

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 V  
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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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

2 --o0o--

3 CO-HEARING OFFICER PETTIT: Good morning.

4 We're here to today to continue the Woods CDO  
5 hearing which began on June 7th and which was continued  
6 on June 24th, 25th, and 28th of 2010.

7 This hearing is being continued in accordance  
8 with the notice dated June 29, 2010.

9 I'm State Board Member Walt Pettit, co-chair of  
10 this hearing, and I'm very glad to see that my co-chair  
11 and our Vice Chairman of the Board, Ms. Spivy-Weber, is  
12 back with us in person as opposed to electronically.

13 Welcome back, Fran.

14 CO-HEARING OFFICER SPIVY-WEBER: Thank you.

15 CO-HEARING OFFICER PETTIT: And Ernie Mona, our  
16 staff engineer, and Marianna Aue, our staff counsel,  
17 with us again.

18 As far as the evacuation procedure, I think  
19 everyone in the room had first-hand practice last Friday  
20 with that. I'll still have to summarize the  
21 requirements.

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

25 CO-HEARING OFFICER PETTIT: As far as

1 appearances go, Mr. Rubin is not here today I see. We  
2 expected that. Ms. Kincaid is here to represent San  
3 Luis & Delta-Mendota Water as I understand it. Correct  
4 Ms. Kincaid?

5 MS. KINCAID: That is correct.

6 CO-HEARING OFFICER PETTIT: As far as I can  
7 tell, I don't think there are any other changes in the  
8 representatives of the parties.

9 Mr. Powell, I see, is absent also. Do you  
10 expect him here today, Ms. Kincaid?

11 MS. KINCAID: We do not.

12 CO-HEARING OFFICER PETTIT: Thank you.

13 As was agreed in scheduling this hearing for a  
14 day in which Mr. Wee is available only till  
15 approximately 12:30, cross-examination of the rebuttal  
16 witnesses will be limited to one hour week.

17 If the parties each take a full hour for  
18 rebuttal cross, this leaves a very tight time line.  
19 Please keep this time line in mind and try and avoid  
20 repetition as much as possible.

21 Before we begin, are there any other procedural  
22 issues that need to be addressed that cannot wait until  
23 Mr. Wee is completed with his appearance?

24 MR. O'LAUGHLIN: Mr. Pettit, you requested  
25 blow-ups of maps. We'll wait until a break and then



1 make those available to the other parties and your staff  
2 that you requested from last week, and then we'll get  
3 them identified after Mr. Wee is done and mark them into  
4 the record.

5 CO-HEARING OFFICER PETTIT: Thank you.

6 We completed all the direct rebuttal testimony  
7 and cross-examination of all rebuttal witnesses except  
8 for the cross of Mr. Wee.

9 The order -- I see Mr. Herrick is up here, so  
10 are we taking you first, Mr. Herrick?

11 MR. HERRICK: Yes.

12 CO-HEARING OFFICER PETTIT: Okay.

13 If any additional exhibits from the rebuttal  
14 process need to be accepted into the record, we can  
15 handle those after Mr. Wee is off the stand and free.

16 So I believe we're ready to start, unless there  
17 are any other comments from anybody or any procedural  
18 issues we have to address.

19 MR. RUIZ: Just as a matter of order, we're  
20 trying to obviously coordinate our cross-examination.

21 The County and myself on behalf of the Agencies  
22 have far less -- far less than Mr. Herrick on behalf of  
23 Woods is probably going to have.

24 So if we get to point where, you know, we'll  
25 cede our time to him, and I'm sure there would be a

1 break in between there, but I just wanted to give you  
2 some notice of that.

3 CO-HEARING OFFICER PETTIT: Okay. I appreciate  
4 that. And we can probably accommodate that.

5 Bear in mind I do want to make sure the total  
6 comes out with what we anticipated so that Mr. Wee can  
7 be released to make his schedule.

8 MR. RUIZ: Absolutely. Understand that.

9 CO-HEARING OFFICER PETTIT: Thank you, sir.  
10 Mr. Herrick, I guess we're ready to proceed.

11 MR. HERRICK: Thank you, Mr. Chairman. I'd  
12 like to reiterate what Mr. Ruiz said. I don't see us  
13 going for the full three hours anyway, so I think we'll  
14 be fine on the time schedule whether we're repetitive or  
15 not. Thank you.

16 --o0o--

17 STEPHEN R. WEE

18 Previously called by MODESTO IRRIGATION DISTRICT

19 CROSS-EXAMINATION BY MR. HERRICK

20 --o0o--

21 MR. HERRICK: Mr. Wee, going through your  
22 testimony, I'm going to try to do it sequentially as  
23 following the testimony itself; but if I stray a bit,  
24 you will please forgive me.

25 Your first discussion deals with couple of

1 assessor's maps or a number of assessor's maps  
2 referenced by other witnesses, and the first one is the  
3 1876 assessor's map from San Joaquin County.

4 Are you familiar with that map?

5 MR. WEE: Yes, I am.

6 MR. HERRICK: And there was noted on it a blue  
7 line extending from Burns Cutoff down to or approaching  
8 Middle River, correct?

9 MR. WEE: That's correct.

10 MR. HERRICK: And the data on an 1876  
11 assessor's map is either from 1875 or some portion of  
12 1876; would that be correct?

13 MR. WEE: The assessor by state law was to  
14 collect that information in March of -- it would have  
15 been March of 1876 when he collected his information, so  
16 it would have covered parts of both years.

17 MR. HERRICK: By that, I'm just saying --

18 CO-HEARING OFFICER PETTIT: Excuse me, Mr.  
19 Herrick. Can you cite the exhibit number that you're  
20 referring to, please.

21 MR. HERRICK: I'm sorry. I should have done  
22 that first.

23 It's my understanding that Mr. Wee's testimony  
24 is MSS-R-14A. Then within or attached to that are  
25 numbered exhibits which are just subparts of that 14A;

1 is that correct? Mr. O'Laughlin?

2 MR. O'LAUGHLIN: Oh. Yeah, I'm sorry. I don't  
3 have the exhibit number.

4 MS. KINCAID: It's 12.

5 MR. HERRICK: I got it. So with that numbering  
6 then, the assessor's map from 1876 is Exhibit No. 12;  
7 correct, Mr. Wee?

8 MR. WEE: That's correct.

9 MR. HERRICK: And so, again without jumping  
10 ahead, this map contains data prior to the completion of  
11 the work on the levees and Duck Slough referenced later  
12 in your testimony; is that correct?

13 MR. WEE: The levee was substantially completed  
14 by that time. There was just a small gap by the mouth  
15 of Duck Slough.

16 MR. HERRICK: Right. So this line, although  
17 you don't believe it's a watercourse, it does roughly  
18 correspond to whatever portion of Duck Slough you  
19 believe still existed in March of 1876, correct?

20 MR. WEE: No. It corresponds to the Cross  
21 Levee that was built in 1875.

22 MR. HERRICK: Well, but it -- the Duck Slough  
23 that you've identified off of Burns Cutoff runs somewhat  
24 along or parallel to that, correct?

25 MR. WEE: Just a small portion of the slough,

1 just about a mile or so up in that upper -- the upper  
2 eastern section.

3 MR. HERRICK: So you think that the -- and I  
4 don't mean to be argumentative -- you think that the  
5 blue line snaking across there is an indication of a  
6 levee?

7 MR. WEE: Absolutely.

8 MR. HERRICK: Okay. Now the next map, I  
9 believe -- it's not next in order of your testimony, but  
10 later on -- is the 1881 map which is Exhibit -- it's in  
11 Exhibit 16, and it's the one, two -- third page which is  
12 the one, two, three -- fourth map; is that correct?

13 MR. WEE: Are you referring to the map marked  
14 1881-82 on the piece of paper that's --

15 MR. HERRICK: Yes.

16 MR. WEE: -- covering part of the map? Okay.

17 MR. HERRICK: And I don't see in your testimony  
18 where you give an opinion as to what the multiple lines  
19 are. I know you say that that represents that same High  
20 Ridge Levee feature or Cross Levee feature, but I'm not  
21 sure -- do you have an opinion as to why that feature is  
22 represented by -- and correct me; I'm just looking at  
23 this. It's kind of difficult.

24 It looks like there are a solid line and two  
25 dotted lines. Sometimes the solid line touches one or

1 the other of the dotted lines. Anyway, it looks like  
2 there's three lines, doesn't it?

3 MR. WEE: Yes, I see them.

4 MR. HERRICK: Okay. My question to you was if  
5 you have an opinion as to what the three lines indicate?

6 MR. WEE: I think that that indicates the levee  
7 is what the two red lines are, definitely. And in fact,  
8 the map is labeled "levee" I think multiple times along  
9 that line in this map.

10 MR. HERRICK: That's correct. But again the  
11 question was: Do you have an opinion as to what the  
12 three lines indicate?

13 MR. WEE: I don't know -- if I were to hazard a  
14 guess at the blue line, it would be speculation. In  
15 most of these maps, blue lines mean boundaries between  
16 school districts.

17 MR. HERRICK: Okay.

18 And then for purposes later, I just want to go  
19 to the follow-on in that collection under Exhibit 16.  
20 It's a number of the assessor's maps for Township 1  
21 North, Range 5 East.

22 And I believe starting with the 1893 map -- and  
23 again, as you said, the dates are generally indicated by  
24 Post-it stickers in one of the corners with the date on  
25 them. Can you find the one that says 1883? Excuse me,

1 1893.

2 MR. O'LAUGHLIN: 1893?

3 MR. HERRICK: '93, I'm sorry.

4 MR. O'LAUGHLIN: Okay.

5 MR. WEE: I think I've located it.

6 MR. HERRICK: And how should I describe this?  
7 Down off Middle River, we've got the line snaking up to  
8 Burns Cutoff which is identified on the map as Cross  
9 Levee and which the discussions regarding Duck Slough or  
10 other features have revolved around, correct?

11 MR. WEE: That's correct.

12 MR. HERRICK: And then to the west of that  
13 there's a, for -- let's see. One, two -- about three  
14 and a half, four sections. Excuse me. Quarter -- those  
15 are quarter sections. About two sections. There's a  
16 line that runs north. Do you see that?

17 MR. WEE: No, I'm not with you on that.

18 MR. HERRICK: Okay.

19 MR. WEE: Where --

20 MR. HERRICK: If you'll find -- if you'll  
21 locate Section 33, the center of that, which is at the  
22 bottom of the page, and it includes a portion of Middle  
23 River.

24 MR. WEE: Yes.

25 MR. HERRICK: And in the southwest quarter of

1 Section 33, there's a line running northward from Middle  
2 River. Do you see that?

3 MR. WEE: Yes, I do.

4 MR. HERRICK: And in Section 28, which is north  
5 of that, that line is identified as Honker Bay Levee, is  
6 it not?

7 MR. WEE: That's correct.

8 MR. HERRICK: Okay. And on following maps,  
9 especially 1897 and -- excuse me; I said that wrong.  
10 1897. Sorry, I did -- 1899. That levee is identified  
11 as the Honker Bay Levee or the Pocket or Honker Levee,  
12 correct?

13 MR. WEE: Which map did you -- 1897 and what?

14 MR. HERRICK: 1897, 1899, 1900.

15 MR. WEE: Yes, it is so identified.

16 MR. HERRICK: Thank you.

17 Next you refer to a number of, as you call  
18 them, pre-reclamation maps. And the first is your  
19 Exhibit 17 which includes A, B, and C. Can you turn to  
20 those please?

21 MR. WEE: Yes.

22 MR. HERRICK: And 17 is titled General Chart.  
23 It's a long title. Farallones Entrance to the San  
24 Francisco Bays -- to the Bay of San Francisco Bays of  
25 San Francisco and San Pablo, Straits of Carquinez, and



1 Suisun Bay and the Sacramento-San Joaquin Rivers, et  
2 cetera. It's dated 1850. You're on that page?

3 MR. WEE: Yes, I am.

4 MR. HERRICK: And from that map, you note that  
5 a feature which might be called Duck Slough comes off of  
6 Burns Cutoff and extends in a southerly direction until  
7 branching into three and then a fourth little offshoot,  
8 correct?

9 MR. WEE: Yes.

10 MR. HERRICK: Now do you know how far that  
11 feature extends into Middle Roberts?

12 MR. WEE: Well, as far as the map shows. I was  
13 wasn't there.

14 MR. HERRICK: I'm asking you just for the  
15 interpretation of the map.

16 MR. WEE: How far in terms of --

17 MR. HERRICK: Do you have an estimate how far  
18 that feature goes into the Middle Roberts district? The  
19 reason I ask that question is that's the area that we're  
20 talking about Woods Irrigation Company generally.

21 MR. WEE: I don't know. I don't have the scale  
22 of this map front of me. Certainly this is blown up, so  
23 it would be difficult to estimate.

24 MR. HERRICK: Do you have opinion as to whether  
25 that feature extends down to the point where the current

1 Woods Irrigation District intake is?

2 MR. WEE: It does not.

3 MR. HERRICK: Okay. And why do you say that?

4 MR. WEE: Well, the -- from the way I read this  
5 map, the current Woods intake would be substantially to  
6 the west of the trajectory of this slough.

7 MR. HERRICK: So does it extend in a southerly  
8 direction as far as the Woods intake, whether it goes to  
9 the current intake location?

10 MR. WEE: It doesn't go anywhere near the  
11 current intake location.

12 MR. HERRICK: No. You're not understanding my  
13 question.

14 This feature -- we'll just call it a possible  
15 Duck Slough or Duck Slough -- extends south. I'm not  
16 asking you if it extends to the current location of the  
17 Woods Irrigation District intake.

18 I'm asking you if it extends as far south as  
19 where you would estimate that current location to be.

20 MR. HERRICK: Wait. I'm confused by that  
21 question. The -- and I don't mean -- I want to get the  
22 question right. Are you talking about where the intake  
23 is currently located?

24 MR. HERRICK: Yes.

25 MR. O'LAUGHLIN: On Middle Roberts Island?

1 MR. HERRICK: Yes.

2 MR. O'LAUGHLIN: On Middle River?

3 MR. HERRICK: Yes. In other words, they're  
4 both on similar latitude -- excuse me. They're both on  
5 a latitude. I'm not trying to get into calling out  
6 longitude and latitude numbers.

7 My question is not if it goes to the intake  
8 location, but if it goes as far as south as the intake  
9 location is.

10 MR. O'LAUGHLIN: Oh, on a latitude?

11 MR. HERRICK: Yes.

12 MR. O'LAUGHLIN: Oh, okay.

13 MR. WEE: So if we're to assume that this map  
14 is an accurate projection of where the river was and  
15 where the slough was, if you drew a line from the intake  
16 as it would be on Middle River in this particular map,  
17 and you drew a line east-west through Duck Slough, it  
18 would intersect the lower portion of what's shown as  
19 what we're calling Duck Slough on this map.

20 MR. HERRICK: So -- and I'm not sure I  
21 understood that.

22 So if you drew a line from the current location  
23 of the Woods Irrigation Company main intake, east-west  
24 line, you think that line would then intersect some of  
25 these features on this representation of Duck Slough?

1 MR. WEE: Yes.

2 MR. HERRICK: Okay. And do you know whether or  
3 not any of those features of this representation of Duck  
4 Slough correspond to any of the irrigation or drainage  
5 channels of the Woods Irrigation District as of say  
6 1914?

7 MR. WEE: As depicted on this map, I couldn't  
8 tell you.

9 MR. HERRICK: Now are you familiar with  
10 whatever rules or standards surveyors in 1850 would  
11 employ in drawing a map like this?

12 MR. WEE: I don't know anything about the  
13 methods that Cadwalader Ringgold used in conducting this  
14 survey.

15 MR. HERRICK: Would your answer be the same  
16 with regard to what features the map drawer would  
17 include or not include?

18 MR. WEE: Yeah. I've never seen any anything  
19 in his reports that would indicate -- that I can  
20 recall -- that would indicate what standards he used.

21 MR. HERRICK: Okay. And I just note that I see  
22 this map doesn't have -- are you familiar with Black  
23 Slough on Lower Roberts Island?

24 MR. WEE: Yes, I am.

25 MR. HERRICK: And this map doesn't appear to

1 contain that, does it?

2 MR. WEE: Well, it wouldn't appear on the large  
3 blow-up page that we're on. It's too far to the north.  
4 I can't see it on the full map.

5 MR. HERRICK: And on any of these sloughs that  
6 are -- or, excuse me, channels or whatever they are --  
7 these channels or sloughs that are represented, we don't  
8 know -- or do we know whether or not the extent of the  
9 lines is the complete extent of the channel itself?

10 In other words, could there be other smaller  
11 features, even smaller features that feed into these  
12 dendritic channels?

13 MR. WEE: I don't know the answer to that.

14 MR. HERRICK: Okay. And if this is a swamp and  
15 overflow land, whether or not there's a channel marked  
16 here on this map, that land at some times would drain  
17 somewhere or could drain somewhere, right?

18 MR. WEE: I don't understand your question.

19 MR. HERRICK: Well, given that we don't really  
20 know if there are other channels that weren't drawn in  
21 here, wouldn't it be reasonable to assume that there are  
22 other channels in the interior of this swamp and  
23 overflow land, not just the two that are -- or three  
24 that are noted here on the blow-up?

25 MR. WEE: I wouldn't necessarily -- I wouldn't

1     assume that, no.

2             MR. HERRICK:   Okay.   So you think that then the  
3     what looks like Duck Slough and what looks like Whiskey  
4     Slough in the upper left and the little slough going to  
5     what we guess is Willow Lake, those are the only three  
6     sloughs on the -- what is it -- 56,000 acres of this  
7     swamp and overflow land?

8             MR. WEE:    I just said I wouldn't assume there  
9     are others based upon the evidence in this map.   I don't  
10    know.

11            MR. HERRICK:   I'm not -- but you have an  
12    opinion on some of these things -- and if you don't,  
13    that's fine -- but I was asking if in your opinion you  
14    thought there were other channels in there that weren't  
15    marked.

16            Would you assume that there are other channels  
17    that aren't marked?

18            MR. O'LAUGHLIN:   That was asked and answered.  
19    I mean he said no.   He made no assumption.

20            MR. HERRICK:    Mr. Wee?

21            MR. O'LAUGHLIN:   Well, no.   I'm going to  
22    object.   He already --

23            CO-HEARING OFFICER PETTIT:   I think he has  
24    answered that question, Mr. Herrick.

25            MR. O'LAUGHLIN:   Answered it twice.

1 MR. HERRICK: Your next map is Exhibit 18 A, B,  
2 and C. And I think 18B has an 18C on it instead. Is  
3 that correct?

4 MR. O'LAUGHLIN: Yeah, they were mismarked.

5 MR. HERRICK: Has that been corrected before?  
6 I don't remember that.

7 MR. O'LAUGHLIN: Yes.

8 MR. HERRICK: Thank you.

9 And this map is an 1865 map titled, I'll say,  
10 Tideland Reclamation Company Directors, and it's  
11 compiled by J.T. Gibbes.

12 MR. WEE: The map --

13 MR. HERRICK: Are you --

14 MR. WEE: The map is not 1865, it's 1869.

15 MR. HERRICK: I'm sorry. I misspoke. 1869?

16 MR. WEE: That's correct.

17 MR. HERRICK: Sorry.

18 And this map again has a feature that we'll  
19 refer to as Duck Slough or in the area of Duck Slough  
20 extending from Rough and Ready Island. Do you see that  
21 feature?

22 MR. WEE: I do.

23 MR. HERRICK: And per your testimony, it goes  
24 first in a southwesterly direction then turns in a  
25 southeasterly direction; is that correct?

1 MR. WEE: That is correct.

2 MR. HERRICK: And the map -- the previous map  
3 we talked about, especially the blow-up in 18C, is  
4 similar to that but not the same; is that correct?

5 MR. WEE: In terms of its trajectory and  
6 relative length, it looks very similar.

7 MR. HERRICK: It's similar, but the 17C blow-up  
8 shows the feature off of Burns Cutoff going mostly  
9 south, not southwest like the one on 18C; is that  
10 correct?

11 MR. WEE: Like the one on -- oh. Could you  
12 ask -- say that again?

13 MR. HERRICK: Yes. The feature on 17C appears  
14 to come off of Burns Cutoff in a southeasterly  
15 direction, whereas the feature on 18C seems to come off  
16 in more of a southwesterly direction.

17 MR. WEE: Well, I think that they're both  
18 southwesterly. But I would agree with you that the  
19 angle of the 1869 map is a little more to the west.

20 MR. HERRICK: And I'm just trying to point out  
21 the differences. Do you take this to mean these are two  
22 different features or the same feature?

23 MR. WEE: No, I believe this is probably the  
24 same feature. The maps are what, 19 years apart. So  
25 things can change.



1           MR. HERRICK:  And the 18C map, we have section  
2 numbers on that so we can see how far that extends  
3 south, correct?

4           MR. WEE:  That is correct.

5           MR. HERRICK:  And it's -- it does not extend as  
6 far south as the current location of the Woods  
7 Irrigation Company intake, correct?

8           MR. WEE:  That's correct.

9           MR. HERRICK:  And the 18C map does not appear  
10 to have the Whiskey Slough feature going as far into  
11 Roberts Island as the 17C map; is that correct?

12           MR. WEE:  Yeah.  For whatever reason, it looks  
13 like that they -- at the township line, it stops.

14           MR. HERRICK:  Okay.  And the 18C map doesn't  
15 have any Willow Lake Slough or Willow Lake on it,  
16 correct?

17           MR. WEE:  That's correct.

18           MR. HERRICK:  And would you agree that we  
19 simply don't really know between 1850 and 1869 whether  
20 things have changed significantly, changed a little, or  
21 the cartographers simply didn't include all the same  
22 things.  Would that be a fair statement?

23           MR. WEE:  I don't know.  There are other  
24 variables that could be considered.

25           MR. HERRICK:  Yes, I -- I thought that was in

1 my question.

2 MR. WEE: Yes.

3 MR. HERRICK: We don't know.

4 MR. WEE: I -- could you ask that question  
5 again?

6 MR. HERRICK: The differences between the 1850  
7 map and the 1869 map could be due to significant changes  
8 or small changes in the features or lack of consistency  
9 between the people doing maps; we simply don't know why  
10 there are those differences, correct?

11 MR. WEE: In some cases, I think that's a  
12 correct statement.

13 MR. HERRICK: And on the 18C map, as I asked  
14 for the prior map, do you know whether or not the  
15 features of this representation of Duck Slough match up  
16 with any of the irrigation or drainage features in the  
17 Woods Irrigation Company, let's say as of 1914?

18 CHIEF LINDSAY: Excuse me. When you are  
19 referring to the 18C map, are you expecting the blow-up?

20 MR. HERRICK: I'm referring to that, but I'm  
21 not --

22 CHIEF LINDSAY: Okay. I'm just making sure  
23 because 18B is the blow-up; and your series of  
24 questions, I think you've been --

25 MR. O'LAUGHLIN: It doesn't matter. It doesn't

1 matter for the record. You're fine, John.

2 CHIEF LINDSAY: Okay.

3 MR. O'LAUGHLIN: We got it.

4 MR. HERRICK: Okay. Then your third map --

5 MR. O'LAUGHLIN: Well, he'll answer your  
6 question.

7 MR. HERRICK: Sure.

8 MR. WEE: These channels as depicted do not  
9 line up with the channels as shown in the Woods  
10 Irrigation maps that I've seen.

11 MR. HERRICK: They do not. So you've done some  
12 sort of comparison or overlay to see if that matches any  
13 of those markings on what we've referred to as that  
14 black map? Remember, that was one of the early maps.

15 MR. WEE: No. Your drawings of the way you're  
16 depicting the sloughs on your maps run all the way to  
17 Middle River, and these clearly don't.

18 MR. HERRICK: I'm sorry. My question didn't  
19 mean to suggest exact -- an exact match but whether or  
20 not they connected to those features or seemed to match  
21 portions of them. I'm sorry. Maybe I said that wrong.

22 Let me start over.

23 Do you know whether or not the features on the  
24 Duck Slough on Exhibit 18 match up with any portions of  
25 the Woods Irrigation Company canals or irrigation

1 ditches or drainage ditches as of, say, 1914?

2 MR. WEE: I don't know. I don't know if some  
3 portion may. I didn't do that comparison.

4 MR. HERRICK: Then your third map -- make sure  
5 I get this right -- is Exhibit 19, and it includes a 19  
6 A and B, I believe. And it's entitled -- let's see if I  
7 can read this.

8 Two Bodies of Land Notoriously Swampy and  
9 Overflowed. There's other stuff in the title. It's  
10 dated you say 1872, correct?

11 MR. WEE: That's correct.

12 MR. HERRICK: And again, this has some sort of  
13 line coming off of Burns Cutoff, initially extending in  
14 a southwesterly direction, then turning southeast with a  
15 couple of forks down below somewhere, correct?

16 MR. WEE: Yes.

17 MR. HERRICK: And again, this map is similar to  
18 but not the exact same representation of the feature on  
19 maps -- map 18; is that correct?

20 MR. WEE: It's very similar.

21 MR. HERRICK: And this map also doesn't have --  
22 appear to have Whiskey Slough extending as far as the  
23 map in 17; is that correct?

24 MR. WEE: I couldn't conclude that from looking  
25 at these two maps.

1           MR. HERRICK:  And then one appears to have a  
2 Fifteen Mile Slough coming off the San Joaquin River but  
3 not a Black Slough; is that correct?

4           MR. WEE:  No, no.  I think this one shows Black  
5 Slough.  It's not labeled.

6           MR. HERRICK:  Other than that one that says  
7 Fifteen Mile Slough?

8           MR. WEE:  I don't see Fifteen Mile Slough.  Let  
9 me --

10          MR. HERRICK:  If you go to the blow-up you've  
11 provided, in the upper left-hand corner, a feature  
12 running south from the San Joaquin River.

13          MR. WEE:  That -- the name of the slough may  
14 have changed.  That is pretty close to where I  
15 understand Black Slough is, so.

16          MR. HERRICK:  So that might be the same  
17 feature?

18          MR. WEE:  It could be.

19          MR. HERRICK:  Now as of 1872, would you expect  
20 there to be other smaller sloughs within the Roberts --  
21 I'll say Middle and Lower Roberts Island area than are  
22 depicted on this 1872 map?

23          MR. WEE:  Not necessarily.  We -- just a few  
24 years later, Gibbes is out there, and he observes two  
25 sloughs.  But one of those had been dammed, so -- the

1 other one was a small slough. So I don't know why they  
2 don't appear on this map or why -- they could have been  
3 dammed off at that time. I don't know.

4 MR. HERRICK: But in 1872, most of Middle and  
5 Lower Roberts Island is not quite fully leveed off; is  
6 that correct?

7 MR. WEE: That's correct.

8 MR. HERRICK: So the original features, if  
9 any -- many of the original features, if any, we would  
10 expect to still be there?

11 MR. WEE: We know that some of the sloughs had  
12 been dammed by that -- by 1872. So which ones, I've  
13 never seen a list.

14 MR. HERRICK: Mr. Lindsay, could you put up  
15 Exhibit 43B? Excuse me. Let's do 43C.

16 And this is 43C from your MSS-R-14A

17 MR. WEE: Correct.

18 MR. O'LAUGHLIN: State engineering map?

19 MR. HERRICK: Yeah.

20 MR. O'LAUGHLIN: Okay.

21 MR. HERRICK: And 43C is the blow-up page from  
22 the California State Engineering Department  
23 Topographical and Irrigation Map of the San Joaquin  
24 Valley. Is that correct?

25 MR. WEE: That's correct.

1           MR. HERRICK:  It looks like the State  
2 Engineer's name is William Hammond Hall, correct?

3           MR. WEE:  Yes, his name is on the legend.

4           MR. HERRICK:  And on the overhead we have 43C,  
5 which is the blow-up of the map, showing generally -- it  
6 shows a larger area, but showing generally the area of  
7 concern which is the Middle Roberts, although a much  
8 larger area is there.

9           And this feature does have a line coming off of  
10 Burns Cutoff going in a southwesterly direction; do you  
11 see that?

12          MR. WEE:  Yes, I do.

13          MR. HERRICK:  And the upper portion of that --  
14 and by upper, I mean the part touching Burns Cutoff is  
15 labeled as Duck Slough SL, correct?

16          MR. WEE:  That's correct.

17          MR. HERRICK:  And one of the points you make in  
18 your testimony is that by using the abbreviated SL  
19 instead of spelling out the word "slough," it's  
20 indication of the length of the feature; is that  
21 correct?

22          MR. WEE:  I said it could -- I think I said  
23 that it could indicate the intent of the cartographer to  
24 limit his description of Duck Slough to that small  
25 portion.

1           The opportunity was there to write Duck Slough  
2 out and extend it more over the length of the feature  
3 that's shown there as he did on Whiskey Slough and  
4 Latham Slough.

5           Any of the longer sloughs that are depicted  
6 here, he writes them all out and sort of tries to cover  
7 the length of the slough, more or less.

8           This is a representation that's very much  
9 different than that, and so I said that it could be that  
10 he was trying to label it in such a way to indicate that  
11 fact.

12           MR. HERRICK:   Okay.

13           MR. WEE:   And that is consistent with all the  
14 other evidence that I have.

15           MR. HERRICK:   And this map, contrary to the  
16 previous maps that we just discussed, this has the line  
17 which is labeled Duck SL at the upper end -- and by  
18 upper, I mean at Burns Cutoff -- it has that line  
19 extending down to Section 27 of Township 1 North, Range  
20 6 East, correct?

21           MR. WEE:   That's correct.

22           MR. HERRICK:   And you have concluded that  
23 that's a -- well, I'm asking you.   Do you conclude that  
24 that's some sort of mistake or error on the part of the  
25 State Engineer in this map?



1           MR. WEE:  If I were to say there's an error  
2 here, it's in the fact that the levee doesn't go all the  
3 way down to Middle River.

4           There were floods during this period, but I  
5 don't know if he -- if that portion of the levee was  
6 destroyed or -- I mean I don't have an explanation for  
7 it.  It just -- it's curious to me that it doesn't go  
8 all the way down to Middle River.

9           MR. HERRICK:  And you're assuming then that the  
10 line -- part of the line is Duck Slough and part of it  
11 is a levee?  Or are you assuming that the line is a  
12 levee, and the Duck Slough is just a reference to a  
13 feature that's not drawn?

14          MR. WEE:  I believe -- all the evidence that I  
15 have would lead me to believe that Duck Slough is a  
16 feature that is limited to that section that runs from  
17 Burns Slough (sic) through section 13 and that the  
18 remainder of that line would be the High Ridge Levee.

19          MR. HERRICK:  Would you expect that to be the  
20 method by which the State Engineer would indicate  
21 features like that using the same line to first  
22 represent Duck Slough and then to represent a levee?

23                 Or would you expect the State Engineer to  
24 indicate two different features with two different  
25 markings?

1           MR. WEE:  At a map of this scale, I -- I don't  
2 know that he would.

3           MR. HERRICK:  The title of the map is not just  
4 Topography of the San Joaquin Valley, but also it says  
5 Irrigation Map; is that correct?

6           MR. WEE:  That's correct.

7           MR. HERRICK:  And is it possible that in  
8 depicting this line the State Engineer was indicating  
9 some sort of irrigation use of a channel which extended  
10 to Burns Cutoff?

11          MR. WEE:  I wouldn't conclude that.  It's  
12 inconsistent with all the other evidence that I have.

13          MR. HERRICK:  And you have evidence of  
14 irrigation canals in -- what's the date of this map --  
15 1886, in that area?

16          MR. WEE:  Absolutely not.

17          MR. HERRICK:  So how do you conclude that it  
18 can't be an irrigation canal if you don't have any maps  
19 or representations of irrigation canals in 1886?

20          MR. WEE:  I think what I said is that I  
21 wouldn't conclude that it is.

22          MR. HERRICK:  Now, are you familiar with the  
23 Cross Levee separating Upper Roberts from Middle  
24 Roberts?

25          MR. WEE:  Yes.

1           MR. HERRICK:  And that levee is -- is it  
2 indicated on this map?  I see a discoloration near where  
3 it would be, but is that levee indicated on this map?

4           MR. WEE:  No.

5           MR. HERRICK:  Generally speaking, that Cross  
6 Levee separating Upper and Roberts would extend from  
7 Middle River to the San Joaquin River generally through  
8 Sections 1 of Township 1 South, Range 5 East through  
9 Sections 6 and 5 of Township 1 South, Range 6 East; is  
10 that correct?

11           MR. WEE:  Well, excuse me, but I'm not sure  
12 that at the time this map was made whether the island  
13 had been broken up into what was the three sections.

14           During this early period, people referred to  
15 Upper Roberts Island as ending at where the Cross Levee  
16 is where Duck Slough is shown, and Lower Roberts Island  
17 being everything above that.

18           It was only when I think after the reclamation  
19 districts were formed which would be 1889 into the 1890s  
20 that we divide the island up into three parts.

21           MR. HERRICK:  That's fine.  I'm not trying to  
22 trick you on when it was built.  I'm just trying to make  
23 the point that, my review of this map, I don't see any  
24 other lines designating ridges or levees but that you do  
25 conclude that the line under the Duck SL notation is

1 some sort of ridge or levee; is that correct?

2 MR. WEE: That's what I believe it is.

3 MR. HERRICK: Do you see any other lines that  
4 indicate ridges or levees on this map?

5 MR. WEE: I think that -- well, the other  
6 levees that I know of that would appear on the map at  
7 this time would be next to the rivers, and on this map I  
8 don't see them indicated.

9 MR. HERRICK: Okay. Your next comment in your  
10 testimony deals with the -- excuse me -- is Exhibit 20,  
11 and that's one of the pages out of the Settlement  
12 Geography of the Delta. Do you have that exhibit in  
13 front of you?

14 MR. WEE: I do.

15 MR. HERRICK: And the quote that's been used by  
16 Mr. Neudeck and then that you repeat here deals with the  
17 author's description of the Samson dredge and its, I'll  
18 just say, first job quote/unquote; is that correct?

19 MR. WEE: Yes.

20 MR. HERRICK: And the quote is generally that  
21 the dredge quote:

22 Could not make headway unless a channel

23 30 by 7 feet was dug.

24 Is that correct?

25 MR. WEE: Yes.

1           MR. HERRICK: Your testimony seems to suggest  
2 that that is incorrect in that you note that this is a  
3 description of dredging or dredging practices rather  
4 than a description of Roberts Island levee construction.  
5 Is that a fair statement?

6           MR. WEE: What I said was that this section of  
7 the dissertation, the subject matter is the evolution of  
8 dredging technology.

9           This statement that the water was low so that  
10 Samson couldn't make headway, he says, unless a channel  
11 30 feet by 7 feet was dug, that means that -- we know  
12 from the newspaper evidence that the Samson had trouble  
13 getting up Burns Slough (sic) and it actually had to dig  
14 a channel deep enough so that it could move up the  
15 slough.

16           And along the way, it was building a levee on  
17 the, would be, the left bank of the slough but that it  
18 was totally inefficient because it had to dig so much  
19 more material than it could utilize in building the  
20 levee.

21           MR. HERRICK: I understand. I think my  
22 question was aimed more at whether or not you thought  
23 that this was an incorrect quotation of the Samson  
24 dredge's need to dig a channel as it progressed.

25           MR. WEE: No.

1 MR. O'LAUGHLIN: Wait. Progressed where?

2 MR. HERRICK: Progressed on its first job here.

3 MR. O'LAUGHLIN: Okay.

4 MR. WEE: My -- I didn't say that Mr. Thompson  
5 was inaccurate in his statement.

6 I said that Mr. Neudeck, in interpreting the  
7 statement to say that the Samson cut a channel along  
8 Duck Slough to Middle River, was incorrect.

9 MR. HERRICK: Okay. Well, we can argue later  
10 about what Mr. Neudeck said. But you would agree that  
11 the Samson dredge did go some distance up Duck Slough;  
12 is that correct?

13 MR. WEE: It worked, as I understand it, around  
14 the mouth of Duck Slough, yes.

15 MR. HERRICK: You say mouth. Do you have an  
16 opinion as to whether or not it went southwest, I'll  
17 call it, up Duck Slough or not?

18 MR. WEE: It was in Duck Slough for a very  
19 short period of time. The rivers were becoming lower  
20 and lower. It did not work in Duck Slough very long,  
21 and as we subsequently know, the main purpose of it was  
22 to close off the mouth of the slough.

23 The only evidence that we have in the  
24 historical record is that they were going to build -- it  
25 was tasked to build the levee along Duck Slough and into

1 Duck Slough. But it was -- and the total area it was to  
2 work was about four miles. So it didn't go very far  
3 down Duck Slough.

4 MR. HERRICK: Do you have any specific  
5 reference to any document that tells us how far up Duck  
6 Slough it went, the Samson dredge that being?

7 MR. WEE: There -- I found no account saying  
8 that it went X number of feet up Duck Slough.

9 MR. HERRICK: Now you do note apparently that  
10 Duck Slough extended up to something known as Honker  
11 Lake Mound; is that correct?

12 MR. WEE: I think it was just Honker Mound. It  
13 may have been Lake Mound.

14 MR. HERRICK: I'm not trying to misquote it.  
15 On the top of your page 6 of your testimony, the third  
16 line, you refer to it as Honker Lake Mound.

17 MR. WEE: That's probably what it was called in  
18 the documents that I was looking at then.

19 MR. HERRICK: And that is you say two miles --  
20 again, I keep using the word up, but up Duck Slough; is  
21 that correct?

22 MR. WEE: One or two.

23 MR. HERRICK: Okay. Do you know the  
24 distance -- well, let me back up.

25 Your statement is that the dredgers were -- the

1 dredger, not dredgers -- the dredger Samson was being  
2 used to repair/build about four miles of levee on Burns  
3 Cutoff and -- I'm sorry.

4 MR. WEE: That was the stated intent.

5 However, we know that it did not do very much  
6 of that work because they brought out 650 Chinese to try  
7 to close the levee in that little -- in the gap that was  
8 left because the dredger dredge wasn't capable of doing  
9 that work.

10 MR. HERRICK: Okay. But the question I was  
11 getting to was: What's the distance of Burns Cutoff  
12 from the San Joaquin River down to Duck Slough -- or up  
13 to Duck Slough? If you know.

14 MR. WEE: I think it's probably close to two  
15 miles by the river.

16 MR. HERRICK: Have you --

17 MR. WEE: I've looked at that, and that's what  
18 I recall.

19 MR. HERRICK: So if the intent was to dredge  
20 four miles, and Burns Cutoff was two miles of that, does  
21 that give us any indication of how much was intended to  
22 be dredged in Duck Slough?

23 MR. WEE: It would be a rough estimate, I  
24 suppose.

25 MR. HERRICK: Now your next exhibit is 21, and



1 that's an article in the Stockton Daily Independent  
2 dated April 15th -- I believe it says 1875; is that  
3 correct?

4 MR. WEE: That is correct.

5 MR. HERRICK: And it includes a letter --  
6 excuse me. The newspaper has a reprinted letter from  
7 Charles Gibbes, and it looks like they misspelled his  
8 name, but to Mr. J.P. Whitney who was the owner of a  
9 large portion of Roberts Island, correct?

10 MR. WEE: That's correct.

11 MR. HERRICK: Now, the letter references  
12 Mr. Gibbes' report or reports. Are there separate  
13 reports from this letter that you know of?

14 MR. WEE: This is the only report that I have  
15 seen from Gibbes to Whitney.

16 MR. HERRICK: So you're not aware of any other  
17 official report that Mr. Gibbes -- official or  
18 unofficial report that Mr. Gibbes gave to Mr. Whitney  
19 other than the reprint of this letter?

20 MR. WEE: The letter suggests that it was  
21 accompanied by drawings, for one, which don't appear  
22 here, and that he was -- but that -- I -- I don't know.  
23 I've never seen a fuller report.

24 MR. HERRICK: Okay. And in the letter,  
25 Mr. Gibbes describes his travels around what they refer

1 to as Upper Roberts but which today is both Middle and  
2 Upper Roberts; is that correct?

3 MR. WEE: That's correct.

4 MR. HERRICK: And he goes -- he starts from  
5 Burns Cutoff and then travels upstream on the San  
6 Joaquin, down Old River for a portion, and then down  
7 Middle River, correct?

8 MR. WEE: That's correct.

9 MR. HERRICK: Then there's also a discussion of  
10 going across land somewhere along that Honker Ridge or  
11 Cross Levee feature; is that correct?

12 MR. WEE: That's correct.

13 MR. HERRICK: Now, in the description by  
14 Mr. Gibbes -- and it's hard to read, I'm sorry -- but at  
15 the bottom of the first page of Exhibit 21, he's talking  
16 about going down Old River and then up Middle River.  
17 And he states:

18 Continuing down Middle River from this  
19 point about one and a half miles is the  
20 lower boundary of the grant.

21 And that's the Rancho Pescadero grant; is that  
22 correct?

23 MR. WEE: That's correct.

24 MR. HERRICK: And that's -- anyway. And so  
25 from that point then, he says -- and I'm skipping some

1 language; I apologize. In the next mile are more  
2 things and he says:

3 This brings us to the middle of Section  
4 13 which is the first part -- first point  
5 where Mr. Whitney's property comes into  
6 contact with Middle River.

7 Correct?

8 MR. WEE: That's correct.

9 MR. HERRICK: And so he's talking about first  
10 one and a half miles then one mile down to that point.  
11 And then he adds a quarter mile further he reaches the  
12 confluence of Willow Slough; is that correct?

13 MR. WEE: Quarter of a mile south of that  
14 point.

15 MR. HERRICK: Quarter of a mile north, going  
16 downstream on Middle River?

17 MR. WEE: No. He says a quarter mile south.

18 MR. HERRICK: Quarter mile south. I'm sorry.  
19 So -- and I apologize. It does say quarter mile south,  
20 but then he says: And add above this point.

21 MR. WEE: Yeah, so up --

22 MR. HERRICK: So he goes backwards --

23 MR. WEE: Up river.

24 MR. HERRICK: -- then?

25 MR. WEE: Right. Yeah.

1           MR. HERRICK:  So he goes up river.  Excuse me.  
2  He goes down river the mile and a half then the mile,  
3  then he goes a quarter mile back up river?

4           MR. WEE:  Well, he's commenting on the fact  
5  that a quarter of a mile to the south up river he had  
6  seen Willow Slough.

7           MR. HERRICK:  That's Willow Slough, correct?

8           MR. WEE:  That's correct.

9           MR. HERRICK:  And Willow Slough has been dammed  
10 a couple of times.  Do we know whether or not the dam on  
11 Willow Slough included some sort of floodgate?

12          MR. WEE:  He doesn't mention anything about the  
13 type of construction.

14          MR. HERRICK:  Okay.  Are you -- you have  
15 reviewed Mr. Nomellini's testimony, have you not?

16          MR. WEE:  I have heard his oral testimony.

17          MR. HERRICK:  And Mr. Nomellini's testimony in  
18 a number of places refers to the history of San Joaquin  
19 County and the Settlement Geography of the Delta?

20          MR. WEE:  Yes.

21          MR. HERRICK:  And in that testimony there are  
22 numerous -- in that testimony, there are references to  
23 these sort of dams on sloughs.  Do you recall that?

24          MR. WEE:  Yes.

25          MR. HERRICK:  And isn't it correct that in that

1 testimony it stated that, for the most part, when people  
2 dam those sloughs they also put some sort of floodgate  
3 structure in them?

4 MR. O'LAUGHLIN: In Mr. Nomellini's testimony?

5 MR. HERRICK: Yes.

6 MR. O'LAUGHLIN: You said in "his" testimony.

7 MR. HERRICK: Yes. I'm sorry.

8 MR. WEE: Sometimes they did. Sometimes they  
9 didn't.

10 MR. HERRICK: And I refer you to page 244 of  
11 the Settlement Geography of the Delta which is in  
12 evidence here.

13 MR. O'LAUGHLIN: What exhibit?

14 MR. HERRICK: The Settlement Geography is one  
15 of the attachments to Mr. Neudeck's. I'll to have get  
16 that reference in a little bit.

17 And I'll just read to you the quote, asking for  
18 your agreement or disagreement. But on page 245 of the  
19 Settlement Geography of the Delta it says -- after  
20 discussing damming of sloughs, it says:

21 Dams were always furnished with  
22 sluiceways and gates. The drainage  
23 capacities of the installations were  
24 commensurate with the area served. The  
25 facilities also served as controls of

1                   irrigation water.

2                   Do you disagree with that, that the dams on  
3 these sloughs had sluiceways and gates put in for  
4 drainage and irrigation purposes?

5                   MR. WEE: I'd have to see the context for that  
6 because I don't -- in fact, we know on this island at  
7 this time the gates that -- the gate that we do know was  
8 put in, we do know it did not have a gate to admit water  
9 into the island.

10                  Now, that's the only specific evidence that I  
11 have on this island of the type of gates that this  
12 company -- that Whitney and Gibbes were putting in were  
13 a tide gate that only allowed water to go out, not in.  
14 They were draining the island. They weren't trying to  
15 irrigate it.

16                  MR. HERRICK: I'm sorry. I didn't follow all  
17 that. You said that the -- we know that gates weren't  
18 put in in this time. To what area were you referring?

19                  MR. WEE: I'm saying we have one full  
20 description or one good description of the type of gate  
21 that was installed on this island at this time, and it  
22 is an automatic tide gate that works one way to let  
23 water out. So --

24                  MR. HERRICK: You're talking about down at the  
25 Duck Slough feature?

1 MR. WEE: At Duck Slough.

2 What Mr. Thompson is talking about is something  
3 very general. I would have to read that in context to  
4 understand. Is he talking about the 1920s, '30s, '40s?  
5 What is he talking about?

6 MR. HERRICK: I appreciate your concern.

7 We were marching down Middle River, and the  
8 first question dealt with the damming of Willow Slough.  
9 And my question to you was whether or not you knew  
10 whether that dam had a sluiceway, and I believe you said  
11 no, you don't know.

12 MR. WEE: I don't know. I'm relying on this  
13 document, and it does not tell me that. And I haven't  
14 seen a description anywhere else.

15 MR. HERRICK: That's fine. That's why I'm  
16 asking questions.

17 And then Mr. Gibbes, as he proceeds downstream  
18 on Middle River, he reaches another undammed slough; is  
19 that correct?

20 MR. WEE: That's correct.

21 MR. HERRICK: And this one is generally -- and  
22 these are my words, and please correct me if I'm  
23 wrong -- generally in the location or in the section  
24 where we believe the Woods Irrigation Company diversion  
25 is eventually located; is that correct?

1 MR. WEE: It's in the same section, yes.

2 MR. HERRICK: And so this either could or could  
3 not be related to the Woods Irrigation Company diversion  
4 when that is eventually put in?

5 MR. WEE: I don't understand what you mean by  
6 "related to".

7 MR. HERRICK: Well, it's possible, is it not,  
8 that the Woods facility was placed where an old slough  
9 was, correct? It's possible it was?

10 MR. WEE: It's possible that it could have been  
11 at this location.

12 MR. HERRICK: So this slough is either one  
13 related to that diversion point or somewhere in the  
14 vicinity?

15 MR. WEE: I mean assuming that it exists -- I  
16 mean it was dammed. And I don't know how it was dammed.

17 It may have ceased to exist as a slough as of  
18 1875. So to say that they adopted this slough as their  
19 point of diversion, I would say I do not agree with  
20 that.

21 MR. HERRICK: Well, I don't think that was the  
22 question. I think I was trying to elicit from you that  
23 we don't know whether or not this slough feature  
24 corresponds to the Woods Irrigation Company diversion  
25 point or not.



1 MR. WEE: And that's what I answered for you, I  
2 think.

3 Does it correspond to it? I don't know if  
4 there was even a slough there. I suspect that there was  
5 no longer a slough there. It had been dammed in 1875.

6 MR. HERRICK: Now you say it was dammed in  
7 1875. It's my recollection from reading this that  
8 Mr. Gibbes suggested it be dammed as part of the  
9 reclamation of the lands. I guess Fisher then owned  
10 them the next year. But is that correct?

11 MR. WEE: Gibbes was the one who laid out the  
12 plan of reclamation. In February of 1875, he says he  
13 was going to dam that slough, and within two or three  
14 months later they were working on Middle River. I  
15 suspect that his plan was carried out.

16 However, I don't know that because of course  
17 when he's writing here it hadn't been carried out yet,  
18 and that particular detail of the reclamation process is  
19 not in the historic record.

20 MR. HERRICK: And -- Mr. Wee, I'm not trying to  
21 fight with you here. I'm just trying to go through this  
22 methodically. And it may be boring, but I'm just trying  
23 to point that out.

24 Your prior comment was they dammed it in -- at  
25 this time, and my response was the record suggests that

1 Mr. Gibbes recommended it be done, but we don't have any  
2 record of it being done. Correct?

3 MR. WEE: Yeah. I think by way of explanation  
4 I agreed with you.

5 MR. HERRICK: Yeah. Now also, we don't know  
6 when they -- when and if they dammed it, if they did put  
7 a sluiceway or a gate at the time they dammed it; is  
8 that correct?

9 MR. WEE: We have no record of that.

10 MR. HERRICK: Now, this slough that we're  
11 talking about, whether or not it's the Woods  
12 Irrigation -- whether it's related to the Woods  
13 Irrigation diversion or not, it describes the width and  
14 depth, correct?

15 MR. WEE: It does.

16 MR. HERRICK: And it says it's 25 lengths wide,  
17 and I believe you've translated that into what,  
18 something like 16 feet or something --

19 MR. WEE: Yes.

20 MR. HERRICK: -- is that right?

21 And does that say six feet or five feet deep?

22 MR. WEE: Six feet.

23 MR. HERRICK: Six feet deep.

24 Now in your rebuttal testimony, which is MSS-1,  
25 you include the filing by Mr. McChesney. Do you have --

1 maybe we could bring that up on the screen. MSS-1B.

2 He'll bring it up. It's fairly short.

3 MR. WEE: The predecessor.

4 MR. HERRICK: Yeah, the filing for the  
5 predecessor of Banta-Carbona.

6 Mr. Wee, it's up on the screen now. I think  
7 you have a copy of in front of you. And this is the  
8 Notice of Water Appropriation filed by Mr. -- I don't  
9 want to say this wrong -- McChesney, I believe it is.

10 MR. O'LAUGHLIN: Can I ask a question? Not to  
11 interrupt too much, but this --

12 MR. HERRICK: Certainly.

13 MR. O'LAUGHLIN: Trying not to. But this was  
14 in his direct testimony, not rebuttal.

15 MR. HERRICK: Correct.

16 MR. O'LAUGHLIN: Okay.

17 MR. HERRICK: And this document describes how  
18 someone intends to divert water from the San Joaquin  
19 River, correct?

20 MR. WEE: That is correct.

21 MR. HERRICK: And he describes the channel into  
22 which he'll divert, and that channel is, as he says, by  
23 means of a ditch having a bottom width of -- does that  
24 say 16 or 18 feet?

25 MR. WEE: I'm not sure.

1           MR. HERRICK:   Anyway 16 or 18 feet.   And  
2   sufficient depth to carry said amount of water and also  
3   by means of pumps and sufficient size.

4           So this channel is approximately as wide as the  
5   slough we're talking about off of Middle River in 1875,  
6   correct?

7           MR. WEE:   In width, yes.

8           MR. HERRICK:   And so if this channel is  
9   anticipated to transport 200 cubic feet per second of  
10   water, do you have an opinion as to whether or not the  
11   slough of a similar but not necessarily exact same width  
12   could also carry that amount of water?

13          MR. WEE:   No.   We don't -- no.   We don't know  
14   the depth of this facility.

15          MR. HERRICK:   And you haven't done any  
16   calculations that would estimate what the slough would  
17   carry, have you?   Or have you?

18          MR. WEE:   No.

19          MR. HERRICK:   Okay.

20          CO-HEARING OFFICER PETTIT:   Mr. Herrick, excuse  
21   the interruption, but we're an hour into your cross, and  
22   I just want to ask -- we'll proceed, as Mr. Ruiz  
23   requested at the beginning.

24                 I just want to ask Mr. Ruiz and Ms. Gillick to  
25   let me know if it appears that we're cutting into your

1 time to the point where we would exceed the total of  
2 three hours.

3 MR. RUIZ: That's fine. We're not near  
4 approaching that.

5 CO-HEARING OFFICER PETTIT: Okay. Thank you.  
6 Just let me know if it looks like it's going to be an  
7 issue.

8 MR. RUIZ: Will do.

9 CO-HEARING OFFICER PETTIT: Thank you.

10 MR. O'LAUGHLIN: Mr. Pettit, can we take a  
11 five-minute break? We've been going for an hour. My  
12 witness would like to take a break.

13 CO-HEARING OFFICER PETTIT: Mr. Herrick, can  
14 your line of questioning stand an interruption for that?

15 MR. HERRICK: Certainly.

16 CO-HEARING OFFICER PETTIT: Thank you. Let's  
17 take five then.

18 MR. O'LAUGHLIN: Thank you.

19 (Recess)

20 CO-HEARING OFFICER PETTIT: It looks like we're  
21 ready to go.

22 Mr. Herrick.

23 MR. HERRICK: Thank you.

24 Mr. Wee, the rest of the report contained in  
25 the Stockton Daily Independent of April 15, 1875 talks

1 about drainage, and I guess these are proposals. And is  
2 it correct to say that it talks about draining those  
3 parts of the island through Whiskey Slough eventually?  
4 Is that correct?

5 MR. WEE: Yes, the lower half of the island.

6 MR. HERRICK: And it says now by -- as I'm  
7 reading from the bottom of your second page which is  
8 about halfway down in the drainage portion, it says:

9 Now by running a main canal from one of  
10 the head branches of Whiskey Slough to  
11 connect with the smaller sloughs that  
12 meander through the center and extending  
13 side ditches wherever found necessary,  
14 the upper end of the island can be  
15 drained through Whiskey Slough.

16 Do you see that quote?

17 MR. WEE: I do.

18 MR. HERRICK: And so it does suggest that there  
19 are other smaller features in Roberts Island that may  
20 not have been noted on earlier maps, correct?

21 MR. WEE: Well, I don't know what sloughs he's  
22 referring to.

23 There are other sloughs shown on maps like  
24 Latham Slough, Black Slough. I've never seen the Perch  
25 Slough that he mentions. I don't know what that is.

1           But yeah, there's quite a few sloughs on the  
2 lower end of the island running into the San Joaquin  
3 River, and many of those are shown on the maps.

4           MR. HERRICK: Now above that, it talks about  
5 the ridge feature which Mr. Gibbes and another gentleman  
6 traveled up and back pursuant to this report. Do you  
7 recall that?

8           MR. WEE: Yes.

9           MR. HERRICK: And it talks about the feature  
10 being anywhere from 100 to 3- to 400 feet wide; is that  
11 correct?

12          MR. WEE: That is correct.

13          MR. HERRICK: And you equate that feature to  
14 what is eventually known as High Ridge Levee; is that  
15 correct?

16          MR. WEE: That's correct.

17          MR. HERRICK: Now, High Ridge Levee is sort of  
18 an -- I don't want overstate this. Sort of a sinuous  
19 feature, correct?

20          MR. WEE: It is.

21          MR. HERRICK: And do you have any opinion as to  
22 why someone would improve that in a sinuous manner if  
23 it's up to 400 feet wide in some areas? In other words,  
24 why wouldn't they have a straight feature rather than a  
25 sinuous feature? If you know.

1           MR. WEE:  Obviously, the -- I mean the ridge  
2 was -- you can have a sinuous feature that is 100 feet  
3 wide.

4           MR. HERRICK:  Certainly.  But if you're making  
5 an improved structure and you've got a 400-foot-wide  
6 area to put it down, do you have an opinion as to why  
7 one might make it curvy rather than make it straight  
8 when you have 400 feet of play?

9           MR. WEE:  I think he's saying that the  
10 sedimentary soil, it was -- it had -- there was a ridge  
11 that was built up.  At its high point, it was two to  
12 three feet above the surrounding land.

13           And what they did is that they plowed that and  
14 scraped it and brought it up to the highest point along  
15 that ridge so that they would have to move the least  
16 amount of soil to build the levee.

17           MR. HERRICK:  I know, and I'm sorry for beating  
18 this to death.

19           I'm trying to explain why -- or see if there's  
20 an explanation why in that process they wouldn't go  
21 straight.  Wouldn't it be easier to build a straight  
22 feature than a curvy feature when you have a  
23 400-foot-wide pathway?

24           MR. WEE:  I think that they were following the  
25 natural high point of the ridge.



1 MR. HERRICK: Okay.

2 Your next exhibit is 22. And that sort of  
3 graphically shows the stuff we've just been talking  
4 about.

5 I'm trying to find a quote here. I apologize  
6 for my delay.

7 I'm sorry, Mr. Chairman. I seem to have  
8 misplaced a quote here. Let me quickly see if I can  
9 find it. Maybe it's -- I'll move on.

10 Going to Exhibit 23 which you describe on page  
11 8 -- and I have no questions on that. Sorry. We'll go  
12 to number 24.

13 Now Mr. Wee, your testimony which is on page 8  
14 of your testimony, you state a few lines down from the  
15 beginning of the September 18, 1875 entry, quoting this  
16 newspaper article, you -- excuse me. You're not quoting  
17 it.

18 But in referring to this newspaper article, you  
19 say:

20 They were transported by Whitney's small  
21 steamer, Clara Crow, to the island and  
22 disembarked at Burns Cutoff near the  
23 mouth of Duck Slough where they abandoned  
24 the vessel and mounted horses.

25 Now your Exhibit 24 states that -- and I'm

1 reading from the middle there:

2 We stepped on board the steamer Clara  
3 Crow, parens, which has been recently  
4 purchased by Mr. Whitney and fitted up in  
5 elegant style, close parens, and in a few  
6 hours were landed at Camp No. 2 on Duck  
7 Slough near the center of the island,  
8 comma, passing on the way several miles  
9 of levee already completed.

10 Now, your written testimony suggests that the  
11 parties disembarked at the mouth of Duck Slough or near  
12 the mouth of Duck Slough whereas the article states that  
13 they took the steamer on Duck Slough to the center of  
14 the island.

15 Do you see that difference?

16 MR. WEE: No. I read that to say center of the  
17 island meaning in a north/south sense near the center of  
18 the island they disembarked at Duck Slough.

19 Duck Slough was about located at the center of  
20 the island on a north/south line. Roberts Island.

21 MR. HERRICK: So when the article says they  
22 went to Camp 2 on Duck Slough near the center of the  
23 island, you take that to mean on Burns Cutoff near the  
24 edge of the island?

25 MR. WEE: Yes. And I think that's the location

1 of St. Catherine's which was the headquarters for the  
2 reclamation of that portion of Roberts Island, and there  
3 was a camp there, and there was a landing there.

4 MR. HERRICK: Well, I don't see where you've  
5 provided any information regarding St. Catherine's, but  
6 it does reference Camp No. 2.

7 Do you have any information that locates Camp  
8 No. 2 at the mouth of Duck Slough rather than in the  
9 interior of Roberts Island?

10 MR. WEE: I would just reiterate my  
11 interpretation of that statement, and I think it's  
12 reasonable given the weight of the entire evidence, is  
13 that the reference to the center of the island, they  
14 would have been traveling in a north/south direction to  
15 get to this point. I think they're saying that Duck  
16 Slough is located at about the center of the island on a  
17 north/south trajectory.

18 MR. HERRICK: And even though they locate the  
19 camp on Duck Slough, you're locating the camp on Burns  
20 Cutoff? Or is that an incorrect statement?

21 MR. WEE: St. Catherine's is very close to Duck  
22 Slough. It's -- I mean they -- that was the  
23 headquarters for the reclamation, and if they had a  
24 labor camp that was associated with or -- with the  
25 headquarters, it could have been located Mr. Towards

1 Duck Slough than the actual headquarters building.

2 We're talking about occupying an area of space  
3 that, you know, perhaps is not, you know, confined to  
4 the farm at St. Catherine's. But I understand that  
5 there was a camp there. There were other camps along  
6 the line too, one in the middle and one down, I believe,  
7 at -- on Middle River.

8 MR. HERRICK: I appreciate that answer.

9 But again, we don't know if Camp 2, as you  
10 suggest, is the same thing as St. Catherine's, but we do  
11 know that the language in the article says Camp 2 on  
12 Duck Slough near the center of the island.

13 MR. WEE: I think my explanation is more  
14 reasonable because Duck Slough did not run to the center  
15 of the island. I will repeat: I believe they're saying  
16 center of the island on a north/south trajectory.  
17 That's where Duck Slough was.

18 MR. HERRICK: I believe you testified earlier  
19 that Duck Slough may go, perhaps, one or two miles  
20 inland; was that correct?

21 MR. WEE: Yes.

22 MR. HERRICK: And if it went two miles inland  
23 by the crow flies, I'll say, that is approximately the  
24 center of the island if you're drawing a line from Burns  
25 Cutoff diagonally southwest down to Middle River, isn't

1 it?

2 MR. WEE: I don't think that any of the maps  
3 that I presented show it to the center of the island.

4 MR. HERRICK: That was not my question.

5 My question was if Duck Slough was two miles in  
6 length, isn't two miles approximately halfway across  
7 Roberts Island from Burns Cutoff in a southwesterly  
8 direction to Middle River?

9 MR. WEE: No.

10 MR. HERRICK: It is not.

11 MR. WEE: No.

12 MR. HERRICK: Okay.

13 On your Exhibit No. 26, you have a blow-up of  
14 the article. The second page starts with a blow-up of  
15 the article from the Pacific Rural Press dated  
16 October 2nd, 1875.

17 And on the first page of the blow-up, on the  
18 second paragraph, it talks about:

19 Great improvements have recently been  
20 made in dredging machinery to be used in  
21 connection with the diking system of  
22 reclamation, but every point gained here  
23 may be applied to the new system, namely  
24 deepening the channels so as to dispense  
25 with dykes and dams.

1 Do you see that?

2 MR. WEE: Yes, I do.

3 MR. HERRICK: Now, you're familiar generally  
4 with the Delta and reclamation processes in the Delta?

5 MR. WEE: Yes.

6 MR. HERRICK: This is a misstatement, isn't it?  
7 Deepening a ditch doesn't change the elevation of the  
8 water surface, does it?

9 In other words, if you deepen a channel, that  
10 has nothing to do with it. You have to dyke or dam it  
11 off in the lower Delta to prevent floods, right? This  
12 is somebody who misunderstands?

13 MR. WEE: I think they're talking about, as I  
14 understand the discussion here, they were talking about  
15 deepening the channel so they'd have greater capacity  
16 and would not overflow the adjacent levees because they  
17 had more carrying capacity in the river.

18 MR. HERRICK: I think that would be a  
19 reasonable conclusion. But deepening a channel doesn't  
20 change the elevation of the water ever, does it? It  
21 might change the volume that it can handle?

22 MR. WEE: I wouldn't know.

23 MR. HERRICK: Your Exhibit No. 28 is a  
24 November 3rd, 1875 article from the Stockton Daily  
25 Independent. Do you have that in front of you?

1 MR. WEE: You said 28?

2 MR. HERRICK: 28.

3 MR. WEE: Yes, I do.

4 MR. HERRICK: And in the blow-up portion of  
5 that under the heading The Dredging Machines, it states  
6 that the Samson dredge quote:

7 Is now in Duck Slough and is cutting its  
8 way up that channel and at the same time  
9 throwing out earth to strengthen the  
10 levee that has been constructed along  
11 that slough for the reclamation of the  
12 eastern portion of the island.

13 Do you see that?

14 MR. WEE: Yes.

15 MR. HERRICK: And so this suggests then that  
16 the Samson dredge is in Duck Slough and proceeding, I'll  
17 say, upstream, but it's in a southwesterly direction,  
18 correct?

19 MR. WEE: Yes, it's in Duck Slough building a  
20 levee.

21 MR. HERRICK: And it's to protect the eastern  
22 portion of the island, not the western portion; is that  
23 correct?

24 MR. WEE: That's correct.

25 MR. HERRICK: Now as I read that article, it

1 suggests to me that the work they were trying to do  
2 closing a gap was a gap along the Burns Cutoff and Duck  
3 Slough levee. It was not the Duck Slough was a gap.  
4 Would you agree with that?

5 MR. WEE: No. The other evidence that we have  
6 clearly indicates that there were gaps on Burns Slough  
7 (sic) as well near the mouth of Duck Slough.

8 MR. HERRICK: No, but what I mean to say is if  
9 you're leveeing off the eastern portion of the island --  
10 which is the intent here, isn't it, to --

11 MR. WEE: Well, the --

12 MR. HERRICK: This stage of the work.

13 MR. WEE: Yeah. What needed to still be done  
14 was levee building on that eastern end of the levee they  
15 were constructing.

16 They were running from -- well, they were  
17 building all along, but the part that had not be closed  
18 that was still subject to being flooded was the area  
19 that is a levee paralleling Duck Slough and Burns  
20 Cutoff.

21 MR. HERRICK: Yes, but Duck Slough is not the  
22 gap they're filling. I understand later -- we'll get to  
23 that -- a dam put across Duck Slough, but these efforts  
24 are to close a gap in that corner, that Duck  
25 Slough/Burns Cutoff corner of this portion of the



1 island, right?

2 MR. WEE: That's correct.

3 MR. HERRICK: Yeah. So the dredger isn't  
4 trying to close a gap of Duck Slough. It's trying to go  
5 on Burns Cutoff up Duck Slough some distance to prepare  
6 that corner or improve that corner of the levee so  
7 there's no flood risk to the eastern part of the island.

8 MR. WEE: Yes, to the -- yes.

9 MR. HERRICK: Right. Turning to Exhibit No. 33  
10 which is a portion of the Tucker field notes -- and  
11 again, Mr. Tucker then does a similar travel down, at  
12 least here, portions of Middle River noting some of the  
13 features. Is that correct?

14 MR. WEE: Yes.

15 MR. HERRICK: And what's the date of these  
16 notes, if you recall?

17 MR. WEE: 1878.

18 MR. HERRICK: Are those reflecting conditions  
19 in 1878 or 1875?

20 MR. WEE: I believe his discussion is  
21 referencing the 1875 work. He's talking about the work  
22 that was done in 1875 through most of this section.

23 MR. HERRICK: And Mr. Tucker notes that quote:

24 In the summer in a number of places where  
25 levee was unfinished, the water rushed

1                   through and would have swept away  
2                   everything if we had not built bulkheads.  
3                   As it was, very little was lost.

4                   So he's noting a number of places where the  
5 water overflowed the levees or went through gaps in the  
6 levees?

7                   MR. WEE: He's referring to the work that was  
8 being done on Middle River, and that they had to build  
9 bulkheads so that -- yeah, so the high water didn't run  
10 into the island.

11                  MR. HERRICK: And his notes don't list the  
12 other slough that we've put somewhere in the area of the  
13 current Woods Irrigation Company diversion; is that  
14 correct?

15                  MR. WEE: That's correct. He doesn't discuss  
16 that one.

17                  MR. HERRICK: Okay. But these are about the  
18 same time as the Gibbes survey, aren't they,  
19 approximately?

20                  MR. WEE: This is --

21                  MR. HERRICK: Summer/fall 1875.

22                  MR. WEE: The work he's describing?

23                  MR. HERRICK: No, no. His notes.

24                  MR. WEE: His notes are 1878. He's describing  
25 work that immediately followed the Gibbes -- completion

1 of the Gibbes plan in 1875.

2 MR. HERRICK: Okay. So again, he doesn't note  
3 whether or not any particular sloughs were leveed or  
4 whether any sluiceways or gates were put in, if they  
5 were leveed off?

6 MR. WEE: He does briefly discuss the Willow  
7 Slough, the dam at Willow Slough.

8 MR. HERRICK: Okay.

9 MR. WEE: He does not discuss the dam at the  
10 other open slough.

11 MR. HERRICK: And he doesn't tell us whether or  
12 not the damming of Willow Slough included some sort of  
13 control structure?

14 MR. WEE: No. He merely describes it as being  
15 built with a certain type of scraper.

16 MR. HERRICK: And just for the record, my copy  
17 of Exhibit 36 didn't have a number on it. Is that --  
18 are other copies like that?

19 Exhibit 36 is the Stockton Daily Journal from  
20 October 11, 1878.

21 MR. WEE: Yes. The full page -- the first  
22 page, the full page, has an exhibit number on it. The  
23 second page is merely a blow-up of the article to make  
24 it easier to read.

25 MR. HERRICK: I understand that. My copy was

1 cut off or something, didn't have it on either side. I  
2 was just trying to make sure I had the right document.

3 MR. WEE: Right. It's 36.

4 MR. HERRICK: On the blow up which is the  
5 second page of that exhibit is the discussion about the  
6 damming of Duck Slough; is that correct?

7 MR. WEE: Yes.

8 MR. HERRICK: And in that -- and I'm sorry for  
9 just picking things out; it's hard to follow along  
10 here -- but three quarters of the way down of the  
11 blow-up page, it says:

12 A large force of Chinese -- or Chinamen,  
13 sorry -- are at work filling the gap on  
14 Burns Cutoff and building the earthen dam  
15 at the mouth of Duck Slough.

16 And again, that indicates that the gap on the  
17 levee was a separate issue than the damming of Duck  
18 Slough, correct?

19 MR. WEE: Well, I mean they go together.  
20 They're finishing the levee on the cutoff, and in order  
21 to finish that work to make that levee secure along  
22 Burns Slough, they had to cut off the mouth of Duck  
23 Slough, so the two are hand in hand.

24 MR. HERRICK: Yes, but the Duck Slough is on  
25 the -- or correct me if I'm wrong -- the Duck Slough

1 then is on the western side of the levee they're making  
2 which is the Lower Roberts side?

3 MR. WEE: At this point in 1877, yes, they have  
4 moved on, and they're working on -- well, excuse me  
5 for -- what --

6 MR. HERRICK: That's fine. If you need to  
7 answer more go ahead, but I can move on.

8 MR. WEE: I just -- excuse me -- I thought that  
9 you -- we had jumped forward to 1877. That's why I was  
10 confused.

11 The work that is being done is to close Burns  
12 Cutoff at Duck Slough or below -- or upstream of Duck  
13 Slough.

14 MR. HERRICK: Yes. Now again, this article is  
15 1878, just for the record, because you just mentioned  
16 1877.

17 Now it also says that in the building of the  
18 earthen dam at the mouth of Duck Slough two self-acting  
19 floodgates were installed, correct?

20 MR. WEE: Excuse me, but -- this is not 1878.  
21 This is 1876.

22 MR. HERRICK: I'm just trying to follow along.  
23 I have noted on that -- I can't really read the note  
24 there. I'm sorry.

25 MR. WEE: I understand. It's difficult. By

1 saying 1878, it puts me into a completely different  
2 understanding of what would be going on.

3 MR. HERRICK: I'm not trying to change the  
4 record. I had written down 1878 because that's how I  
5 read that little teeny print. So the --

6 MR. O'LAUGHLIN: So the 18 --

7 MR. HERRICK: The Stockton Daily Independent  
8 article which is Exhibit 36, then, is October 17, 1876.

9 MR. WEE: Okay.

10 MR. HERRICK: Right?

11 MR. WEE: It's difficult to read. I believe  
12 it's October 11.

13 MR. HERRICK: Got that date wrong too.

14 (Laughter)

15 MR. HERRICK: Must be an age thing.

16 MR. O'LAUGHLIN: You want to try again?

17 MR. HERRICK: Yes, for the record, let's do it  
18 again.

19 Exhibit 36, which is a Stockton Daily  
20 Independent article, is dated October 11, 1876. Okay.

21 And again the question was, before I messed up  
22 the date, both the year and month and day, that the --  
23 in the damming of Duck Slough they installed two  
24 self-acting floodgates, correct?

25 MR. WEE: That's correct.

1           MR. HERRICK:  And those floodgates would then,  
2  as they describe here or you describe, could be used to  
3  drain those portions of Lower Roberts, not Upper or  
4  Middle Roberts; is that correct?

5           I say that because I thought we just  
6  established the levee is around -- the levees around  
7  Upper, Middle/Upper Roberts, and the slough's on the  
8  other side, and the floodgates then are on the old  
9  slough draining --

10          MR. WEE:  No.  We're on Upper Roberts Island  
11  here.  This is 1876.  And they're -- what happened is  
12  that the island had been so wet from the break the  
13  previous year that they couldn't -- they wanted to let  
14  it dry out somewhat before they starting doing work  
15  again.

16          So they really didn't get out there to fix the  
17  problem from the previous year until the fall of 1876,  
18  so they're completing the work on Upper Roberts Island.

19          MR. HERRICK:  Now when they're doing these  
20  activities, as you just said, it's for the purpose of  
21  protecting and then draining as necessary the lands of  
22  the owner, correct?

23          MR. WEE:  Yes.

24          MR. HERRICK:  So this is the preliminary work  
25  in order to make the land available for other uses,

1 mostly agriculture, correct?

2 In other words, they're turning it from swamp  
3 and overflow land into land that they might be able to  
4 farm or otherwise use?

5 MR. WEE: Yes.

6 MR. HERRICK: So at this time, their concern is  
7 not irrigation of that land, it's draining of that land,  
8 correct?

9 MR. WEE: That's correct.

10 MR. HERRICK: Now, there's no indication that  
11 these floodgates -- excuse me. Let me back up.

12 Do you know how long these floodgates remained  
13 there at the mouth of Duck Slough?

14 MR. WEE: I haven't found any historic  
15 documentation that says they were changed or taken out,  
16 so I don't have any documentation that would allow me to  
17 give you a date or a year.

18 MR. HERRICK: Do you know whether or not they  
19 are still there today?

20 MR. WEE: I don't.

21 MR. HERRICK: Do you know whether or not the  
22 gates were altered or improved or changed after their  
23 installation?

24 MR. WEE: No.

25 MR. HERRICK: Now you've heard the other



1 testimony with regard to how irrigation practices  
2 developed on the islands, and I'm just trying make sure  
3 I'm not asking a question out of the blue, and do you  
4 see any reason why someone couldn't in the later years  
5 simply tie open those floodgates to allow water to come  
6 in to the old Duck Slough for irrigation purposes?

7 MR. WEE: Well, at this specific location we  
8 know that the gates were designed for drainage and  
9 drainage only. And subsequent to this that time, as I  
10 read the historic record and the maps that are  
11 available, that that channel filled in.

12 And so I -- certainly if you look at the USGS  
13 Stockton Quad for the 1913, 1911 situation, there is no  
14 Duck Slough. It's filled in.

15 So I would suspect that that, over the ensuing  
16 years, that Duck Slough filled in wasn't -- I have no  
17 knowledge that it was ever used for irrigation.

18 MR. HERRICK: Yes, but my question was: We  
19 don't know -- I think 1976, the date of this article,  
20 through 1911, the quad map you note, that's -- what is  
21 that? 35 years?

22 So my question was: Do you know whether or not  
23 that these gates were operated for irrigation purposes  
24 during that 35-year period?

25 MR. WEE: Well, these gates would not have

1 been. They would have had to have been altered. If  
2 you're asking me do I know that they were altered, the  
3 answer is no.

4 MR. HERRICK: When you say they gates could  
5 not, couldn't they just tie the gates open and then  
6 close them for irrigation purposes on certain tides in  
7 order to fill the slough up?

8 MR. WEE: I -- I don't know the practices. If  
9 you were to open that gate and keep it open, and the  
10 river were to rise, and the slough was open, then water  
11 would come into the island.

12 MR. HERRICK: I'm not trying to be  
13 argumentative, but your prior statement was that they  
14 could not have been operated for irrigation.

15 I was just trying to clarify that it would  
16 appear that just by simply tying them open the channel  
17 would fill, then -- however somebody might do that --  
18 but you could fill that channel on the right tide in  
19 order to irrigate, correct.

20 MR. WEE: Yeah -- I suppose that if you -- if  
21 you tied those things open, water would get in if it was  
22 higher than the level of the opening.

23 MR. HERRICK: And we do not know when Duck  
24 Slough or any portions of Duck Slough were actually  
25 filled in except that you've concluded that at least by

1 1911 that upper portion was not a slough, is that  
2 correct?

3 MR. WEE: Yeah. I don't know the process by  
4 which it was filled.

5 MR. HERRICK: Mr. Wee, going back to  
6 Exhibit 33 -- I apologize. I missed one of my  
7 questions.

8 33 is one of your Tucker field note copies.  
9 And again, Mr. Tucker's notes at the very bottom talks  
10 about:

11 This four miles was completed before the  
12 flood came. The average height of the  
13 levee was six feet. Slopes 2-to-1 and  
14 crown 4 feet wide. The two miles along  
15 Duck Slough from Honker Mound to Burns  
16 Cutoff was located and constructed, well  
17 started when the flood came but had to be  
18 left unfinished.

19 I just highlight that. That suggests that Duck  
20 Slough ran at least two miles up from Burns Cutoff; is  
21 that correct?

22 MR. WEE: That's what he says, yes.

23 MR. HERRICK: Again, I appreciate everybody's  
24 consideration as I go through this.

25 Mr. Wee, just a small point. On your page 14,

1 as you discuss Mr. Neudeck's discussion of a slough that  
2 appears on a 1941 Woods map, which slough appears to go  
3 approximately from Middle River up to a location known  
4 as Kingston School -- you are familiar with what I'm  
5 talking about here?

6 MR. O'LAUGHLIN: Where are you at, John?

7 Page 14?

8 MR. HERRICK: Very bottom.

9 MR. WEE: I would go with Exhibit 48, and I --  
10 yes, I...

11 MR. HERRICK: Now in discussing that slough --  
12 and you label it a so-called slough, but it is labeled  
13 slough on that 1941 map, isn't it?

14 MR. WEE: Yes, it is.

15 MR. HERRICK: Okay. You say that it was two  
16 islands removed from Roberts Island. Do you see where  
17 you say that, about five lines from the bottom?

18 MR. WEE: Yes.

19 MR. HERRICK: I just wanted to clarify your  
20 statement there. The Pocket and Drexler Tract are part  
21 of Roberts Island, aren't they?

22 MR. WEE: You know, I have seen the use of the  
23 Pocket as being part of Roberts Island. Drexler Tract I  
24 understand, at least in my mind, I always thought of it  
25 as a separate piece, and particularly by this time. It

1 had been reclaimed. It had been leveed off. It had  
2 been separated.

3           It may be true that back in the 1870s when  
4 people talked about Roberts Island being a 61,000-acre  
5 island that that property was included in it, as was  
6 Jones Tract, Lower/Upper Jones Tract, and a lot of  
7 other -- Victoria. You can go on and on.

8           By this time, they are separate. They had been  
9 leveed. They had been reclaimed. They were separate  
10 entities.

11           And so I'm referring to them in the context of  
12 1941 as, you know, two tracts removed or two -- I think  
13 I may have used the word island, but probably better to  
14 use the word tracts.

15           But there is a -- the Pocket Area intervening,  
16 and then there is Drexler Tract. That slough is on  
17 Drexler Tract.

18           MR. HERRICK: Okay. But they weren't ever  
19 separate land bodies. They were part of the same swamp  
20 and overflow. When they were drained, there was no  
21 river separating them.

22           I just want to clarify that two islands removed  
23 doesn't mean it's 20 miles away. It's just across a  
24 couple of interior cross levees, right?

25           MR. WEE: Right. There is no natural river

1 separating those areas into separate islands in a -- as  
2 I said, the pre-reclamation phase, they may have been  
3 considered part of Roberts Island.

4 MR. HERRICK: Let me jump ahead to Exhibit 45,  
5 please.

6 And Mr. Wee, Exhibit 45 is that topo map that's  
7 been briefly mentioned before created by the US  
8 Geological Survey. And it's a 1913 map with 1911 data;  
9 is that correct? I mean there's been some confusion  
10 about that, but.

11 MR. WEE: Yeah. The surveys were done in 1911  
12 at least, but the map was published in 1913.

13 MR. HERRICK: And the feature that was  
14 highlighted in the Woods case deals with the blue line  
15 that stretches at least a portion of the length of what  
16 you've identified as the High Ridge Levee, correct?

17 MR. WEE: That's correct.

18 MR. HERRICK: Okay. And you've stated that you  
19 thought this might be or could be something to do with  
20 the Woods Irrigation District supply system?

21 MR. WEE: Yes. I think it's related to the  
22 Woods Irrigation Company's land modifications that they  
23 were making to their tract.

24 MR. HERRICK: But the USGS identified it as  
25 some sort of body of water by the blue coloring,

1 correct?

2 MR. WEE: If you look at the legend for these,  
3 the topos from this period, I think that what they say  
4 that that indicates is an intermittent stream or ditch.

5 MR. HERRICK: And an intermittent stream or  
6 ditch, in your opinion, can that confer any sort of  
7 riparian right?

8 MR. WEE: If it was a natural stream, it could.

9 MR. HERRICK: So if there was some sort of  
10 remnant -- and these are my words; you can disagree --  
11 remnant stream that either periodically, regularly, or  
12 constantly had water in it, that might confer a riparian  
13 status to lands bordering it, is that correct?

14 MS. KINCAID: I'm going to object to the  
15 question. It calls for a legal conclusion.

16 MR. O'LAUGHLIN: Well, my only objection is  
17 that it's vague in regards to the word remnant. I don't  
18 know what "remnant" means. Is it a stream or isn't it?  
19 I don't know what the word remnant has to do with the  
20 question.

21 MR. HERRICK: I can rephrase.

22 With regards to the calls for a legal  
23 conclusion, I thought we established Mr. Wee's statement  
24 of qualifications includes a voluminous number of  
25 reports he's done for the very purpose of making

1 riparian or nonriparian conclusions.

2 And in fact, in similar proceedings here with  
3 different Hearing Officers, he's made those riparian  
4 arguments or conclusions.

5 Now if he doesn't want to answer, he doesn't  
6 have to. But I believe that's one of the purposes he  
7 here is to draw conclusions about certain lands and  
8 certain rights to those lands with regard to water.

9 But that's up to them.

10 MR. O'LAUGHLIN: I have no problem with the  
11 question that regard. My only question is remnant  
12 because -- my only question is remnant.

13 Because remnant denotes to me that at one time  
14 it had been a stream and stopped being a stream. That's  
15 the definition of remnant --

16 MR. HERRICK: I can --

17 MR. O'LAUGHLIN: -- whereas a stream denotes at  
18 the time that it was in place it had the ability to take  
19 and use water.

20 MR. HERRICK: I can clarify that part,  
21 certainly. I will restate that.

22 CO-HEARING OFFICER PETTIT: I'd probably back  
23 up a little further because the distinction between  
24 remnant, ditch, and stream all holds different  
25 connotations as far as I'm concerned, and I think that



1 Mr. Wee is not a lawyer. I realize he's quite an expert  
2 in these matters, but I don't expect him to draw legal  
3 conclusions.

4 If you want to pursue that, Mr. Herrick, I  
5 think we need to break down the question somewhat  
6 because I would regard it as a different question if we  
7 are talking about a stream versus a ditch, for example.

8 MR. HERRICK: Let me try two short questions  
9 and --

10 CO-HEARING OFFICER PETTIT: I will say I don't  
11 expect Mr. Wee to express any legal conclusions, but to  
12 the extent he feels qualified to answer whatever your  
13 rephrased question is, we'll see how that goes.

14 MR. HERRICK: I can ask just a couple  
15 questions, and if they're not appropriate or he can't  
16 answer them, that's fine.

17 Mr. Wee, let me just back up and say land can  
18 be riparian to a lake, correct, as opposed to a flowing  
19 stream?

20 MR. WEE: Yes.

21 MR. HERRICK: And so depending on the  
22 configuration or size of that lake, it could be a real  
23 thin one or a narrow one, or it could be a huge one and  
24 deep one, correct?

25 MR. WEE: Lakes come in different sizes.

1           MR. HERRICK:  Yeah, and I just mean there are  
2  different possibilities as to land's connection to a  
3  body of water.  It doesn't just have to be a big lake or  
4  it doesn't have to be a huge flowing stream; is that  
5  correct?

6           MR. WEE:  That's correct.

7           MR. HERRICK:  Okay.  And the representation on  
8  the 1911 topo map, Exhibit 45A, that could indicate that  
9  the blue line along what you'd identify as High Ridge  
10 Levee is a body of water, correct?  Is that correct?

11          MR. WEE:  I don't interpret it as a natural  
12 body of water.

13          MR. HERRICK:  If you interpret it as a portion  
14 of the Woods Irrigation land -- excuse me.

15                 If you interpret that as a portion of the Woods  
16 Irrigation Company system, would you make any  
17 conclusions about whether or not it then is able to get  
18 water to the Honker Lake area?

19          MR. WEE:  Well, given what I can see on this  
20 map, it's on the wrong side of the levee to deliver  
21 water to Honker Lake.

22          MR. HERRICK:  But your Exhibit No. 2 -- and  
23 just for the record; make sure I get this right --  
24 MSS-R-14A, your exhibit WIC Exhibit 2.  So that's the  
25 portion that you've -- the portion of your rebuttal that

1 you've geared more towards Woods Irrigation Company  
2 specifically. Do you have that in front of you?

3 MR. WEE: I do.

4 MR. HERRICK: And that's entitled Topographical  
5 Map of Portion of Property of Alice M. Woods trust;  
6 correct?

7 MR. WEE: Yes.

8 MR. HERRICK: And at least as of this map's  
9 date -- and it is 1927, I believe, isn't it?

10 MR. WEE: That's correct.

11 MR. HERRICK: At least as of this date, there  
12 appears to be channels connecting the Woods Irrigation  
13 Company system with that Honker Lake area, correct?

14 MR. WEE: Could you say that again?

15 MR. HERRICK: At least as of the date of this  
16 map, it appears that the various channels of the Woods  
17 Irrigation Company service area can and do connect to  
18 the Honker Lake area; is that correct?

19 And again, if I --

20 MR. WEE: No, I believe that the system that's  
21 connecting to the Honker Lake area is the Woods Robinson  
22 Vasquez irrigation system, not the Woods Irrigation  
23 Company system.

24 MR. HERRICK: Yes, but without testing  
25 everybody's geographic knowledge, in the bottom right of

1 that map, that's the Woods Irrigation service area,  
2 right? Correct?

3 MR. WEE: Are we talking now about Exhibit 2?

4 MR. HERRICK: Yes, the bottom right.

5 MR. WEE: In the bottom right, that's correct.

6 MR. HERRICK: Yeah. And that portion of the  
7 Woods system has numerous drainage and/or irrigation  
8 canals or ditches -- my wording, obviously -- fanning  
9 out in a northerly and northwesterly direction, correct?

10 MR. WEE: Yes.

11 MR. HERRICK: And some of those appear to be  
12 interconnected with the channels or ditches over in the  
13 Honker Lake Tract area, correct?

14 MR. WEE: Yeah, I'm unclear whether they're  
15 connected by drainage ditches or by irrigation ditches,  
16 but there are I think a couple of connections.

17 MR. HERRICK: Okay. Switching over to -- let  
18 me see if I -- sorry.

19 STAFF ATTORNEY AUE: Mr. Herrick, just to  
20 clarify. The map that you were comparing to just now is  
21 MSS Exhibit 14, and then Exhibit 2 to the testimony, not  
22 14A; is that correct?

23 MR. HERRICK: If that is correct. I was going  
24 off the 14A and assuming everything was subparts of that  
25 14A.

1           STAFF ATTORNEY AUE: I believe the map you are  
2           referencing is actually attached to 14. There is no  
3           Exhibit 2 to the 14A. That hasn't been submitted in  
4           this hearing.

5           MR. O'LAUGHLIN: Right. You are correct.

6           STAFF ATTORNEY AUE: Thanks.

7           MR. O'LAUGHLIN: Not A, it's just 2.

8           MR. HERRICK: Just 2.

9           MR. O'LAUGHLIN: Yes.

10          MR. HERRICK: Mr. Wee, briefly, the -- you  
11          cover the Nelson v Robinson case, which was discussed or  
12          cited by Mr. Neudeck in his testimony, on page 18 of  
13          your written testimony. Are you there? I just don't  
14          want to jump ahead of you.

15          MR. WEE: Give me one second. Okay. I'm  
16          there.

17          MR. HERRICK: And this testimony, whether  
18          there's a disagreement or not, there is an issue about  
19          the location of the slough that the defendants  
20          apparently filled in some time in 1926-ish with regard  
21          to the seepage issues of their neighbor -- to the  
22          neighbor?

23          MR. WEE: Yes.

24          MR. HERRICK: Now do you know what this  
25          slough -- what other features this slough may have been

1 attached to at the time of this 1926 incident, I'll say?

2 MR. WEE: No. All that the court tells us is  
3 that it was on the east side of the property, but I  
4 don't know which slough they are referring to.

5 MR. HERRICK: And we don't have any record of  
6 whether the slough originated off of Middle River at  
7 some time in the past, do we?

8 MR. WEE: No.

9 MR. HERRICK: And we don't know if it's a  
10 branch of a bigger -- branch of a slough that originated  
11 off of Burns Cutoff, do we?

12 MR. WEE: No, I don't -- I mean I don't have a  
13 map showing me that slough, so I don't know.

14 MR. HERRICK: And so we don't know what other  
15 features it may have been connected to either before --  
16 it may have been connected to before it was filled in?

17 MR. WEE: I don't know what it was connected  
18 to.

19 MR. HERRICK: But we do know -- I believe the  
20 case -- and I can go get it real quick; I forgot to  
21 bring it up here with me -- but it said that the  
22 defendants had kept it full; is that correct?

23 MR. WEE: Well, it said that it was -- I don't  
24 remember the exact language, but yes, it was full of  
25 water.

1           MR. HERRICK: Kept it filled with water, I'll  
2 say. Something like that. So they could have been  
3 using that for irrigation purposes, could they not?

4           MR. WEE: I don't know.

5           MR. HERRICK: And we don't know whether it was  
6 connected to the Woods Irrigation system as a means of  
7 filling it, do we?

8           MR. WEE: I don't know.

9           MR. HERRICK: Yeah. Now with regards to the  
10 two 1911 agreements to furnish water -- and they were  
11 Exhibits, I believe, O and P to Mr. Blake's testimony  
12 which would make them --

13           MR. RUIZ: I believe would make them 60 and P.

14           MR. HERRICK: 60 and P.

15           And with regards to O -- we don't have to bring  
16 it up, but with regards to 60, you recall, as you  
17 discuss in your testimony, Mr. Neudeck used -- came up  
18 with different total acreages than the Prosecution Team  
19 did for waters to be served by Woods; is that correct?

20           Was that too confusing? You want me to start  
21 over?

22           MR. WEE: I don't recall.

23           MR. HERRICK: As Mr. Neudeck did, you go  
24 through in your testimony that there were three separate  
25 parcels described in the Exhibit O, 40 -- 60, sorry --

1 and one of them was 12.7 acres, one of them was 769.32  
2 acres, and one of them 4480 acres. You recall that,  
3 don't you?

4 MR. WEE: Yes, I do.

5 MR. HERRICK: And do you agree with Mr. Neudeck  
6 or with the Prosecution as to the intent of that 1911  
7 agreement to either irrigate eventually 4,480 acres or  
8 the three -- the total acres of the three parcels?

9 MR. WEE: I think that that, as it's stated in  
10 the agreement, that the -- that they had intended, I  
11 think, to irrigate the three parcels that were named.

12 MR. HERRICK: And other things happened after  
13 that. Property was removed. Whether or not things  
14 happened or that property was irrigated, you would  
15 agree, I think you just said, that the intent was that  
16 that total amount of acres could or would be furnished  
17 by the Woods system, not just the 4480; is that correct?  
18 I'm sorry for repeating that, but I'm just trying to  
19 make sure that we're clear.

20 MR. WEE: In 1911, that was the stated intent.

21 MR. HERRICK: Now you talk about the part of  
22 the land -- and excuse me if I'm jumping around here.  
23 Part of the land was severed by the railroad line; is  
24 that correct?

25 MR. WEE: Part of what land?



1 MR. O'LAUGHLIN: What land?

2 MR. HERRICK: The -- I'm sorry. I did jump  
3 forward. I'm sorry.

4 On page 24, but mostly on 25, at the top of 25,  
5 the first -- I guess the second paragraph. Let me get  
6 back to that. That's out of order. I apologize. I'm  
7 not -- I just -- okay.

8 MR. O'LAUGHLIN: Can I ask another question  
9 since he's looking to get organized?

10 Do you mind -- we've been going for  
11 approximately another hour -- if we took another short  
12 five-minute break and John can get organized?

13 Then the other thing is that we're still within  
14 our time period, so I assume we've got two more hours  
15 and we could wrap up.

16 MR. HERRICK: I don't mind taking a break, but  
17 I probably have maybe 15 minutes, and when I'm what I  
18 think is close to done I have to go confer because there  
19 is one thing I do remember that I missed that I can't  
20 find. So we're near --

21 MR. HERRICK: Let's do it now. Can we take a  
22 break now, five minutes, and he can confer and we'll  
23 finish up with him and move to the others?

24 CO-HEARING OFFICER PETTIT: Yeah, and I was  
25 just going to point out in my role as chief nag here

1 that we're two hours into the three hours allotted for  
2 this joint cross.

3 So let's take a break. And our last  
4 five-minute break was 15 minutes, so let's not make this  
5 one longer.

6 (Recess)

7 CO-HEARING OFFICER PETTIT: Appears everybody's  
8 in position. You ready to, Mr. Mr. Herrick?

9 MR. HERRICK: Yes, sir.

10 CO-HEARING OFFICER PETTIT: Please proceed.

11 MR. HERRICK: Mr. Wee, your exhibit, I'll just  
12 call it 5, right? Or do you want me to put the WIC in  
13 front of it?

14 MR. O'LAUGHLIN: That's fine.

15 MR. HERRICK: Exhibit 5 is another Pacific  
16 Rural Press article. And I believe I will correctly  
17 read the date this time of April 23rd, 1898. Do you  
18 have that in front of you?

19 MR. WEE: Yes.

20 MR. HERRICK: And on the -- well, one, two,  
21 three, four -- on the fifth page, it deals with San  
22 Joaquin County. Do you see that?

23 MR. WEE: On the fifth page?

24 MR. HERRICK: I believe the copies are on each  
25 side.

1           MR. O'LAUGHLIN: It just says San Joaquin. It  
2 says beets in place of grain?

3           MR. HERRICK: Yes.

4           MR. O'LAUGHLIN: You're on the wrong page 2.  
5 Right here.

6           MR. HERRICK: The third physical page.

7           MR. WEE: Yes.

8           MR. HERRICK: And on that, it talks about the  
9 Woods brothers tract of land needs to or it would be  
10 necessary to run a canal from Middle River to a half  
11 mile inland so water could be conducted to the farm.

12           Do you see that, where it says that?

13           MR. WEE: Yes.

14           MR. HERRICK: And it talks about the canal  
15 being 25 feet wide at the bottom, and then it discusses  
16 how much water will be in it at high and low tides. Do  
17 you see that?

18           MR. WEE: Yes, I do.

19           MR. HERRICK: Have you done any calculation to  
20 determine how much water that canal would take or would  
21 carry?

22           MS. KINCAID: I'm going to object to the  
23 question. That's outside the witness's expertise. He's  
24 not an engineer.

25           MR. HERRICK: I asked him if he had made any

1 calculation. I don't know how that could be objected  
2 to. He might answer he is not qualified or he hasn't  
3 done it, but I don't know how it could be inappropriate.

4 CO-HEARING OFFICER PETTIT: I more or less  
5 agree with Ms. Kincaid's objection because I don't think  
6 Mr. Wee has claimed any expertise in that area.

7 So if he wants to answer a question as to  
8 whether he's made any calculation, that's fine. But we  
9 will give it whatever weight it deserves.

10 MR. WEE: I have made no calculation.

11 MR. HERRICK: And again, the date of this is  
12 1898, correct?

13 MR. WEE: That's correct.

14 MR. HERRICK: The article continues on the next  
15 page, and it says quote:

16 The irrigation system will be made a  
17 permanent one, and for that reason a  
18 substantial head gate is being fixed in  
19 the levee at Middle River end of the  
20 canal.

21 Do you see where it says that?

22 MR. WEE: Yes.

23 MR. HERRICK: So that indicates that a head  
24 gate is being installed; is that correct -- or is to be  
25 installed. Is that correct?

1           MR. WEE:  Yes.

2           MR. HERRICK:  But the article gives us no  
3   indication whether or not there was any existing sluice  
4   gate or floodgate at that portion of the river; is that  
5   correct?

6           MR. WEE:  It -- the article, if you read it in  
7   its totality, it says a recent survey had been done that  
8   allowed them to realize that irrigation could take  
9   place.  So I take that to mean that there was no  
10  irrigation works in place before the survey was  
11  conducted.

12          MR. HERRICK:  I appreciate that, but I didn't  
13  ask you if there were irrigation works.  I asked if  
14  there was a floodgate or sluice gate.

15          We had previously discussed the likelihood of a  
16  slough in that area pursuant to Mr. Gibbes' survey back  
17  in 1875.  And so regardless of the intent to install an  
18  irrigation system in 1898, you would agree, would you  
19  not, that we have no indication of whether or not there  
20  was a sluiceway or floodgate at this same point?

21          MR. WEE:  I have no information.  There's  
22  nothing in the historical record to indicate to me that  
23  there was or wasn't.

24          MR. HERRICK:  Then the rest of the article for  
25  the San Joaquin County says:

1           Most of the irrigation is being done by  
2           means of siphons which conduct water over  
3           the top of the levees.

4           MR. WEE:   Well --

5           MR. HERRICK:  Do you see where it says that?

6           MR. WEE:  Yeah.  That to me is a general  
7           comment.  They were -- had been talking about the fact  
8           that irrigation was occurring in many parts of the  
9           Delta, and I take that to mean that this is going to be  
10          a permanent system whereas elsewhere people had siphons  
11          that they put over the levee to get emergency water if  
12          he had crops that needed it.

13          MR. HERRICK:  Do you know whether or not the --  
14          I'll call them the Woods brothers, the Woods owning the  
15          land here -- do you know -- have any information whether  
16          or not the Woods brothers were using siphons to irrigate  
17          any of their land on Roberts Island?

18          MR. WEE:  I don't believe so.

19          MR. HERRICK:  Mr. Wee, do you know when pumps  
20          to lift water from the main channels of the Delta onto  
21          the island were first introduced?

22          MR. O'LAUGHLIN:  Island generally?  Is this a  
23          general --

24          MR. HERRICK:  Generally, yes.  Little  
25          foundation.

1 MR. O'LAUGHLIN: Okay.

2 MR. WEE: I do know that mobile pumps were  
3 employed early in the -- I couldn't give you a  
4 chronological framework, certainly not a tight one. But  
5 I know that prior to permanent systems there were mobile  
6 pumps.

7 MR. HERRICK: Do you have any information as to  
8 when pumps were used by the Woods brothers to divert  
9 water onto their lands on Roberts Island?

10 MR. WEE: I'm trying to think. I believe that  
11 the first indication that I have seen in the --  
12 certainly on the maps I think is the 1941 map. I don't  
13 think a pump appears on any of the earlier system maps.

14 MR. HERRICK: Appreciate that.

15 Again, the question was more of: Do you know  
16 when the Woods brothers may have first used pumps to  
17 divert from the channels onto their land.

18 MR. WEE: I was trying to answer your question.  
19 By 1941, but I don't know.

20 MR. HERRICK: Okay. I'm just getting to that.  
21 Have you reviewed any of the Woods Irrigation Company  
22 minutes?

23 MR. WEE: I haven't read them all the way  
24 through, certainly, no.

25 MR. HERRICK: Do you recall any reference in

1 those minutes to installation of pumpworks before 1941?

2 MR. WEE: As I recall, they talk about pumps.  
3 It's unclear whether they were drainage pumps or  
4 irrigation pumps.

5 MR. HERRICK: Have you examined Mr. Nomellini's  
6 written testimony and exhibits?

7 MR. WEE: No.

8 MR. HERRICK: So then you're not familiar with  
9 his attachment of the decree of distribution for J.N.  
10 Woods?

11 MR. WEE: I have --

12 MR. HERRICK: I'm not trying trick you.

13 MR. WEE: I have seen that document, yes.

14 MR. HERRICK: Do you recall whether or not that  
15 document contains a pump as one of the items in his  
16 estate, the J.N. Woods estate?

17 MR. WEE: I would have to refer to the  
18 document, look at it. I don't recall.

19 MR. HERRICK: The reason I was saying that was  
20 to try to see if I could jog your memory to see if you  
21 did have any earlier knowledge of pumps being used by  
22 the Woods brothers, not that those questions confirm or  
23 deny any particular date.

24 Again, did that jog your memory at all? Do you  
25 have any other recollection now of such use of pumps?



1           MR. WEE:  As I said, I don't recall pumps being  
2  in that document.

3           MR. HERRICK:  Okay.  Thank you.  Now that 1898  
4  article we just went over, Exhibit 5, dealing with the,  
5  would it be correct to say, the proposed Woods  
6  irrigation system -- excuse me -- with the proposed  
7  Woods brothers irrigation system, from that article do  
8  you -- can you discern how many acres were intended to  
9  be served by that facility?

10          MR. WEE:  No, that's beyond my expertise.

11          MR. HERRICK:  And do you have any information  
12  with regards to other sources as to how many acres were  
13  to be served by that facility?

14          MR. WEE:  Never seen it, an acreage figure, on  
15  this gravity facility.

16          MR. HERRICK:  And then Exhibit 6 is a March 11,  
17  1899 article similar to the prior one in that it has an  
18  agricultural view by counties, or by some counties, and  
19  on -- could you go to the page that deals with San  
20  Joaquin?

21          MR. WEE:  Yes.

22          MR. HERRICK:  And that article states -- excuse  
23  me for jumping forward quickly.

24                 That article states, sort of in the middle  
25  there:

1 Woods brothers have an excellent system  
2 of ditches for irrigation, but a better  
3 yield will be secured if the moisture can  
4 be obtained in the form of rain at the  
5 right time.

6 Do you see that?

7 MR. WEE: Yes.

8 MR. HERRICK: Now again, I -- I'm sorry for  
9 being -- it seems representative, but I'm just trying to  
10 go through each document.

11 From this document, do you have any knowledge  
12 of the acreage that the Woods brothers may have been  
13 irrigating as of the date of this article which is 1899?

14 MR. WEE: No.

15 MR. HERRICK: Do you know whether or not the,  
16 as they call it, the excellent system of ditches for  
17 irrigation includes any sloughs in the area that may  
18 have existed?

19 MR. WEE: No.

20 MR. HERRICK: And do you know whether or not  
21 the Woods Irrigation system includes -- let me back up.

22 Do you know whether or not at the date of this  
23 article in 1899 whether the Woods system includes pumps?

24 MR. WEE: No. As I said, nothing in the  
25 historic record indicates that.

1           MR. HERRICK: Turning to your Exhibit 7A, do  
2 you have that in front of you?

3           MR. WEE: I do.

4           MR. HERRICK: And this is your excellent  
5 representation of transfers of land to the Woods  
6 brothers over a certain period of time, is that correct?  
7 Is that a fair statement?

8           MR. WEE: That's correct.

9           MR. HERRICK: You don't have to agree with the  
10 "excellent" part.

11           Anyway, each of those transfers has an  
12 accompanying deed thereafter in your -- as your -- one  
13 of your attachments, correct?

14           MR. WEE: That's correct.

15           MR. HERRICK: And the area marked with a 2 --  
16 and I apologize; I'm colorblind, so I can't help with  
17 what the colors are outlined. But the area marked in 2  
18 which is dated June 8, 1891, do you see that? That's at  
19 the very bottom there.

20           MR. WEE: Yes, I do.

21           MR. HERRICK: And I believe it was your  
22 testimony that that I'll call it a parcel; doesn't mean  
23 it's a separate parcel -- but that area of land  
24 transferred to the Woods in your opinion maintained a  
25 riparian connection at the time of this transfer?

1           In other words, it hadn't been previously cut  
2 out before?

3           MR. WEE: That's correct.

4           MR. HERRICK: And it dates it, as I said,  
5 June 8, 1891. Do you have the recordation dates of  
6 these deeds in addition to the date of the deeds  
7 themselves?

8           MR. WEE: I believe the date of recordation is  
9 on each of the deeds, yes.

10          MR. HERRICK: Okay. I've got a -- you can  
11 disagree, because I don't -- we can just refer to the  
12 record if we have to, but I've got a summary of those --  
13 many of those deeds with the recordation date and the  
14 agreement date.

15          I'll just use it to see if I can jog memory,  
16 but you tell me if it doesn't or I'm wrong.

17          MR. WEE: I also have the recordation date. It  
18 appears in my table.

19          (Discussion between counsel and witness)

20          MR. O'LAUGHLIN: What we were talking about is  
21 that in the Exhibit 7A the second page is a table. And  
22 in the table, it not only has the date of the instrument  
23 but it has the date that it's recorded is running  
24 parallel to it.

25          MR. HERRICK: I see that. I apologize.

1 MR. O'LAUGHLIN: This would be 7B.

2 MR. WEE: The table is 7B.

3 MR. HERRICK: And excuse me for this being a  
4 little difficult. But the number 2 transaction would be  
5 in your table.

6 MR. WEE: It is the second one down.

7 MR. HERRICK: The second one.

8 Let me approach this another way since I just  
9 confused that horribly. I apologize.

10 I few of these -- I don't want to overstate it;  
11 it will have to be argument later.

12 A few of these then, notwithstanding the date  
13 on the instrument, a few of these were recorded on  
14 similar dates not the date of the agreement, correct?

15 MR. WEE: Some of these deeds were taken to the  
16 Recorder's Office on the same day and were made -- were  
17 made -- they made them of record, yes.

18 MR. HERRICK: And it appears from your chart  
19 that the second instrument -- excuse me.

20 It appears from your chart that the one, two,  
21 three -- fourth and fifth instrument were recorded on  
22 the same date.

23 MR. O'LAUGHLIN: Rather than say the  
24 instrument, can we describe what actual transaction  
25 we're talking about? I'm confused.

1           MR. HERRICK:  Okay.  Turning to the second page  
2 of your chart, Mr. Wee, document A72-65 --

3           MR. WEE:  Yes.

4           MR. HERRICK:  -- and 64 were recorded on the  
5 same date; is that correct?

6           MR. WEE:  They were recorded on the same date.

7           MR. HERRICK:  And then documents A77-63,  
8 A78-130, and A78-130 (sic) were also recorded on the  
9 same date; is that correct?

10          MR. WEE:  That's correct.

11          MR. HERRICK:  Going back to your map which is  
12 7A, walking through these sequentially real quickly,  
13 sorry.

14          So number 2 is transferred to the Woods  
15 brothers on June 8, 1891, and it is connected to Middle  
16 River; is that correct?

17          MR. WEE:  That is correct.

18          MR. HERRICK:  And then the remainder of the  
19 parcels at this time are in the hands of Stewart; is  
20 that correct?  Or maybe Easton.  Mess things up further.

21          MR. WEE:  Yes, they are all in the hands of  
22 Stewart at that time.

23          MR. HERRICK:  So if we go to transaction number  
24 5 which is just immediately north of 2.

25          MR. WEE:  Yes.

1           MR. HERRICK: Prior to transaction, this sale,  
2 this transfer, that portion was part of the Stewart  
3 et al's land which at a minimum connected at Burns  
4 Cutoff; is that correct?

5           MR. WEE: Yes. Prior to this transfer, it was  
6 part of a parcel that did --

7           MR. HERRICK: Then after the transfer -- sorry?

8           MR. O'LAUGHLIN: You got to look at it.

9           MR. WEE: Yes. It was part of the larger  
10 parcel that connected to Burns at the time.

11           MR. HERRICK: And so it went -- through this  
12 transaction, it went from contiguous to Burns Cutoff to  
13 joining the piece of land contiguous with Middle River;  
14 is that correct?

15           MR. WEE: I don't know what you mean by joined  
16 with?

17           MR. O'LAUGHLIN: Adjoining.

18           MR. WEE: Adjoining, next to?

19           MR. O'LAUGHLIN: Adjoining or joining.

20           MR. HERRICK: I'll restate that.

21           Prior to the transaction, it was contiguous to  
22 Burns Cutoff; and by the transaction, it was owned by  
23 individuals who were contiguous to Middle River,  
24 correct?

25           MR. WEE: The Woods brothers --

1 MR. O'LAUGHLIN: Can we -- wait, wait, wait.

2 No, no, no.

3 I'm not -- I don't want to tell you how to do  
4 your cross-examination. That was a compound question  
5 because you started at Burns and then you added "and".

6 Can you break it up so we can be specific, like  
7 either before and after?

8 I know what you're getting at, but the question  
9 is compound, and if he answers yes or no, it may be  
10 incorrect.

11 MR. HERRICK: I'm not trying to make him say  
12 anything incorrect.

13 Mr. Wee, do you need a different question?

14 MR. WEE: It probably would help if you --  
15 now -- if you would repeat the question.

16 MR. HERRICK: Certainly. And at any time, if I  
17 mangle the words or say it inappropriately, say I don't  
18 understand that. I'm not trying to make you say  
19 something you don't want to.

20 Prior to the transaction listed in number 5,  
21 the property designated by number 5 was part of a parcel  
22 or parcels owned by Stewart, et al which was touching  
23 Burns Cutoff, correct?

24 MR. WEE: That's correct.

25 MR. HERRICK: Through the transaction, the



1 parcel included in number 5 transferred to the owners of  
2 land contiguous to Middle River, correct?

3 MR. WEE: The Woods brothers owned an adjacent  
4 parcel that was contiguous to Middle River.

5 MR. HERRICK: That's all I was asking for. I'm  
6 not trying to mess that up.

7 And for each of those other transactions, one  
8 could do a similar question to see whether or not the  
9 land was contiguous to Burns Cutoff before the  
10 transaction and then to see what it was touching  
11 contiguous with its new owner's lands?

12 MR. WEE: Yes, that can be done. That's the  
13 purpose of this map.

14 MR. HERRICK: And then parties can then argue  
15 about what can and can't be riparian rights, right?

16 MR. WEE: Correct.

17 MR. HERRICK: Okay.

18 Now, in your testimony -- and I may be  
19 intruding upon other people's work here -- but in your  
20 testimony, you talk about the -- let me get to the map.  
21 Sorry.

22 Your Exhibit No. 8A. And 8A is an assessor's  
23 parcel map or plat with some ownership designations put  
24 in by you.

25 MR. WEE: That is correct.

1           MR. HERRICK:  And I believe it's your intent in  
2  this -- in discussing and presenting this map to show  
3  that when the Woods brothers' lands were divided up  
4  between E.W.S. Woods' and J.N. Woods' heirs that there  
5  were interruptions between the heirs' lands touching  
6  Burns Cutoff and their lands farther south.  Is that a  
7  correct statement?

8           MR. WEE:  Yes.  Mr. Woods' lands lie between  
9  the two.

10          MR. HERRICK:  Okay.  And in your analysis of  
11  that interruption, did you take into consideration that  
12  the heirs of J.N. Woods received their land through a  
13  decree of distribution or through a court action which  
14  divided the deceased's lands?

15          MR. WEE:  Yes, I noted that.  I know that  
16  occurred, yes.

17          MR. HERRICK:  And in your opinion, does that  
18  division by the court indicate an intent either way to  
19  either interrupt or sever -- excuse me -- to either  
20  interrupt or maintain any rights dealing with the  
21  properties?

22          MR. WEE:  To me, that's a legal question that I  
23  don't have the answer to.

24          MR. HERRICK:  That's fine.

25                 Now at this time -- and you've dated this

1 December 1909 -- at this time, were there any facilities  
2 connecting the Wilhoit Douglass lands, who are the heirs  
3 of J.N. Woods, on the south to their little portion on  
4 the north which abuts Burns Cutoff?

5 MR. WEE: Could you repeat that? I'm not sure  
6 I got.

7 MR. HERRICK: At the time of this ownership  
8 that you designated on your map, Exhibit 8A, do you know  
9 if there are any facilities connecting the northern  
10 Wilhoit Douglass lands with the southern Wilhoit  
11 Douglass lands?

12 MR. WEE: I've never seen any documentation in  
13 the historic record to indicate that to me, no.

14 MR. HERRICK: Okay. Do you know where the  
15 Woods Irrigation Company drainage facilities are?

16 MR. WEE: Yes, I do.

17 MR. HERRICK: And are they indicated on this  
18 map? Can you designate that at all?

19 MR. WEE: Yes, inside the green triangular  
20 parcel that's adjacent to Burns Cutoff, you see the  
21 words Wilhoit and Douglass. It is -- the letter U in  
22 Douglass is bisected by the sort of north-south trending  
23 line, and that is the location of the main drain.

24 MR. HERRICK: That connects both -- using this  
25 map, that connects both the E.W.S. Woods lands and the

1 southern Wilhoit Douglass lands through a drainage ditch  
2 to Burns Cutoff, correct? Or drainage facilities.

3 MR. WEE: You can't tell that from this map. I  
4 don't know if that -- I don't know if that drainage  
5 system continues on down into the Wilhoit Douglass  
6 property or not.

7 MR. HERRICK: Okay.

8 Now on to your page 25, that second paragraph,  
9 you're sort of summing up that subsequent transfers in  
10 1912 conveyed certain lands north of the railroad to  
11 three parties.

12 And then at the end of the paragraph you say:

13 By end of 1912, the parcel north of the  
14 railroad line running to Burns Cutoff had  
15 been broken up into several small  
16 parcels.

17 Is that correct?

18 MR. WEE: That's correct.

19 MR. HERRICK: And is it your contention that  
20 the railroad running east-west through this portion,  
21 which is the lower portion of Middle Roberts, is it your  
22 contention that that caused any sort of severance  
23 regarding water rights?

24 MR. WEE: I don't think I said that. I think  
25 I -- it's a physical separation, and what the legal

1 consequences of that would be to their riparian rights  
2 is something that I am not capable of probably making  
3 that determination.

4 MR. HERRICK: Did you examine any of the deeds  
5 regarding the railroad to see if there were any  
6 reservation of rights?

7 MR. WEE: You know, these deeds, I looked at  
8 several of them because they sort of -- they continue  
9 through the whole line in here.

10 And all I can say about them is that there are  
11 different provisions in different deeds, and I do know  
12 that in some of the deeds -- certainly in at least one  
13 of the deeds -- there is a reversionary clause, I guess  
14 you would call it, that if the property was not used for  
15 railroad purposes it could revert to the landowner.

16 MR. HERRICK: Mr. Chairman, I believe I'm done.  
17 If I could just have a couple minutes to confer, and  
18 then I think we'll move on to the other two  
19 cross-examiners who have very little.

20 CO-HEARING OFFICER PETTIT: Go ahead,  
21 Mr. Herrick.

22 MR. HERRICK: Thank you.

23 CO-HEARING OFFICER PETTIT: Let's go off the  
24 record for a moment, Linda.

25 (Recess)

1           MR. RUIZ: Mr. Pettit, if we could take our  
2 last little short break and we can more adequately do  
3 our conferring, and whatever cross the County and the  
4 Agencies have left we can do at that time.

5           CO-HEARING OFFICER PETTIT: How long do you  
6 need, Mr. Ruiz.

7           MR. RUIZ: Five minutes.

8           CO-HEARING OFFICER PETTIT: Okay. Let's stick  
9 to five.

10           (Recess)

11           CO-HEARING OFFICER PETTIT: Does this mean you  
12 weren't complete, Mr. Herrick.

13           MR. HERRICK: Pardon me?

14           CO-HEARING OFFICER PETTIT: You have more, I  
15 take it?

16           MR. HERRICK: Just have a couple short  
17 questions, then we can move on and certainly meet our  
18 time.

19           CO-HEARING OFFICER PETTIT: Thank you.

20           MR. HERRICK: Mr. Wee, are you familiar with  
21 the construction of the railroad across this portion of  
22 Roberts Island at all?

23           MR. WEE: How it was constructed? No, not this  
24 railroad, no.

25           MR. HERRICK: For the purposes of this hearing,

1 did you examine any documents related to the plans or  
2 eventual construction of it?

3 MR. WEE: You mean plans by the railroad? No.  
4 No, I didn't.

5 MR. HERRICK: Do you know whether or not they  
6 built trestles over different features rather than -- as  
7 opposed to fill them in and make a big levee?

8 MR. WEE: I don't know.

9 MR. HERRICK: Okay. Do you know whether or not  
10 they left gaps under structures like a trestle or bridge  
11 in order to facilitate other land uses?

12 MR. WEE: I did read in one of the deeds, I  
13 believe, that there were two 11-foot -- somewhere along  
14 that road; I can't tell you where along it. I don't  
15 know that. In fact, it wasn't specified where -- there  
16 are two openings that were reserved for passing through  
17 under the railroad and one crossing for a road.

18 MR. HERRICK: Do you recall what the purpose of  
19 those two 11-foot openings were?

20 MR. WEE: I don't think it specified what they  
21 were for.

22 MR. HERRICK: I have nothing further. I  
23 believe Mr. Ruiz will go next, I think.

24 CO-HEARING OFFICER PETTIT: Thank you,  
25 Mr. Herrick.

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CROSS-EXAMINATION BY MR. RUIZ  
FOR CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY

--o0o--

MR. RUIZ: Good morning, Mr. Wee. Dean Ruiz for Central and South Delta Water Agency. Just real quick, I know you've been doing this for a long time, so really a quick question or two following up on the testimony you just provided.

Mr. Herrick was -- you just testified in response to a question I believe that you came across a document or agreement talking about a reservation of a right of way and in two 11-foot openings under the railroad; is that right?

MR. WEE: That's correct.

MR. HERRICK: Do you know what -- where you came across that document? What -- any recollection of that specific document?

MR. WEE: It would have to be a deed that somehow dealt with the railroad lands, but I cannot tell you off the top of my head, and I don't believe I have anything like that with me.

MR. RUIZ: Okay. I'm not trying to test your memory. I have an agreement that I'll represent, and I'd like to have this marked as Woods IC-R for



1 identification. I'm not sure what number we're on.

2 But it's an 1898 agreement, and it is very  
3 difficult to read, but it appears to be an agreement,  
4 1898 agreement, between Woods John N. Woods and  
5 E.W.S. Woods and the San Francisco and San Joaquin  
6 Valley Railroad Company.

7 Do you recall coming across any such agreement  
8 with respect to your testimony about the openings in the  
9 railroad?

10 MR. WEE: Whether that document contains that  
11 information, I don't know. But I have seen that  
12 document.

13 MR. RUIZ: Okay. I have through the use of a  
14 visual aid, which I don't have here, but I have  
15 interpreted or read the last couple paragraphs of it,  
16 and I'll give you a copy of the agreement that I'm  
17 referring to.

18 I don't expect you're going to -- well, you may  
19 be able to read it because you do this a lot more than I  
20 do, but I'll go through with you the language that I  
21 think it contains.

22 MR. O'LAUGHLIN: Could we have --

23 STAFF ATTORNEY AUE: Just --

24 MR. O'LAUGHLIN: We don't have the document  
25 marked. Can we -- is it Woods what? What's the number?

1           STAFF ATTORNEY AUE:  Actually, that would be  
2  South Delta or Central Delta.

3           MR. RUIZ:  That's fine.

4           STAFF ATTORNEY AUE:  Have you entered exhibits  
5  before?

6           MR. RUIZ:  We haven't so, it would be --

7           STAFF ATTORNEY AUE:  R-1.

8           MR. RUIZ:  It would be.  Thank you.

9           STAFF ATTORNEY AUE:  Just to clarify, would  
10 that be for South Delta, Central Delta, or both?

11          MR. RUIZ:  Both.

12          STAFF ATTORNEY AUE:  Thanks.

13          MR. RUIZ:  Just looking at page two of this  
14 agreement, the last two paragraphs, can you read those  
15 last two paragraphs?

16          MR. WEE:  Can you just give me a moment to try  
17 to decipher what this document is?

18          MR. RUIZ:  Sure.

19          MS. KINCAID:  In the meantime, Mr. Ruiz, do you  
20 have any other copies of that document?

21          MR. RUIZ:  I do have one more.

22          THE WITNESS:  You were directing my attention  
23 to where?

24          MR. RUIZ:  I was directing your attention to  
25 the last two paragraphs on the second page.  And I can

1 read to you what I interpreted with a visual aid.

2 It says, the second to last paragraph:

3 It is further coveded and agreed that  
4 said party of the second part shall  
5 construct such and maintain at a point to  
6 be designated by the said parties of the  
7 first part two openings --

8 And then I don't know. It says blank blank:  
9 that 14 feet wide and that said party of  
10 the second part shall construct and  
11 maintain a crossing at least 42 feet wide  
12 over the road of said party of the second  
13 part at a point to be designated by said  
14 parties of the first part.

15 Do you follow along? Does that -- are you able  
16 to read that with my interpretation?

17 MR. WEE: Yes.

18 MR. RUIZ: Okay. And then the second -- the  
19 last paragraph, I interpret it to say:

20 It is further coveded and agreed that  
21 said party of the second part in  
22 constructing the road bed shall not in  
23 any way --

24 And there's a missing word, but it appears to  
25 be -- it would logically seem to be "interfere."

1                   -- with the growing of crops on said  
2                   land.

3                   Do you see that? Can you read that with my  
4                   assistance?

5                   MR. WEE: Yes.

6                   MR. RUIZ: Okay. Does this trigger your memory  
7                   at all if you've come across this agreement?

8                   MR. WEE: Well, as I said, I read the -- I knew  
9                   I had seen this agreement. I recall it was 11 feet  
10                  instead of 14. But I think other than that it tracks  
11                  with what I said.

12                  MR. RUIZ: Okay. And calling your attention to  
13                  that last paragraph, with respect to no interference or  
14                  it was coveted there wouldn't be any interference with  
15                  the growing of crops on said land, would that in any way  
16                  affect your analysis or conclusions of any of the work  
17                  you've done in connection with this matter?

18                  MR. WEE: No.

19                  MR. RUIZ: And the same question with respect  
20                  to the second to last paragraph?

21                  MR. WEE: No.

22                  MR. RUIZ: Okay. Let me look at my other notes  
23                  real quickly.

24                  Thank you, Mr. Wee.

25                  MR. WEE: Thank you.

1 CO-HEARING OFFICER PETTIT: Mr. Ruiz, I was  
2 just reminded. I don't think we have a copy of that  
3 last exhibit yet.

4 MR. RUIZ: Oh, yes. Let me get you -- thank  
5 you.

6 CO-HEARING OFFICER PETTIT: Thank you.

7 For the record, I gather Ms. Gillick is about  
8 ready to proceed.

9 --o0o--

10 CROSS-EXAMINATION BY MS. GILLICK  
11 FOR SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY  
12 FLOOD CONTROL & WATER CONSERVATION DISTRICT

13 --o0o--

14 MS. GILLICK: Thank you. DeeAnne Gillick on  
15 behalf of the County of San Joaquin.

16 Mr. Wee, why don't we start at the area of  
17 questioning that just left off regarding the railroad.

18 And I believe in your testimony you included a  
19 reference to several transactions associated with the  
20 railroad. Do you recall that?

21 MR. WEE: Which exhibits are you referring to?

22 MS. GILLICK: Just foundational, that your  
23 testimony deals with deeds that is north -- I believe  
24 north of the railroad.

25 MR. WEE: Oh, yes. There are a few deeds that

1 I presented that do deal with lands north of the  
2 railroad.

3 MS. GILLICK: And I don't think it's quite  
4 clear, at least not clear to me, the identification  
5 numbers of those exhibits. But I believe your WIC  
6 Exhibit 8F is one of those deeds?

7 MR. WEE: Yes, it is.

8 MS. GILLICK: Okay. And the purpose -- or how  
9 is this deed connected to your testimony, if you'll tell  
10 me.

11 MR. WEE: Yes. The lands that are north of the  
12 railroad passed through the hands of the Wilhoit  
13 Douglass families to other individuals in 1912. And  
14 I --

15 MS. GILLICK: So this is.

16 MR. O'LAUGHLIN: Wait. Wait. You've got to  
17 wait until he's done with his answer, then you can ask  
18 the next question. He has not finished.

19 MS. GILLICK: Well, I think he had. Go ahead,  
20 Mr. Wee.

21 MR. WEE: I just wanted to continue on through  
22 these transactions to show that the lands, you know, had  
23 passed on to other individuals north of the railroad.

24 MS. GILLICK: But I don't think I specifically  
25 asked you to go through each deed. I asked you the

1 general purpose of those deeds as to your testimony.

2 MR. WEE: To indicate that the land that is  
3 north of the railroad was severed from the Wilhoit  
4 Douglass holdings.

5 MS. GILLICK: Thank you.

6 On your Exhibit 8F in that deed, wasn't there a  
7 right of way preserved for purposes of irrigation?

8 MR. WEE: On the severed parcel, yes.

9 MS. GILLICK: On the several parcel?

10 MR. WEE: Yes.

11 MS. GILLICK: Okay. And I believe -- I'm  
12 looking at that deed. I believe in the middle of the  
13 page, if you can follow that with me, it reads:

14 Also that certain perpetual right of way  
15 for the purpose of digging -- and  
16 something -- repairing and using either  
17 as a canal or flume or as -- or pipe or  
18 canal.

19 Is that correct?

20 MR. WEE: Yes.

21 MS. GILLICK: And I did skip some of the words  
22 that I couldn't read, but the ones I did read were  
23 correct?

24 MR. WEE: Yes.

25 MS. GILLICK: Okay. Mr. Wee, I'd like to refer

1 to your Exhibit 8G.

2 MR. WEE: Yes.

3 MS. GILLICK: Does that deed also retain a  
4 similar right of way for purpose of an irrigation canal?

5 MR. WEE: Yes. These deeds to these  
6 individuals contained a right of way for an irrigation  
7 canal to serve their lands.

8 MS. GILLICK: Okay. I'm going to turn to a  
9 different area now.

10 I'd like to refer to your map which you  
11 prepared as Exhibit 7A, and I believe that's a  
12 representation of, according to your testimony, alleged  
13 transfers of the property which severs that parcel or  
14 each parcel from any connection with a waterway. Was  
15 that correct?

16 MR. WEE: Yes. All of them except for the one  
17 that is what I previously noted, parcel number 2, at the  
18 very south end of the map.

19 MS. GILLICK: Okay. And looking at that, I  
20 think it's what you noted as parcel 8A regarding  
21 agreement 75:484. Do you see that parcel in the center,  
22 on the left-hand center of the map?

23 MR. WEE: Okay. First of all, it's not A for  
24 agreement. It's a deed. The A is Book A of Deeds.

25 MS. GILLICK: I'm sorry. I misspoke. I said A



1 for agreement. A 75:484.

2 MR. WEE: Yes, I see the parcel you're  
3 referring to.

4 MS. GILLICK: And it's my understanding that  
5 you conclude that that deed severed that parcel from any  
6 riparian watercourse; is that correct?

7 MR. WEE: Not that deed, no.

8 MS. GILLICK: That --

9 MR. WEE: It was later severed.

10 MS. GILLICK: Okay. It's my understanding that  
11 your testimony is that parcel is severed. The parcel  
12 depicted is severed from any riparian watercourse.

13 MR. WEE: Well, that parcel was created in  
14 1892. My argument or my -- is that by 1909 or 1912,  
15 depending on the legal issues, I think, that parcel was  
16 severed from Burns Cutoff.

17 MS. GILLICK: Okay. You included as part of  
18 your testimony the deeds that supported the parcels  
19 created on your Exhibit 7A; is that correct?

20 MR. WEE: Yes.

21 MS. GILLICK: And in your testimony, you noted  
22 that the deeds did not -- let me use the exact  
23 language -- specifically reserve any riparian water  
24 rights. Is that correct?

25 MR. WEE: That's correct.

1 MS. GILLICK: And the dates of all of these  
2 deeds is 1891; is that correct?

3 MR. WEE: No.

4 MS. GILLICK: I'm sorry. The dates of these  
5 deeds are 1891 and 1992?

6 MR. WEE: No.

7 MS. GILLICK: Is that correct? Okay. Are the  
8 dates of these deeds prior to 1892?

9 MR. WEE: Some of them are, yes. They range in  
10 date from 1889 to 1892.

11 MS. GILLICK: So the latest deed would have  
12 been in 1892; is that correct?

13 MR. WEE: That's correct.

14 MS. GILLICK: Okay. And isn't it true that  
15 every single one of these deeds includes as language  
16 within the deeds language which reads as follows:

17 Together with all and singular the  
18 tenements, hereditaments, and  
19 appurtenances thereunto belonging or in  
20 any-wise appertaining, and the reversion  
21 and reversions, remainder and remainders,  
22 rents, issues and profits thereof.

23 MR. WEE: I have to look to see if all of them  
24 contain that. Certainly some of them do.

25 MS. GILLICK: Why don't we go through those

1 deeds. I believe it is 7C, is the first one.

2 MR. WEE: Yes. I can see that, 7C and 7D.

3 MS. GILLICK: So 7C and 7D do. How about 7E?

4 MR. WEE: Give me a little more time here.

5 This is a handwritten one, so I'm just -- let me see

6 here.

7 MS. GILLICK: 7D does?

8 MR. WEE: We're up to 7D, and I will have to

9 look here.

10 MS. GILLICK: On 7D? Are you looking at 7D

11 right now?

12 MR. WEE: I am looking at 7D.

13 MS. GILLICK: If I can point your attention to

14 the second page of that deed, the first -- the second

15 paragraph which states together with all and singular.

16 Do you see that?

17 MR. WEE: Yes, I do.

18 MS. GILLICK: So that deed, 7D, includes that

19 language?

20 MR. WEE: Yes.

21 MS. GILLICK: And deed 7E, I believe it's typed

22 in the center of the page?

23 MR. WEE: Yes.

24 MS. GILLICK: 7F, again typed in the center of

25 the page?

1           MR. WEE:  Yes.

2           MS. GILLICK:  7G, again typed in the center of  
3 the page?

4           MR. WEE:  Yes.

5           MS. GILLICK:  7H, typed in the center of the  
6 page?

7           MR. WEE:  Yes.

8           MS. GILLICK:  7I, on the second page, the first  
9 full paragraph reads:  Together with all and singular;  
10 is that correct?

11          MR. WEE:  Yes.

12          MS. GILLICK:  7J --

13          MR. WEE:  7J also, yes.

14          MS. GILLICK:  -- includes the language as well.  
15                And 7K on the very last page, the first full  
16 paragraph, the top of that page?

17          MR. WEE:  Yes.  And 7L, yes.  7M, yes also.

18          MS. GILLICK:  Okay.  So do you agree that all  
19 the deeds include that language?

20          MR. WEE:  Yes.

21          MS. GILLICK:  Do you know in the years 1889 to  
22 1892 how a riparian water right might be retained in the  
23 deeds?

24          MR. WEE:  Yes.  By specific reservation of the  
25 right or passage of the right.

1 MS. GILLICK: Do you know if the general  
2 language could retain -- the general language we just  
3 went over in all the deeds could retain a riparian water  
4 right?

5 MR. O'LAUGHLIN: I'm going to object. It calls  
6 for a legal conclusion.

7 And not only that, actually there's California  
8 case law specifically on this point that that language  
9 does not expressly reserve a riparian right.

10 MS. GILLICK: Okay. Well, we'll argue the  
11 legal issues --

12 CO-HEARING OFFICER PETTIT: I think the  
13 language speaks for itself, and I won't ask Mr. Wee to  
14 respond to that, so.

15 MS. GILLICK: Mr. Wee, I believe in your  
16 testimony you point out that you disagree with Mr.  
17 Blake's representation of some of the interior island  
18 sloughs in his presentation of his riparian analysis.  
19 Is that a correct representation of your testimony?

20 MR. O'LAUGHLIN: Can you point us to that in  
21 the testimony that you are referring to?

22 MS. GILLICK: Pointing to page 21 where says:  
23 I will first address the interior  
24 sloughs.

25 Do you recall that testimony, Mr. Wee? Page 21

1 of your testimony.

2 MR. WEE: Yes.

3 MS. GILLICK: I'd like to refer to map 2A of  
4 the Woods Irrigation Company exhibits. And that's a  
5 document --

6 MR. O'LAUGHLIN: I don't have Woods in front of  
7 us.

8 MS. GILLICK: Well, I think Mr. Lindsay could  
9 pull that up. It's 2A in Woods Irrigation Company  
10 exhibits.

11 CHIEF LINDSAY: Is this the original 2A or in  
12 the rebuttal?

13 MS. GILLICK: Woods Irrigation Company No. 2A.

14 MR. O'LAUGHLIN: But I don't understand why  
15 we're doing cross-examination on a Woods exhibit.

16 MS. GILLICK: We're using it for illustrative  
17 purposes, Mr. O'Laughlin.

18 MR. O'LAUGHLIN: Illustrative purposes. Okay.  
19 Well --

20 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin, I  
21 didn't hear your comment there.

22 MR. O'LAUGHLIN: Well, no, I just want to --  
23 you know, we're running short of time, and she -- I just  
24 want to make sure that we stay with the rebuttal  
25 testimony.

1           And Mr. Wee didn't use this map as part of his  
2   rebuttal testimony.

3           CO-HEARING OFFICER PETTIT: I was about to ask  
4   about that, Ms. Gillick.

5           MS. GILLICK: Mr. Pettit, on cross-examination,  
6   you can refer to anything to address the credibility or  
7   the intent of the testimony.

8           And I'm referring to another map for  
9   illustrative purposes to investigate Mr. Wee's testimony  
10  that he presented on rebuttal.

11          CO-HEARING OFFICER PETTIT: Okay. I have some  
12  good legal advice. We're going to allow the question,  
13  but if it's not relevant to the rebuttal, we'll strike  
14  it later.

15          MS. GILLICK: Okay. Well, my line of  
16  questioning, I'm talking about the interior sloughs  
17  which were just identified in his testimony on page 21.

18          And Mr. Wee --

19          MR. O'LAUGHLIN: Mr. Wee didn't identify them.  
20  Mr. Blake identified them. Mr. Wee noted that Mr.  
21  Blake identified --

22          MS. GILLICK: I just identified Mr. Wee's  
23  testimony on page 21 regarding the interior sloughs  
24  discussion.

25          Mr. Wee, I'm looking at a map, and I'm going

1 to -- it's in the record as Woods Irrigation Company 2A.  
2 And I'm going to purport that it is a map that's been  
3 dated between 1907 and 1909. Can we assume that fact  
4 for purposes of our discussion?

5 MR. WEE: My analysis of that map said it was  
6 1909.

7 MS. GILLICK: 1909. Okay. Then we'll take  
8 your analysis. Are you familiar with this map? Have  
9 you seen it before?

10 MR. WEE: Yes.

11 MS. GILLICK: Okay. And does this map depict  
12 in the very center of that map a sinuous line that runs  
13 down the center of the map? I'll just -- see the line  
14 I'm referring to?

15 MR. WEE: I do see the line you are referring  
16 to.

17 MS. GILLICK: Okay. And on that sinuous line,  
18 do you know if there is noted on the map, if you got a  
19 closer look, the word "gates" as well as the word  
20 "dams"?

21 MR. WEE: Yeah. I've viewed that map, and I've  
22 verified that those words are on there.

23 MS. GILLICK: Okay. Isn't it possible that the  
24 route of that sinuous line runs along an historic  
25 slough?



1           MR. O'LAUGHLIN:  Objection; vague and  
2  ambiguous.

3           Historic slough?  And I don't know what that  
4  means.  What is historic?  Does that mean it existed  
5  2000 years ago?  And not only that, "is it possible" is  
6  irrelevant.  I mean that calls for speculation.

7           CO-HEARING OFFICER PETTIT:  I guess my  
8  question, Ms. Gillick, would be we have had a lot of  
9  discussion about the absence or presence of Duck Slough  
10 and where it went, if it went and so on.  And I would  
11 just wonder where you are going with this what you would  
12 hope to show with it in any event.

13          MS. GILLICK:  Well, we're not dealing with the  
14 location of Duck Slough.  We're dealing right in the  
15 middle of the map, the sinuous line that goes down that  
16 connects from Burns Cutoff down the middle of the map to  
17 the bottom.

18          And Mr. Wee, let's assume for purposes that  
19 that sinuous line I just identified was a natural slough  
20 in 1891.  Can we do that?  From 1889 to 1892.

21          MR. WEE:  I wouldn't assume that it was.  But  
22 if you want.

23          MR. O'LAUGHLIN:  No.  I don't want to assume if  
24 it isn't.  Because if -- that's just calling for  
25 speculation, incomplete hypotheticals, and guessing and

1 isn't leading to the discovery of admissible evidence or  
2 relevant evidence.

3 MS. GILLICK: I believe I can set up  
4 hypotheticals, and I'm trying to do that step-by-step so  
5 that I didn't get objections being compound later.

6 Why don't we do this, Mr. Pettit. I have eight  
7 minutes left. So let me take a two-minute break, look  
8 at the rest of my testimony, questions I've prepared,  
9 and evaluate how I'm going to spend the next eight  
10 minutes, if that's okay.

11 CO-HEARING OFFICER PETTIT: You did qualify the  
12 question as hypothetical, and I think Mr. Wee recognized  
13 that. I'm still not sure where it's going. But two  
14 minutes, fine. Then let's get back on it.

15 MS. GILLICK: Eight minutes left, so let's  
16 finish up and give me a two-minute break and we'll  
17 focus --

18 CO-HEARING OFFICER PETTIT: Ten minutes all  
19 tolled, we'll be done.

20 MS. GILLICK: Thank you very much.

21 (Recess)

22 CO-HEARING OFFICER PETTIT: We're on again.

23 MS. GILLICK: Thank you, Hearing Officer  
24 Pettit. I'm going to go to a different area for the  
25 sake of the time that's remaining in our allotted

1 cross-examination time.

2 Mr. Wee, you earlier were questioned by  
3 Mr. Herrick regarding the historical installation of a  
4 head gate by the Woods brothers off of Middle River. Do  
5 you recall that?

6 MR. WEE: Yes.

7 MS. GILLICK: Okay. And your knowledge the  
8 head gate was being installed by the Woods brothers was  
9 based upon an historical article; is that correct?

10 MR. WEE: That's correct.

11 MS. GILLICK: Do you know if that head gate  
12 reference in the article was connected to one tunnel  
13 through the Middle River levee?

14 MR. WEE: It says a head gate.

15 MS. GILLICK: Okay. So do you know if the head  
16 gate was connected to two tunnels through -- the head  
17 gate through Middle River was connected to two tunnels?

18 MR. WEE: The article didn't say two tunnels.  
19 It just said a head gate. That's what I know.

20 MS. GILLICK: So you don't know if the head  
21 gate that was installed in reference in the article was  
22 connected to one tunnel, two tunnel, or even more than  
23 that; is that correct?

24 MR. WEE: I just know that a head gate was put  
25 in at that location.

1 MS. GILLICK: Okay. I'd like to pull up  
2 Exhibit 6L of Woods Irrigation Company for illustration  
3 purposes. It's a map. 6L.

4 CHIEF LINDSAY: I'm just showing R 14-6.

5 MS. GILLICK: Going back to the Woods exhibits,  
6 not Mr. Wee's.

7 CHIEF LINDSAY: No problem.

8 MS. GILLICK: So Woods attached to Mr. Blake's  
9 testimony.

10 I'm going to represent to you, Mr. Wee, that  
11 this is a diagram of some of the infrastructure in the  
12 Woods Irrigation Company service area. Okay?

13 MR. O'LAUGHLIN: Objection; vague and  
14 ambiguous. Represent when and where and at what time?  
15 Is this 1898 or 1900 or 19 -- or presently?

16 MS. GILLICK: For purposes of this question, it  
17 doesn't matter the date.

18 MR. HERRICK: Mr. Chairman, if I may clarify.  
19 I believe this is a blow-up of the 1914 Hendersen and  
20 Billwiller map which was used by Mr. Blake to identify  
21 dotted lines as canals.

22 CO-HEARING OFFICER PETTIT: Well, we have the  
23 exhibit. The exhibit is numbered. Everybody has it and  
24 can locate it, so I suggest you use your time by asking  
25 questions about it, if you have any.

1 MS. GILLICK: Okay. We've got a map identified  
2 as 1914. Okay, Mr. Wee? Do you see that map?

3 MR. WEE: Yes.

4 MS. GILLICK: Okay. I'd like to point out and  
5 identify what's been labeled Interior Island Slough  
6 which is the words for Interior Island Slough is  
7 directly above the hashmark parcel that's outlined in  
8 the map. Do you see that Mr. Wee?

9 MR. WEE: Yes.

10 MS. GILLICK: In the center of the page there  
11 is a hashmark, and above that there's a depiction  
12 identified as Interior Island Slough; is that correct?

13 MR. WEE: I see the marking on the map in blue,  
14 right?

15 MS. GILLICK: That's correct.

16 MR. WEE: Okay. Yes, I can read it now.

17 MS. GILLICK: Do you know if the facility that  
18 was -- do you know if the facility that the head gates  
19 reference in the newspaper articles, which we were just  
20 discussing, whether or not they were connected to this  
21 Interior Island Slough that we just identified on  
22 Exhibit 6L?

23 MR. O'LAUGHLIN: I'm going to object. That  
24 misstate the testimony. The testimony by Mr. Wee was it  
25 was a head gate. It was head gates. It was a head

1 gate.

2 MS. GILLICK: Okay. Then do you know if the  
3 head gate which we just discussed on Middle River and  
4 the facility from it was connected to the Interior  
5 Island Slough which we just identified on Exhibit SL?

6 MR. WEE: Two points: I don't know who  
7 identified Interior Island Slough. It's not on the  
8 maps. It's something somebody has added to the map.

9 Secondly, the article very clearly stated it  
10 had a head gate and a canal, canal running half a mile  
11 into the interior of the island. Does not mention any  
12 sloughs.

13 MS. GILLICK: Do you know where that canal  
14 referenced ran in the island? Which areas, where it  
15 was?

16 MR. WEE: Well, I don't. All the subsequent  
17 mapping shows one canal, and it's the one that was  
18 almost due north on that map, on the map you have on the  
19 wall or up on the screen.

20 MS. GILLICK: So you don't know if the canal  
21 referenced in Exhibit F, the article, was the Interior  
22 Island Slough depicted on Exhibit SL?

23 MS. KINCAID: That's been asked and answered.

24 MR. O'LAUGHLIN: Asked and answered. He's  
25 already said it was a half mile canal that went into the

1 interior, and he already said he didn't whether or not  
2 it connected to slough or not.

3 CO-HEARING OFFICER PETTIT: Sustained.

4 MR. O'LAUGHLIN: Thank you.

5 MS. GILLICK: I have no further questions.  
6 Thank you.

7 CO-HEARING OFFICER PETTIT: Thank you,  
8 Ms. Gillick.

9 MR. WEE: Thank you.

10 CO-HEARING OFFICER PETTIT: And thanks all  
11 three of you. Despite the breaks for consultations, you  
12 did complete within the time we asked you to, so thank  
13 you.

14 MR. O'LAUGHLIN: Prosecution Team?

15 CO-HEARING OFFICER PETTIT: Prosecution Team is  
16 up now, yes.

17 MR. ROSE: We have no cross-examination of Mr.  
18 Wee.

19 CO-HEARING OFFICER PETTIT: Okay. Thank you.  
20 Did you have any cross, Ms. Kincaid?

21 MS. KINCAID: No, I do not.

22 CO-HEARING OFFICER PETTIT: That appears to  
23 complete the cross for Mr. Wee then; is that correct?

24 MR. O'LAUGHLIN: Cross-examination is complete.  
25 We have no redirect.

1           And I don't know how you want to handle this.  
2   The Hearing Team had asked for a blow-up of a previous  
3   exhibit. We have done that. Should we just mark that  
4   and put that in? But I have no redirect for Mr. Wee.

5           CO-HEARING OFFICER PETTIT: Okay.

6           MR. O'LAUGHLIN: We can put just that in next  
7   in order in Mr. Wee's testimony.

8           CO-HEARING OFFICER PETTIT: Mr. Mona has a copy  
9   of that. I guess I did have one in front of me.

10          MS. KINCAID: And I believe they should be  
11   marked already.

12          MR. O'LAUGHLIN: Yes.

13          MR. NOMELLINI: Correctly?

14          MR. O'LAUGHLIN: We hope.

15          CO-HEARING OFFICER PETTIT: Mr. Mona tells me  
16   you folks have it sorted out between him and you, so.

17          MR. O'LAUGHLIN: Great.

18          CO-HEARING OFFICER PETTIT: They are marked.

19          MR. O'LAUGHLIN: Thank you very much.

20          MS. KINCAID: And I believe we need to move our  
21   exhibits into evidence at this point. If you want, I  
22   can read the exhibits as I have them marked. Our  
23   rebuttal exhibits have not been marked.

24          STAFF ATTORNEY AUE: I thought we moved the  
25   rebuttal exhibits into evidence at the end of the day on



1 Monday. Does anybody else recall or would there be a  
2 way to check?

3 MS. KINCAID: My recollection, we moved our MSS  
4 1 through 13 into evidence, and our rebuttal exhibits  
5 have not been moved.

6 MR. O'LAUGHLIN: Correct.

7 MS. KINCAID: If you want me to read them for  
8 the record. It gets a little confusing here, but they  
9 are MSS-R-14, then there is MSS-R-14 1 through 8.

10 MSS-R-14A. MSS-R-14A 12 through 55. And then  
11 MSS-R-15 through 24. And those have not been marked, my  
12 understanding. We'd like to move them now.

13 CO-HEARING OFFICER PETTIT: Any objection to  
14 those? We'll admit them.

15 (Whereupon MSS Rebuttal Exhibits were  
16 accepted in evidence.)

17 CO-HEARING OFFICER PETTIT: And my recollection  
18 was the same, and I think Mr. O'Laughlin agreed, so I  
19 think that was the sequence the other day.

20 MS. KINCAID: Thank you, Hearing Officer  
21 Pettit.

22 CO-HEARING OFFICER PETTIT: Thank you.

23 And we're concluded with Mr. Wee, and I see  
24 he's already on his way to vacation, so. Thank you  
25 Mr. O'Laughlin for making him available today so we

1 could get this completed.

2           What I was going to suggest is we need to  
3 discuss some procedural items with regard to briefing  
4 and so on. I don't know how long that's going to take.  
5 Do you want to -- Mr. Ruiz?

6           MR. RUIZ: I'm sorry. I'm not hearing you very  
7 well, but as far as the discussion about responses to  
8 objections to evidence, I think you were -- part of what  
9 you were going to discuss with respect to procedural  
10 stuff.

11           The Agencies have written opposition today to  
12 the objections to evidence and to the motions. I can  
13 get those circulated and submitted and then provide some  
14 brief summary of those arguments as well at some point  
15 if you'd like.

16           CO-HEARING OFFICER PETTIT: Hang on just a  
17 second, please.

18           I think we're all on the same page. I guess to  
19 get to the heart of the matter, what I was leading up to  
20 is: Do you want to take a lunch break now and try and  
21 do this? Or do we think we can get it finished and  
22 still get out of here in a reasonable time?

23           MR. RUIZ: I don't think we need a lunch break.  
24 Maybe just quick break, use the bathroom before we do  
25 it. But I don't think we want to delay it.

1 CO-HEARING OFFICER PETTIT: Since we've done  
2 pretty well on the schedule so far, let's take a break  
3 till 11:30 and then come back then, if you all think we  
4 can --

5 MR. RUIZ: That would be perfect.

6 CO-HEARING OFFICER PETTIT: Thank you.

7 (Recess)

8 CO-HEARING OFFICER PETTIT: I believe we're  
9 ready to go back on the record and proceed.

10 Mr. Ruiz, we have the documents you submitted.  
11 I think we've got them all.

12 And as I indicated earlier, we plan on ruling  
13 on all these admonitions and objections by letter, and  
14 we'll discuss that subsequently.

15 But just to make sure we're all on the same  
16 page, if you would just run through and give us the  
17 titles of them. I don't think we need any detail since  
18 we'll be looking at them later, but just for the record  
19 to make sure.

20 MR. RUIZ: Mr. Pettit, I believe I heard you.  
21 I think you wanted me to go through and at least  
22 identify the documents by title as opposed to going  
23 through the details of them, and you said you're going  
24 to rule by a letter within some period of time.

25 CO-HEARING OFFICER PETTIT: That's correct.

1 And we'll talk about the period of time for that in a  
2 few minutes.

3 MR. RUIZ: Okay.

4 There are four documents. The first one is  
5 opposition to motion in limine. And that is a -- that  
6 has an exhibit to it, a five- or six-page document.

7 And these by the way are filed on behalf of the  
8 South and Central Delta Water Agencies.

9 The second one is response by South Delta Water  
10 Agency and Central Delta Water Agency to the evidentiary  
11 objections by the San Luis & Delta-Mendota Water  
12 Authority and the Prosecution Team which I also  
13 understand MID joined in.

14 The third one is opposition to motion to strike  
15 the testimony of Timothy Grunsky, and that's just a  
16 two-page document.

17 And the fourth one is opposition to motion to  
18 strike the testimony of Christopher Neudeck, WIC Exhibit  
19 4A, attachment Exhibit 3V and WIC Exhibit 4D.

20 The 3V may be a -- some confusion as to whether  
21 or not that was objected to, and that came in -- I just  
22 covered that because that I believe came in the text the  
23 court reporter was kind enough to send other day in  
24 terms of discussion on the exhibits.

25 But generally what that is is their opposition

1 to Mr. Neudeck's Delta pool and related testimony.

2 MR. HERRICK: Mr. Chairman, as you can see,  
3 Mr. Ruiz on behalf of the two Agencies took the lead in  
4 writing this up, but I want to make sure the record's  
5 clear that Woods Irrigation Company joins in these  
6 oppositions, obviously, because it was our testimony  
7 that was being offered to which the objections were  
8 made.

9 CO-HEARING OFFICER PETTIT: Thank you.

10 MR. HERRICK: It's my understanding you do not  
11 want to hear at this time any sort of oral summary or  
12 description of the substance of the oppositions.

13 CO-HEARING OFFICER PETTIT: That's correct. I  
14 don't think it's necessary right now because we do have  
15 the material. We will respond to it in detail.

16 MS. KINCAID: Hearing Officer Pettit, my  
17 understanding was actually different. My understanding  
18 was that although you would rule on them in letter form  
19 that we would respond to them orally today.

20 If that's not the case, the Authority will be  
21 more than happy to provide a written response to the  
22 objections just so you can have a written record in  
23 front of you on both sides.

24 CO-HEARING OFFICER PETTIT: Either way, would  
25 be fine. And if you would prefer to do it in writing so

1 we have it in print, we'll set a time for that.

2 MR. O'LAUGHLIN: Mr. Pettit, we'll get together  
3 and decide whether or not we're going to file anything  
4 in writing. We'll get back to you on that.

5 CO-HEARING OFFICER PETTIT: And you don't need  
6 to do anything oral today then?

7 MR. O'LAUGHLIN: No.

8 CO-HEARING OFFICER PETTIT: Ms. Kincaid?

9 MS. KINCAID: That's fine. We can discuss  
10 that, and if we feel like we need to follow up, we can  
11 respond to the objections just served in writing.

12 CO-HEARING OFFICER PETTIT: Thank you. Okay.  
13 Mr. Herrick?

14 MR. HERRICK: I just wanted to confirm that --  
15 two things that I recall.

16 One is that I owe you, the Board, a better copy  
17 of those documents that didn't come up on the screen.  
18 Remember, they were all black and blurry. So my  
19 secretary is rescanning all of that to make sure it gets  
20 back. So that will be forthcoming.

21 And secondly, I believe you asked the parties  
22 two or three hearing dates ago whether or not the Delta  
23 lowlands report could or should be included in the  
24 record.

25 One of the areas, Area 9 or something, was part

1 of Mr. Dante Nomellini's testimony. We have no  
2 objection to the rest of the report, which includes 10  
3 or 11 service areas, we have no objection to the entire  
4 report being put in if that's the Board preference.

5 CO-HEARING OFFICER PETTIT: I'll ask Mr. Mona  
6 to clarify that. I thought we had decided at one point  
7 that that had been put in someplace along the line.

8 Is that correct, Ernie?

9 WATER RESOURCE CONTROL ENGINEER MONA: No.

10 MR. O'LAUGHLIN: I don't believe it has.

11 CO-HEARING OFFICER PETTIT: Okay. Well,  
12 then --

13 MR. O'LAUGHLIN: I would prefer --

14 WATER RESOURCE CONTROL ENGINEER MONA: The only  
15 report we're interested in putting in the record is the  
16 one covering Roberts Island which is Area 9. We don't  
17 want the entire set.

18 MR. HERRICK: If the Board's question was about  
19 the Service Area 9, that is part of Mr. Nomellini's  
20 testimony, and so it need not be a separate offering or  
21 anything. It is being offered now through him.

22 CO-HEARING OFFICER PETTIT: Okay.

23 WATER RESOURCE CONTROL ENGINEER MONA: Entire  
24 report.

25 MS. KINCAID: For the record, just to make sure

1 we're all clear, that is included in one of the  
2 exhibits, I believe, that the Authority has objected to.  
3 And we would -- our objection -- the basis for our  
4 objection is that it should be taken official notice of  
5 but not put in evidence for the truth of the matter  
6 asserted.

7           Obviously, by noticing it through the Board, it  
8 would be essentially same as taking official notice, so  
9 we would have no objection to that.

10           CO-HEARING OFFICER PETTIT: Okay.

11           MR. O'LAUGHLIN: We have no objection to it  
12 coming in under official notice.

13           CO-HEARING OFFICER PETTIT: Thank you.

14           MR. NOME LLINI: It's attached to my testimony,  
15 and we so request you take it in either way, official  
16 notice or as part of my testimony.

17           CO-HEARING OFFICER PETTIT: Okay. Thank you,  
18 Mr. Nomellini.

19           There were one or two items Ms. Aue and I  
20 talked about that I'm going to ask her to summarize that  
21 we could ask for your comments on at the moment just to  
22 help the Hearing Team clarify a couple matters.

23           STAFF ATTORNEY AUE: Thank you.

24           I think at this point, given that we have a  
25 written response, it just boils down to one matter, and



1 it is question for Mr. Herrick.

2 That's whether the Neudeck testimony from the  
3 Phelps case that's been submitted in this case, is that  
4 submitted in this case for any other reason than to  
5 support the theory that the lands that we're discussing  
6 are riparian by virtue of overlaying the groundwater  
7 that's connected to surface water from which the  
8 diversions are occurring?

9 That's my summary of the crux of the motion in  
10 limine that Mr. O'Laughlin filed, and I just want to see  
11 if you were submitting that for any other relevance  
12 reasons.

13 MR. HERRICK: As I try to quickly remember  
14 here, it's my understanding that Mr. Neudeck referenced  
15 his prior testimony specifically with regard to the DWR  
16 report which relates to the shallow groundwater and the  
17 interconnection of surface and groundwater which then  
18 relates to that argument of the Delta pool.

19 STAFF ATTORNEY AUE: Okay. So it's only for  
20 that argument. The connection with the groundwater is  
21 not being presented for any other reason?

22 MR. HERRICK: Well, I don't know what you mean  
23 by any other reason.

24 The legal arguments with regard to that are  
25 allegedly factual situations. It may be -- may include

1 things I'm not thinking of right now.

2 But it's for that connection between channel  
3 waters neighboring the island and the groundwaters under  
4 the islands.

5 STAFF ATTORNEY AUE: Thank you.

6 CO-HEARING OFFICER PETTIT: There's another  
7 thing I propose that we take official notice of. We  
8 have received a couple of statements of water diversion  
9 and use from Woods Irrigation Company that were received  
10 during the last couple of days, and I think that is  
11 responsive to the first item in the Cease and Desist  
12 Order.

13 So I propose that we take official notice of  
14 those with the caveat that I don't think they've even  
15 been numbered yet, let alone evaluated or anything, so  
16 we're not making any conclusion as to what our response  
17 to those would be so.

18 MS. KINCAID: Are copies of those being  
19 distributed?

20 MR. O'LAUGHLIN: Mr. Pettit, I have problems  
21 with that from the standpoint that, A, they weren't  
22 included. There is no direct testimony from anybody on  
23 the authenticity of those. And my understanding is that  
24 those reports that have been filed have been filed for  
25 diversions in use contemporaneously in the past year

1 which I would find to be irrelevant.

2           So I -- and I don't think they're an official  
3 public document, so I don't know which way we could go  
4 about getting those in.

5           CO-HEARING OFFICER PETTIT: I guess in response  
6 to your last point, I would think they would be an  
7 official document in that they have been filed with the  
8 Board now.

9           MR. O'LAUGHLIN: You can talk to your attorney  
10 about this. A document filed by a private citizen  
11 doesn't capture an official public document because  
12 public is usually denoted by either a governmental or  
13 state agency with experience, background, and knowledge  
14 and expertise, so.

15           These were filed by Woods Irrigation Company.

16           I don't have any problem. I just haven't seen  
17 them, and I don't know what's in them, and I don't know  
18 what relevance they would have.

19           CO-HEARING OFFICER PETTIT: And I didn't  
20 understand the distinction you were making. I agree  
21 with respect to the public versus private. I had not  
22 made that distinction. So.

23           Mr. Rose.

24           MR. ROSE: Board Member Pettit, I likewise  
25 haven't seen those. It sounds like you've already

1 agreed with Mr. O'Laughlin as to his objection or at  
2 least thought about that, so I won't reiterate it.

3 I have no problem stipulating to the fact that  
4 we received them for purposes of the Draft Cease and  
5 Desist Order having requested those.

6 As to any information that's actually contained  
7 in those, I would object to that being included short of  
8 taking an opportunity to look at those. The receipt of  
9 those, I have no problem with.

10 CO-HEARING OFFICER PETTIT: Yeah. I think we  
11 were headed the same way because I was about to back off  
12 and say at least head in the direction of saying that  
13 they are responsive to the CD, and we can deal with them  
14 in the followup to the CD when we issue or don't issue  
15 it.

16 So I won't push the point about taking notice  
17 of them at this point. I don't think it's necessary.

18 MR. ROSE: Thank you for that clarification.

19 CO-HEARING OFFICER PETTIT: Yes. As Mr. Rose  
20 said, we can take notice of the fact that they have been  
21 filed and let it go at that, I believe.

22 Is there any objection to that? Okay.

23 MR. O'LAUGHLIN: I have no objection to them  
24 being noticed as filed.

25 CO-HEARING OFFICER PETTIT: Thank you.

1           Now the other day, Ms. Aue and I consulted and  
2 she sent out an e-mail which I think all of you have  
3 with respect to follow-up for briefs and timing and  
4 length of briefs, and so on.

5           I'll ask her to summarize what she put in that  
6 e-mail, and we'll go from there in settling what the  
7 further process here is, so Marianna.

8           STAFF ATTORNEY AUE: Thank you.

9           So essentially, we're proposing to allow 30  
10 pages for closing briefs. That's a little longer than  
11 we normally allow, but there's a lot of evidence here  
12 and, you know, the Hearing Team would benefit from, you  
13 know, careful briefing that directly addresses, you  
14 know, which evidentiary -- you know, what evidence is  
15 being referred to when. And that can take a little  
16 longer in terms of page length.

17           And then --

18           MR. O'LAUGHLIN: Can I interrupt you right  
19 there before we move on and take these seriatim?

20           Two questions really quickly on the 30-page  
21 limit. One, is the 30-page limit per party in this  
22 matter? Is that what you're shooting for? Or is it per  
23 side?

24           STAFF ATTORNEY AUE: Per party.

25           MR. O'LAUGHLIN: Okay. Can I ask a follow-up

1 question to that? If multiple parties, if MID, San Luis  
2 & Delta-Mendota Water Authority, and the State Water  
3 Project Contractors join in a joint brief, my guess  
4 would be, as long as we don't go crazy, we can go over  
5 the 30 page limit somewhat?

6 Because we'd each have 30 pages individually,  
7 but if we kept it in the 40 to 50 page range, we could  
8 do a joint brief?

9 I just want to be clear because otherwise we're  
10 going to have to each file an individual brief.

11 CO-HEARING OFFICER PETTIT: I think that's  
12 fine. If you submit something that's 38 pages long,  
13 we're not going to tear off the last eight pages and  
14 throw them away.

15 MR. O'LAUGHLIN: That might be helpful to my  
16 argument. But thank you.

17 (Laughter)

18 MR. O'LAUGHLIN: What we're going to try to do  
19 just so the Hearing Team knows this, on our side of the  
20 aisle, at least in regards to the San Luis &  
21 Delta-Mendota Water Authority, MID and the State Water  
22 Contractors, we will file a joint brief. And we'll try  
23 to stick to the 30 pages, but we may go over.

24 CO-HEARING OFFICER PETTIT: Thank you.

25 STAFF ATTORNEY AUE: Okay. Does anybody else

1 have announcements about how they'd like to coordinate?

2 Okay.

3           And then we were envisioning these would be due  
4 21 days after the preparation of transcripts or, you  
5 know, electronically sending out the letter that rules  
6 on the evidence which presumably will get there before  
7 the transcripts, but just in case. We don't want to  
8 lock anybody in to briefing before that goes out.

9           MR. O'LAUGHLIN: I have a question regarding  
10 the running of the 21 days. Sorry. This is all  
11 nitpicky stuff, but I want to make sure we're all  
12 operating on the same page.

13           Now you can count 21 days from the day you  
14 receive it, or are we starting the 21 days starting the  
15 day after you receive it?

16           And does this include weekends and holidays or  
17 only business days? I know this is trivial. I hate  
18 doing this. But I don't want people to be calling up  
19 and saying, you know, I got my electronic copy on August  
20 -- July 14th and they start counting on July 15th, and  
21 they file late.

22           I just want to make sure -- and actually, I  
23 think the easier way to do it from the Hearing Team's  
24 perspective is that when that time period runs from  
25 either the transcript going out or the other -- the

1 ruling on the motions is that you just send out a notice  
2 and say your brief is due by close of business 5:00 p.m.  
3 on August blank. That way, it's crystal clear, and we  
4 don't have any worries about the date.

5 CO-HEARING OFFICER PETTIT: We will do that.  
6 And I don't think that's trivial, Mr. O'Laughlin. I  
7 used to deal with construction contracts, and when you  
8 have liquidated damages for delays in contract  
9 performance, it's far from trivial sometimes, so.

10 MR. O'LAUGHLIN: So the Hearing Team will send  
11 out the 21 days has expired; on X date, your brief is  
12 due.

13 CO-HEARING OFFICER PETTIT: Yeah.

14 MR. HERRICK: Mr. Chairman, I would request  
15 that we have 30 days. I understand everybody's  
16 interest. Three weeks is pretty short given everything  
17 else that's going on and the volume of materials that  
18 have been involved in this matter.

19 I think 30 days would be more appropriate, but  
20 I certainly agree that once the time starts, staff send  
21 us a note as to the time frame.

22 MS. KINCAID: For the record, the Authority  
23 would like to stick to the original schedule mentioned  
24 in previous hearing days of a mid August, 2nd week of  
25 August, goal deadline for closing briefs.



1           And I don't believe Mr. Herrick's suggestion  
2 stays within that. I realize that's not binding, and  
3 that was just being thrown around. But we would  
4 definitely prefer to have briefs due in the early part  
5 of August rather than the later.

6           MR. O'LAUGHLIN: And in response to that, I  
7 understand Mr. Herrick's concern, but my understanding  
8 in talking to the court reporter is that we are probably  
9 going to get at least a week as soon as we leave here  
10 and maybe ten days for her to get the final transcripts  
11 done and out. So when you add the week or ten days to  
12 the 21 days, you are already at 30 days.

13           So there's no reason I mean we have at all  
14 exhibits and testimony. And the transcript is helpful,  
15 of course, but we can start writing our briefs. In  
16 fact, we have already started.

17           So I think there's no problem sticking to the  
18 time frame of 21 days.

19           Otherwise, we're going to run into the problem  
20 we've talked about earlier where if we keep pushing  
21 these deadlines out you're not -- you, Mr. Pettit, on  
22 the Hearing Team may not have time to review all the  
23 material, digest all the material, and deliberate with  
24 your Co-Hearing Officer on getting out a ruling.

25           MR. HERRICK: Mr. Chairman, I'm sorry to --

1 I'll sound like I'm petty. This is nonsense. I asked  
2 for 30 days instead of 21, and so everybody doesn't want  
3 us to have 30 days.

4 It's nine extra days. It's a whole bunch of  
5 testimony. There's nothing unreasonable about that.  
6 And nothing is delayed by this being due, you know,  
7 August 20th instead of August 11th. You know.

8 Some level of common sense is necessary here.  
9 Excuse me for being bitter about this.

10 CO-HEARING OFFICER PETTIT: Well, recognizing I  
11 at least feel an obligation to try and make sure this  
12 gets done on whatever watch I've got left, and so I am  
13 concerned about the timeliness and getting it done  
14 within that time frame, whatever that time frame happens  
15 to be.

16 Given the complexity, I'm inclined to go with  
17 Mr. Herrick and go with the 30 days, and we will try and  
18 make that schedule and make sure we get done within that  
19 time.

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

21 CO-HEARING OFFICER PETTIT: Mr. O'Laughlin  
22 asked earlier, 30 days is 30 days from when we start,  
23 and that does include weekends, holidays, birthdays and  
24 so on.

25 Are there any other matters that we need to

1 deal with before we adjourn?

2 MR. RUIZ: We had one exhibit, I don't think I  
3 moved it into evidence.

4 CO-HEARING OFFICER PETTIT: I think that's  
5 correct. Are you moving that now Mr. Ruiz?

6 MR. RUIZ: Yes. Move to have the exhibit in at  
7 this time.

8 CO-HEARING OFFICER PETTIT: Okay. Any  
9 objection to that?

10 MR. O'LAUGHLIN: We have no objection.

11 MS. KINCAID: The Authority no objection.

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

13 It's in.

14 (Whereupon Exhibits SJC-R 1 and 2 were  
15 accepted in evidence.)

16 MR. HERRICK: Into Mr. Chairman, just to  
17 confirm, all of Woods's exhibits were moved in subject  
18 to certain objections, and that will be ruled on, but I  
19 want to make sure there are no missing exhibits that are  
20 being considered.

21 MR. O'LAUGHLIN: We have no objections to the  
22 other exhibits that were not objected to or anything  
23 moving in.

24 My understanding is exactly what Mr. Herrick  
25 said, that all his exhibits have been moved in and we're

1 waiting for the Hearing Team to rule on the various  
2 objections.

3 CO-HEARING OFFICER PETTIT: That's our  
4 understanding too.

5 MS. GILLICK: Mr. Pettit, just one more thing.  
6 I did e-mail a Motion For Official Notice of a couple  
7 State Water Board documents. Just for the record, I  
8 want to put that on the record that that request has  
9 been made by the County of San Joaquin.

10 CO-HEARING OFFICER PETTIT: We received it, and  
11 it will be included in the ruling.

12 Anything else? Mr. O'Laughlin, if you and  
13 Ms. Kincaid decide to file a written response to those  
14 objections, can you have that ready by the end of next  
15 week, say?

16 MS. KINCAID: We can have that ready mid next  
17 week, if we're doing so. And we'll let you know whether  
18 or not we're going to file a written response or not on  
19 Monday.

20 CO-HEARING OFFICER PETTIT: Okay. And if  
21 you're going to --

22 MR. O'LAUGHLIN: Tuesday. Monday's a holiday.  
23 I'm not doing anything on Monday.

24 CO-HEARING OFFICER PETTIT: Is it a holiday?

25 MS. KINCAID: That's correct. Tuesday.

1 CO-HEARING OFFICER PETTIT: I looked on the  
2 calendar. I didn't think it was. I was planning on  
3 coming to work.

4 MR. O'LAUGHLIN: You've got an extra day off.  
5 We'll let you know ASAP and we'll let the other parties  
6 know if we're going to file written objections. And if  
7 we do, we'll get them in expeditiously as possible, and  
8 I would imagine no later than probably Thursday morning.

9 CO-HEARING OFFICER PETTIT: Sounds good. Thank  
10 you.

11 Anything else? Okay.

12 I want to thank you all for your patience and  
13 perseverance while we waited through this. It's been a  
14 rather unusual proceeding when you consider all the  
15 parallel issues that are going on, and I appreciate your  
16 cooperation.

17 So we're adjourned.

18 \* \* \*

19 (Thereupon the WATER RESOURCES CONTROL  
20 BOARD hearing adjourned at 11:55 a.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  
6 ^ meeting ^ hearing was reported in shorthand by me,  
7 Linda Kay Rigel, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in  
12 any way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this July 16, 2010.

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LINDA KAY RIGEL, CSR  
20 Certified Shorthand Reporter  
License No. 13196

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