Mr. Herrick, I was just chatting with Mr. O'Laughlin and  
5 we were thinking about the possibility of getting  
6 through your witnesses this afternoon, your direct  
7 witnesses, and Mr. Rose's if he has any, and we may be  
8 able to get started with Mr. Wee's recross and -- oh,  
9 yeah, he's going to be tomorrow.

10 And so maybe we'd better tentatively save  
11 tomorrow to see if there's anything we can proceed with  
12 at the end of the day.

13 So is that at all clear?

14 MR. HERRICK: No.

15 MR. O'LAUGHLIN: Let me help clarify it. What  
16 I basically thought about during the break was that you  
17 have rebuttal, we'll get through your rebuttal. And  
18 then the State has rebuttal. Then all the rebuttal will  
19 be done.

20 My expectation is if your two witnesses, which  
21 I'm assuming are the two witnesses that you currently  
22 have, John, on the panel, are not available tomorrow --  
23 is there another one? Who's the third?

24 Oh, I was looking at you. I thought -- oh,  
25 shoot, I forget you're a witness. Sorry. I also do.

1           So you have three witnesses on rebuttal but two  
2 can't make it tomorrow. We will do our  
3 cross-examinations of them today, get them done, get  
4 them gone.

5           And then what I would propose is that Mr. Wee  
6 show up tomorrow and you guys can start your  
7 cross-examination, because I think it's going to take  
8 more than two, three, four or five hours to get through  
9 it.

10           And I realize Ms. Gillick can't make it, but  
11 the other three can make it, we can at least get  
12 started.

13           Because otherwise, my guess is that Mr. Wee is  
14 going to go longer than a day. And even if we reserve  
15 an additional day, we're not going to get done on that  
16 day.

17           MR. HERRICK: Well, we keep changing the plan  
18 here, no offense, but I tried to convey the inability  
19 for to us continue tomorrow.

20           The amount of information we have to review in  
21 order to do the cross-examination in combination with  
22 lots of things, but it's just -- you know, I'm  
23 apologizing for it, but tomorrow just doesn't work for  
24 any of us.

25           CO-HEARING OFFICER PETTIT: Okay. Well, let's

1 proceed with your direct and we'll see where we are at  
2 the end of the day, and I understand.

3 Go ahead, please.

4 MR. HERRICK: Thank you, Mr. Chairman.

5 For rebuttal we're going to address the issue  
6 of the delivery of water prior to 1914 as we did not do  
7 that directly because it wasn't part of the original  
8 disagreement between the State Board and Woods during  
9 the discussions about diversion rates and water rights  
10 supporting those.

11 So I have here a panel of three witnesses who  
12 have already appeared in this case and have all taken  
13 the oath. The first is Mr. Nomellini, second Mr. Chris  
14 Neudeck, and third Mr. Terry Prichard.

15 --o0o--

16 DANTE JOHN NOME LLINI

17 CHRISTOPHER H. NEUDECK

18 TERRY PRICHARD

19 Called on rebuttal by WOODS IRRIGATION COMPANY

20 DIRECT EXAMINATION BY MR. HERRICK

21 --o0o--

22 MR. HERRICK: And I will start with  
23 Mr. Nomellini. I've asked him to go through in more  
24 detail his calculation of the water needed to serve the  
25 crops for Woods Irrigation District. It was touched



1 upon in some cross earlier, but I don't believe that  
2 takes away from the fact that it had to be put on in  
3 more depth on rebuttal.

4           So with that, Mr. Nomellini, would you please  
5 explain and go through your calculations regarding  
6 diversion rates to Woods Irrigation District service  
7 area at and before 1914?

8           MR. NOMELLINI: Yes.

9           I refined my calculation previously. I did it  
10 in response to cross, and I used 8700 acres as the  
11 acreage that was within the Woods brothers system.

12           And based on the tabulation of acreage by  
13 Kjeldsen, Sinnock & Neudeck, Mr. Neudeck and Mr. Blake,  
14 it's actually reported by them to be 8178.43 acres.

15           And I used the Table 8 from the WIC 8B which  
16 the Board also put in which is the Central Valley  
17 Project, Delta Lowlands Service Area Investigations  
18 Report DL-9.

19           And I looked at the month of July and I used  
20 previously, and I used now, the .65 acre feet per acre  
21 for alfalfa, the miscellaneous pasture has a .70 acre  
22 feet per acre evapotranspiration requirement, and tule  
23 and swamp has .87.

24           So that same calculation I did before using the  
25 reduced acreage and still using the .65 for alfalfa for

1 the month of July yields -- and I'll just give you the  
2 numbers the way I calculated it -- 8178.43 acres times  
3 .65 acre feet per acre for July gives a total of 5315.98  
4 acre feet for the month.

5 I divided it by 31 days to get the number of  
6 acre feet per day which would be 171.48 acre feet per  
7 day, divided that by 1.98 acre feet per cfs, and I get  
8 86.61 cfs would have been the average monthly  
9 requirement just to supply the water for the  
10 evapotranspiration needs of the plant or the plants in  
11 July.

12 And that assumes that the .65 is representative  
13 of the existence of conditions within that entire area.  
14 We know there is a variability.

15 But once the levees are in place and drainage  
16 has been operating which we understand had been  
17 operating for a good number years after reclamation was  
18 pretty much put together in the late 1800s, early 1900s,  
19 then you have to meet the requirements even of the  
20 fallowed land, the tule and swamp, and the pasture  
21 whether you meet it with surface delivery or  
22 subirrigation.

23 So I think it's reasonable to use that figure  
24 to get at the cubic feet per second that would be  
25 expected to be delivered to that area to sustain it

1 after levees and drainage were in place.

2 Now, if you take that quantity instead of  
3 spreading it over the entire 31 days and you pick it up  
4 in a more -- a shorter time period for the month,  
5 something like the board's licenses over the years have  
6 had the provision that you can apply the equivalent in a  
7 shorter period of time as long as you don't exceed the  
8 monthly amount, then you end up with a higher cfs  
9 delivery over a shorter period of time.

10 And I used, just as an example, 10 days rather  
11 than 31 days, and you would have a cubic feet per  
12 second, which would be the maximum diversion, of 268.48  
13 cubic feet per second.

14 I just give that as an example. I think easily  
15 the 86.61 cubic feet per second is an easily sustainable  
16 and reasonable number to attribute to the area even if  
17 with the vagaries of losses in the canals, changes in  
18 crops, fallowed land and what you do otherwise.

19 And so anyway, that's my testimony.

20 MR. HERRICK: Mr. Neudeck, would you please  
21 explain your calculations and your conclusions with  
22 regard to how much water could be transported through  
23 the Woods Irrigation Diversion points, the main Woods  
24 Irrigation Diversion points as of 1914?

25 MR. NEUDECK: Certainly, I will walk through

1 that. Mr. Lindsay, do you have the flash drive? Okay.  
2 Unfortunately, I'm going to have to try and recall.  
3 Let's pick the very first PDF. I apologize, not that.  
4 Let's pick the very first section. Thank you.

5 This section represents basically two features:  
6 One is the floodgate, what we're calling the opening  
7 through the levee, which is an 8 foot diameter circular  
8 floodgate.

9 And I've got various numbers on there I'll  
10 explain momentarily. Then I also have a trapezoidal  
11 earthen channel beneath that that this would spill into.

12 The parameters that I chose for the assumptions  
13 of these flow calculations were basically setting the  
14 pipe to slightly below the typical low tide elevation of  
15 minus 1 1/2 feet, setting the top of the pipe at the  
16 maximum typical tide of elevation 6, and then the invert  
17 of the channel slightly below that.

18 I will walk through some calculations  
19 associated with these parameters. The one thing you  
20 might note is there is a section in blue and a section  
21 in red.

22 The section in red is to demonstrate some  
23 siltation in that culvert or in that floodgate, which I  
24 put in the calculation to give me some variation in flow  
25 rates.

1           If we could turn to the next exhibit I'll walk  
2 through -- if we could zoom out a little bit. Okay.

3           This is three scenarios, one, the first being a  
4 full circular flow of pipe, the second being partially  
5 full circular pipe, and then the third being partially  
6 buried. Let's go ahead and start at the top.

7           I apologize, Mr. Lindsay, I'm walking through  
8 this pretty quickly.

9           At maximum tide this pipe is capable of  
10 carrying 91 -- basically, 91.21 cfs. That's assuming  
11 that at the downstream condition the water is being  
12 consumed and used for irrigation's sake. So that  
13 carrying capacity at that elevation is 91 cfs.

14           The next elevation is a typical high tide which  
15 drops it down to about 90 cfs. Not a substantial  
16 difference in those two elevations.

17           The very bottom one where you actually have  
18 some siltation in the pipe itself, which could likely  
19 occur and is actually the condition that exists out  
20 there today, and that condition shows that a partially  
21 buried pipe would convey at a normal high tide around 44  
22 cfs.

23           So there's a range of calculations, assuming  
24 the flow is being carried out and irrigated on the  
25 downstream condition. So that's a free-flowing

1 discharge through this pipeline.

2           Now if we could turn to the next exhibit, this  
3 will go quickly here, this is -- let's zoom back out.  
4 There's a number of scenarios here, all related to the  
5 same flow parameters.

6           I either chose a flow rate of 38 cfs or a flow  
7 rate of 78 cfs. And the reason I chose these two were  
8 just to get us in the range of the calculations I just  
9 previously showed to give you some parameters as to the  
10 width the channel would take to carry those flow  
11 parameters. Then I varied the depth.

12           So I kept the depth at high tide elevation.  
13 That was the water surface elevation. Then I just  
14 varied the depth of what otherwise would be the earthen  
15 channel.

16           So as you walk down, let's say, the left side  
17 of this diagram, all those factors are 38 cfs. With 3  
18 foot of water you can see the channel base width is only  
19 about 8 feet wide.

20           With 4 feet of water that gets reduced down to  
21 4 feet wide.

22           With 5 feet of water your channel base is a  
23 foot and a half.

24           And then with 6 feet of water, which would have  
25 the invert at the minus tide elevation, a minus 1.5,

1 you're basically at a V ditch for 38 cfs.

2           So that gives you a general characteristic of  
3 the flow conditions for, again, a free outflow, assuming  
4 that the water downstream would be consumed for  
5 irrigation.

6           Now moving up to the right-hand column, at a  
7 higher flow rate obviously the channel has to become  
8 wider.

9           So at the top 3 foot you're approximately 17  
10 feet wide to carry the approximately 80 cfs.

11           At 4 feet of depth you're down to 10 feet of  
12 bottom width.

13           5 foot of depth you're at 6 foot.

14           And then at -- excuse me -- at 5 foot depth  
15 you're at 6 foot canal base width.

16           And at 6 foot of depth your channel base width  
17 is 3 feet.

18           This again is assuming a channel with  
19 one-to-one side slope, so a 45 degree angle.

20           Now if we can move to the next slide, I want to  
21 go over just briefly these same characteristics, and  
22 this is a lot of calculations so I'm -- I'm sorry, it's  
23 the very first one, Mr. Lindsay. I apologize. Thank  
24 you.

25           I'm really looking at the unhighlighted

1 numbers, so that area in there is what I need to look  
2 to, so those three columns to the right.

3           What this demonstrates, these columns reflect  
4 what I just spoke of with regards to the earthen channel  
5 conditions.

6           I assumed for calculation's sake a Manning's n  
7 of .02. A Manning's n of .02 is reflected in hydraulic  
8 manuals as a uniform earthen channel.

9           Then I took some what I would consider called  
10 sensitivity analysis and I changed that Manning's n from  
11 .02 to .025 then to .0275 and then ultimately to .03.

12           The variation in that ranges from a windy  
13 sluggish channel, which is .025, to a dredged earthen  
14 channel, which is .0275, to the final Manning's n of .03  
15 which is a channel with rough stony beds, weeds on  
16 earthen banks.

17           If you look at the bottom of that series of  
18 numbers, you'll see a percent change both in the  
19 Manning's n, which goes 25, 38, and 50 percent -- that's  
20 not material for what I'm really trying to show here --  
21 but it shows about a 20 percent range, a change in the  
22 volumetric flow rate for increasing the Manning's n from  
23 .02 to .025.

24           So we'd be going from a flow of 78 cfs down to  
25 a flow of 62.2 cfs if you increase the Manning's n.



1           That's the roughness coefficient, that's the  
2 friction head loss in a channel.

3           If you increase that to .0275, you increase  
4 your flow reduction to 27 percent and reduce the 78 cfs  
5 down to 56.56 cfs.

6           And then finally, the final number, .03 would  
7 reduce the flow rate from 78 cfs down to 51.

8           Now, I won't walk through the rest of these  
9 because it's just a change in the input parameters that  
10 I showed on the previous page. But that gives a  
11 sensitivity to the Manning's n.

12           This is a -- one of the hydraulic parameters  
13 that has to be put into the model when you evaluate the  
14 flow rate through a channel.

15           Generally speaking, the canals are generally  
16 fairly clean, and that's why I chose the uniform earthen  
17 channel. But as you move down the parameters you can  
18 see the change.

19           With that, that concludes my testimony.

20           MR. HERRICK: Mr. Neudeck, let me just ask you  
21 a couple clarifications.

22           So your calculations indicate that under  
23 various scenarios the Woods Irrigation Diversion points  
24 in 1911 -- excuse me -- 1914 or before were sufficient  
25 to carry the amount of water Mr. Nomellini calculates is

1 needed for the evapotranspiration needs of the crops?

2 MR. NEUDECK: That's correct. And there's one  
3 thing I overlooked.

4 We calculated for purposes of evaluating the  
5 current condition, which are about 30 foot wide channels  
6 out there, what the carrying capacity of that canal is  
7 today. And I didn't show that.

8 I used sensitivity of what would be considered  
9 a lot smaller channel. But the carrying capacity of a  
10 30 foot wide channel is on the order of about 325 cfs.

11 So if you match that to the 90 cfs on a gravity  
12 system, obviously the two aren't very well matched. So  
13 to get up to that kind of carrying capacity, the 325,  
14 which I don't know that it has, would require pumps. It  
15 would require greater input into that channel to get  
16 take high a flow rate into it.

17 MR. HERRICK: Mr. Neudeck, your testimony is  
18 also based on or also assumes the conclusions from  
19 Mr. Nomellini and your testimony that in 1914 there were  
20 two floodgates at the main diversion point for Woods  
21 Irrigation Company, correct?

22 MR. NEUDECK: That's correct.

23 MR. HERRICK: So your calculations that were  
24 presented here show one, but in fact you're testifying  
25 as to double that for the various rates of diversion

1 that could have been accomplished?

2 MR. NEUDECK: That is correct.

3 MR. HERRICK: Thank you.

4 The third witness on this panel is Mr. Terry  
5 Prichard. Again, he's taken the oath. His statement of  
6 qualifications, as was Mr. Neudeck's and  
7 Mr. Nomellini's, was previously submitted as evidence.

8 Oh, I'm sorry. Let me go back. Mr. Neudeck's  
9 handout with the four pages should be labeled, and just  
10 to follow what the other parties have done, we'll call  
11 it WIC-R, for rebuttal, dash 11, because that's the next  
12 number in order from his direct testimony. So WIC-R-11.

13 Then I'll move to Mr. Prichard.

14 Mr. Prichard, you heard Mr. Nomellini's  
15 calculations and have reviewed them. Those were  
16 addressing the evapotranspiration needs of crops.

17 And you've been asked to list and describe  
18 other considerations that need to be taken into -- other  
19 considerations, and what your inclusion are from adding  
20 those considerations to Mr. Nomellini's original  
21 calculation. So please present your information.

22 MR. PRICHARD: Yes. I was able to examine the  
23 testimony of Mr. Nomellini as to calculating a --  
24 utilizing a reasonable method for calculation what the  
25 water demand would be.

1           And I agree that the relatively simple but  
2 effective formula would be to utilize the ET figures  
3 that were stated in that exhibit, multiplied times the  
4 acreage and then factored by the amount of water  
5 delivered in terms of the -- over a 30-day period to get  
6 the answer.

7           My calculations are identical to his.

8           However, there are other unavoidable losses in  
9 irrigation systems that require larger applications to  
10 meet the use, meaning a larger gross application to meet  
11 the net use. Those losses include run-off,  
12 de-percolation, canal loss.

13           Also in question is the mix of crops in this --  
14 you know, I'm not specifically addressing what the mix  
15 of crops were in there, just the ET of these that are  
16 presented.

17           And finally, some winter soil storage which  
18 would decrease the irrigation requirement, but only  
19 slightly in contrast to the full water use.

20           So I find that the figures, if we were to take  
21 an application of efficiency value and apply it to this  
22 that this figure that Mr. Nomellini gives at -- is it  
23 86.6 cfs -- would probably be low, and probably would be  
24 higher if the application efficiency were included in  
25 that, even given the other factors that might reduce

1 that somewhat.

2           One might find it also interesting that in  
3 bulletin -- DWR Bulletin 113, if we looked at what the  
4 statewide applied water would be and then evaluated that  
5 against the total number of acres served, we find that  
6 if the water was applied over a five-month irrigation  
7 season that 1 cfs is on a statewide average 82 cfs. 82  
8 acres, excuse me. I'm sorry about that. I saw your  
9 puzzling look there.

10           So 1 cfs, 82 acres on a statewide basis. Which  
11 accounts for the complete variety of crops, whether  
12 fallow, seasonal and for different types of irrigation  
13 systems which include both pressurized as well as  
14 gravity systems.

15           MR. HERRICK: Mr. Prichard, your analysis and  
16 conclusions took into account other factors also -- is  
17 that correct? -- including such things as your knowledge  
18 of when the area was reclaimed and drained, generally,  
19 and the practices of farmers in areas that have the high  
20 groundwater such as this; is that correct?

21           MR. PRICHARD: Yes, once the tract is  
22 reclaimed, then irrigation water must be brought in to  
23 produce a productive crop.

24           MR. HERRICK: That concludes our direct and --  
25 rebuttal direct, sorry.

1 CO-HEARING OFFICER PETTIT: Okay. And by my  
2 calculation then that would bring us to -- well, let's  
3 back up.

4 The Prosecution Team had requested to go last,  
5 but Mr. Ruiz and Ms. Gillick, do you have anything?

6 MR. RUIZ: On behalf of Central and South Delta  
7 Water Agency, we don't have any rebuttal testimony at  
8 this point.

9 CO-HEARING OFFICER PETTIT: Thank you.

10 MS. GILLICK: On behalf of the County, we do  
11 have a rebuttal with two documents if you give us a  
12 break, a second to kind of just talk for a second.

13 CO-HEARING OFFICER PETTIT: Sorry, I can't hear  
14 you.

15 MS. GILLICK: I do have a short rebuttal.

16 CO-HEARING OFFICER PETTIT: Okay. Why don't  
17 you go next and then Mr. Rose will be the follow-up.

18 MR. RUBIN: Hearing Officer Pettit, could I  
19 have one minute here. I'm not sure. I might want to  
20 raise an objection to the rebuttal case by San Joaquin  
21 County.

22 CO-HEARING OFFICER PETTIT: Pardon me?

23 MR. RUBIN: Can I have one minute before you  
24 agree to allow San Joaquin County to present a rebuttal  
25 case? I might want to raise an objection.

1 CO-HEARING OFFICER PETTIT: Go ahead.

2 MR. O'LAUGHLIN: While he's looking, I'll raise  
3 a basic objection. I -- oh, is that what you were going  
4 to raise? Oh, that's funny. I don't want to steal your  
5 thunder.

6 My problem is how do you put on a rebuttal case  
7 when you never put on a case-in-chief? And the County  
8 never put on a case-in-chief, so how do they put on a  
9 rebuttal case? I don't understand that.

10 MR. RUBIN: Hearing Officer --

11 CO-HEARING OFFICER PETTIT: Ms. Aue is  
12 checking. As I remember the opening statement when we  
13 started this process, we listed those two parties as  
14 being present to put on rebuttal or cross-examination  
15 but no direct case.

16 I'm not sure how we do that, but that's my  
17 recollection of what we said. Now, Ms. Aue is checking  
18 on that.

19 MS. GILLICK: I believe, you know, you have a  
20 right to do cross-examination as well. I'm sorry. I  
21 believe there is a right to do cross-examination and  
22 then as well as rebuttal if anything comes up.

23 MR. O'LAUGHLIN: I raised it. Let's move on.

24 CO-HEARING OFFICER PETTIT: Let's go off the  
25 record a moment so people can chat while we sort this

1 out.

2 (Recess)

3 CO-HEARING OFFICER PETTIT: Okay. Let's go  
4 back on the record, and while Ms. Gillick is getting  
5 settled, I want Ms. Aue to explain the basis for our  
6 deciding to proceed in this manner.

7 STAFF ATTORNEY AVE: Thank you, Hearing Officer  
8 Pettit.

9 Just to clarify, in our hearing notice we  
10 defined rebuttal testimony -- excuse me -- rebuttal  
11 evidence as new evidence used to rebut evidence  
12 presented by another party. So there's no requirement  
13 that you present a case-in-chief in order to have  
14 rebuttal evidence.

15 CO-HEARING OFFICER PETTIT: Please proceed,  
16 Ms. Gillick.

17 MS. GILLICK: I have one rebuttal witness with  
18 a couple documents to introduce in the record. I  
19 apologize, I don't have a copy of those documents. We  
20 can and will distribute them, and they are documents  
21 that are in the other hearing proceeding records.

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SCOTT LANDON BLAKE

Called on rebuttal by

SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY

FLOOD CONTROL & WATER CONSERVATION DISTRICT

DIRECT EXAMINATION BY MS. GILLICK

--o0o--

MS. GILLICK: Mr. Landon, do you want to state your name for the record, please. I'm sorry; Mr. Blake.

MR. BLAKE: Scott Landon Blake.

MS. GILLICK: And Mr. Blake, have you taken the oath in this proceeding?

MR. BLAKE: Yes, I have.

MS. GILLICK: Mr. Blake, in your involvement in this proceeding, did you review title documents at the County Recorder's Office from the County Recorder's Office regarding property within the Woods Irrigation Company?

MR. BLAKE: Yes, I did.

MS. GILLICK: And as part of that review, are you familiar with a document that was recorded in 1911 regarding the Woods Irrigation Company?

And just for reference I'll refer to the document, and the title or the caption for the document is Woods E.W.S. to Woods Irrigation Company, and it is

1 an agreement entered and dated September 29, 1911.

2 Are you familiar with that document?

3 MR. BLAKE: Yes, I'm familiar with that  
4 document.

5 MS. GILLICK: In summary, what does that  
6 document do?

7 MR. BLAKE: That's a document, it's an  
8 agreement, recorded agreement between E.W.S. Woods and  
9 Woods Irrigation Company.

10 And it basically allows Woods Irrigation  
11 Company to operate and maintain a system of canals and  
12 ditches for drainage and irrigation purposes over a  
13 series of three parcels that's within the Woods  
14 Irrigation Company service area and includes things like  
15 rights for ingress and egress, the ability for each  
16 party to deliver and drain water in the canals and  
17 ditches of the system, and rights to police, patrol  
18 widen, repair and maintain that system of channels and  
19 ditches.

20 MS. GILLICK: Is the document that you are  
21 referring to now different than the document you had  
22 previously provided in your direct testimony in this  
23 case?

24 MR. BLAKE: Yes, it is different.

25 MS. GILLICK: I believe there's a reference in

1 Exhibit 60 and 6P in your direct testimony to documents  
2 that were regarding a contract to furnish water between  
3 the Woods Irrigation Company and the Woods family; do  
4 you recall that?

5 MR. BLAKE: That's correct.

6 MS. GILLICK: And the document before you we're  
7 identifying now is a different document?

8 MR. BLAKE: That's correct. This agreement is  
9 recorded in Book G of miscellaneous records, volume 27,  
10 page 30, San Joaquin County records.

11 MS. GILLICK: And just for identification  
12 purposes, I'd like to identify this document as SJC  
13 No. 1.

14 And then I'd like to refer to SJC No. 2, which  
15 is a substantially similar document, and the caption on  
16 this document would be Woods Irrigation Company to  
17 Douglass and Wilhoit -- I'm sorry, I'm looking at the --

18 MR. O'LAUGHLIN: Hearing Officer Pettit, can we  
19 have the document marked SJC-R-1, please.

20 MS. GILLICK: That's fine.

21 MR. O'LAUGHLIN: Thank you.

22 MS. GILLICK: R-1. And then the second  
23 document would be R-2. And again that would be Wilhoit  
24 and Douglass to Woods Irrigation Company titled  
25 Agreement is what the caption is.

1           And again, Mr. Blake, what is -- in summary,  
2 what is the purpose of this agreement?

3           MR. BLAKE: It's very similar to the first. It  
4 basically allows Woods Irrigation Company to operate and  
5 maintain a series of canals and ditches for drainage and  
6 irrigation purposes over the lands of the first party  
7 with similar description of rights for ingress and  
8 egress and patrolling, widening, repairing that system  
9 of canals and ditch.

10           MS. GILLICK: And just for reference in the  
11 record since we don't have these exhibits before us and  
12 parties don't, the document identified SJC-R-1, was it  
13 part of the record and provided in the Pak and Young  
14 hearing on behalf of MSS as a component of their  
15 Exhibit 1?

16           MR. BLAKE: I believe that it was, yes.

17           MS. GILLICK: And San Joaquin County rebuttal  
18 document No. 2, was that also a component of the  
19 documents submitted by MSS in the Dunkel proceeding as  
20 part of their documents included in their Exhibit 1?

21           MR. BLAKE: I believe that it was, yes.

22           MS. GILLICK: That concludes my direct and the  
23 reference of those two documents, and I will copy them  
24 and distribute them to everybody, and apologize for not  
25 doing that.

1 CO-HEARING OFFICER PETTIT: Thank you. I  
2 believe Mr. Ruiz said you didn't have any?

3 Okay. Mr. Rose.

4 MR. ROSE: We have no rebuttal testimony.  
5 Thank you.

6 CO-HEARING OFFICER PETTIT: Okay, thank you.  
7 It appears we can start the rebuttal then. Can we go in  
8 the same order? Where are we?

9 MR. O'LAUGHLIN: Cross-examination on rebuttal.

10 CO-HEARING OFFICER PETTIT: Rebuttal cross,  
11 yeah.

12 MR. O'LAUGHLIN: Sure. Why don't we take  
13 Mr. Hopkins first.

14 MS. GILLICK: Mr. Pettit, I'm sorry.

15 At the beginning of -- when we came back from  
16 lunch, I specifically asked if we were going to be  
17 proceeding with any cross-examination of the rebuttal  
18 cases, and it was my understanding that there would be  
19 no cross-examination today.

20 And I specifically asked that, because I said  
21 it makes a difference in us listening to the testimony  
22 of direct testimony right now on whether or not we were  
23 going to be proceeding with cross-examination of the  
24 witnesses today.

25 And it was my recollection the response was

1 that we would not be doing cross-examination of any of  
2 the rebuttal witnesses.

3 Now, if that's different, I specifically asked  
4 it for clarification before we proceeded with the  
5 witnesses.

6 CO-HEARING OFFICER PETTIT: My recollection is  
7 that I thought at the time we probably wouldn't get to  
8 it, but that we also wanted to see how far we could get  
9 today, and it seems to me like we can make a little more  
10 headway today.

11 So you're concerned you won't be in the  
12 position to --

13 MS. GILLICK: I just listened to --

14 MR. O'LAUGHLIN: But that's the position we're  
15 all in.

16 (Interruption by the reporter)

17 MS. GILLICK: I just listened to two hours of  
18 testimony, and I specifically asked the question before  
19 that testimony commenced on whether or not there was  
20 going to be cross-examination today.

21 And it was my understanding there would not be.  
22 And two hours later to kind of change the situation, I  
23 think it's prejudicial.

24 MR. O'LAUGHLIN: Another prejudicial. Your  
25 whole side has been prejudicial. Why don't you just

1 stand up and say you're crucified?

2 Look it, here's the deal -- wait, wait. Wait a  
3 second.

4 CO-HEARING OFFICER PETTIT: Stop and pause for  
5 just a moment.

6 As far as prejudicial goes, I think we started  
7 this morning not knowing to any extent how far we were  
8 going to get and what might come up during the day. And  
9 we have made several adjustments as we went along.

10 But I don't think anybody is prejudiced more  
11 than anyone else is, because we did not have any idea  
12 when we started this morning how far we were going to  
13 get. And in fact, I had some hope we might finish. So  
14 everybody would have been in the same shape if that had  
15 been the case.

16 MR. O'LAUGHLIN: Right. We're -- Mr. Hearing  
17 Officer, we're ready to prepare. We have our witnesses  
18 present. We'll make them available for  
19 cross-examination.

20 You know, we went fast, we got done and we're  
21 burning time. And, you know, rather than -- I will say  
22 this for the other side. I understand taking a great  
23 deal of time to go through what Mr. Wee has done. I  
24 have no qualms with that. Okay?

25 But the testimony by Mr. Hopkins and

1 Mr. Johnson is pretty narrow, very limited, and not of a  
2 great extent.

3 And I would be quite happy to take Mr. Johnson  
4 and Mr. Hopkins, get them done, and I can get done with  
5 Mr. Nomellini -- I don't know which two aren't going to  
6 be here tomorrow.

7 I can get done with whatever two witnesses  
8 won't be here for Woods Irrigation Company tomorrow on  
9 cross-examination as well today.

10 And I think we should do that because the time  
11 that's going to be eaten up is going to be eaten up on  
12 Wee.

13 CO-HEARING OFFICER PETTIT: And you're  
14 suggesting that we do go ahead tomorrow?

15 MR. O'LAUGHLIN: I understand Mr. Herrick's  
16 statement. And my preference is to get done. If they  
17 want to wait a couple days and schedule a hearing date  
18 on July 1st or 2nd -- I don't know what dates you put up  
19 on the board -- I have no problem with that either.

20 Steve's available. And I understand that. So  
21 I don't have a problem with that. But to the extent  
22 that we can get other witnesses done, we should get them  
23 done and out of the way.

24 CO-HEARING OFFICER PETTIT: So we'll go in  
25 slightly different order with your rebuttal cross and



1 get Mr. Hopkins and Mr. Johnson.

2 MR. HERRICK: Mr. Chairman, getting as much  
3 done today is a good idea. We're not trying to avoid  
4 that.

5 But we are trying to plan what we're doing.  
6 And we've had a lot of discussions, and this is like the  
7 fifth permutation of how we're going to proceed.

8 I thought the understanding was ten minutes ago  
9 that we would put my three-witness panel on, cross them,  
10 and be done. If we need to squeeze in or try to squeeze  
11 in Mr. Johnson and Mr. -- Hopkins, was it?

12 MR. O'LAUGHLIN: I have no problem taking  
13 Mr. Herrick's panel right now and finishing them and be  
14 done with them and get them done and then put  
15 Mr. Hopkins on.

16 CO-HEARING OFFICER PETTIT: Okay. That will  
17 be --

18 MR. O'LAUGHLIN: I'm talking no more than 15 or  
19 20 minutes or taking cross on them.

20 CO-HEARING OFFICER PETTIT: That's another  
21 change, but it's okay with me. I'm only interested in  
22 getting as much as we can get done today efficiently.

23 MR. HERRICK: That's okay with me. I'm not  
24 trying to cut anybody off, and I'm not trying to delay  
25 this.

1           Ms. Gillick is correct. What she said was  
2 there was a clarifying statement that, okay, we're not  
3 going to do any cross.

4           That's okay, but -- you know, we're trying to  
5 plan out what we can do and when we do it.

6           MR. RUIZ: Mr. Pettit, I specifically heard  
7 just, I don't know, half an hour, 45 minutes ago when we  
8 came back, you said there wouldn't be cross unless you  
9 reserved the right if somebody wanted to initiate cross  
10 at the end of the day if there was time, and that's the  
11 way we were proceeding.

12           So certainly there's been some confusion.

13           CO-HEARING OFFICER PETTIT: I thought I  
14 caveated that statement by seeing how far we got. Sorry  
15 if that wasn't the case, but as I said a moment ago, I  
16 think this morning we didn't know what was going to come  
17 up today anyway, so.

18           MR. O'LAUGHLIN: We'll be happy to finish  
19 Mr. Herrick's witnesses and put Mr. Hopkins on today.

20           CO-HEARING OFFICER PETTIT: Let's proceed with  
21 that then.

22           MS. GILLICK: And I'd also request that  
23 Mr. Blake, since he's here and available, so he doesn't  
24 have to come back on a short direct.

25           MR. ROSE: Board Member Pettit, if it makes

1 anything easier, we'd be happy to go with the previous  
2 order that we had established. Prosecution Team can go  
3 first.

4 The only reason we were talking about switching  
5 that up was in case we had any rebuttal we would go  
6 last. But for cross-examination we can go first or last  
7 or whatever you want.

8 If you are used to the previous order of  
9 proceeding where Prosecution Team would go first, we can  
10 cross first.

11 CO-HEARING OFFICER PETTIT: Mr. Herrick, come  
12 on up. We're going with you anyway.

13 MR. ROSE: Doesn't matter.

14 CO-HEARING OFFICER PETTIT: Thank you,  
15 Mr. Rose. Do you envision much cross?

16 MR. ROSE: No. I have some, but very brief.

17 --o0o--

18 CROSS-EXAMINATION BY MR. ROSE

19 FOR PROSECUTION TEAM

20 --o0o--

21 MR. ROSE: Good afternoon again, gentlemen. I  
22 think I just have a couple of questions for Mr. Neudeck  
23 at this point.

24 Mr. Neudeck, you said that a 30-foot channel  
25 that exists today could carry the amount of water

1 calculated by Mr. Nomellini; is that what you said on  
2 your rebuttal testimony?

3 MR. NEUDECK: Yes. I actually stated that  
4 under the conditions it could carry up to 325 cfs, so  
5 that would equate to the larger number that  
6 Mr. Nomellini testified to as to -- I don't know the  
7 exact terminology he used, but summing the use over a  
8 30-day period.

9 MR. ROSE: 200 some-odd cfs.

10 MR. NEUDECK: Correct.

11 MR. ROSE: Again, you said that was based on  
12 the 30-foot channel existing today, correct?

13 MR. NEUDECK: Yes.

14 MR. ROSE: And you don't know the size of the  
15 channel existing prior to 1914, do you?

16 MR. NEUDECK: No, I do not.

17 MR. ROSE: Okay. That's it for my questions.

18 --o0o--

19 CROSS-EXAMINATION BY MR. O'LAUGHLIN

20 FOR MODESTO IRRIGATION DISTRICT

21 --o0o--

22 MR. O'LAUGHLIN: Good afternoon, gentlemen. My  
23 name is Tim O'Laughlin. I represent the Modesto  
24 Irrigation District in this matter.

25 Mr. Nomellini, starting with you, were you

1 present when Mr. Johnson made his presentation regarding  
2 the aerial photo interpretation of 1937?

3 MR. NOMESELLINI: Yes, I was.

4 MR. O'LAUGHLIN: Okay. I guess I could use  
5 your calculation and use his percentages to find out  
6 what amount of water was being delivered in August of  
7 1937; would that be correct? If his numbers were  
8 correct?

9 MR. NOMESELLINI: I think that -- if his numbers  
10 were correct?

11 : Yeah, if his aerial interpretation was  
12 correct, I could basically apply his percentages to your  
13 calculation to see what water was applied if August of  
14 1937, correct?

15 MR. NOMESELLINI: I don't think his were correct,  
16 but I don't think that was a reasonable interpretation  
17 of what happened in 1937.

18 MR. O'LAUGHLIN: I know. But leaving aside  
19 what you believe, I could take your calculation and  
20 apply his percentages and come up with the amount of  
21 water that was delivered in 1937, correct?

22 MR. NOMESELLINI: That's -- what I'm offering is  
23 that a very reasonable interpretation would be the 86.61  
24 or the one cubic feet per second, you know, for 82 acres  
25 statewide.

1 MR. O'LAUGHLIN: No. My question is very  
2 simple. Just answer the question.

3 I can apply his percentage to your calculation  
4 and find out what happened in 1937 for my purposes.

5 MR. NOMELLINI: Not at all, because I don't  
6 think he properly interpreted what was happening in  
7 1937.

8 MR. O'LAUGHLIN: Did you personally have an  
9 aerial review of the photos done to see what crops were  
10 being grown in 1937?

11 MR. NOMELLINI: No, but I have looked at those  
12 aerials, and I have different interpretation of what is  
13 being displayed on the aerial.

14 MR. O'LAUGHLIN: Are you trained in  
15 ascertaining and looking at stereoscopic aerial photos  
16 for determining cropping uses and cropping patterns?

17 MR. NOMELLINI: I have training as a site  
18 development specialist with the air force. I went  
19 through civil engineering school. I have worked with  
20 topographic maps. I've farmed out in the area. And I  
21 am capable of ascertaining what I see on an aerial  
22 photograph with regard to crops.

23 MR. O'LAUGHLIN: Is there a reason why in your  
24 testimony you didn't review the aerial paragraphs and  
25 come up with a determination of what crops were being

1 grown out there if you have that specialty.

2 MR. NOMELLINI: I didn't try to.

3 MR. O'LAUGHLIN: Okay.

4 Mr. Neudeck, were you present when Mr. Hopkins  
5 testified?

6 MR. NEUDECK: Yes, I was.

7 MR. O'LAUGHLIN: Do you have any disagreement  
8 with his basic description of hydraulics?

9 MR. NEUDECK: The only description that he  
10 mentioned that caught my attention that I did not agree  
11 with was the call for the Manning's n coefficient of  
12 .03.

13 If you noticed in my sensitivity analysis, that  
14 was the greatest Manning's n, whereas I calculated using  
15 a lesser Manning's n.

16 Otherwise, the general parameters of hydraulic  
17 calculations I agreed with.

18 MR. O'LAUGHLIN: Okay. Now, really as we all  
19 sit here today, we don't know what the Manning's n's  
20 were in the early 1900s, do we?

21 MR. NEUDECK: No, that would be an assumption.

22 MR. O'LAUGHLIN: Yeah. And it's true that some  
23 of the channels had been improved within the Woods  
24 Irrigation Company service area as of 1911, correct?

25 MR. NEUDECK: That's correct.

1           MR. O'LAUGHLIN: But we don't know the scope  
2 and extent of those improvements; is that correct?

3           MR. NEUDECK: Well, I tend to disagree.

4           I believe that the Woods area was improved for  
5 irrigation sake, that's why they were incorporated into  
6 the service area. The scope and extent, I guess, I  
7 don't fully understand.

8           MR. O'LAUGHLIN: Well, we don't know if they're  
9 concrete-lined channels, we don't know the depths of the  
10 channels, we don't know the width of the channels. We  
11 don't have specifics as to what each of those channels  
12 looked like; is that correct?

13          MR. NEUDECK: No, I do not have specific  
14 measurements.

15          MR. O'LAUGHLIN: Okay. Now, Mr. Blake  
16 testified earlier that in fact it appeared to him that  
17 Woods Irrigation Company had been using sloughs to  
18 distribute water.

19          Would you agree that sloughs may have a  
20 different Manning's n than an earthen canal that had  
21 been constructed?

22          MR. NEUDECK: Yes.

23          MR. O'LAUGHLIN: And that would be the same if  
24 you used a natural river course to convey water as  
25 opposed to a concrete-lined channel or a pipeline,



1 correct?

2 MR. NEUDECK: Yeah, all those vary to some  
3 degree. The roughness aspect of any of those is not  
4 substantial. You're not dealing with cobble in this  
5 region. So from that perspective, but as you could see,  
6 the sensitivity within those numbers was not  
7 substantial.

8 MR. O'LAUGHLIN: One of the things that --  
9 there was an exhibit that was offered earlier, and I  
10 forget the number, I think it's 2A, and it may be in  
11 your testimony or Mr. Blake's, where there was a map and  
12 it depicted that there were gates and dams along the map  
13 in Woods Irrigation Company; do you remember that?

14 MR. NEUDECK: Yes, I'm familiar with it.

15 MR. O'LAUGHLIN: Okay. Now, if you're  
16 irrigating and you're taking water from Middle River and  
17 you're moving it to the downstream side, would you still  
18 have dams in your canal facility?

19 MR. NEUDECK: Certainly.

20 MR. O'LAUGHLIN: Okay. Now what would the  
21 purpose of those dams be?

22 MR. NEUDECK: Depending upon who was irrigating  
23 at what time, they could back water up and then lift it  
24 onto their property for a more efficient use at that  
25 property.

1           So there could be a lifting vis-a-vis a pump  
2 into the canal system initially, and then they could  
3 back water up and then lift that up to a higher, say,  
4 irrigation ditch to be more efficient for the crop that  
5 they happen to be growing.

6           MR. O'LAUGHLIN: Okay. If the canal was a  
7 gravity system and there were checks in the canal, what  
8 would be the purpose of a check in a canal downstream  
9 for irrigation purposes?

10          MR. NEUDECK: Well, it could be to -- just as I  
11 indicated in the prior answer, it could be to back up  
12 water so they could lift it up, or they could  
13 subirrigate from that backing up.

14          As I've indicated in my prior testimony, I  
15 believe that they were both irrigation and drainage  
16 canals, multipurpose.

17          But regardless, water being water, they could  
18 back it up for either subirrigation sake or to have a  
19 pool of water to lift to put into irrigation ditches.

20          MR. O'LAUGHLIN: Now, if you back water up in a  
21 canal on the inboard side of the levee, would you agree  
22 with Mr. Hopkins' testimony that having a water surface  
23 elevation on the inboard side of the levee would  
24 diminish -- may diminish the amount of water you would  
25 get through your head gate?

1           MR. NEUDECK: Yes, that would be basically a  
2 downstream control. So you can't push water against  
3 water. You have to consume the water. So as you're  
4 consuming it, it's going to flow in from a gravity  
5 perspective.

6           MR. O'LAUGHLIN: Okay. So if the dams on the  
7 canal, let's say, were set at elevation two, that even  
8 at the headworks, if you were below elevation two or  
9 below on a water surface elevation on Middle River, you  
10 still couldn't push water into that canal, correct?

11           MR. NEUDECK: You said a lot of numbers in  
12 that, and I apologize. I think I know where you're  
13 heading, but I don't want to misstate an answer. I can  
14 qualify it.

15           MR. O'LAUGHLIN: No, let me ask it again.

16           MR. NEUDECK: I apologize, because you were  
17 using elevations and I want to make sure I've got the  
18 right elevation.

19           MR. O'LAUGHLIN: Absolutely. Let's say the  
20 elevation on the canal on the check is elevation two.

21           MR. NEUDECK: Okay.

22           MR. O'LAUGHLIN: Okay? And let's say that the  
23 elevation on the Middle River water surface elevation is  
24 two or less. Can you move water from Middle River and  
25 into the canal?

1           MR. NEUDECK:  Not unless you lift it.  No, not  
2 by gravity.

3           MR. O'LAUGHLIN:  Right.  You could pump it.

4           MR. NEUDECK:  Correct.

5           MR. O'LAUGHLIN:  But you couldn't lift it  
6 through a gravity system.

7           MR. NEUDECK:  No.

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

9           Mr. Prichard, I am interested in what is the  
10 irrigation efficiency that you're using in regards to  
11 your calculation?

12           MR. PRICHARD:  I didn't apply an irrigation  
13 efficiency to give you any numbers.

14           MR. O'LAUGHLIN:  And why is that?

15           MR. PRICHARD:  I simply indicated that if one  
16 looked at application efficiency the number would be  
17 larger than calculated by ET alone.

18           MR. O'LAUGHLIN:  But -- well, this is an  
19 interesting point, I think, that's kind of confusing to  
20 me.  I don't disagree that -- wouldn't it be -- well,  
21 let me go a different way.

22           If the irrigation efficiency is lower -- let's  
23 say it's 60 percent or 50 percent -- then the amount of  
24 water that needs to be diverted has to increase; is that  
25 correct?

1 MR. PRICHARD: That's correct.

2 MR. O'LAUGHLIN: Okay. And as the irrigation  
3 efficiency goes up, the amount of water that needs to be  
4 diverted goes down, correct?

5 MR. PRICHARD: Correct.

6 MR. O'LAUGHLIN: Okay. Then the same thing,  
7 that if you grow a crop that uses a lot of water and you  
8 have a low irrigation -- a lot of water, you need to  
9 move more water into the system, right?

10 MR. PRICHARD: If the ET is higher, it would  
11 require more water.

12 MR. O'LAUGHLIN: And if the ET is less, you  
13 require less water, right?

14 MR. PRICHARD: Correct.

15 MR. O'LAUGHLIN: And, now, did you assume a  
16 general percolation loss for the area in regards to what  
17 your calculation was?

18 MR. PRICHARD: No, I did not.

19 MR. O'LAUGHLIN: Did you assume a general --  
20 now, these are earthen canals, correct? If you know.

21 MR. PRICHARD: Yes.

22 MR. O'LAUGHLIN: Okay. Are there canal losses  
23 as this water is diverted through the system?

24 MR. PRICHARD: There are canal losses as it's  
25 diverted through the system, but vary on the soil

1 characteristics on which they're placed.

2 MR. O'LAUGHLIN: Okay. So if you move water --  
3 percolation wasn't included in your ET calculation,  
4 correct?

5 MR. PRICHARD: Correct.

6 MR. O'LAUGHLIN: So if you did apply some  
7 number for percolation, the amount of water that would  
8 have to be diverted would go up as well; is that  
9 correct?

10 MR. PRICHARD: From canal loss?

11 MR. O'LAUGHLIN: No, percolation. Deep perc.

12 MR. PRICHARD: There's winners and losers. So  
13 the losses to the system are runoff, depercolation or  
14 percolative losses and canal loss.

15 MR. O'LAUGHLIN: Correct. Okay. So as those  
16 losses go up, then you need to divert more water from  
17 the Middle River to make sure that the crops get enough  
18 water to survive, correct?

19 MR. PRICHARD: Correct.

20 MR. O'LAUGHLIN: Okay. Now, you said something  
21 and then -- okay.

22 So in regards to Mr. Nomellini's testimony, if  
23 we were to apply these losses, there is one or two ways  
24 to look at it. Either the irrigation demand has to go  
25 up -- in other words, you take more water off the

1 system -- or in actuality you may have to plant less  
2 acreage; is that correct?

3 MR. PRICHARD: I'm not sure I get the either/or  
4 there.

5 MR. HERRICK: I would have to object to the  
6 question. It seems to assume a limiting diversion  
7 factor upstream, which is okay if that's a hypothetical,  
8 but the question seemed to assume that.

9 MR. O'LAUGHLIN: Well, no, I actually don't  
10 have any. I mean -- well, let's assume one. Let's  
11 assume that in fact Woods can divert 77.7 cfs. Just use  
12 that as a limiting factor. Mr. Herrick points that out.

13 So if you're going to grow crops and meet this  
14 ET and irrigation efficiency, percolation and canal  
15 losses, it may be that either, A, you to have to go  
16 above 77.7 cfs to meet your entire acreage demand; or,  
17 B, you can plant less acreage and maintain your 77.7  
18 cfs; is that correct?

19 MR. PRICHARD: Those are two options.

20 In addition to that, one could utilize some of  
21 the shallow groundwater as a component of the ET. You  
22 could also have some benefit from the stored winter  
23 moisture going into the season that you could utilize  
24 during the season.

25 MR. O'LAUGHLIN: Well, yeah, and that's a great

1 lead-in; you should be a straight man. This is exactly  
2 my last question in regards to this.

3 Winter storage. Now, are you familiar with the  
4 use of dry land farming in the Central Valley in early  
5 1900s.

6 MR. PRICHARD: I wasn't around then, but I've  
7 heard about it.

8 MR. O'LAUGHLIN: Okay. Was it generally the  
9 concept that you would plant a crop and use winter and  
10 spring rainfall events to irrigate the crop and then  
11 take the crop off sometime in June or July?

12 MR. PRICHARD: Yes. True dry land farming  
13 would be to plant into a soil which either had some  
14 moisture in it that you would gain from winter rainfall;  
15 however, it's not irrigated either from a surface or  
16 subsurface perspective. That wouldn't be dry land.

17 MR. O'LAUGHLIN: Okay. Now, it may have been  
18 possible in Woods Irrigation Company if lands were below  
19 a certain elevation that given the hydraulics between  
20 the river and the land surface elevation you may have  
21 planted a winter crop that could, in fact, be subsurface  
22 irrigated in a winter month period, and then as the  
23 water surface elevation fell it would not receive that  
24 subsurface irrigation. Correct?

25 MR. PRICHARD: It's possible that the



1 subsurface water could replenish the soil profile and  
2 the crop would use that water.

3 MR. O'LAUGHLIN: Right. And also if we have  
4 like a normal rainy season, you may get 10 to 12 inches  
5 of rainfall that could be applied to that crop which may  
6 figure into your winter storage application.

7 MR. PRICHARD: The effective rainfall would  
8 certainly be considered.

9 MR. O'LAUGHLIN: Great. Thank you very much,  
10 gentlemen, I appreciate your time.

11 --o0o--

12 CROSS-EXAMINATION BY MR. RUBIN

13 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

14 --o0o--

15 MR. RUBIN: Good afternoon.

16 Mr. Neudeck, I just have a couple of questions  
17 regarding what I believe is Woods Irrigation Company  
18 R-11.

19 Mr. Neudeck, did you prepare Woods Irrigation  
20 Company Exhibit R-11?

21 MR. NEUDECK: Yes. Actually, my staff and I  
22 did.

23 MR. RUBIN: And there are four pages to that  
24 exhibit; is that correct?

25 MR. NEUDECK: That's correct.

1           MR. RUBIN: Now, I need some help here. Is it  
2 your opinion that in 1914 there was a diversion facility  
3 as depicted on the first page of Woods Irrigation  
4 Company, Exhibit R-11?

5           MR. NEUDECK: From the standpoint of the  
6 diameter of the floodgate, yes.

7           I did not put a dimension on the channel base  
8 because I did the sensitivity analysis to evaluate  
9 basically what would be the carrying capacity of various  
10 flow rates to try to give me a perspective of, you know,  
11 can we -- would this have to be a 30 foot wide canal, a  
12 10 foot wide canal, a 5 foot wide canal.

13           So that's why I went through that exercise to  
14 demonstrate the reasonableness of carrying this kind of  
15 capacity through the ditch.

16           MR. RUBIN: Mr. Neudeck, on what document do  
17 you base your conclusion that there was a floodgate as  
18 depicted on Woods Irrigation Company R-11 in 1914?

19           MR. NEUDECK: The 1911 service agreement that  
20 indicates that there was service to this area indicates  
21 that there was a diversion, point of diversion off of  
22 Middle River.

23           The facilities are clearly at that point of  
24 diversion. And the type of construction that is  
25 currently in existence out there leads me to believe

1 they were in existence in 1911.

2 MR. RUBIN: Do you have any records of Woods  
3 Irrigation Company that reflect the installation of a  
4 gate as depicted on Woods Irrigation Company, Exhibit  
5 R-11?

6 MR. HERRICK: Excuse me, if I may just  
7 interrupt for a second. Sorry.

8 I want to make sure that in describing the  
9 circle, which is supposed to be something through a  
10 levee, we're not confusing that with a depiction of a  
11 gate, but it is meant to be reflective of the conveyance  
12 orifice through the levee, but it's not the gate. Is  
13 that correct?

14 MR. NEUDECK: That's correct. It's a hole  
15 through the levee. It's a pipe.

16 MR. RUBIN: Let's describe it as a pipe.

17 Do you have any records from Woods Irrigation  
18 Company that depict the purchase of a pipe the size  
19 that's depicted on Woods Irrigation Company R-11.

20 MR. NEUDECK: No, I do not.

21 MR. RUBIN: Do you have any information that  
22 reflects the installation of a pipe the size that's  
23 depicted on Woods Irrigation Company R-11?

24 MR. NEUDECK: No, I did not have any direct  
25 measurements of the floodgate other than what I just

1 testified to earlier.

2 MR. RUBIN: Now, in order to do what I believe  
3 you called a sensitivity analysis that's reflected on  
4 the last page of Woods Irrigation Company R-11, you  
5 needed to make a number of assumptions; is that correct?

6 MR. NEUDECK: That's correct, and those  
7 assumptions were what were shown on the prior page, the  
8 cross-sections, and my purposes in doing so was to give  
9 you some parameters as to when you change the  
10 Manning's n what the effect of the flow rate would be.

11 MR. RUBIN: Let me ask you a question, and I  
12 apologize. I'm an attorney and not an engineer, so I  
13 apologize if I'm asking a question that doesn't make  
14 sense here.

15 But I don't see anywhere that discusses the  
16 elevation of the land that's being irrigated. Doesn't  
17 that play into how much water can be served through a  
18 diversion facility?

19 MR. NEUDECK: Well, it may impact the head of a  
20 facility, but we have testified to that in my earlier  
21 testimony, but this was related to the conveyance  
22 facility.

23 So what I was drawing conclusions on was the  
24 conveyance facility, not the adjoining ground. The  
25 ground in all cases, you know, is -- well, I'll leave it

1 at that.

2 MR. RUBIN: Let's take a hypothetical, and  
3 again I apologize, I just want to understand this.

4 If you have a diversion facility that's at  
5 zero, at sea level, and you're trying to irrigate land  
6 that's 30 feet above sea level, wouldn't the fact that  
7 you're trying to move water 30 feet in elevation affect  
8 the amount of water that you can move through the  
9 diversion facility?

10 MR. NEUDECK: Well, yeah. You can't do that by  
11 gravity because you're fixed by the energy of the  
12 gravity which would be elevation zero. You'd have to  
13 mechanically lift it to get it above that.

14 So what I've done is I've given you parameters  
15 and assumptions as to what the height of tide would be.

16 So when I say elevation 4.5 that's 4.5 feet  
17 above sea level. And we understand that the ground fell  
18 from about a zero to a minus 10, in that general range,  
19 Middle River to Burns Cutoff. So the water is above --  
20 the high tide is above the adjoining ground.

21 MR. RUBIN: So is it your position that all  
22 lands within Woods Irrigation Company in 1914 or earlier  
23 lie within zero to minus 10 sea level?

24 MR. NEUDECK: Majority of such. That's what  
25 the 1911 Quadrangle shows.

1           MR. RUBIN:  And does your analysis assume --  
2 well, let me just leave it at that.  
3           I have no further questions.  Thank you.  
4           MR. NEUDECK:  Thank you.  
5           CO-HEARING OFFICER PETTIT:  Mr. Ruiz, do you  
6 have any cross of this panel?  
7           MR. RUIZ:  No cross of this panel, Mr. Pettit.  
8           CO-HEARING OFFICER PETTIT:  Ms. Gillick?  
9           MS. GILLICK:  No cross for me.  Thank you.  
10          CO-HEARING OFFICER PETTIT:  Thank you.  
11          Ms. Gillick, you had the one witness.  Does  
12 anybody have any cross of that witness?  
13          MR. HERRICK:  Is there any redirect,  
14 Mr. Chairman?  
15          CO-HEARING OFFICER PETTIT:  Pardon me?  
16          MR. HERRICK:  Do I get some redirect, please?  
17          CO-HEARING OFFICER PETTIT:  Hang on just a  
18 second.  
19          Sure.  Go ahead.  Have at it.  Knock yourself  
20 out.  Yeah, let's finish you guys up.  
21          CO-HEARING OFFICER PETTIT:  Yes, go ahead,  
22 Mr. Herrick.  
23          MR. HERRICK:  Thank you.  
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REDIRECT-EXAMINATION BY MR. HERRICK  
FOR WOODS IRRIGATION COMPANY

MR. HERRICK: Mr. Neudeck, you were asked a number of questions on cross with regard to Manning coefficients of the old sloughs that were identified by Mr. Landon Blake; is that correct?

MR. NEUDECK: That's correct.

MR. HERRICK: Do you recall that?

MR. NEUDECK: Yes.

MR. HERRICK: Now, of course the Manning coefficients of the system that distributes the water doesn't affect how much water comes in unless they somehow limit that; is that correct?

MR. NEUDECK: Yeah, that's correct.

I mean, the value of the Manning's n that I was calculating was for the distribution system within Woods Irrigation Company, not leading to the entrance to the feature -- the diversion feature, excuse me.

MR. HERRICK: So if you go downstream in the delivery system and come up with a small slough that has a high Manning's coefficient, that doesn't tell you anything, necessarily, about how much water can be diverted to headworks, does it?

1 MR. NEUDECK: That's correct.

2 MR. HERRICK: And in your calculation, didn't  
3 you assume that the system built by the Woods brothers  
4 and operated eventually by Woods Irrigation Company had  
5 sufficient canals and sloughs downstream to distribute  
6 the water they were diverting, correct?

7 MR. NEUDECK: That's correct, and I want to  
8 qualify briefly my conversation.

9 There is hydraulic parameters here. If there  
10 is a downstream condition that's building head, water  
11 will not flow up against that.

12 But for the most part the Manning's n at the  
13 entrance would be what I was calculating for conveyance  
14 purposes.

15 MR. HERRICK: And of course if somebody has a  
16 dam on one of the channels downstream in the delivery  
17 system that blocks water or backs up water for some  
18 purpose, again, that may have no effect on how much  
19 water can be diverted to headworks, does it?

20 MR. NEUDECK: No, because you have multiple  
21 conveyance facilities off that primary point of  
22 diversion.

23 MR. HERRICK: And you recall that we referred  
24 to it as the black map that had gates listed on one of  
25 the lines on the map? Do you recall that?



1 MR. NEUDECK: That's correct.

2 MR. HERRICK: And one of the questions you -- a  
3 number of the questions you were asked dealt with that  
4 map; is that right? Do you recall?

5 MR. NEUDECK: That's correct.

6 MR. HERRICK: And if you go say two miles down  
7 that line and the fall of the land is 5 to 10 feet and  
8 you have a gate on that, would you expect that to  
9 interfere at all with the amount of water being diverted  
10 to headworks?

11 MR. NEUDECK: No, that condition is probably  
12 outside the controlling condition of the headworks. It  
13 would be outside the controlling condition of the  
14 headworks.

15 MR. HERRICK: And you would assume, would you  
16 not, that the system built actually could distribute the  
17 water diverted rather than they built some level canal  
18 that would back up and not deliver water as the tide  
19 changed, wouldn't you?

20 MR. NEUDECK: These were farmers. These  
21 farmers were intent on irrigating their land. They  
22 constructed it to meet their needs.

23 MR. HERRICK: Do farmers in your experience  
24 typically build extensive systems covering 6 to 8,000  
25 acres that won't deliver water because it backs up

1 inappropriately?

2 MR. NEUDECK: That's not been my experience in  
3 the 30 years I've been doing this.

4 MR. HERRICK: Mr. Prichard, you were asked a  
5 number of questions about dry land farming; do you  
6 recall those questions?

7 MR. PRICHARD: Yes, I do.

8 MR. HERRICK: And you are familiar with the  
9 farming practices in the Delta in the area which we are  
10 talking about now for Woods Irrigation Company?

11 MR. PRICHARD: Yes.

12 MR. HERRICK: And those are lands that without  
13 drainage systems have a high water table; is that  
14 correct?

15 MR. PRICHARD: Correct.

16 MR. HERRICK: And in fact some of those lands  
17 are below sea level and the water would rise to the  
18 surface in the absence of the drainage facility,  
19 correct?

20 MR. PRICHARD: Without drainage they would be  
21 inundated.

22 MR. HERRICK: Mr. Prichard, once somebody  
23 institutes a drainage system for 6- to 8,000 acres of  
24 land, do they then randomly allow the water to rise back  
25 to the surface in hopes that will irrigate crops, or do

1 they typically irrigate those crops with a surface  
2 system?

3 MR. PRICHARD: No. Once it's drained they're  
4 going to irrigate for maximum productivity and salinity  
5 control, because if you allow the groundwater to rise up  
6 at certain times of the year to the surface, then you'll  
7 bring additional salts to the surface.

8 MR. HERRICK: In fact in this instance it's  
9 your understanding, is it not, that as of sometime  
10 around 1909 or 1911, but certainly before 1914, there  
11 was an extensive delivery system for Woods Irrigation  
12 Company for the purpose of delivering water, correct?

13 MR. PRICHARD: Yes.

14 MR. HERRICK: In your experience would farmers  
15 then not take advantage of a delivery system of water  
16 but hope that the vagrancies of weather or rising  
17 groundwater due to tides would irrigate their crop  
18 appropriately?

19 MR. PRICHARD: Just as today, they'll take  
20 maximum advantage of the irrigation.

21 MR. HERRICK: And those sort of issues we just  
22 discussed are what you took into consideration when you  
23 were evaluating what was appropriate to assume in order  
24 to calculate how much water would be delivered prior to  
25 1914; is that right?

1 MR. PRICHARD: Correct.

2 MR. HERRICK: Mr. Neudeck, you were asked by  
3 Mr. Rubin a number of questions about the facility  
4 through the levee, the Middle River levee, which is at  
5 the headworks of the Woods Irrigation Company system; is  
6 that correct?

7 MR. NEUDECK: Yes.

8 MR. HERRICK: And he asked you whether or not  
9 you had specific knowledge of the size and dimensions of  
10 the floodgate or gates in 1914; do you recall that?

11 MR. NEUDECK: That's correct.

12 MR. HERRICK: Mr. Neudeck, you've visited the  
13 site, have you not?

14 MR. NEUDECK: Yes, I have.

15 MR. HERRICK: And can you actually see the  
16 eastern -- the western floodgate on the downstream side?

17 MR. NEUDECK: Yes, that's what I thought I made  
18 note of. But I visited the site, you can see it, and we  
19 actually have photos of that configuration and existing  
20 floodgate in Mr. Nomellini's testimony.

21 MR. HERRICK: And the original works are made  
22 of brick, are they not?

23 MR. NEUDECK: Yes, they are.

24 MR. HERRICK: So there is no reason to think  
25 that Woods Irrigation Company bought some 8-inch pipe in

1 1909 when we can see the bricks they used to build it  
2 back in whatever year it was; is that correct?

3 MR. NEUDECK: That's correct.

4 MR. HERRICK: And in fact, you have measured  
5 that facility, without jumping in the water, but you've  
6 stood on the top and using tape measures and eye-balling  
7 it you have made your estimation of the sizes of that  
8 facility, correct?

9 MR. NEUDECK: That is correct. I have not  
10 surveyed it for elevation sake, that's why I testified  
11 to drawing some assumptions based off of tide  
12 elevations. But the dimension of it, yes, was measured.

13 MR. HERRICK: So is there any question in your  
14 mind that the one works that we just talked about  
15 accurately reflects your calculations based on the first  
16 page of your exhibit?

17 MR. NEUDECK: No, there is no question.

18 MR. HERRICK: And then you also believe there  
19 is a second floodgate, now filled in, a few yards  
20 upstream which is the other Woods diversion, correct?

21 MR. NEUDECK: That's correct.

22 MR. HERRICK: And based on your discussion with  
23 the person who filled it in, you've also estimated the  
24 size of that one, too, haven't you?

25 MR. NEUDECK: That's correct.

1           MR. HERRICK: Mr. Neudeck, you were asked a few  
2 questions about delivery of water 30 feet uphill; do you  
3 recall those?

4           MR. NEUDECK: Yes, from Mr. Rubin.

5           MR. HERRICK: Now, just this morning you  
6 reviewed the 1911 topographical maps that covered the  
7 Woods Irrigation service area, did you not?

8           MR. NEUDECK: Yes, I was reviewing those.

9           MR. HERRICK: Would it be correct to say that  
10 except for a small portion of lands at the far north  
11 end, most of the lands are at and then below sea level;  
12 is that correct?

13          MR. NEUDECK: That's correct.

14          MR. HERRICK: Now, of course, at anywhere  
15 inside that service area there may be mound or something  
16 that may differ from that, but generally speaking the  
17 fall of the land quickly approaches sea level and then  
18 goes down below sea level, correct?

19          MR. NEUDECK: Correct. In a northerly  
20 direction, that's correct.

21          MR. HERRICK: And with that sort of fall of  
22 land, would you then assume that the delivery of water  
23 to the headworks is not impeded by any gates or any  
24 backup mechanism that might be used to distribute water  
25 through the system?

1 MR. NEUDECK: Well, I think you have to qualify  
2 that.

3 I mean, if the gate was immediately downstream  
4 of the diversion point, it could be impeded. Those  
5 gates further down the system would not likely have an  
6 effect and control the water surface at the gate  
7 diversion point.

8 MR. HERRICK: Thank you. That's all the  
9 questions I have.

10 CO-HEARING OFFICER PETTIT: I have been trying  
11 to be very sensitive to everybody's due process rights  
12 here and equity issues. That's I guess from the legal  
13 side of things.

14 From the technical side, I think we're getting  
15 close to the point where discussing what was happening  
16 back in those days is getting very close to where our  
17 precision is greatly exceeding our accuracy.

18 And I'd just like everybody to bear that in  
19 mind as we reiterate some of this stuff that's already  
20 in the record.

21 With that in mind, is there any recross of this  
22 panel before we go any further?

23 MR. O'LAUGHLIN: No.

24 MR. RUBIN: No recross.

25 CO-HEARING OFFICER PETTIT: And none from

1 Ms. Gillick?

2 MS. GILLICK: Correct.

3 MR. RUIZ: None.

4 CO-HEARING OFFICER PETTIT: No recross of this  
5 panel then. Thank you, gentlemen.

6 MR. O'LAUGHLIN: Hearing Officer Pettit, we  
7 have no cross-examination based on the testimony --  
8 rebuttal testimony offered by San Joaquin County.

9 CO-HEARING OFFICER PETTIT: Okay. Mr. Rose?

10 MR. ROSE: Likewise, we have no  
11 cross-examination of San Joaquin County.

12 CO-HEARING OFFICER PETTIT: Pardon me?

13 MR. ROSE: Likewise, we have no  
14 cross-examination of those witnesses.

15 CO-HEARING OFFICER PETTIT: Thank you.  
16 Mr. Rubin?

17 MR. RUBIN: No cross.

18 CO-HEARING OFFICER PETTIT: Okay. So we're  
19 done with that too then. Okay.

20 Now I think we're back to Mr. O'Laughlin's  
21 offer to put on Mr. Hopkins and Mr. Johnson.

22 MR. O'LAUGHLIN: Do you want to take a short  
23 break since she's been going a while?

24 MS. GILLICK: Mr. Pettit, we don't have those  
25 exhibits and those maps. Again, you know, I --



1 MR. O'LAUGHLIN: Exhibits and maps of what?

2 MS. GILLICK: Mr. Johnson did maps and had  
3 blow-ups.

4 MR. O'LAUGHLIN: No. We have offered to  
5 everybody the maps that Mr. Johnson did. That's all in  
6 his testimony; it was all handed out.

7 MR. RUIZ: That's not correct. There was one  
8 map handed out. The other ones -- the other exhibits  
9 were put on the board, the overhead. Excuse me. There  
10 was the map handout and there was a memorandum, but the  
11 other exhibits were not available.

12 CO-HEARING OFFICER PETTIT: Is that correct,  
13 Mr. O'Laughlin?

14 MR. RUBIN: Yes.

15 MR. O'LAUGHLIN: That is correct.

16 CO-HEARING OFFICER PETTIT: Would a 15 or  
17 20-minute break allow you to get to the point where you  
18 can remedy that?

19 MR. O'LAUGHLIN: Why don't we take a break  
20 because the court reporter has been going for a while.  
21 I can put Mr. Hopkins on and then I can come back and  
22 tell you where we are with Mr. Johnson's exhibits.

23 CO-HEARING OFFICER PETTIT: Okay. Sounds like  
24 a plan. Thank you. Let's take 15 minutes then.

25 (Recess)

1 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin, you  
2 are going have Mr. Hopkins available for some cross?

3 Who has questions for this?

4 MR. ROSE: The Prosecution Team has no  
5 questions for Mr. Hopkins.

6 CO-HEARING OFFICER PETTIT: No questions, okay.

7 Mr. Herrick is up.

8 --o0o--

9 CROSS-EXAMINATION BY MR. HERRICK

10 FOR WOODS IRRIGATION COMPANY

11 --o0o--

12 MR. HERRICK: Thank you, Mr. Chairman.

13 Mr. Hopkins, I just have a couple questions.

14 If one were calculating the flow of a facility  
15 that's been described here for Woods, an assumption that  
16 water was being taken out -- I'll say downstream, but  
17 that's down canal -- could be used to confirm how much  
18 water the system could take in, correct?

19 MR. HOPKINS: The rate at which it's being  
20 diverted to the land?

21 MR. HERRICK: Yes.

22 MR. HOPKINS: Yeah, you could start with the  
23 end of the canal and work your way backwards is  
24 standard.

25 MR. HERRICK: And that was a horrible question,

1 but what I'm saying is the withdrawals from the  
2 downstream side either help or determine the ability to  
3 divert at the point of diversion?

4 MR. HOPKINS: Yes.

5 MR. HERRICK: Okay. And in your experience do  
6 diversions in the Delta -- are diversions and canal  
7 systems in the Delta designed to back up on the tides or  
8 are they designed to flow downhill and supply water  
9 without interruption?

10 MR. HOPKINS: I don't have any direct  
11 experience in the Delta. Most of my experience is all  
12 down in the lower Central Valley. But standard  
13 irrigation practice would be to work your way downhill.

14 MR. HERRICK: And have you viewed any of the  
15 quad maps or other documents in this proceeding which  
16 indicate the fall of the land in this area, the Woods  
17 Irrigation Company service area?

18 MR. HOPKINS: I've seen different maps and a  
19 hydraulic profile of a channel.

20 MR. HERRICK: Would you agree that the fall of  
21 the land is generally downhill sufficient to keep the  
22 channels -- keep the system flowing?

23 MR. HOPKINS: Yes.

24 MR. HERRICK: Okay. And did you do any  
25 calculations -- no let me stop.

1           One of the things that has been speculated  
2 about was whether or not pumps were being used on the  
3 system. Would a pump at the head gates affect the  
4 ability to move water through any channel?

5           MR. HOPKINS: Yes.

6           MR. HERRICK: And would pumps on the down flow  
7 side, lower down in the canal system, also help  
8 determine how much water would flow through the channel?

9           MR. HOPKINS: You mean --

10          MR. HERRICK: Let me restate.

11          MR. HOPKINS: -- at the diversions?

12          At the diversions from the canal, yes, that  
13 would help too.

14          MR. HERRICK: So even if it was gravity at the  
15 head, diversions lower down would be part of the  
16 calculation for how much water could move down that  
17 channel?

18          MR. HOPKINS: Yes.

19          MR. HERRICK: And in your description, or maybe  
20 it was a hypothetical about a screw gate being lowered  
21 on the opening of the diversion in order to improve the  
22 velocity -- is that correct? Those questions?

23          MR. HOPKINS: Yeah, it basically would increase  
24 in velocity.

25          MR. HERRICK: But it's also possible that in

1 operating that screw gate they have it wide open on the  
2 high tide and then drop it down significantly in order  
3 to maintain a pool of water downstream for diversions to  
4 be had?

5 MR. HOPKINS: That's possible, yes.

6 MR. HERRICK: Thank you. I have no further  
7 questions.

8 CO-HEARING OFFICER PETTIT: Any recross or  
9 redirect, I mean, Mr. O'Laughlin?

10 MR. O'LAUGHLIN: None.

11 CO-HEARING OFFICER PETTIT: Anybody else have  
12 cross for this witness?

13 MR. RUIZ: No cross.

14 MS. GILLICK: No cross, thank you.

15 CO-HEARING OFFICER PETTIT: Okay, it looks like  
16 we're done then.

17 Ms. Gillick, what's the status of your review  
18 on the maps and our possibilities of proceeding with  
19 Mr. Johnson?

20 MS. GILLICK: We did review them, and I think  
21 we can move forward with his --

22 CO-HEARING OFFICER PETTIT: Pardon me?

23 MS. GILLICK: We did review them, and I think  
24 we can move forward with his cross-examination.

25 CO-HEARING OFFICER PETTIT: Thank you.

1 Mr. O'Laughlin, I guess we're ready to proceed.

2 MR. O'LAUGHLIN: He's available for  
3 cross-examination.

4 CO-HEARING OFFICER PETTIT: Right, and I don't  
5 know who yet wants to cross-examine. Mr. Rose does.

6 --o0o--

7 CROSS-EXAMINATION BY MR. ROSE  
8 FOR PROSECUTION TEAM

9 --o0o--

10 MR. ROSE: Good afternoon, Mr. Johnson.

11 MR. JOHNSON: Good afternoon.

12 MR. ROSE: Specifically, your Exhibit MSS-R-17,  
13 that's the photointerpretive map of 1937 land uses,  
14 Woods Irrigation Company service area.

15 You said on your rebuttal testimony that you  
16 prepared this exhibit; is that correct?

17 MR. JOHNSON: That's correct.

18 MR. ROSE: Did you do the same process and  
19 prepare a similar map with regards to 1940 paragraphs?

20 MR. JOHNSON: No, I did not.

21 MR. ROSE: Did you create any similar type map  
22 for -- well, let me back up.

23 When was the photograph -- when were the  
24 photographs taken that you created this map from?

25 MR. JOHNSON: 1937.

1 MR. ROSE: Is there a specific month?

2 MR. JOHNSON: I believe it was August. There  
3 may have been a flight line off on the east end. It may  
4 have flown in September. I don't remember. There were  
5 a number of air photos I was looking at that extended  
6 beyond this area, so I don't remember whether that  
7 September flight line was included. Primarily August.

8 MR. ROSE: I thought that's what you had said.  
9 Now, did you recreate this similar process for say  
10 July 1937?

11 MR. JOHNSON: I don't believe so.

12 MR. ROSE: Okay. You haven't done this for any  
13 other time period other than August 1937; is that  
14 correct?

15 MR. JOHNSON: That's primarily the time period  
16 when the air photos were flown.

17 MR. ROSE: And you've only done it --

18 MR. JOHNSON: I'm not aware of other -- of  
19 other air photos from earlier in the 1937.

20 MR. ROSE: That's fine.

21 So you've only done this process for this one  
22 set of photos from August and possibly September 1937,  
23 correct?

24 MR. JOHNSON: That's correct, to the best of my  
25 recollection.

1           MR. ROSE:  So you don't have any information  
2  regarding cropping patterns in say any dates prior to  
3  1914; is that correct?

4           MR. JOHNSON:  I don't believe there are any air  
5  photos that I'm aware of prior to 1914.  Because aerial  
6  photographs need to have air flight.

7           MR. ROSE:  So the process that you've done in  
8  creating this exhibit and delineating what you think was  
9  dry farm grown crops, fallow, burned or disturbed, not  
10 cultivated lands, only applies to the 1937 photographs,  
11 correct?

12          MR. JOHNSON:  That is correct.  That's only to  
13 the specific flights.

14          MR. ROSE:  Thank you.  Now, in creating this  
15 map you did not consider any possible double cropping,  
16 did you?

17          MR. JOHNSON:  No.  Do you mean different crops  
18 were utilized at different times of the year?

19          MR. ROSE:  I do.

20          MR. JOHNSON:  It's only in interpretation of  
21 what you can see in air photos that were flown at that  
22 time and not anything, any interpolation as to what  
23 happened previously in the year what would have happened  
24 in the future.

25          MR. ROSE:  Okay.  That's what I thought, I just



1 wanted to make sure.

2 Can you bring up the photo? I don't have the  
3 exhibit number as it was labeled, but it would be the  
4 dry farmed example. I believe that's the third from the  
5 top.

6 Can you briefly explain again how you came up  
7 with the label that this was dry farmed.

8 MR. JOHNSON: Yeah. Several reasons. One is  
9 the light tones indicate that it's indeed dry. The  
10 other is that it has a characteristic plowing pattern  
11 that I understand is characteristic of dry farming where  
12 you have concentric polygons.

13 MR. ROSE: That characteristic, what particular  
14 crop is that a characteristic of?

15 MR. JOHNSON: I'm not certain. You cannot tell  
16 from air photos what crop is being grown.

17 MR. RUBIN: Hearing Officer Pettit, this is  
18 John Rubin. I believe we are talking about MSS-R  
19 Exhibit 19.

20 MR. ROSE: Thank you.

21 CO-HEARING OFFICER PETTIT: Mr. Mona tells me  
22 that's correct.

23 MR. ROSE: Let me ask it a different way.

24 It is possible that the crops that are depicted  
25 in this picture could have been grown with irrigation,

1 correct?

2 MR. JOHNSON: I guess I don't understand that  
3 question.

4 MR. ROSE: You labeled this as dry farming  
5 because of a specific pattern, but this same pattern  
6 could show up in crops that have been grown with  
7 irrigation, is that correct?

8 MR. JOHNSON: It's possible someone could mimic  
9 the pattern of dry farming and indeed irrigate; is that  
10 what you mean?

11 MR. ROSE: Essentially.

12 You said that you don't know which particular  
13 type of crops might make this pattern, but crops that  
14 are grown with irrigation could be farmed in such a  
15 manner that they would show this same pattern; is that  
16 correct?

17 MR. JOHNSON: Well, it's my understanding this  
18 is the typical pattern of dry farming. But I suppose if  
19 you were to attempt to mimic dry farming and then  
20 irrigate, that is a possibility.

21 MR. ROSE: Okay. I'm done with that line of  
22 questioning.

23 Now briefly this is something maybe you can  
24 explain for me. I don't quite understand -- can you  
25 bring up the MSS-R-17 again, please, Mr. Lindsay? That

1 one's okay. That will do fine. It's the same shape.

2 What's the total acreage for this particular  
3 piece that you have identified here?

4 MR. JOHNSON: I don't think I have that  
5 information with me. It was -- what we did was we had  
6 our --

7 MR. O'LAUGHLIN: You're done. Just answer the  
8 question and be done. You don't have to --

9 MR. JOHNSON: I don't have that information  
10 with me.

11 MR. ROSE: How did you arrive at this  
12 particular boundary?

13 MR. JOHNSON: That was derived from a map what  
14 that was provided, an historical map that was provided  
15 by Tim O'Laughlin's office.

16 MR. ROSE: And is it your understanding that  
17 this, the map provided by Mr. O'Laughlin's office,  
18 accurately reflects the Woods Irrigation Company's  
19 boundaries?

20 MR. JOHNSON: That's what I was -- I was  
21 provided with this map. I didn't do anything to verify  
22 whether that's accurate or not.

23 MR. ROSE: Okay. So you were not certain that  
24 this particular map as the boundaries of this map are  
25 depicted is in fact the same boundaries of Woods

1 Irrigation Company at any particular point, are you?

2 MR. JOHNSON: I was provided with a map that  
3 said it was Woods Irrigation Company District or Woods  
4 Irrigation Company service area, and I didn't do  
5 anything to verify that.

6 MR. ROSE: Okay. Do you have your own copy of  
7 this map or any one of these maps in front of you?

8 MR. JOHNSON: I don't. I actually gave that to  
9 Valerie.

10 MR. ROSE: I'll hand you this.

11 Mr. Lindsay, could you bring up briefly  
12 Prosecution Team Exhibit PT5, and I believe we're  
13 looking for about the 10th or 11th page.

14 Probably about page 10 or 11 I think is what  
15 we're looking for. It's a map. That's what we're  
16 looking for.

17 Have you seen this before --

18 MR. JOHNSON: I don't believe I have.

19 MR. ROSE: -- Mr. Johnson?

20 Now, you see a hatched or dotted line on this  
21 exhibit?

22 MR. JOHNSON: Yes, I do.

23 MR. ROSE: Briefly, taking a look at that, do  
24 those lines appear to be in the same place as the  
25 boundaries of the map that you have in front of you,

1 MSS-R-17?

2 MR. JOHNSON: No, they do not.

3 MR. ROSE: And what is the labeling on this  
4 map? What is this map depicting, does it say?

5 MR. JOHNSON: Map of lands serviced by Woods  
6 Irrigation Company.

7 MR. ROSE: Thank you.

8 I have no further questions.

9 CO-HEARING OFFICER PETTIT: Thank you.  
10 Mr. Ruiz?

11 MR. RUIZ: Actually, Mr. Pettit, counsel for  
12 Woods is going to go first, and if we have any follow-up  
13 cross we'll go from there.

14 --o0o--

15 CROSS-EXAMINATION BY MR. HERRICK

16 FOR WOODS IRRIGATION COMPANY

17 --o0o--

18 MR. HERRICK: Mr. Johnson, your exhibit  
19 MSS-R-17 which is the colored map -- you'll excuse me,  
20 I'm colorblind so I'll have difficulty in some of these  
21 questions.

22 But you state in your memorandum some mix of  
23 irrigated lands, fallow lands, row crops, et cetera;  
24 correct?

25 MR. JOHNSON: That's correct.

1           MR. HERRICK: Is it your intent to suggest this  
2 is some sort of unnatural mix of cropping and  
3 noncropping patterns?

4           MR. JOHNSON: No.

5           MR. HERRICK: And are you trying to suggest  
6 that from one year to the next lands that you have  
7 designated fallow might not be planted the next year?

8           MR. JOHNSON: No.

9           MR. HERRICK: And you're not suggesting that  
10 lands that were what you called dry crop one year might  
11 not be a permanent crop the next year?

12          MR. JOHNSON: No.

13          MR. HERRICK: And you're not suggesting this  
14 reflects conditions in 1914 or before that?

15          MR. JOHNSON: No.

16          MR. HERRICK: And you're not suggesting that  
17 this reflects any five-year period of cropping patterns  
18 for these lands?

19          MR. JOHNSON: No.

20          MR. HERRICK: Okay. Could we pull up whichever  
21 exhibit it was that is the mosaic of the aerial photos,  
22 please?

23          CHIEF LINDSAY: You're not referring to  
24 anything on the disc you just gave me.

25          MR. HERRICK: No. I would like to start with

1 his first, please. Thank you.

2 Mr. Johnson, this is some sort of photomosaic  
3 of numerous 1937 aerial photos?

4 MR. JOHNSON: Yes.

5 MR. HERRICK: I guess this is for the Board  
6 then. It's my understanding we had an objection to a  
7 mosaic of photos presented by Mr. Moore as not having  
8 provided the original individual pictures.

9 So is this okay to proceed with this, or should  
10 we object to that also?

11 CO-HEARING OFFICER PETTIT: Since we haven't  
12 ruled on that objection yet, Mr. Herrick, I'd suggest we  
13 should proceed.

14 MR. HERRICK: It's my opinion that both  
15 parties' exhibits should be let in when the time comes,  
16 but of course we wouldn't want to just let in one and  
17 not the other.

18 CO-HEARING OFFICER PETTIT: Agreed. Thank you.

19 MR. HERRICK: Mr. Johnson, if we zoom in on  
20 this, are we going to get any sort of good resolution?  
21 I don't mean that facetious, I just mean is there a good  
22 resolution here that we can zoom in and check what  
23 you've done?

24 MR. JOHNSON: Possibly. I doubt we have to  
25 zoom in.

1 MR. HERRICK: Okay.

2 MR. JOHNSON: I don't know.

3 MR. HERRICK: Mr. Lindsay, could we try zooming  
4 in, and if we could focus on the bottom left -- right  
5 there. And right what's in the center, if you could  
6 zoom in as much as you can without losing all  
7 resolution.

8 And I'm looking for that little hook portion on  
9 what is either High Ridge Levee, Duck Slough, Honker  
10 Levee, Inland Road, whatever. And again, I'm asking you  
11 to go in as far as you can. Sorry.

12 Okay. Now we've got to -- where are we? Oh,  
13 now pan down a little bit, please. There you go. Thank  
14 you very much.

15 Now, Mr. Johnson, we're looking at a sinuous  
16 line that runs -- I'll start at the bottom. From the  
17 bottom, it starts immediately over to the northwest,  
18 then kind of slopes up towards the north and then makes  
19 a little hook back down southeast and then goes over and  
20 goes back up north.

21 Anyway, can you see that line I'm talking  
22 about?

23 MR. JOHNSON: Yes.

24 MR. HERRICK: And the lands to the east of  
25 that, if that is to the right, in that little hook you



1 can see -- or tell me what you see there, please.

2 MR. JOHNSON: You're talking about the area  
3 below, just to the east of that sinuous line?

4 MR. HERRICK: Yeah. Right in the corner there  
5 of that little hook but east of the line.

6 MR. JOHNSON: Right there? Well, there's --

7 MR. HERRICK: The whole parcel.

8 MR. JOHNSON: The whole parcel. Appears to be  
9 some fallow land.

10 MR. HERRICK: Okay. Now, I see -- excuse me,  
11 let me ask you.

12 What would be your estimate of the distance  
13 between those parallel lines going through the field  
14 there? I mean, is that -- that's not like 2 feet or is  
15 that 10 feet? Do you have any idea? 30 feet?

16 MR. JOHNSON: I don't know.

17 Well, it's not 3 feet, is it? Isn't that --

18 MR. JOHNSON: It's more than 3 feet.

19 MR. HERRICK: Okay. So those aren't channels  
20 between empty row crops, are they? Those are something  
21 like checks for alfalfa or something, right? That would  
22 be the levee for the check?

23 MR. JOHNSON: I don't know.

24 MR. HERRICK: Okay. Well, you've designated  
25 that as fallow land.

1 MR. JOHNSON: That's correct.

2 MR. HERRICK: Why do you think that's fallow  
3 rather than worked ground with a crop that's either  
4 starting, finishing, harvested, not harvested? What  
5 indicates that no crop has been on that all year?

6 MR. JOHNSON: It doesn't indicate that there  
7 was no crop on there all year; it just indicates that it  
8 appears to be dry at that time.

9 MR. HERRICK: Okay. When you say dry, does  
10 that mean there's no crop on it -- or excuse me, no  
11 plants on it?

12 MR. JOHNSON: It appears to be fallow; that is,  
13 not currently under irrigation with crop that's being  
14 irrigated.

15 MR. HERRICK: Really. What are those lines in  
16 the field?

17 MR. JOHNSON: We interpret those as --

18 MR. HERRICK: Remnants?

19 MR. JOHNSON: -- remnants, yes.

20 MR. HERRICK: Remnants? I was kidding, I'm  
21 sorry.

22 MR. O'LAUGHLIN: No, he's not.

23 MR. HERRICK: I know. That's why I'm  
24 qualifying. Remnants of what?

25 MR. JOHNSON: Of previous cultivation.

1           MR. HERRICK:  So it's your opinion that a  
2 farmer cultivated that sometime in the past, removed the  
3 crop without interfering with the cultivation, and then  
4 left it there for a certain amount of time?

5           MR. JOHNSON:  No, that it had been harvested.

6           MR. HERRICK:  So it could have been harvested  
7 how long before this photo was taken?

8           MR. JOHNSON:  I don't know.

9           MR. HERRICK:  So in fact this, rather than  
10 fallow land, could have been irrigated that year,  
11 correct?

12          MR. JOHNSON:  It could have that year, but --

13          MR. HERRICK:  Well, that's what I'm getting to.  
14 You've made conclusions about the percentages of fallow  
15 land in the area.  I just want to make sure.

16                 You're then saying what you consider or have  
17 interpreted as fallow land, but just at that moment it  
18 doesn't tell you anything about the irrigation that  
19 year.

20          MR. JOHNSON:  That's correct.  It only  
21 indicates what's present at the time of the aerial  
22 photograph.

23          MR. HERRICK:  Okay.  So this isn't telling us  
24 whether or not irrigation occurred within this gross  
25 area at all?

1 MR. JOHNSON: During that year, no.

2 MR. HERRICK: Okay. Now, we can go to --  
3 Mr. Lindsay, sorry. If we could go to his example of  
4 dry farming, is that what it's called?

5 MR. RUBIN: Mr. Herrick, I believe MSS-R  
6 Exhibit 19.

7 MR. HERRICK: Thank you.

8 Mr. Johnson, you've labeled this as dry  
9 farming; is that correct?

10 MR. JOHNSON: That's correct.

11 MR. HERRICK: And you indicate that the lines,  
12 the markings on that are indicative of dry farming  
13 practices; is that what you said?

14 MR. JOHNSON: That's correct.

15 MR. HERRICK: What are dry farming practices  
16 with regards to tractor work or plowing?

17 MR. JOHNSON: As I indicated, this kind  
18 concentric pattern of polygons.

19 MR. HERRICK: Well, is there a reason why you  
20 don't conclude that that concentric polygon pattern was  
21 not the result of the harvest of the wheat crop?

22 MR. JOHNSON: I didn't conclude that.

23 MR. HERRICK: I asked you why you didn't.

24 How do you know that's not the harvesting  
25 marks, I'll say, from a wheat crop? Wouldn't they

1 harvest the wheat in that same sort of going back and  
2 forth around the field?

3 MR. JOHNSON: It's possible that's due to  
4 harvesting of the wheat. I don't know.

5 MR. HERRICK: And if it's a wheat crop that was  
6 harvested sometime prior to -- I think you said August  
7 or what, September? What was the other date?

8 MR. JOHNSON: Well, primarily August for these  
9 aerial photographs.

10 MR. HERRICK: But you didn't -- I'm sorry, I  
11 thought you didn't date these specifically. You said  
12 the photos were a combination of some from August and  
13 some from later in the year, I thought you said.

14 MR. JOHNSON: I said it's possible that the  
15 eastern end -- there was a flight line that I remember  
16 that was from September that may -- I don't remember if  
17 that was within the Woods Irrigation Company service  
18 area or not.

19 MR. HERRICK: Okay. And so let's just say  
20 hypothetically, if that was -- the markings were the  
21 result of harvesting a wheat crop, that wheat crop could  
22 have been irrigated a number of times before that,  
23 correct?

24 MR. JOHNSON: Prior to the aerial photographs?

25 MR. HERRICK: Yes.

1 MR. JOHNSON: It's possible.

2 MR. HERRICK: I have no further questions.

3 Thank you.

4 CO-HEARING OFFICER PETTIT: Thank you,

5 Mr. Herrick. Mr. Ruiz?

6 MR. RUIZ: No cross, Mr. Pettit.

7 CO-HEARING OFFICER PETTIT: Ms. Gillick?

8 MS. GILLICK: Everything's been covered. No

9 cross.

10 CO-HEARING OFFICER PETTIT: Thank you.

11 Mr. O'Laughlin, do you have any redirect of this

12 witness?

13 MR. O'LAUGHLIN: None.

14 CO-HEARING OFFICER PETTIT: It appears we are

15 done with Mr. Johnson then, is that correct?

16 MR. O'LAUGHLIN: Yes, that is correct.

17 CO-HEARING OFFICER PETTIT: Thank you. Thank

18 you, Mr. Johnson.

19 We have learned that we have a potential for

20 getting the room and at least some schedules for

21 July 2nd -- July 1st and July 2nd which would be this

22 Thursday and Friday. Does that create a problem for

23 anybody, or can we make those dates?

24 Mr. Herrick?

25 MR. HERRICK: I'm sorry, I guess I could be the

1 kicking boy here. It does. The earliest I could make  
2 would be the -- was it July 7th, the following  
3 Wednesday? I apologize for that. It's not my intent to  
4 delay this. I would like to get it done, too. I cannot  
5 make further days this week.

6 CO-HEARING OFFICER PETTIT: Where do we stand  
7 with -- I thought somebody said something.

8 MR. O'LAUGHLIN: I did. I get that, but you  
9 know, we all recognized that we were coming back. We  
10 had two days set aside to get this done, and they were  
11 going to be today and tomorrow.

12 So I get it. I'm not -- but it's -- I mean,  
13 and I get that they need time to prepare for Wee, but  
14 there is no sense kicking it over for another week.

15 I mean, there's plenty of counsel on the other  
16 side. They've got four attorneys working on this. They  
17 can delegate it, and we can get started.

18 I would prefer to go earlier. We have tomorrow  
19 scheduled out. And if we can't do tomorrow because they  
20 want to prepare, then I say let's go on July 1st and  
21 2nd.

22 MR. HERRICK: Mr. Chairman, if I may, again,  
23 I'm not trying to be argumentative. I'm just being  
24 honest with you. I am counsel for Woods Irrigation  
25 Company, and I don't know by what means I would delegate

1 Woods's work to the two other representatives here.

2           Sure, there is no doubt that we've been talking  
3 as we go on, but that's completely different than who  
4 represents Woods. And I don't -- I just can't delegate  
5 this to other people.

6           MR. RUBIN: Hearing Officer Pettit.

7           MR. O'LAUGHLIN: Then let's go tomorrow.

8           MR. RUBIN: I just want to make a statement. I  
9 understand we're not going to -- I assume we're not  
10 going to change Mr. Herrick's schedule, but we were all  
11 aware of the setting of tomorrow as a hearing date. I  
12 had a number of different prior obligations on my  
13 calendar. I moved them based on the notice that was  
14 received.

15           I am out for a number of days, as you are  
16 aware, as I raised earlier, for a vacation. I am  
17 willing for the case to move forward in my absence.

18           But at some point, despite Mr. Herrick's  
19 representations, the concern of delay comes up. And at  
20 some point, although we have other things on your  
21 calendars, we have to move forward.

22           MR. O'LAUGHLIN: And not only that, I'd like to  
23 add -- I mean, I'm here today and my witness is here  
24 tomorrow. So if they want to come in and do  
25 cross-examination, they can come in and do



1 cross-examination.

2           We have not -- when the hearing notices went  
3 out last week, we had no further dates set or anything  
4 done. We all knew we were going to come in and do  
5 rebuttal and get rebuttal done.

6           So my statement is rather than kicking it an  
7 extra week, I'm ready, I'm available tomorrow. If  
8 nobody shows up and takes cross-examination, then I'd  
9 say the hearing's concluded and we'll figure out what  
10 the briefing schedule looks like.

11           MR. RUIZ: Mr. Pettit, as convenient as that  
12 might be for Mr. O'Laughlin, obviously that's not  
13 practical.

14           There was a significant amount of new -- of  
15 evidence came in today, speaking about efficiencies. To  
16 the extent there is a -- you know, we're talking about  
17 from July 1st to July 2nd to July 7th, I don't even know  
18 what the Board's availability is as of July 7th.

19           But efficiencies are going to be accomplished  
20 by putting in a little bit more time to come in here and  
21 present cross-examination in a much more efficient  
22 manner as opposed to rushing through this. And we were  
23 talking about in a matter of days.

24           There's also a lot of overlapping issues at  
25 this point with the other hearing, which some of these

1 issues going to be -- you know, there's going to be  
2 inefficiency in terms of having them decided in both of  
3 these matters, because there is, frankly, some  
4 overlapping issues.

5           And we talked earlier in the day about some  
6 concept of merging some of these issues. So we're not  
7 talking about long delays.

8           Also, for the record, as counsel for Central  
9 and South Delta Water Agencies, I'm unavailable on  
10 July 2nd as I've got a previous commitment I can't  
11 break.

12           MR. O'LAUGHLIN: But this gets to my point,  
13 Mr. Pettit, is that we had the hearing dates set. And I  
14 understand it. But I don't get where there's some  
15 efficiencies that are going to happen or not.

16           I mean, Mr. Wee can be here all day tomorrow.  
17 He's the only witness left. We can take all day if we  
18 need to. We can get Mr. Wee done. And if it's  
19 inefficient, great.

20           But I think that's better, because I have heard  
21 no offer from the other side that by coming back in  
22 three days or four days or five days it's going to take  
23 an hour or two.

24           If they want to say that they're going to come  
25 back in five or six days and we're going to have an

1 efficiency that we're going to be done in a couple  
2 hours, I get it. But that's not what I'm hearing.

3 I'm hearing basically that they're going to  
4 have time to prepare and they're all going to take an  
5 hour and we're going to be here for four hours plus and  
6 have their cross-examination done.

7 So if we're going to do that, I'd just prefer  
8 to start tomorrow. Because we had to do our rebuttal  
9 and we had to our cross on their rebuttal today. And I  
10 I'm not going to use word, but I don't think it's fair  
11 to have our testimony go in and give them a week to  
12 prepare cross-examination on that point when in fact we  
13 had designated tomorrow for the hearing date.

14 MR. HERRICK: Mr. Chairman, we can say this a  
15 thousand times. Earlier today everybody was very  
16 agreeable, we'll find what's convenient, and now it's  
17 time to go home, no, we have to do it tomorrow.

18 I think I made myself very clear. I cannot  
19 make tomorrow. I apologize for that. I explained that  
20 I should have said that Friday, but I assumed that based  
21 on the estimations of time we would finish today.

22 CO-HEARING OFFICER PETTIT: But I understand  
23 your objection to tomorrow, Mr. Herrick, is in not  
24 having time to respond to the rebuttal evidence, and  
25 typically we haven't frequently even allowed any time

1 for response to rebuttals. In most of our hearings we  
2 have had people proceed with rebuttal cross directly  
3 after the direct testimony, so.

4 MR. HERRICK: I understand that. I don't know  
5 how we got to this point. Everything was nice and  
6 agreeable earlier today and there was tacit and verbal  
7 agreement that we would do the cross when it was  
8 convenient, and all of a sudden now convenient means  
9 tomorrow morning at 9:00 a.m.

10 I'm trying to tell the Board that a Cease and  
11 Desist Order against Woods is a very important thing,  
12 and I can't make it tomorrow. I don't know how to be  
13 more clear.

14 I'll do it what the Board says, obviously,  
15 but --

16 MR. O'LAUGHLIN: But John, that's not -- I  
17 mean, earlier today, I'm sorry, but you said earlier  
18 today the reason you couldn't do it tomorrow was because  
19 your witnesses were unavailable. We're done with your  
20 witnesses.

21 MR. HERRICK: No, that's part of what I said.

22 I said two or three things, and one of them was  
23 last Friday I anticipated that the estimated time for  
24 your rebuttal had been given, and based on that  
25 estimation I was very confident that we were going to

1 finish Monday even if we had to go late.

2 Then we come here this morning and find out,  
3 unfortunately -- that's nobody's fault -- but that's not  
4 the case. So I mistakenly didn't objection to Tuesday  
5 last night. I've said that a number times now. I'm not  
6 changing the rules, I'm just telling you where I stand.

7 MR. RUBIN: Hearing Officer Pettit, at this  
8 point I think you've heard everyone's position on  
9 tomorrow. I want to just reiterate a point that was  
10 made earlier today, and that is a timing issue.

11 We've all been aware that this proceeding was  
12 going to occur for at least six, seven months now. At  
13 least the San Luis & Delta-Mendota Water Authority want  
14 to complete this process and frankly provide you with an  
15 opportunity to participate in the deliberations that the  
16 State Water Resources Control Board's going to have.

17 To the extent we do not have a hearing date  
18 tomorrow, I think it's imperative that you compel all of  
19 us to attend or at least conduct the hearing as quickly  
20 as possible so that we can get this resolved, get to the  
21 briefing, closing briefs, and hopefully get to a  
22 decision quickly.

23 CO-HEARING OFFICER PETTIT: Well, as much as  
24 things have changed today, we're still at the same point  
25 where, as I understand it, we don't need Mr. Herrick's

1 witnesses tomorrow, we don't guarantee any preparation  
2 time for rebuttal, and we've already got objections to  
3 going forward with the 1st or the 2nd or the 7th, and so  
4 it doesn't appear that there's any schedule that can  
5 accommodate everybody.

6           And we came in here expecting this morning that  
7 we might get into the rebuttal cross today. So I'm  
8 going to say let's go tomorrow and keep the schedule.

9           MS. GILLICK: Mr. Pettit, just for the record,  
10 I expressed last week when tomorrow's date came up that  
11 I was not available. At that time I said, you know,  
12 it's your choice, you can move forward without me.

13           I haven't had the opportunity to address the  
14 scheduling. I again raise I'm not going to be here, and  
15 given the substantial nature of Mr. Wee's testimony, I  
16 object for that going on. And when the hearings were  
17 set, I did express that.

18           You know, I could also address, you know, we  
19 talk about the administrative process and rebuttal  
20 testimony. Your administrative process is quite  
21 different than a court proceeding, and that is set up so  
22 that testimony is received beforehand so people have the  
23 opportunity to review for that and have the opportunity  
24 to cross-examine.

25           I submit that rebuttal testimony of the nature

1 that was submitted by Mr. Wee, that the same  
2 administrative processes and procedures are appropriate.  
3 And I submit that after an all-day assumption changing  
4 at 5 o'clock, it's highly inappropriate to proceed  
5 tomorrow at 9:00 a.m.

6 I also, just for the record, I'm not the  
7 attorney -- or, you know, John Herrick is the attorney  
8 for Woods Irrigation Company.

9 Although I've had discussions with him in  
10 coordinating some items, I have not been involved in any  
11 of the strategic or preliminary investigation and  
12 presentation of any of the evidence.

13 And I think it's highly prejudicial that you  
14 just are saying we're moving forward with the hearing  
15 when the attorney for the party at issue here says he's  
16 not available and can't make tomorrow. And I just  
17 highly ask you to reconsider that decision.

18 We've already delayed this hearing weeks from  
19 the original date. I don't see how delaying it another  
20 week or two weeks adds anything to a well-reasoned  
21 process that all parties have been ample opportunity to  
22 represent their clients.

23 CHIEF LINDSAY: Mr. Pettit, I just want to add  
24 that I have yet to clear the 7th with the Board clerk.  
25 That date may not be available. It appears to be on the

1 Board's calendar that's on the website, but I have yet  
2 to talk to her.

3 And then a reminder, on the 9th we proceed into  
4 Pak Young Mussi followed by the Truckee River hearing.  
5 So if we don't do it very soon we'll be into August.

6 MS. GILLICK: You know, all the parties here  
7 are also the parties to Mussi and Pak Young. If there's  
8 a desire to move forward with Woods and finish that, I  
9 make the suggestion that on that first day of the  
10 continued Mussi Pak Young hearing, except for the  
11 Hearing Officers and staff -- I realize there's  
12 different staff those days, but I believe the first day  
13 is July 9th. I make the request that we consider  
14 continuing and finishing the Woods hearing on July 9th.

15 There's two additional days already set and  
16 reserved for the Mussi and Pak Young matters. And I  
17 submit that the Mussi and Pak Young hearings could be  
18 pushed off and start at the conclusion of the Woods. I  
19 think that's reasonable, I think that's feasible and a  
20 consideration.

21 MR. HERRICK: Mr. Chairman, maybe I can --  
22 maybe I can resolve this. If I'm going to be fired I'd  
23 rather get fired for scheduling this on Friday than  
24 tomorrow. Neither Dean nor I are available, but we'll  
25 have to move what was scheduled already. But that's my



1 offer, maybe, of meeting halfway or something if we  
2 could do it on Friday.

3 CO-HEARING OFFICER PETTIT: Well, by  
4 coincidence I was just going to ask of the days that  
5 we've have been talking about -- tomorrow, Thursday or  
6 Friday, which is the least objectionable to most people,  
7 because that's what I'm going to go with.

8 MR. HERRICK: Woods would say Friday.

9 CO-HEARING OFFICER PETTIT: I know  
10 Mr. O'Laughlin's opinion, and I share his desire to move  
11 forward tomorrow, but I might be willing to compromise  
12 on Friday. What do other people think about that?

13 MR. RUIZ: From Central and South Delta's  
14 perspective, I can rearrange things to make Friday work.

15 MR. RUBIN: Hearing Officer Pettit, that was  
16 one of the days that I am not available, but I would  
17 prefer that we move forward in my absence. Ms. Kincaid  
18 will be here to represent the San Luis & Delta-Mendota  
19 Water Authority.

20 CO-HEARING OFFICER PETTIT: Okay. And I think  
21 Mr. O'Laughlin is checking with his witness, so let's  
22 see what he comes up with.

23 MS. GILLICK: And just for the record, I'm  
24 currently unavailable on Friday but I will do my best to  
25 change those plans so that I can be available.

1 CO-HEARING OFFICER PETTIT: Thank you.

2 MR. ROSE: Board Member Pettit, we're available  
3 any of those days. I do think that Woods counsel should  
4 certainly be here for whichever day we're going to go  
5 forward just to avoid any improprieties, any problems  
6 with the record.

7 CO-HEARING OFFICER PETTIT: I guess evidence of  
8 my agreement with that is what I just said before, so.

9 MR. RUBIN: Hearing Officer Pettit, as we're  
10 waiting for Mr. O'Laughlin, if we move forward on Friday  
11 do the parties need to make arrangements for a court  
12 reporter since it will be within the July month?

13 CO-HEARING OFFICER PETTIT: You mean for  
14 payment of the court reporter?

15 MR. RUBIN: Yes.

16 CO-HEARING OFFICER PETTIT: You probably  
17 should. I haven't given up yet on us continuing our  
18 responsibility for that, but if push comes shove we may  
19 have no way of paying for it, and that's not something  
20 that is our option, necessarily.

21 MR. HERRICK: We can certainly get it paid.

22 CO-HEARING OFFICER PETTIT: I heard that the  
23 other day, and I'm assuming that's still an offer if  
24 it's necessary. I apologize for the possibility that it  
25 may be necessary. I hate to see that, but that's the

1 way -- that's the situation we're in at the moment.

2 Mr. Powell, you were about to say something?

3 MR. POWELL: Yes. I'm not sure if I'm going to  
4 be able to make the Friday date, but as Mr. Rubin  
5 indicated, I think it's important that we do try and  
6 move this forward as quickly as possible.

7 So I think if Friday is the day that it needs  
8 to be, I think getting that done sooner rather than  
9 later is preferable.

10 CO-HEARING OFFICER PETTIT: Okay.

11 Mr. O'Laughlin, is your witness available?

12 MR. O'LAUGHLIN: I'm available all day on  
13 Friday. Unfortunately, my witness is not. He's made  
14 travel plans for Fourth of July weekend to leave.

15 But -- wait, wait. There is a light at the end  
16 of the tunnel. We can rearrange some of his plans.

17 The thing I would ask is that we start early.  
18 And since there's one, two -- how many attorneys do you  
19 have? Three? Who's the fourth? Three. With them  
20 that's four.

21 So if we start around 8:00 or 8:30 and each  
22 side gets an hour for cross-examination, we can go until  
23 about 12:30. After that it gets tough because we can't  
24 get out of town for him for his family commitment.

25 CO-HEARING OFFICER PETTIT: How early do you

1 want to start? You said 8:00 or 8:30?

2 MR. O'LAUGHLIN: Shoot, I don't care. I can  
3 start at 7:00, but I don't know about everybody else. I  
4 don't care. I can start as early as you want.

5 CO-HEARING OFFICER PETTIT: Well --

6 MR. O'LAUGHLIN: 8:00 is fine for me.

7 CO-HEARING OFFICER PETTIT: You're commuting  
8 some distance, I assume?

9 MR. O'LAUGHLIN: Yeah, I'm coming from Chico so  
10 it's about an hour and a half.

11 CO-HEARING OFFICER PETTIT: And we have some  
12 from the Stockton area, too, so --

13 MR. O'LAUGHLIN: One and a half hour.

14 CO-HEARING OFFICER PETTIT: Why don't we make  
15 it -- I won't comment on that.

16 MR. RUBIN: Mr. Pettit, just -- I want to make  
17 sure that this is -- we're clear here, that if I  
18 understand Mr. O'Laughlin's response correctly, there  
19 needs to be a commitment by the parties that are going  
20 to be cross-examining that they're going to be limited  
21 to one hour.

22 I don't want to be in a situation where  
23 somebody argues that they are going to be prejudiced if  
24 they can't spend more time cross-examining. I think  
25 within your discretion to limit people to an hour, but I

1 was to make sure that if we are moving off of tomorrow,  
2 going to Friday that we're going to be setting up a  
3 circumstance where we're going to be done with Mr. Wee  
4 on Friday.

5 CO-HEARING OFFICER PETTIT: I agree. Given  
6 that we're making a concession and putting this over  
7 till Friday just so everybody can be prepared, I would  
8 ask that everybody agree to show up here at 7:30 on  
9 Friday morning and that you agree that we're going to be  
10 limited to one hour of direct testimony because I fully  
11 intend to enforce that -- or I'm sorry, cross.

12 No objections to that?

13 MR. O'LAUGHLIN: We're agreeable to that and we  
14 will be here at 7:30 in morning and have Mr. Wee  
15 available for cross-examination.

16 CO-HEARING OFFICER PETTIT: Ms. Aue, what's  
17 your --

18 MR. HERRICK: Mr. Chairman, counsel just  
19 pointed to us and laughed.

20 CO-HEARING OFFICER PETTIT: She wants your  
21 commitment in blood that you're all agreeable to that  
22 time limit, and I'm assuming by the lack of comment that  
23 you are.

24 MR. RUBIN: Putting all jokes aside, Hearing  
25 Officer Pettit, if I understand you've made that

1 determination. I think it's incumbent upon any of the  
2 parties to raise an objection to your determination. If  
3 they haven't, then they've acquiesced.

4 MR. HERRICK: Okay, we agree. What is going on  
5 today?

6 MR. RUIZ: For the record, are you saying we're  
7 starting at 7:30 and our deadline is what time? Noon or  
8 12:30? 12:30, right?

9 CO-HEARING OFFICER PETTIT: Let's make it noon.

10 MR. O'LAUGHLIN: Between 12 noon, 12:30,  
11 whatever, we're fine with that. We can do that.

12 MS. GILLICK: Well, an hour of testimony; not  
13 an hour with all the administrative procedural time  
14 periods taken out. An hour of direct questioning.

15 MR. O'LAUGHLIN: One other one.

16 If we come back on Friday, between now and then  
17 it would be helpful if the Hearing Team would think  
18 about how they want to approach the briefing schedule  
19 and give us some thoughts and ideas about what that  
20 briefing schedule looks like and page limits and whole  
21 nine yards about what that looks like so we can talk  
22 about that on Friday.

23 CO-HEARING OFFICER PETTIT: We will attempt to  
24 do that and try and get things lined up.

25 MR. O'LAUGHLIN: Thank you for your time and

1 patience today. I appreciate it.

2 CO-HEARING OFFICER PETTIT: One more question.  
3 Are there any objections that need to be posed now about  
4 the rebuttal exhibits so far?

5 MR. O'LAUGHLIN: We have no objections to any  
6 of the rebuttal exhibits that were offered into  
7 testimony by Woods Irrigation Company or San Joaquin  
8 County.

9 CO-HEARING OFFICER PETTIT: Right. Do you want  
10 to move yours into the record?

11 You're not finished yet.

12 MR. O'LAUGHLIN: I'm not done yet so I'd like  
13 to wait.

14 CO-HEARING OFFICER PETTIT: How about Mr. Rose?  
15 You had some, didn't you? No, you didn't. Okay.

16 Mr. Herrick?

17 MR. HERRICK: If you would like at this time  
18 for us to offer the rebuttal testimony into evidence, I  
19 would do so, certainly.

20 And also excuse me for jumping topics. I was  
21 reminded that there were limited copies of Mr. Wee's  
22 testimony in exhibits, and I was wondering if those have  
23 been supplied and will be posted quickly so other people  
24 can access them? Is that possible? I just don't know.

25 CO-HEARING OFFICER PETTIT: So are you moving

1 your exhibits?

2 MR. HERRICK: Yes. I'm sorry. Yes.

3 MR. O'LAUGHLIN: I have no objection.

4 CO-HEARING OFFICER PETTIT: They're accepted.

5 (Whereupon the Prosecution Team's  
6 exhibits were accepted in evidence.)

7 Ms. Gillick?

8 MS. GILLICK: I'll move my exhibits. There  
9 were two exhibits, San Joaquin County R1 and 2.

10 MR. O'LAUGHLIN: I have no objection.

11 CO-HEARING OFFICER PETTIT: They are in.

12 (Whereupon SJC-R 1 and 2 were accepted in  
13 evidence.)

14 CO-HEARING OFFICER PETTIT: Thank you all for  
15 your patience.

16 MS. GILLICK: Was that confirmation the Wee  
17 testimony exhibits will be posted on the website and  
18 time period? Tomorrow?

19 WATER RESOURCE CONTROL ENGINEER MONA: I'll  
20 submit the request for posting tomorrow and they'll  
21 probably be posted by tomorrow afternoon, Wednesday  
22 morning or by Wednesday. Everything.

23 STAFF ATTORNEY AUE: If anybody parties are  
24 still missing testimony, it might be faster to get it  
25 from the party that submitted it rather than waiting for



1 the Board process for posting. Can you be sure that,  
2 you know, everybody gets a copy?

3 MR. O'LAUGHLIN: Sorry about the confusion  
4 here. I don't get this question because we gave them  
5 all copies of all the testimony by Mr. Wee. If they  
6 want to make copies on their side, have at it.

7 My understanding is the State has it, Woods has  
8 it, South Delta has it and Central Delta has it. So if  
9 they need their other witnesses or people to get it,  
10 make copies. I'm not going to do it.

11 STAFF ATTORNEY AUE: Is that true that  
12 everybody has at least one copy to work from? Okay,  
13 great.

14 CO-HEARING OFFICER PETTIT: Okay. We're done  
15 for the day. Thank you all.

16 \* \* \*

17 (Thereupon the WATER RESOURCES CONTROL  
18 BOARD meeting was continued at 4:56 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 14, 2010.

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LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196

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