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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION)
HEARING)

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
BYRON SHER AUDITORIUM
1001 I STREET
SECOND FLOOR
SACRAMENTO, CALIFORNIA

Thursday, August 4, 2016
9:00 A.M.

PART 1A

Volume 5
Pages 1 - 261

Reported By: Candace Yount, CSR No. 2737, RMR, CCRR
Certified Realtime Reporter

Computerized Transcription By Eclipse
California Reporting, LLC - (510) 224-4476
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APPEARANCES

CALIFORNIA WATER RESOURCES BOARD

Division of Water Rights

Board Members Present:

Tam Doduc, Co-Hearing Officer
Felicia Marcus, Chair & Co-Hearing Officer
Dorene D'Adamo, Board Member

Staff Present:

Diane Riddle, Environmental Program Manager
Dana Heinrich, Senior Staff Attorney
Kyle Ochendusko, Senior Water Resources Control Engineer

PART I

For Petitioners:

California Department of Water Resources:

James (Tripp) Mizell
Thomas M. Berliner

INTERESTED PARTIES:

For Planning & Conservation League:

Jonas Minton

For Central Delta Parties:

John Herrick, Esq.

For California Sportfishing Protection Alliance (CSPA),
California Water Impact Network (C-WIN), and AquAlliance:

Michael Jackson

For State Water Contractors:

Stefanie Morris

For Restore the Delta:

Tim Stroshane

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INTERESTED PARTIES (Continued):

California Water Research:

Deirdre Des Jardins

For Pacific Coast Federation of Fishermen's Associations
and Institute for Fisheries Resources:

Stephan C. Volker
M. Benjamin Eichenberg

For Westlands Water District:

Philip A. Williams

For Planetary Solutionaries:

Patrick Porgans

For Snug Harbor Resorts, LLC:

Nicole S. Suard, Esq.

For The City of Roseville, Sacramento Suburban Water
District, San Juan Water District, The City of Folsom:

Alan Lilly

For Brett G. Baker, Local Agencies of the North Delta,
Bogle Vineyards/Delta Watershed Landowner Coalition,
Diablo Vineyards and Brad Lange/Delta Watershed Landowner
Coalition, Stillwater Orchards/Delta Watershed Landowner
Coalition, Islands, Inc., SAVE OUR SANDHILL CRANES and
Friends of Stone Lakes National Wildlife Refuge:

Osha Meserve

For Save the California Delta Alliance; Janet & Michael
McCleary; Frank Morgan; and Captain Morgan's Delta
Adventures, LLC:

Michael Brodsky

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APPEARANCES (Continued)

INTERESTED PARTIES (Continued):

For County of Solano:

Peter Miljanich

For Friant Water Authority & Friant Water Authority
Members:

Gregory Adams

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I N D E X

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PLANNING & CONSERVATION LEAGUE:

	DESCRIPTION	IDEN EVID
PCL-1	July Biological Assessment, Page 3-222, Section 3.7.2	20

1 Thursday, August 4, 2016 9:00 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: (Banging gavel.)

5 Good morning, everyone. If you'll please take
6 a seat.

7 Welcome back to the California WaterFix
8 Petition hearing.

9 In case you've forgotten, I'll do some quick
10 introductions.

11 I am Tam Doduc, State Water Board Member and
12 Hearing Officer for this item.

13 To my right is Co-Hearing Officer and the Board
14 Chair Felicia. To her right is Board Member Dee Dee
15 D'Adamo.

16 To my left are Dana Heinrich, Diane Riddle and
17 Kyle Ochenduszeko.

18 We have other staff assisting us here today.

19 A couple of quick general announcements.

20 Please take a moment now to identify the exits
21 closest to you. If an alarm sounds, we will evacuate.
22 Please gather your belongings, take the stairs and not
23 the elevators down to the first floor, exit the building
24 and cross over to the park.

25 Second announcement is, this is being recorded

1 and Webcasted so, please, as you provide your comments or
2 objections or testimony, please speak into the
3 microphone.

4 A court reporter is here, so please make
5 arrangements with her if you would like the transcript
6 earlier to when we will post it on the website, which is
7 sometime after the close of Part IA.

8 Is that right? Okay.

9 Take a moment now, please, and check to make
10 sure that your cellphones are off or on vibrate. As you
11 know, that's extremely important.

12 All right. Before we resume with
13 cross-examination, I want to address the motion filed by
14 Save the California Delta Alliance, and several other
15 parties, on prohibiting witnesses from consulting with
16 anyone, including their attorney, until they have
17 completed their cross-examination and any redirect and
18 recross.

19 The legal authority cited by Save the
20 California Delta Alliance establishes that trial court
21 judges have discretion to limit witnesses from consulting
22 with counsel during cross-examination.

23 This is not a civil trial and, as we have
24 stated before, this proceeding is not governed by
25 technical Rules of Evidence. Nonetheless, we recognize

1 the importance of effective cross-examination.

2 As the hearing progresses, we may in our
3 discretion limit witnesses from conferring with counsel
4 if it appears that any such consultation is interfering
5 with the ability of other parties to elicit truthful
6 responses to their questions.

7 So far, however, there has been no evidence
8 that counsel for Petitioners have improperly interfered
9 with other parties' ability to effectively cross-examine
10 witnesses.

11 Accordingly, we decline to impose a blanket
12 rule prohibiting witnesses from consulting with third
13 parties until they have completed their testimony.

14 I also want to take this opportunity to remind
15 parties that you are expected to be present when it is
16 your turn to conduct cross-examination according to the
17 ordering table provided last week.

18 Hearing Officer Marcus and I will consider
19 requests to go out of order due to scheduling conflicts,
20 but unless we approve a change in the order or timing of
21 cross-examination, we will consider a party to have
22 waived their right to cross-examine a witness or panel of
23 witnesses if they are not present when their name is
24 called.

25 Accordingly, parties who were absent when their

1 names were called on Friday have waived their right to
2 cross-examine Petitioners' first panel of witnesses.

3 And with that, we are ready to resume with the
4 cross-examination of this panel by California
5 Sportfishing Protection Alliance, et al., Group
6 Number 31.

7 MR. BRODSKY: With regards --

8 CO-HEARING OFFICER DODUC: I'm sorry. Come on
9 up to the microphone, please.

10 MR. BRODSKY: Thank you. With regards to
11 the --

12 CO-HEARING OFFICER DODUC: I'm sorry,
13 Mr. Brodsky, identify yourself for the court reporter.

14 MR. BRODSKY: Michael Brodsky on behalf of Save
15 the California Delta Alliance.

16 On behalf of -- You know, some of the parties
17 weren't here last week when it was their turn to
18 cross-examine. But -- So, for example, if we have
19 decided in advance we may not want to cross-examine some
20 of the engineering witnesses when that panel comes up,
21 could we just notify you in advance that we wouldn't be
22 here at that time and that would help people know how
23 things -- how things are going to proceed, so forth?

24 CO-HEARING OFFICER DODUC: Thank you. That
25 would be extremely helpful. I would encourage all

1 parties to do the same.

2 MR. BRODSKY: Thanks.

3 CO-HEARING OFFICER DODUC: Any other helpful
4 suggestions?

5 All right. Mr. Jackson, you are up.

6 MS. DES JARDINS: I've had a request by Joseph
7 Minton for the Planning & Conservation League to
8 facilitate his abilities.

9 Is it okay for him to go first? It'll -- It's
10 about 15 minutes, and then he's got another engagement
11 somewhere else he's supposed to be at.

12 CO-HEARING OFFICER DODUC: All right. Next
13 time, Mr. Minton, please make your request to us.

14 But to accommodate that, please go ahead.

15 MR. MINTON: Thank you.

16 CO-HEARING OFFICER DODUC: And Mr. Minton, you
17 are representing Group Number . . . 33?

18 MR. MINTON: That is correct.

19 Jonas Minton, representing the Planning &
20 Conservation League.

21 JENNIFER PIERRE and STEVE CENTERWALL
22 called as witnesses for the Petitioners, having been
23 previously duly sworn, were examined and testified
24 further as follows:

25 ///

1 CROSS-EXAMINATION BY

2 MR. MINTON: Good morning, Ms. Pierre. I am
3 Jonas Minton.

4 I will be asking you questions in three areas
5 of the Board's responsibility:

6 And first is the requirement that the Project
7 do no harm to other lawful users of water.

8 Is it your general understanding that it is
9 less difficult for the State Water Project and Central
10 Valley Project Water Project Operators to meet competing
11 needs and requirements in wetter water years?

12 WITNESS PIERRE: Yes, that's my general
13 understanding.

14 MR. MINTON: Conversely, is it your general
15 understanding that it is more difficult for SWP and CVP
16 Water Project Operators to meet competing water needs and
17 requirements in drier years?

18 WITNESS PIERRE: I'm not an operator, but that
19 is my understanding.

20 MR. MINTON: Thank you.

21 Now, let's turn to how operators have operated
22 in complex situations; in particular, drier years.

23 Are you aware that the Petitioners have
24 requested Temporary Urgency Change Petitions in numerous
25 drier years when they did not believe they could satisfy

1 all needs and requirements?

2 WITNESS PIERRE: I'm generally aware, but the
3 specifics of those I'm not familiar with.

4 MR. MINTON: Thank you.

5 Are you aware of the -- this wording in the
6 January 2016 Draft Biological Assessment at Page 3-215:

7 "Proposed future drought procedures."

8 This is Subsection H which I believe was also
9 the subject of some examination last week.

10 "Reclamation and DWR will prepare TUCPs, as
11 needed, for submittal to the State Water Resources
12 Control Board."

13 WITNESS PIERRE: I would like to note that a
14 newer version of the Biological Assessment was posted and
15 so that has been adjusted.

16 The language was there for Item H for the Draft
17 Biological Assessment. Ultimately, though, the language,
18 although it doesn't specifically state TUCPs in the
19 Biological Assessment that's available now, the point is
20 identifying that, in the future, the agencies would go
21 through a process to identify a Drought Contingency Plan
22 and work through those effects.

23 And, ultimately, the WaterFix BA, including the
24 Draft BA, does not identify any processes different than
25 would occur with or without the Project and would require

1 that a separate proceeding and separate valuation of the
2 specific implications of whatever's being requested are
3 conducted at that time in a separate proceeding.

4 MR. MINTON: Thank you.

5 I have a copy of that section, the Proposed
6 Future Drought Procedures, from the just-released July --
7 Is it now a Draft Biological Assessment or is it a Final
8 Biological Assessment? Do you know, Miss Pierre?

9 WITNESS PIERRE: The Petitioners have requested
10 consultation using that Biological Assessment.

11 MR. MINTON: Would that, then, be a better
12 characterization to use the word "final"?

13 WITNESS PIERRE: The Fishermen Service and
14 National Marine Fishery Service need to actually take a
15 look and confirm that it's sufficient for purposes of
16 consultation, so I'd be hesitant to label it as final
17 until that happens.

18 MR. MINTON: Thank you.

19 I do have a copy of the pages I mentioned that
20 you just referenced, the Proposed Future Drought
21 Procedures.

22 May I provide you a copy in case you don't have
23 one handy?

24 WITNESS PIERRE: Sure.

25 MR. MINTON: And I have a few extra copies if

1 the Board would like to look at that which I will be
2 examining Miss Pierre on.

3 So may I approach the witness?

4 CO-HEARING OFFICER DODUC: Please go ahead,
5 Mr. Minton.

6 WITNESS PIERRE: Thank you.

7 MR. MINTON: (Distributing document.)

8 Oh, may I have one copy back?

9 (Laughter.)

10 CO-HEARING OFFICER MARCUS: Very generous of
11 you.

12 MR. BERLINER: Excuse me. Since the
13 document -- This is Tom Berliner on behalf of the
14 Department of Water Resources.

15 Since the document is now publicly available,
16 could we pull it up?

17 WITNESS PIERRE: Do you need help?

18 CO-HEARING OFFICER DODUC: While staff is
19 looking for that, let me use this opportunity to make a
20 request to parties.

21 If you are conducting your cross-examination
22 and you know that you're going to be presenting certain
23 documents and exhibits, if you could inform the staff
24 ahead of time before we convene. That would be really
25 helpful so that they can just set it up and have it ready

1 to go.

2 Yes, Mr. Herrick?

3 MR. HERRICK: Thank you. John Herrick for
4 Central Delta parties.

5 Just for clarification, I'm not sure what's
6 going on here. Are we taking notice of some new document
7 or are we -- somebody's proposing to --

8 CO-HEARING OFFICER DODUC: Mr. Minton, as part
9 of his cross-examination, is referring to a document that
10 staff is trying to pull up.

11 MR. HERRICK: So this is Jonas' request for
12 the -- Okay. Thank you.

13 CO-HEARING OFFICER DODUC: You may blame
14 Mr. Minton for this delay.

15 MR. HERRICK: I do.

16 (Laughter)

17 CO-HEARING OFFICER DODUC: It's 3-222.

18 MS. McCUE: 3-222?

19 (Document displayed on screen.)

20 CO-HEARING OFFICER DODUC: All right,
21 Mr. Minton.

22 MR. MINTON: Thank you.

23 Miss Pierre, may I draw your attention to the
24 last sentence on Page 3-222 of the Biological Assessment
25 published last week?

1 Let me read it into the record as well

2 (reading):

3 "Such a contingency plan should, at a minimum,
4 include information pertaining to: An evaluation of
5 current and forecasted hydrologic conditions and
6 water supplies; recommended actions or changes
7 needed to respond to drought (including changes to
8 project operations, contract deliveries, and
9 regulatory requirements) and any associated water
10 supply or fish and wildlife impacts; identified
11 timeframes; potential benefits; monitoring needs and
12 measures to avoid and minimize fish and wildlife
13 impacts; and proposed mitigation (if necessary)."

14 And I draw your attention in particular to the
15 phrase "regulatory requirements" as an -- something that
16 might be included in such a drought plan as a recommended
17 action or change needed.

18 Could a Temporary Urgency Change Petition be
19 one of those recommended regulatory requirement changes?

20 WITNESS PIERRE: I think that's a potential
21 outcome of a Drought Contingency Plan.

22 MR. MINTON: Thank you.

23 Is it your understanding that the CalSim
24 modeling included in the Petitioners' case in chief did
25 not simulate operations under Temporary Urgency Change

1 Petitions?

2 WITNESS PIERRE: I don't know the answer to
3 that so the Modeling Panel will need to answer that.

4 MR. MINTON: Okay. Is it your general
5 understanding that one requirement for approval of the
6 WaterFix Petition is that the Water Board find there is
7 no harm to lawful water users?

8 WITNESS PIERRE: I'm not familiar with the
9 specific legal language of the requirements before you,
10 but generally I believe that's what they are evaluating.

11 MR. MINTON: Thank you.

12 Can you direct us to any analysis in the
13 Petitioners' case in chief that provide specific
14 operations in times the system is most stressed,
15 information the Board could review to determine if there
16 would be harm to other water users?

17 WITNESS PIERRE: So, I think a couple pieces.
18 And, again, I think the Modeling Panel can provide a lot
19 more detail around this question.

20 But I'll offer that there are critical years
21 modeled within the 82-year record, and so those could
22 specifically be looked at.

23 And, additionally, we have Boundary 1 and
24 Boundary 2, again, which provide a range around various
25 outflows and operations that would allow a look at the

1 variation and potential effects.

2 MR. MINTON: As you have noted, this is a
3 question that may also be appropriate to ask for the
4 modelers when they testify.

5 If they indicate that there is no specific
6 modeling of the use of Temporary Urgency Change
7 Petitions, is there anywhere else that you are aware of
8 in the Petitioners' case in chief that that would be
9 addressed?

10 WITNESS PIERRE: I'm not familiar with any
11 other areas. I would note, however, that, again, the
12 proceeding relative to a TUCP would occur before this
13 Board as a separate evaluation.

14 MR. MINTON: Thank you.

15 The second set of questions concerns
16 appropriate flow criteria.

17 Do you recall hearing Ms. Doduc say at the
18 start of this hearing on July 26, quote:

19 "The Delta Reform Act of 2009 requires the
20 State Water Board to impose appropriate flow
21 criteria for the Sacramento-San Joaquin Delta as a
22 condition of any approval of the Water Right Change
23 Petition for the WaterFix Project."

24 WITNESS PIERRE: Yes, I recall that.

25 MR. MINTON: Thank you.

1 In the Petitioners' case in chief, are any
2 appropriate flow criteria recommended?

3 WITNESS PIERRE: The case in chief includes
4 Boundary 1 and Boundary 2 and I think is looking to the
5 Board to identify those as we proceed through these
6 proceedings, Part I and II.

7 MR. MINTON: Let me restate the question:

8 Does the Petitioners' case in chief recommend
9 any appropriate flow criteria?

10 WITNESS PIERRE: The case in chief does include
11 Boundary 1 and Boundary 2.

12 The BA also includes a specific point within
13 that that we discussed on Friday, which is the H3 point
14 within H3 and H4, the initial operating criteria.

15 But for purposes of this proceeding, we're
16 asking the Board to evaluate the effects of Boundary 1
17 and Boundary 2.

18 And, again, that's to provide the space around
19 the adaptive management and the ability to make
20 adjustments over time based on new information that's
21 gathered before operations come online and then during as
22 well.

23 MR. MINTON: The third set of questions
24 concerns Permit conditions.

25 Miss Pierre, are you generally aware that the

1 State Board frequently imposes conditions on water rights
2 approvals?

3 WITNESS PIERRE: Yes.

4 MR. MINTON: Thank you.

5 Have you read -- And this is on the WaterFix
6 website, and you may have participated in its
7 development.

8 The -- Oh, I'm sorry. No, this is not
9 something you would have developed. It's something that
10 the State Board developed (reading):

11 "The Revised Hearing Schedule, Revised Notices
12 of Intent to Appear, electronic service, and
13 submissions and other procedural issues concerning
14 the California WaterFix Water Right Change Petition
15 issued by the Board on March 4th."

16 This was one of their filings that you -- that
17 the Board Members issued.

18 WITNESS PIERRE: I may have read that.

19 MR. MINTON: Okay.

20 WITNESS PIERRE: I don't recall. I'm generally
21 tracking.

22 MR. MINTON: I assumed you would have.

23 And here's a sentence in that that I am going
24 to ask if you were -- you have a recollection of, quote:

25 "We have strongly expressed that Petitioners

1 should include proposed Permit terms as part of
2 their exhibits. To the extent that Petitioners'
3 proposed Permit terms designed to protect other
4 legal users from injury, it would be more efficient
5 if other parties had the opportunity to address the
6 adequacy of those terms in their cases in chief as
7 opposed to waiting until rebuttal."

8 Do you recollect that?

9 WITNESS PIERRE: No.

10 MR. MINTON: Okay. Have you read -- Now, this
11 is something you may have participated in.

12 Have you read the March 28, 2016, letter from
13 Petitioners captioned "Request for a 60-day continuance
14 of the hearing on California WaterFix Water Rights Change
15 Petition"?

16 This was the request for the 60-day
17 continuance.

18 WITNESS PIERRE: Right. Again, I may have read
19 it at the time that it was produced, but I didn't produce
20 it myself nor I was involved in that.

21 MR. MINTON: Thank you.

22 If you've read it, do you recall this
23 statement:

24 "Within 30 days of granting this continuance,
25 Petitioners propose to submit an update to the State

1 Water Board to report on their status, potential
2 proposed Permit conditions, and any other additional
3 modeling in support of the Project Description."

4 Do you have a recollection of that?

5 WITNESS PIERRE: No.

6 MR. MINTON: Okay. Have you -- Do you have a
7 recollection of the May 16th, 2016, letter from the
8 Petitioners to the Board Members Doduc and Marcus,
9 stating, quote:

10 "The Petitioners do not have any proposals at
11 this time for potential Permit conditions."

12 WITNESS PIERRE: No, I did not read that.

13 MR. MINTON: Okay. Ms. Pierre, can you direct
14 us to anywhere in the Petitioners' case in chief where we
15 can find potential Permit conditions?

16 WITNESS PIERRE: Again, what's being presented
17 is Boundary 1 and Boundary 2. And the -- If we want to
18 maybe review for today what those are? I don't know if
19 that would be helpful to do.

20 MR. MINTON: That's not necessary for response
21 to the question. Thank you.

22 That concludes my cross-examination questions.
23 Thank you very much, Ms. Pierre.

24 CO-HEARING OFFICER DODUC: Thank you,
25 Mr. Minton.

1 With you like to move into, for the record,
2 your exhibit now?

3 MR. MINTON: Pardon?

4 CO-HEARING OFFICER DODUC: You don't have to,
5 but if you would like to.

6 MR. MINTON: With the Hearing Officers'
7 permission, I would move to enter into evidence the
8 Section 3.7.2 of the Biological Opinion (sic) published
9 and submitted to the Federal agencies, dated July 2016.

10 MS. RIDDLE: Do you mean Biological Assessment?

11 MR. MINTON: Yes, Biological Assessment. Thank
12 you.

13 CO-HEARING OFFICER DODUC: Do we have a number
14 for it?

15 MS. RIDDLE: Would it be PCL-1?

16 MR. MINTON: I believe it could be PCL-1.

17 MR. BERLINER: Is there a way to just admit the
18 entire document instead of chopping up -- I mean, for
19 reference purposes, others may want to reference that
20 same document. It seems for efficiency purposes we
21 wouldn't want to have a number of excerpts from that
22 document entered into the record but, instead, the whole
23 document at once.

24 MS. DES JARDINS: CSBA would object to the
25 entry of the document. It's only been out for a day or

1 two, and it is extensive. And we've got to compare it to
2 a different document.

3 It's not in the record. It wasn't filed as
4 evidence because it wasn't completed. And so we would
5 object to the entry of the whole document.

6 We'll not object to the page that was used in
7 the cross but . . .

8 CO-HEARING OFFICER DODUC: Thank you.

9 We will enter that one page as PCL-1 into the
10 record. We will, similar to other documents, just mark
11 this one as whatever the appropriate number is as a
12 document under the staff SWICB category just for
13 reference purposes going forward in this hearing.

14 MS. McCUE: So that was Page 3-222?

15 CO-HEARING OFFICER DODUC: Two people talking
16 at the same time.

17 Miss McCue?

18 MS. McCUE: I was just confirming that it was
19 Page 3-222.

20 CO-HEARING OFFICER DODUC: It was 3-222,
21 correct.

22 MS. RIDDLE: To clarify, Mr. Minton, you asked
23 for the section. Do you want to just ask for the page?

24 MR. MINTON: Just the section, please, which is
25 on 3-222.

1 MS. RIDDLE: Okay.

2 CO-HEARING OFFICER DODUC: So that's the entire
3 section on Page --

4 MR. MINTON: Yes, please.

5 CO-HEARING OFFICER DODUC: Okay. And
6 Miss Heinrich?

7 MS. HEINRICH: I just want the record to be
8 clear whether we're marking it for identification or
9 admitting it into evidence.

10 CO-HEARING OFFICER DODUC: The entire document
11 is only being marked for identification.

12 MS. HEINRICH: Okay.

13 CO-HEARING OFFICER DODUC: Mr. Minton's one
14 page, one section, is being marked into the record as an
15 exhibit.

16 (Planning & Conservation League
17 Exhibit PCL-1 marked for
18 identification)

19 MR. BERLINER: Excuse me.

20 CO-HEARING OFFICER DODUC: Mr. Berliner.

21 MR. BERLINER: If the entire document is going
22 to be marked for identification, is that going to be
23 marked as a DWR modification or a Water Board document?
24 Where should we find that?

25 CO-HEARING OFFICER DODUC: It should be a Water

1 Board document right now because all those documents are
2 just marked for identification.

3 MS. RIDDLE: Yeah. That one's new, so we don't
4 currently have it on the list. So we can add it to the
5 list as the next number on the State Board Exhibit
6 Identification List.

7 For the convenience of the parties, we'll go
8 ahead and do that.

9 CO-HEARING OFFICER DODUC: Yes.

10 MR. BERLINER: Thank you.

11 CO-HEARING OFFICER DODUC: Mr. Herrick.

12 MR. HERRICK: Yes. John Herrick for Central
13 Delta parties.

14 I would just like to add my objection to
15 admitting either the page or the whole document in the
16 record.

17 The time for introducing document and testimony
18 by the Petitioners is passed and it appears that this
19 will be discussed and offered as evidence of what they
20 plan to do, which is slightly different from what they
21 told us they were planning to do by the deadline for
22 submitting evidence.

23 CO-HEARING OFFICER DODUC: I'm sorry. You're
24 also objecting to Mr. Minton's introduction of that one
25 page; right?

1 MR. HERRICK: Yes.

2 CO-HEARING OFFICER DODUC: All right. Your
3 objection is noted.

4 MS. RIDDLE: So, for everyone's reference, the
5 State Board identification number for the Biological
6 Assessment is SWRCB-104 if others would like to use it in
7 the future.

8 We'll have that posted today or tomorrow.

9 (State Water Resources Control
10 Board' Exhibit SWRCB-104 marked for
11 identification)

12 CO-HEARING OFFICER DODUC: Mr. Jackson.

13 CROSS-EXAMINATION BY

14 MR. JACKSON: Yes. I'm moving so that I can
15 see the witness.

16 Ms. Pierre, I believe you said on direct that
17 you've been following in your job the environmental
18 documents sort of from the BDCP beginning?

19 WITNESS PIERRE: I personally began work on
20 this Project in 2011. At that time, we reviewed and
21 began updating draft documents. I don't want to claim to
22 be familiar with materials prior to that time.

23 MR. JACKSON: In the -- In the course of the
24 time since then, there have been a number of iterations
25 of environmental documentation; is that correct?

1 WITNESS PIERRE: Yes, that's correct.

2 MR. JACKSON: And the original BDCP document
3 was directed toward the question of biological impacts,
4 hydrological impacts, dealing with a Section 10 Permit?

5 WITNESS PIERRE: So you're referring to the
6 Draft BDCP itself? I think that was in February of 2012.

7 MR. JACKSON: Yes.

8 WITNESS PIERRE: So, yes, that was a Draft
9 Habitat Conservation Plan to address Section 10 under
10 ESA.

11 MR. JACKSON: And what was your role for that
12 particular Habitat Conservation Plan?

13 WITNESS PIERRE: I oversaw the development of
14 the flex analysis for fish species.

15 MR. JACKSON: In that document, to the best of
16 your recollection, did that document ever look at legal
17 harm to water rights of other parties?

18 WITNESS PIERRE: That document was an ESA
19 compliance document, and that's not a topic that's
20 typically discussed within any ESA consultation
21 documents, so I don't recall that that topic was in the
22 BDCP.

23 There was also a Draft EIR and so
24 Mr. Centerwall could answer maybe his recollection of --
25 as to whether that accompanying EIR included that.

1 WITNESS CENTERWALL: So, there was not any
2 specific section that was directed at legal users of
3 water, but we did evaluate --

4 MR. JACKSON: Thank you.

5 WITNESS CENTERWALL: -- at least one chapter of
6 water quality which looked at effects on beneficial uses.

7 MR. JACKSON: But not on whether or not there
8 was injury from the Project to any specific water user,
9 like my client or any of the other parties who are
10 present for this hearing.

11 WITNESS CENTERWALL: No.

12 MR. JACKSON: Calling your attention to the
13 change when the BDCP died, or morphed, or whatever it did
14 to the WaterFix, there was an environmental review that
15 took place in that regard as well; was there not?

16 WITNESS CENTERWALL: Yes. That circulated
17 document was released in July 2015.

18 MR. JACKSON: Was there any exception that
19 addressed whether or not there was legal -- whether there
20 were effects to other people's water rights or their
21 legal uses of water?

22 WITNESS CENTERWALL: Again, the analysis looked
23 at water quality effects on beneficial uses but did not
24 look at specific effects on water users.

25 MR. JACKSON: In your testimony, Ms. Pierre,

1 you indicated that, to the best of your knowledge, there
2 would be no legal effect on water users?

3 WITNESS PIERRE: That's correct.

4 MR. JACKSON: And what did you base that
5 opinion on?

6 WITNESS PIERRE: The modeling results for
7 Boundary 1 and Boundary 2.

8 MR. JACKSON: And anything else?

9 WITNESS PIERRE: No.

10 MR. JACKSON: Are the modeling results for
11 Boundary 1 and -- Have the modeling results from
12 Boundary 1 and Boundary 2 been examined in any previous
13 environmental document, to your knowledge?

14 WITNESS PIERRE: So, maybe it would be worth
15 pulling up my slide. I forget what number it is.

16 I think it would be helpful to take a look at
17 how Boundary 1 and Boundary 2 relate within the EIR/EIS.
18 The effects that Mr. Centerwall described in terms of
19 water quality effects have been described.

20 (Document displayed on screen.)

21 WITNESS PIERRE: Thank you.

22 So, looking at this diagram, we see that
23 Boundary 1 and Boundary 2 fall within the alternatives
24 evaluated in the EIR/EIS and, as such, we can link
25 Boundary 1 and Boundary 2 operations and associated

1 results to the results that have been evaluated and
2 included in the EIR/EIS.

3 So I think that is one way that the analysis
4 has been made available, and in the Modeling Panel, more
5 information will be provided specifically about
6 Boundary 1 and Boundary 2 results.

7 MR. JACKSON: But to this point, have you
8 released the results of the modeling runs from -- from
9 any of the red areas? Is there an environmental document
10 that deals with those?

11 WITNESS PIERRE: Boundary 2 was included as
12 part of the State Water Board Appendix C, I believe, in
13 the Recirculated Draft, so that has been evaluated and
14 the results are included in that appendix.

15 I believe the modeling results have been
16 included as well, as part of exhibits for the case in
17 chief. And Boundary 1 analysis can be linked back to
18 specific alternatives that have similar operations within
19 them.

20 MR. JACKSON: Has that been done in any public
21 forum or public release?

22 WITNESS PIERRE: We can take a look at
23 Boundary 1 and we can map it to the environmental impacts
24 that have been made available within the Draft EIR and
25 the Recirculated Draft.

1 MR. JACKSON: But you indicated -- I think both
2 of you indicated that in none of the prior EIRs did you
3 deal with the question of legal injury to other water
4 users; isn't that correct?

5 WITNESS PIERRE: Not in those terms. What CEQA
6 and NEPA were looking at water quality impacts. So we
7 looked at fresh hold exceedances as well as changes in
8 different water quality parameters, and that's what's
9 been evaluated for the suite of alternatives that are
10 included in the EIR.

11 MR. JACKSON: Do you have a working definition
12 in any environmental document, or in any testimony that
13 you could point me to, for what you believe "injury" to
14 be?

15 WITNESS PIERRE: That's not within my area of
16 expertise.

17 MR. JACKSON: Can you point me to who in -- in
18 the people who filed testimony, in your overview, could
19 identify what your working definition was for "injury" in
20 order to come to the opinion that there isn't any?

21 WITNESS PIERRE: I think the entirety of the
22 testimony provided will provide the information you're
23 seeking, and I think it will come from a combination of
24 the Engineering testimony that will follow, the Modeling
25 testimony, the Water Rights testimony, and the Operations

1 testimony.

2 MR. JACKSON: So, let me ask the question
3 again:

4 Is there a definition of "injury" that was used
5 by DWR to come up with an opinion?

6 WITNESS PIERRE: I am not able to answer that.
7 That's a question that I think the other panels can
8 answer.

9 MR. JACKSON: All right. So let's talk a
10 little about the Alternatives Comparison that's on
11 DWR-114.

12 (Document displayed on screen.)

13 MR. JACKSON: I believe you said in your
14 testimony -- Well, let me withdraw that and start over.

15 On the left-hand corner above the green outline
16 near Alternative 1, it says the words "Similar to
17 Existing Outflow."

18 What does that mean?

19 WITNESS PIERRE: As I outlined on some
20 following slides, there are a number of key operational
21 criteria that were varied within Boundary 1 and
22 Boundary 2, which is the focus of the proceedings today.

23 And we are -- This is not in any way to say --

24 MR. JACKSON: I'm not asking you about
25 Boundary 1 or Boundary 2 right now. I'm asking you about

1 the green areas that were part of some previous
2 iteration, I guess, of alternatives.

3 WITNESS PIERRE: The green bar represents the
4 range of alternatives that has been and continues to be
5 included in the EIR/EIS analysis.

6 MR. JACKSON: All right. So what is the number
7 in the month of April for this depiction of Alternative 1
8 in terms of outflow?

9 MR. BERLINER: I object: At this point,
10 counsel is trying to get into the specifics of
11 alternatives not before the Board at this point and
12 doesn't represent the Project of this -- the subject of
13 this hearing. So at this point, I'm not sure why this is
14 relevant at all to what we're presenting the Board.

15 MR. JACKSON: I'll be glad to -- I'll be glad
16 to discuss that with you.

17 The --

18 CO-HEARING OFFICER DODUC: Discuss it with me,
19 Mr. Jackson.

20 MR. JACKSON: All right. Alternative 1 is an
21 alternative that is D-1641 or is not?

22 CO-HEARING OFFICER DODUC: You just asked a
23 question. I was expecting for you to provide the
24 relevancy with respect to your line of questioning.

25 MR. JACKSON: The relevance is that this

1 Alternatives Comparison has words on it that are similar
2 to existing outflow and high outflow bracketed from 1 to
3 8. I'm trying to find out what those are.

4 CO-HEARING OFFICER DODUC: Okay. That's fair
5 enough. I'll allow that.

6 Miss Pierre.

7 WITNESS PIERRE: Alternatives 1 through 8
8 represent operational alternatives that were evaluated in
9 the EIR/EIS.

10 Alternative 1 was an action alternative. It
11 did include a new conveyance facility and associated
12 operational criteria and is just on one end of the range
13 of alternatives evaluated in the EIR.

14 MR. JACKSON: So Alternative 1 is not the
15 No-Action Alternative?

16 WITNESS PIERRE: That's correct.

17 MR. JACKSON: And Alternative 8, what is that?

18 WITNESS PIERRE: Alternative 8 was an
19 alternative that was presented by the State Water Board
20 staff as something to evaluate for high outflow and
21 bracketed kind of the other end of outflow conditions
22 within the range of alternatives in the EIR.

23 MR. JACKSON: So this was the Board's comment
24 on the inadequacy of the existing set of EI -- of
25 alternatives that was sent to BDCP in 2011?

1 MR. BERLINER: Objection: Misstates the
2 witness' testimony.

3 CO-HEARING OFFICER DODUC: Yes. Mr. Jackson,
4 please --

5 MR. JACKSON: Sure.

6 CO-HEARING OFFICER DODUC: -- reframe that.

7 MR. JACKSON: I'll rephrase that.

8 Is this Alternative 8 the Board's suggested
9 alternative from 2011?

10 WITNESS PIERRE: Yes. As noted in my written
11 testimony in Footnote 11 on Page 11, this is a reference
12 to a letter to Mr. Gerald Meral on April 19th, 2011, from
13 the State Water Board.

14 MR. JACKSON: And, to your knowledge, is
15 Alternative 8 somewhat consistent with the 2010 Flow
16 Report that was required by the Delta Reform Act?

17 WITNESS PIERRE: I haven't personally done a
18 comparison between the two.

19 MR. JACKSON: So, can you tell me how close --
20 I mean, on this schematic, I guess, Boundary 2 snuggles
21 right up next to it.

22 Is -- Is -- Does Boundary 2 have the same
23 outflow as Alternative 8?

24 WITNESS PIERRE: They're similar but not the
25 same.

1 MR. JACKSON: How do they differ?

2 WITNESS PIERRE: When we evaluated
3 Alternative 8 in the Draft EIR, we found some significant
4 impacts into upstream conditions, including fish. And so
5 Boundary 2 addresses those issues.

6 MR. JACKSON: And how does it address those
7 issues?

8 WITNESS PIERRE: Among other things, ensuring
9 that storage from upstream reservoirs is not released so
10 aggressively to achieve outflow so that you don't retain
11 cold water pool that has implications on following years.

12 MR. JACKSON: And that's important for
13 biological reasons?

14 MR. MIZELL: Objection: We've gotten past the
15 project description aspect of this line of questioning
16 and gone into the biological justification of Boundary 2.

17 I think that's reserved for Part II at this
18 point.

19 CO-HEARING OFFICER DODUC: Mr. Jackson.

20 MR. JACKSON: I'll withdraw the question.

21 CO-HEARING OFFICER DODUC: All right.

22 MR. JACKSON: So, I'm going to ask you to
23 assume a . . .

24 Let me step back a minute.

25 Would you put up DWR-116?

1 So, what does DWR-116 -- What's its purpose?

2 WITNESS PIERRE: This was also included in my
3 direct testimony, and its purpose is to identify key
4 Delta operational criteria and the comparison of those
5 among the No-Action Alternative, Boundary 1, Boundary 2,
6 and H3 and H4.

7 MR. JACKSON: And is its purpose somehow to
8 support a -- an opinion upon your part of no legal
9 injury?

10 WITNESS PIERRE: Its purpose was to provide for
11 the Board a description of what's being proposed in terms
12 of initial operating criteria, as well as the boundaries
13 that we would like to have considered as part of these
14 proceedings and how they relate to each other.

15 MR. JACKSON: So, what this points out is,
16 these are biological constraints?

17 WITNESS PIERRE: These are operational criteria
18 that are assumed for each of the scenarios on this table.

19 MR. JACKSON: And how do they result -- What
20 relevance do they have to whether or not my clients,
21 who -- I'll give you a hypothetical, which will be pretty
22 close to reality.

23 If my clients owned land in Collinsville,
24 California, on the Sacramento River below the area in
25 which your new diversions will go in, how do these

1 alternatives or -- tell the landowner what the effect is
2 going to be on their land?

3 WITNESS PIERRE: So, this is just the
4 description of what those criteria are. The effects of
5 these criteria will be described by the Modeling Panel,
6 provided in that testimony.

7 MR. JACKSON: Okay. So, DWR-116 doesn't --
8 isn't intended to support a finding of no injury.

9 WITNESS PIERRE: It's not in that -- Sorry.

10 MR. MIZELL: Objection: Misstates the witness'
11 testimony.

12 MR. JACKSON: Excuse me?

13 MR. MIZELL: I'm objecting to your testimony as
14 misstating Miss Pierre's testimony.

15 CO-HEARING OFFICER DODUC: Reframe,
16 Mr. Jackson.

17 MR. JACKSON: DWR-116 has essentially nothing
18 to do with an injury claim?

19 WITNESS NO. 1: It's not an analysis. It's a
20 description of the criteria.

21 MR. JACKSON: What . . . How did you
22 determine -- Well, let me -- DWR-513, Figure EC1.

23 Are you familiar with this?

24 WITNESS PIERRE: No, I'm not. This is not part
25 of my testimony.

1 MR. JACKSON: And so you . . .

2 Do you even know what the shading means?

3 WITNESS PIERRE: I have not looked at this
4 diagram before.

5 I mean, I can read the graph, but I -- this is
6 not part of my testimony.

7 MR. JACKSON: So you did not -- As part of your
8 opinion that there is no legal injury, you did not use
9 the model runs depicted in DWR-513?

10 CO-HEARING OFFICER DODUC: Miss Morris?

11 MS. MORRIS: Objection: Calls for a legal
12 conclusion; it misstates the witness' testimony.

13 CO-HEARING OFFICER DODUC: Thank you,
14 Miss Morris.

15 Mr. Jackson, if you could please rephrase your
16 question.

17 MR. JACKSON: Did you use DWR-513 in order to
18 come -- to help you in coming to an opinion that there
19 would be no legal injury to any water user between the
20 old point of diversion and the new point of diversion by
21 this Project?

22 MR. MIZELL: Objection: Asked and answered.

23 She said she doesn't know what this graph is,
24 hasn't looked at it before.

25 Also calls for a legal conclusion of a

1 determination of legal injury, which is the purview of
2 the Board.

3 CO-HEARING OFFICER DODUC: Mr. Jackson, she's
4 already answered that she has not seen this, so please
5 either move on or move onto your next question with
6 respect to this figure.

7 MR. JACKSON: Well, my -- my next question in
8 regard to this figure is:

9 Looking at Emmaton on the Sacramento River, and
10 calling your attention to the -- the first and the second
11 bars. The first bar is the No-Action Alternative and the
12 second bar is your Boundary 1.

13 Can you see that this graph reflects that water
14 quality at Emmaton under your Boundary 1 situation is
15 worse than the No-Action Alternative?

16 MR. MIZELL: Objection: The questioner is
17 asking Miss Pierre to interpret a graph that's not part
18 of her testimony and outside of her expertise, which she
19 has already indicated.

20 CO-HEARING OFFICER DODUC: Your --

21 MR. JACKSON: This is --

22 CO-HEARING OFFICER DODUC: Okay. Mr. --

23 MR. JACKSON: This is an overview of the
24 Project. She testified on direct that there were three
25 things that they looked at: They looked at water

1 quality; they looked at water supply; and they looked at
2 access in order to determine whether or not there was
3 injury.

4 CO-HEARING OFFICER DODUC: Ms. Morris?

5 MS. MORRIS: I'm going to join in the
6 objection, and then further note that this is coming from
7 modeling testimony which has yet to be presented, and
8 Miss Pierre was simply providing overview in her slide
9 that talked about what other people will talk about,
10 indicated what Mr. Jackson just said. She didn't talk
11 about it, nor did she draw any kind of conclusion about
12 impacts on water quality.

13 CO-HEARING OFFICER DODUC: All right. I'll
14 keep those objections in mind.

15 And, Miss Pierre, just respond to the best of
16 your ability. You're definitely free to say that you
17 have not time to look at this and don't have an opinion.

18 And, Mr. Jackson, I don't know whether you want
19 to pursue this further or wait until the Modeling
20 section -- Modeling Panel comes up.

21 MR. JACKSON: The problem is that this witness
22 gave an opinion in her testimony.

23 She's not going to be around after the Modeling
24 Panel appears. I'm trying to get a foundation for how
25 she determined that opinion, and I'll be doing it with

1 every one of their witnesses who gives opinion.

2 CO-HEARING OFFICER DODUC: Fair enough.

3 Miss Morris, I understand that you're
4 objecting. That's enough.

5 Miss Pierre, just answer to the best of your
6 ability.

7 WITNESS PIERRE: I'm not familiar with this
8 graphic, and I don't believe I made a statement about the
9 outcome other than you would be evaluating that as part
10 of this proceeding.

11 MR. JACKSON: So, I'd like to go back to
12 DWR-114, only this time it's Exhibit 1, Page 11.

13 CO-HEARING OFFICER DODUC: So you don't want
14 DWR-114. You want DWR-1, Page 11.

15 MR. JACKSON: I want DWR-1, Page 11.

16 (Document displayed on screen.)

17 MR. JACKSON: Did you prepare DWR-1?

18 WITNESS PIERRE: Yes, I did.

19 MR. JACKSON: Calling your attention to the
20 right-hand side of DWR-1, Page 11, under the topic "What
21 Isn't Changing."

22 You indicated you did not change (reading):

23 ". . . quantity, rate, timing, place or purpose
24 of use under the existing permits."

25 So, how did you determine that there would be

1 no change to quantity, rate, timing, place or purpose of
2 use?

3 WITNESS PIERRE: That's not what's being
4 requested, and Miss Sergent can answer that in more
5 detail in the Water Rights testimony.

6 MR. JACKSON: Okay. Is there anything in your
7 testimony that deals with my clients' access to water
8 under the different scenarios reflected in Boundary 1
9 and -- through Boundary 2?

10 WITNESS PIERRE: That's not included in my
11 testimony.

12 MR. JACKSON: Is there anything in your
13 testimony that deals with flow and the effect it would
14 have on a location downstream of the new pumps, or the
15 new diversions, on the Sacramento River?

16 WITNESS PIERRE: My testimony was to provide an
17 overview of the Project Description, and so the
18 implications of the Project Description will be provided
19 in subsequent testimony.

20 MR. JACKSON: Okay. And in terms of salinity,
21 you didn't -- you didn't see the salinity figures until
22 today?

23 WITNESS PIERRE: As I mentioned during my
24 testimony, there's been a lot of analysis done for this
25 Project which I have seen and have been aware of.

1 I'm not specifically aware of the exhibit that
2 was just pulled up, but I am aware of the different
3 alternatives and their water quality result. I'm not a
4 water quality expert, either but, you know, as a team, we
5 do look at these things and that's the basis of my
6 testimony.

7 MR. JACKSON: Who was working on your team?

8 WITNESS PIERRE: For which area of analysis?

9 MR. JACKSON: Legal injury.

10 WITNESS PIERRE: That would be our attorney
11 group that I mentioned before.

12 MR. JACKSON: Anyone else other than your
13 attorneys?

14 WITNESS PIERRE: Well, as a group, that's
15 providing testimony, the following testimony after me
16 will provide information to support the Petition.

17 MR. JACKSON: And no one else who isn't
18 providing testimony was in the group.

19 WITNESS PIERRE: I honest -- I can't answer
20 that. I honestly am not familiar with the full span of
21 which panels and who's on each of them that follow after
22 me. I'm focused on my panel.

23 MR. JACKSON: In response to Mr. O'Brien, I
24 believe you said that . . . you are -- I may not have
25 written this down exactly, but that you are uncertain

1 what operations will be so you're unable to answer
2 whether there would be changes in reservoir operations
3 upstream from -- from the proposal; is that correct?

4 WITNESS PIERRE: I'm hesitant to answer that
5 given that it was several days ago, and I'm not certain
6 that those are the words that I used.

7 So, if there's a specific question maybe, that
8 would be helpful.

9 MR. JACKSON: Sure. Will there be changes in
10 reservoir operations from the present time to . . . to
11 upstream reservoir operations at the Boundary 2 level?

12 WITNESS PIERRE: So, Boundary 2 would continue
13 to meet the applicable criteria of the upstream
14 reservoirs, as I testified.

15 They're -- It is a higher outflow scenario, and
16 so it does increase some reservoir releases, but within
17 the criteria applicable at those reservoirs.

18 MR. JACKSON: So it's still within the -- the
19 existing criteria.

20 WITNESS PIERRE: The operations of Boundary 1
21 and Boundary 2 and H3 and H4 are all consistent with the
22 applicable operational criteria and regulations on all of
23 the upstream reservoirs.

24 MR. JACKSON: So, you could release whatever
25 water is described in the document that I hope to see at

1 some point about Boundary 2? You could release that
2 without changing upstream reservoir operations.

3 WITNESS PIERRE: I think that this question
4 would be better answered by Mr. John Leahigh when he
5 talks about operations and from the Modeling Panel.

6 MR. JACKSON: Okay. I believe you also said
7 that the modeling for the BA is based upon a different
8 CalSim II model than was used for BDCP.

9 MR. MIZELL: Objection: There's no question
10 pending.

11 MR. JACKSON: Is it your testimony that the
12 modeling for the BA is different because it's based upon
13 a different CalSim model than you used previously for
14 BDCP?

15 MR. MIZELL: Can the questioner please specify
16 which version of the BA he's referring to, just for the
17 record?

18 MR. JACKSON: I haven't had time to read the
19 second version of the BA. It was only just released.

20 MR. MIZELL: So you're referring to the Draft
21 BA?

22 MR. JACKSON: Yes.

23 WITNESS PIERRE: When we moved to a Section 7
24 process, we redid a modeling run and that's what's
25 evaluated in the Biological Assessment.

1 MR. JACKSON: So the two models are different
2 in some fashion.

3 WITNESS PIERRE: I think the Modeling Panel can
4 answer more, but generally, just so everyone's aware,
5 CalSim is updated all the time, and there were a number
6 of years spanning between the two, and so when we did the
7 modeling for the BA, we used a version of CalSim that has
8 been updated.

9 MR. JACKSON: And I believe you also -- You
10 testified previously that the . . . Modeling won't
11 constrain the operators?

12 In other words, what you're modeling is not
13 exactly what the operators are likely to do?

14 WITNESS PIERRE: I'm not sure if that's what I
15 testified, but what I can speak to around that topic is
16 that the modeling -- CalSim, for example, is a monthly
17 model and can't possibly reflect what an operator does on
18 a day-to-day basis in response to actual conditions but
19 does provide a good basis for the comparative
20 implications and effects of various scenarios, which is
21 how it's been used.

22 MR. JACKSON: And that's the reason that one of
23 the previous documents that you're not familiar with has
24 the words "Model results are used for comparative
25 purposes and not for predictive purposes" stamped on --

1 MR. MIZELL: Can the questioner identify what
2 document he's referring to?

3 MR. JACKSON: Yeah. DWR-513.

4 WITNESS PIERRE: As I testified, I wasn't
5 familiar with that document until it was --

6 MR. JACKSON: I'm asking you now whether you're
7 familiar with the qualifier on every one of these?

8 MS. MORRIS: Objection: Calls for speculation.

9 CO-HEARING OFFICER DODUC: Miss Pierre, just
10 answer to the best of your ability.

11 WITNESS PIERRE: If it's there on someone
12 else's exhibit, that could potentially be the reason why.

13 MR. JACKSON: As you sit here today, do you
14 know how a landowner like my clients could determine what
15 the flow levels past their riparian property would be
16 under Boundary 1 and Boundary 2?

17 MR. MIZELL: Objection: Asking the witness to
18 speculate as to what his clients would be thinking about.

19 CO-HEARING OFFICER DODUC: No. He asked --
20 She's -- She can answer whether she knows.

21 WITNESS PIERRE: I don't. I think the Modeling
22 Panel can provide information about those sorts of
23 results.

24 MR. JACKSON: And you've indicated that you
25 yourself would not be able to determine what the water

1 quality change would be from the granting of this
2 Petition at the location that my clients own property?

3 MR. MIZELL: Object: Misstates her testimony.

4 CO-HEARING OFFICER DODUC: Mr. Jackson --

5 MR. JACKSON: It's a question. I mean --

6 CO-HEARING OFFICER DODUC: -- please just ask
7 her a simple direct question.

8 MR. JACKSON: Can you -- Can you tell me, as
9 you sit here today, what the water quality situation
10 would be on land -- riparian land below the diversion
11 point that you're requesting?

12 WITNESS PIERRE: I'm not an expert on water
13 quality, but that information is provided as part of
14 other testimony following me.

15 MR. JACKSON: For a -- For each piece of land
16 in the Delta?

17 WITNESS PIERRE: Again, I'm not an expert, and
18 that's not my testimony.

19 There are various points within the Delta that
20 water quality and other effects have been examined and
21 those results will be provided as part of the Modeling
22 Panel.

23 MR. JACKSON: Thank you.

24 Can you point to anyone else that's filed
25 testimony that can answer my question --

1 CO-HEARING OFFICER DODUC: She's an --

2 MR. JACKSON: -- other than Modeling?

3 CO-HEARING OFFICER DODUC: She's answered that.

4 Let's move on, Mr. Jackson.

5 MR. JACKSON: Could you put up Exhibit 515, the

6 key comparisons chart.

7 MS. McCUE: Do you have a page number?

8 MR. JACKSON: One.

9 (Document displayed on screen.)

10 MR. JACKSON: So, did you help prepare this

11 chart?

12 WITNESS PIERRE: I did not, but I am familiar

13 with it.

14 MR. JACKSON: All right. Calling your

15 attention to Boundary 2.

16 In terms of the planning horizon, this reflects

17 that it's the same as a No-Action Alternative?

18 WITNESS PIERRE: That's correct.

19 MR. JACKSON: And the year that's picked for

20 the No-Action Alternative is 2030?

21 WITNESS PIERRE: That's right. That's

22 consistent with the NEPA definition of the future no

23 action essentially.

24 MR. JACKSON: 2030 -- Well, is this Project

25 likely to be operating by 2030?

1 MR. MIZELL: Objection: Calls for speculation.

2 MR. JACKSON: Is it presently -- When is the
3 start date for building the Project?

4 WITNESS PIERRE: I'm not certain what the
5 Engineering Group has on their schedule at this time.

6 MR. JACKSON: Okay. Do you know how long after
7 they decide to start building the Project it'll take to
8 build it?

9 WITNESS PIERRE: I don't -- Again, I don't know
10 what the exact time frame of the schedule is. I'm more
11 familiar with it in water work period, which is just a
12 portion of that time.

13 MR. JACKSON: Well, the next thing on -- on the
14 chart is inflow and supplies, which are . . . pretty
15 important to landowners in the Delta.

16 And what it says is that there will be
17 modification to operations upstream of rim reservoirs.

18 Do you know what modifications above the rim
19 reservoirs they will be?

20 WITNESS PIERRE: I do not know what these are
21 specifically, but I would note this is the No-Action
22 Alternative and that it's unchanged for the four
23 alternatives or scenarios that are before the Board.

24 MR. JACKSON: Yes. They're -- They're all the
25 same, but they all include historical flows and supplies

1 when changes upstream in the rim reservoirs.

2 Can you tell me what those changes are?

3 WITNESS PIERRE: I cannot. But I'd also point
4 out these are modeling assumptions and so the Modeling
5 Panel could probably provide more detail around what
6 those specific modeling assumptions were.

7 MR. JACKSON: Okay. Calling your attention to
8 the -- in the Facilities section, the Head of Old River
9 Gate. The No-Action Alternative is a Temporary Head of
10 Old River Barrier installed in the fall months, and then
11 H3 goes to the Permanent Head of Old River and is in the
12 rest of the proposal, the adaptive part of the proposal;
13 is that correct?

14 WITNESS PIERRE: That's correct.

15 MR. JACKSON: What authority does DWR have to
16 build a Permanent Head of Old River Barrier?

17 MR. MIZELL: Objection: Calls for a legal
18 conclusion.

19 CO-HEARING OFFICER DODUC: Let me cut to the
20 chase here.

21 Miss Pierre, are you able to provide any
22 specifics or details with respect to any of the criteria
23 or factors listed on this table which you did not
24 prepare, as I understand, but are somewhat familiar with?

25 WITNESS PIERRE: No. I think the Modeling

1 Panel would be able to provide that information.

2 CO-HEARING OFFICER DODUC: So there's not any
3 one of these particular facilities, diversion operation
4 criteria, et cetera, that you would be able to provide
5 any further details on.

6 WITNESS PIERRE: That's correct.

7 MR. JACKSON: Thank you.

8 CO-HEARING OFFICER DODUC: Mr. Jackson.

9 Mr. Jackson?

10 MR. JACKSON: Yes.

11 CO-HEARING OFFICER DODUC: Counsel has advised
12 me that, if you want to, you can ask her questions about
13 what is or is not in the Project Description.

14 MR. JACKSON: All right. Is the Head of Old
15 River -- a Permanent Head of Old River barrier in your
16 Project Description?

17 WITNESS PIERRE: The Head of Old River Operable
18 Gate is part of the description.

19 MR. JACKSON: And . . . is the -- At the bottom
20 of that page, it talks about a "minimum flow near
21 Rio Vista."

22 Is an additional 3,000 cfs from January to
23 August in the -- in -- in your proposal?

24 WITNESS PIERRE: What this is, is a new minimum
25 flow requirement at Rio Vista between January and August.

1 There isn't currently one in D-1641, so that is included
2 in Boundary 1 and Boundary 2 and H3 and H4. So, yes,
3 it's included in the Proposed Project.

4 MR. JACKSON: Is there an environmental
5 document that would reflect why -- to your knowledge,
6 that would reflect why the number 3,000 cfs is chosen for
7 every alternative?

8 WITNESS PIERRE: I think the Modeling Panel can
9 answer the specifics of why that particular flow level
10 was selected.

11 MR. JACKSON: Did DWR discuss in any meeting
12 that you were at Water Code Section 85086.22, which is
13 required as Delta flow criteria?

14 MR. BERLINER: Objection: Asked and answered.
15 This was covered on Friday by Mr. O'Brien -- or
16 Mr. Lilly.

17 MR. JACKSON: Well, I don't --

18 CO-HEARING OFFICER DODUC: All right. Hold on
19 a second. Let's -- Let's -- Let's proceed carefully.

20 Miss Pierre, go ahead and answer the question
21 and we'll see where Mr. Jackson goes with this.

22 WITNESS PIERRE: I don't recall that.

23 MR. JACKSON: So you wouldn't know whether or
24 not the DWR proposal is required to meet the Delta Reform
25 Act in general?

1 MR. BERLINER: Objection: Calls for a legal
2 conclusion.

3 WITNESS PIERRE: I believe you asked if I was
4 in a meeting where that section of the Water Code was
5 discussed --

6 MR. JACKSON: Yes.

7 WITNESS PIERRE: -- and I answered I don't
8 recall.

9 MR. JACKSON: I'll change the question some.
10 Does DWR believe that they are required to meet
11 the Delta Reform Act?

12 MR. BERLINER: Objection . . .

13 MR. MIZELL: Mr. Berliner's objection is calls
14 for a legal conclusion.

15 CO-HEARING OFFICER DODUC: Mr. Jackson.

16 MR. JACKSON: I'm asking about a belief. I'm
17 asking about whether or not they dealt with it. And I'm
18 not asking about whether they have to; the courts will
19 decide that later.

20 CO-HEARING OFFICER DODUC: Mr. Jackson, let's
21 move on. I doubt if she's going to say they don't
22 believe they have to comply with something, so let's move
23 on.

24 MR. JACKSON: She's certainly not going to,
25 ma'am.

1 I think I'm finished. Thank you very much.

2 CO-HEARING OFFICER DODUC: Thank you,

3 Mr. Jackson.

4 With that, let's go ahead and take our morning
5 break.

6 We will resume at 10:30.

7 (Recess taken at 10:15 a.m.)

8 (Proceedings resumed at 10:30 a.m.)

9 CO-HEARING OFFICER DODUC: All right. It's
10 10:30.

11 We are resuming now with Group Number 32.

12 And before you begin, Mr. Stroshane, let me ask
13 a clarifying question:

14 I understand that Earthjustice will be grouping
15 up into Group 32 with Restore the Delta. Will this be
16 only for Part I, or Part I and Part II?

17 MR. STROSHANE: We will clarify that for you as
18 soon as possible.

19 CO-HEARING OFFICER DODUC: Okay. But for
20 purposes of today and Part IA, you are --

21 MR. STROSHANE: Right.

22 CO-HEARING OFFICER DODUC: -- one group.

23 MR. STROSHANE: Yes.

24 CO-HEARING OFFICER DODUC: Thank you.

25 ///

1 CROSS-EXAMINATION BY

2 MR. STROSHANE: I'm Tim Stroshane. I'm with
3 Restore the Delta. I just have two questions. Maybe --

4 CO-HEARING OFFICER DODUC: Can you turn your
5 mic on, please?

6 MR. STROSHANE: Oh, I thought -- Maybe I'm not
7 close enough.

8 Is that better? Is that coming through?

9 MS. RIDDLE: I think now, yeah. Just pull it
10 closer.

11 MR. STROSHANE: On Friday, when you were
12 testifying, were you referring in your testimony to the
13 working draft of the Biological Assessment from January
14 of 2016, the August 3rd draft that was released
15 yesterday, or -- or both?

16 WITNESS PIERRE: I was referring to the January
17 version of the BA.

18 MR. STROSHANE: Thank you.

19 And today, when you've been testifying based
20 on -- Is your testimony based on that earlier working
21 draft, or the draft released yesterday, or both?

22 MR. MIZELL: Objection: Vague.

23 Can the questioner please specify which answer
24 he's referring to? Because I believe the previous
25 questioner referenced both documents.

1 CO-HEARING OFFICER DODUC: Mr. Stroshane?

2 MR. STROSHANE: In your testi -- testimony so
3 far today, is it -- is your testimony based on the
4 working draft, the revised draft from yesterday, or both?

5 WITNESS PIERRE: I believe the only question I
6 answered related to the Biological Assessment was that
7 brought by Mr. Minton regarding text specifically in the
8 August or July draft.

9 MR. STROSHANE: Okay. Thank you.

10 No further questions.

11 CO-HEARING OFFICER DODUC: Thank you,
12 Mr. Stroshane.

13 Group Number 33? I'm sorry. Everybody has
14 gone.

15 34, the Environmental Justice Coalition for
16 Water, who is not here.

17 Group 35, NRDC, The Bay Institute, and the
18 Defenders of Wildlife.

19 He's not here.

20 Group 37, Miss Des Jardins.

21 MS. DES JARDINS: I have some documents I
22 provided for cross-examination.

23 CO-HEARING OFFICER DODUC: Please begin.

24 MS. DES JARDINS: Okay.

25 CO-HEARING OFFICER DODUC: You need to get

1 closer to the microphone.

2 MS. DES JARDINS: Sure.

3 I'm actually -- I do need my documents loaded
4 to start.

5 MS. McCUE: Which one do you want?

6 MS. DES JARDINS: The . . . The October 22nd,
7 2009 -- Oh, oh. There's a folder that says "Jennifer
8 Pierre questions," and I need the October 22nd, 2009,
9 Steering Committee document.

10 (Document displayed on screen.)

11 Yes. This one.

12 CROSS-EXAMINATION BY

13 MS. DES JARDINS: So, Miss Pierre --

14 MR. BERLINER: Excuse me, Miss Doduc.

15 CO-HEARING OFFICER DODUC: Hold on. One at a
16 time.

17 MR. BERLINER: Oh, I'm sorry.

18 CO-HEARING OFFICER DODUC: Mr. Berliner.

19 MR. BERLINER: Could we inquire how long the
20 cross will be? Because it looks like we would have time
21 before lunch possibly, if we are finished with cross, to
22 start the next group, and they're not here and we would
23 want to get them here in case you intend to start the
24 next group before lunch.

25 CO-HEARING OFFICER DODUC: Are you suggesting,

1 Mr. Berliner, that you will not have any redirect?

2 MR. BERLINER: It would be very short.

3 CO-HEARING OFFICER DODUC: And then we'll have
4 recross, and then there might be some questions from us,
5 so I don't believe we'll get to it by -- before lunch,
6 anyway.

7 MR. BERLINER: Okay. Then we'll have them here
8 after lunch.

9 CO-HEARING OFFICER DODUC: Miss Des Jardins,
10 would you begin by identifying yourself for the record.

11 MS. DES JARDINS: My name is Dierdre
12 Des Jardins, and I'm with California Water Research.

13 Miss Pierre, so, you started in 2011 with the
14 Bay-Delta Conservation Plan process?

15 WITNESS PIERRE: Yes, that's correct.

16 MS. DES JARDINS: So you weren't with the
17 Steering Committee when some early decisions were made
18 about what was going to be looked at?

19 WITNESS PIERRE: That's correct.

20 MS. DES JARDINS: I did -- These documents, I
21 did look at, so this is when they made an early decision
22 about what climate change scenarios were going to be
23 looked at.

24 And, originally, this document shows -- Let me
25 see how to get it to work. Oh, here we go.

1 This document shows that they were originally
2 looking at these four quadrants, which included the
3 warmer drier scenarios and the wetter scenarios.

4 (Document displayed on screen.)

5 MS. DES JARDINS: Are you familiar with
6 these -- this -- these quadrants?

7 WITNESS PIERRE: I'm not familiar with this
8 presentation. I'm familiar with the general selection of
9 climate change assumptions, but I think the Modeling
10 Panel will be able to provide a lot more information
11 about what exactly these quadrants are and what was
12 selected and used in the modeling.

13 MS. DES JARDINS: This is actually a
14 specification question; it's not about the modeling.
15 It's about you originally were going to look at not just
16 overall central tendency of these models but at the
17 warmer, drier models which predict the kind of droughts
18 that we've been seeing recently.

19 So, the question is why none -- none of these
20 quadrants that were originally in the alternatives looked
21 at, and are in the Biological Assessment, why the drier
22 climate change scenario projections aren't available.

23 And do you have any idea why those were taken
24 out, because they were in the Biological Assessment?

25 MR. MIZELL: Objection: Asked and answered.

1 She doesn't know what this document says.

2 CO-HEARING OFFICER DODUC: Miss Pierre, are you
3 able to answer any questions regarding this document?

4 WITNESS PIERRE: No. And I would want to
5 clarify that I'm not aware of any Biological Assessment
6 associated with this Project that looked at anything
7 other than Q5 on climate change.

8 MS. DES JARDINS: Respectfully, the information
9 that -- The modeling information that was distributed
10 with Biological Assessment in February had the Q2 and Q4
11 drier, warmer climate change scenarios, and I'm wondering
12 why those aren't in here.

13 The significance of this document, which you
14 may not be aware of because you weren't part of the --

15 MR. BERLINER: Excuse me. I'm going to object:
16 This is not the opportunity for the cross-examiner to
17 testify. If there's a question, she should ask it.

18 MS. DES JARDINS: The -- The --

19 CO-HEARING OFFICER DODUC: Correct.

20 MS. DES JARDINS: Let me explain --

21 CO-HEARING OFFICER DODUC: Miss Des Jardins --

22 MS. DES JARDINS: Yes.

23 CO-HEARING OFFICER DODUC: -- I need you to ask
24 very focused, specific questions of the witness without
25 providing what might be perceived as testimony.

1 MS. DES JARDINS: Okay. I'm sorry.

2 Are -- Miss Pierre, so clearly you're not --
3 you're not familiar with this document, but it does show
4 that the Committee was originally -- originally using
5 these scenarios.

6 So, you have no idea why these alternative
7 scenarios were dropped from ones presented to the Board?

8 WITNESS PIERRE: This was dated 2009 and,
9 again, I -- I was brought on to this Project in 2011.

10 And I've never seen this document, and I
11 haven't -- I'm not familiar with the evolution of how
12 things were modeled between 2009 and 2011.

13 MS. DES JARDINS: At a high-level
14 specification, is there some reason to not provide
15 information on what the drier, warmer scenarios show to
16 the Board and to this proceeding?

17 MR. BERLINER: Objection: We're getting into
18 modeling, and this witness has already indicated she's
19 not familiar with the modeling.

20 These are questions better reserved for the
21 Modeling Panel, if at -- if at all.

22 CO-HEARING OFFICER DODUC: Miss Pierre, are you
23 able to answer that question at all?

24 WITNESS PIERRE: No, I'm not. I'm not familiar
25 with that information.

1 MS. DES JARDINS: Respectfully, this is not
2 about modeling; this is about the specification. And
3 Miss Pierre is testifying to the choice of information
4 that is being presented here at the hearing.

5 So, you have no idea why this has been dropped?

6 MR. MIZELL: Asked and answered.

7 MS. DES JARDINS: Okay.

8 CO-HEARING OFFICER DODUC: Please move on.

9 MS. DES JARDINS: Okay. My next question --
10 let me go back -- is about sea-level rise.

11 So, was there any -- Was there any effort to
12 present alternative sea-level rise scenarios? Any
13 discussion of that?

14 MR. MIZELL: Objection: Vague.

15 At what point are you talking about discussion?
16 What forum? What date?

17 CO-HEARING OFFICER DODUC: In general,
18 Miss Pierre, was the issue of sea-level rise discussed?

19 WITNESS PIERRE: Yes. The BDCP document
20 included -- and this is shown in the graph on the
21 screen -- two different sea level scenarios, and those
22 are the 15-centimeter and the 45-centimeter represented
23 by early long-term and late long-term, which was
24 evaluated in the Draft BDCP as well as a number of
25 alternatives in the EIR.

1 MS. DES JARDINS: The issue is the Army Corps
2 of Engineer projections -- which are shown in yellow --
3 are significantly higher.

4 Did you look at any of the Army Corps of
5 Engineer projections, or any of the new science that's
6 come out, in producing this document for the Water Board?

7 WITNESS PIERRE: Which document are you
8 referring to?

9 MS. DES JARDINS: In producing the -- the set
10 of scenarios that you presented to the Water Board and
11 the assumption of -- You assume 6 inches of sea-level
12 rise; isn't that correct?

13 WITNESS PIERRE: The early long-term runs,
14 which are the basis of the proceedings today, do include
15 the 15-centimeter model assumption in those model runs.

16 And the Modeling Panel can provide a lot more
17 information about how they collated various model runs
18 that are at a regional and global scale and to the
19 assumptions used in WaterFix modeling.

20 MS. DES JARDINS: Miss Pierre, are you familiar
21 with the mandates of the Delta Reform Act with respect to
22 sea-level rise -- consideration of sea-level rise?

23 WITNESS PIERRE: Not the specific mandates in
24 the Delta Reform Act.

25 MS. DES JARDINS: You're supposed to consider a

1 range of sea-level rise scenarios.

2 MR. MIZELL: Objection.

3 CO-HEARING OFFICER DODUC: Miss Des Jardins, a
4 question, please --

5 MS. DES JARDINS: Yeah.

6 CO-HEARING OFFICER DODUC: -- not testimony.

7 MS. DES JARDINS: Yeah, I'm sorry.

8 Do you know -- Are -- Did -- Was any
9 consideration given to -- to providing a range of
10 sea-level rise estimates for this hearing?

11 WITNESS PIERRE: The EIR/EIS is an exhibit and
12 are available, I'm assuming, and that does look at a
13 range of sea-level rise.

14 In terms of the -- the Boundary 1 and
15 Boundary 2 presented as part of this proceeding, it is
16 modeled at the early long-term period, which does include
17 the six-inch sea-level rise assumption.

18 MS. DES JARDINS: I'd like to bring up the Port
19 Chicago sea-level rise, the graph, please.

20 (Document displayed on screen.)

21 MS. DES JARDINS: This is the latest science.
22 It shows NOAA.

23 The issue, Miss Pierre, is -- Quite frankly, I
24 would hope that you would consider the more recent --

25 CO-HEARING OFFICER DODUC: Your question,

1 Miss Des Jardins.

2 MS. DES JARDINS: Yeah.

3 In producing the new -- That this is an -- This
4 is some of the new research.

5 Did you look at any of the new research, such
6 as these estimates from the Army Corps of Engineers and
7 NOA, and in considering what you might see in 2030 and
8 during the operations?

9 WITNESS PIERRE: I think the Modeling Panel can
10 answer the question as to how these data relate to or
11 have been considered in terms of the modeling assumptions
12 that were used.

13 MS. DES JARDINS: Yeah. Thank you.

14 Can we go to the other Port Chicago --

15 (Document displayed on screen.)

16 MS. DES JARDINS: Yeah. Thank you.

17 Ms. Pierre, so, if you look at 2030, the NOAA
18 high-sea-level rise is one foot.

19 Are you familiar with those guidelines? They
20 came out in 2012.

21 MR. BERLINER: Objection: What guidelines are
22 we talking about --

23 MS. DES JARDINS: They are --

24 MR. BERLINER: -- just for reference here?

25 MS. DES JARDINS: They are in this -- They

1 are -- I -- They are in this document.

2 Would you like me to go to that estimate?

3 MR. BERLINER: If the questioner's referring to
4 some document, it would be helpful to have the document.

5 MS. DES JARDINS: Okay. Let's go to the NOAA
6 guidelines.

7 (Document displayed on screen.)

8 MS. DES JARDINS: Are you familiar with this
9 document, Ms. Pierre?

10 WITNESS PIERRE: I don't recall. I don't think
11 so.

12 MS. DES JARDINS: This is the National Oceanic
13 and Atmospheric Association guidelines for sea-level
14 rise. It's updated science.

15 CO-HEARING OFFICER DODUC: And your question?

16 MS. DES JARDINS: Just, is -- is she familiar
17 with it? Is she familiar with any of the guide --
18 updated guidelines in this document?

19 WITNESS PIERRE: I don't think so. I can't
20 recall that I looked at this when it came out.

21 MS. DES JARDINS: So you're not familiar with
22 this table?

23 MR. MIZELL: Objection: Asked and answered.

24 I think we've established that she hasn't
25 looked at this document, is not familiar with what the

1 questioner is asking about.

2 MS. DES JARDINS: Okay.

3 CO-HEARING OFFICER DODUC: Miss Pierre?

4 MS. DES JARDINS: Okay.

5 WITNESS PIERRE: I haven't seen this table.

6 CO-HEARING OFFICER DODUC: Okay.

7 MS. DES JARDINS: Thank you.

8 Respectfully, there is a question of whether
9 the current -- whether the specifications for this
10 hearing are adequate, whether they use the current, best
11 available science, whether an adequate range of scenarios
12 was considered.

13 CO-HEARING OFFICER DODUC: What is your
14 question to the witness?

15 MS. DES JARDINS: Oh.

16 So, it sounds like you -- What's your
17 background, Miss Pierre? Do you have a background in
18 climate change? Do you have a background in sea-level
19 rise?

20 MR. MIZELL: Compound question.

21 Can you --

22 MS. DES JARDINS: Do you have --

23 MR. MIZELL: -- specify which of those?

24 MS. DES JARDINS: Do you have a background that
25 would lead you to be able to consider appropriate

1 sea-level rise estimates for this proceeding?

2 WITNESS PIERRE: No, I do not.

3 MS. DES JARDINS: Did you consult with somebody
4 who did?

5 WITNESS PIERRE: I was not -- I did not develop
6 the modeling. That's the -- The Modeling Panel is the
7 appropriate place, and they -- there is expertise within
8 that panel around sea-level rise and climate change.

9 MS. DES JARDINS: But you're testifying at the
10 management level.

11 Was there anybody in the management team who
12 had the ability to look at this and say, "We need to use
13 the current, best available science for this proceeding"?

14 MR. MIZELL: Objection: Misstates the witness'
15 testimony. She hasn't indicated she's testifying at a
16 management level; and, furthermore, asking her to
17 speculate on what was in the minds of DWR's management as
18 to why they made decisions they made, which the witness
19 has already indicated she doesn't know.

20 CO-HEARING OFFICER DODUC: Miss Pierre, from
21 whom could Miss Des Jardins ask these questions in terms
22 of the upcoming witnesses?

23 WITNESS PIERRE: I think Mr. Munévar would be
24 an appropriate person to ask. He's on the Modeling
25 Panel.

1 CO-HEARING OFFICER DODUC: Thank you.

2 MS. DES JARDINS: Respectfully, Miss Pierre,
3 the modelers may simply say that decision was made by the
4 management and that they were following the
5 specifications they were given.

6 WITNESS PIERRE: Is there --

7 MR. BERLINER: There's no pending question
8 here.

9 MS. DES JARDINS: Okay.

10 MR. BERLINER: That was just a statement.

11 MS. DES JARDINS: Thank you.

12 So, I believe -- Let me go back to my document
13 list.

14 Oh, how do I push return?

15 How -- How do I get back to the list of things
16 that I was going to ask about?

17 Yeah, I want to go back to the set of documents
18 that I had.

19 MR. OCHENDSZKO: File Explorer.

20 MS. DES JARDINS: Yeah. Thanks.

21 So let's go to the San Joaquin River.

22 (Document displayed on screen.)

23 MS. DES JARDINS: So, Miss Pierre, do any of
24 these simulations that you presented show the San Joaquin
25 River restoration flows?

1 WITNESS PIERRE: I think the Modeling Panel
2 needs to answer that. I'm actually not certain where we
3 ended with that.

4 MS. DES JARDINS: I just respectfully -- I
5 believe -- I respectfully -- If the San Joaquin River is
6 an expected future condition, should it be part of the
7 information presented here for this proceeding?

8 MR. MIZELL: Objection: Calls for a legal
9 conclusion as to what has to be presented before the
10 Board.

11 I don't understand it.

12 CO-HEARING OFFICER DODUC: I'm not sure I
13 understand --

14 MS. DES JARDINS: In your --

15 CO-HEARING OFFICER DODUC: -- the question.

16 MS. DES JARDINS: -- specification of the base
17 conditions, Miss Pierre, you were not even aware of
18 whether or not they included the San Joaquin River
19 restoration flows.

20 Is that what you're stating?

21 WITNESS PIERRE: I can't recall that specific
22 modeling assumption.

23 MS. DES JARDINS: It's not just a modeling
24 assumption. It's --

25 MR. MIZELL: Objection: Argumentative.

1 Where are we going with this line of
2 questioning?

3 CO-HEARING OFFICER DODUC: Hold on. Hold on.

4 Miss Des Jardins, again, your specific
5 question --

6 MS. DES JARDINS: Yeah.

7 CO-HEARING OFFICER DODUC: -- please.

8 MS. DES JARDINS: So, I apologize. I'm not
9 trained as an attorney, clearly.

10 But, Miss Pierre, this is relevant to whether
11 there is an -- You're testifying about the specifications
12 you made of the baseline, and I'm just trying to
13 determine if there was an appropriate specification of
14 the baseline conditions.

15 So, you're stating that you have no idea if
16 this was included.

17 WITNESS PIERRE: I testified as to the Project
18 Description. That's my area of expertise, in terms of
19 what assumptions were used in the no-action modeling, or
20 based on modeling, or in previous modeling, which this
21 document appears to be from 2010.

22 I -- I can't speak to every modeling assumption
23 around that. I think the Modeling Panel can answer
24 questions about specific assumptions in the baseline or
25 no-action conditions.

1 MS. DES JARDINS: Okay.

2 Miss Pierre, do you work closely with the
3 modelers?

4 WITNESS PIERRE: I oversee the development of
5 environmental documents and, in doing so, I work with
6 them and a host of other experts in their fields.

7 MS. DES JARDINS: How is it that you developed
8 this environmental document and you don't even know if
9 the modeling included the San Joaquin River flows?

10 MR. BERLINER: Objection: Argumentative.

11 CO-HEARING OFFICER DODUC: Please restate your
12 question.

13 MS. DES JARDINS: How is it that you oversaw
14 the development of these documents? Did -- Did you --
15 When -- In specifying this, were you aware of the
16 San Joaquin River flows and whether they were included or
17 not?

18 MR. MIZELL: Objection: Asked and answered.

19 CO-HEARING OFFICER DODUC: She has answered
20 that question.

21 MS. DES JARDINS: Okay. Thank you.

22 That's all of my questions.

23 CO-HEARING OFFICER DODUC: Do you wish to
24 mark --

25 MS. DES JARDINS: Yes.

1 CO-HEARING OFFICER DODUC: -- these?

2 MS. DES JARDINS: Yes.

3 So, respectfully to the Board, these were some
4 of the early sensitivity analyses that I did ask for and
5 the Board did mandate that the Petitioners' disclose.
6 And they were not provided.

7 I did -- was able to find them on the website.
8 The underlying modeling has not been provided.

9 I would like to mark them California Water
10 Research 1 through 6.

11 WITNESS PIERRE: Mr. Berliner.

12 MR. BERLINER: Regarding the exhibits that are
13 simply graphs with no references on them, we would object
14 to that as being without foundation.

15 As far as we know, those are just words on
16 paper with lines drawn. We don't know where they came
17 from.

18 They were represented by this cross-examiner as
19 representing the latest science, but we don't know
20 where -- we don't know the genesis of these graphs or
21 those charts. They may be fine but there needs to be a
22 foundation for them.

23 CO-HEARING OFFICER DODUC: Miss Des Jardins,
24 the graphs that you presented, are they part of --

25 MS. DES JARDINS: They're --

1 CO-HEARING OFFICER DODUC: -- the documents
2 that you have here.

3 MS. DES JARDINS: They're from -- They're from
4 the . . . Army Corps of Engineer Sea-level Rise
5 Calculator at Port Chicago.

6 And he is correct: I need to provide a link to
7 the calculator and the assumptions that I put into them.

8 I respectfully ask the Board if I could cement
9 a declaration later of the . . . with the link, you know,
10 to the calculator.

11 CO-HEARING OFFICER DODUC: Miss Des Jardins,
12 will you be using these exhibits later as part of your
13 case in chief?

14 MS. DES JARDINS: I can -- I would like to
15 keep -- I -- I do believe that I would like to keep the
16 early -- I believe that the early scenarios are important
17 because they show information that was considered and
18 then dropped, and those, I believe, should be in this --
19 my cross. They were in my cross-examination and they
20 should be in here.

21 CO-HEARING OFFICER DODUC: Will they be in your
22 case in chief?

23 MS. DES JARDINS: I was planning to use them
24 for --

25 CO-HEARING OFFICER DODUC: All right. Let's do

1 this.

2 MS. DES JARDINS: -- cross-examination, yeah.

3 CO-HEARING OFFICER DODUC: Let's hold off on
4 all these until you do your case in chief, and then you
5 may lay the foundation for them and introduce them into
6 the record.

7 MS. DES JARDINS: Yeah. Respectfully, I do
8 have the right for cross-examination and the -- I agree
9 about the NOAA sea-level rise in Port Chicago.

10 But the other -- The scenarios and information
11 not being, you know, what's presented to the Board is
12 relevant at this phase.

13 CO-HEARING OFFICER DODUC: You have the right
14 to introduce them; Mr. Berliner has the right to object;
15 I have the right to rule.

16 MS. DES JARDINS: Okay.

17 CO-HEARING OFFICER DODUC: Thank you,
18 Miss Des Jardins.

19 MS. DES JARDINS: Thank you.

20 CO-HEARING OFFICER DODUC: With that, we will
21 now move on to Group Number 38, the Pacific Coast
22 Federation of Fishermen's Association and Institute for
23 Fishery Resources.

24 Not here?

25 MR. VOLKER: Yes, we're here.

1 CO-HEARING OFFICER DODUC: There you are.

2 MR. VOLKER: We're packing up.

3 CO-HEARING OFFICER DODUC: Mr. Volker, do you
4 have a time estimate in terms of your cross?

5 MR. VOLKER: I estimate less than an hour, but
6 I'm not sure how much less.

7 CO-HEARING OFFICER DODUC: Okay.

8 MR. VOLKER: Obviously, much depends on the
9 witnesses' responses and objections and the Board's
10 rulings thereon.

11 Thank you --

12 CO-HEARING OFFICER DODUC: I ask --

13 MR. VOLKER: -- very much.

14 CO-HEARING OFFICER DODUC: -- simply to respond
15 to Mr. Berliner's earlier question.

16 I don't expect we'll get to your second panel,
17 not before lunch, anyway.

18 MR. BERLINER: Thank you.

19 CROSS-EXAMINATION BY

20 MR. VOLKER: Good morning, Miss Pierre.

21 My name is Stephen Volker. I'm a lawyer
22 representing the Pacific Coast Federation of Fishermen's
23 Associations and the Institute for Fisheries Resources.

24 I'm here today to ask questions about your
25 testimony which has been marked as DWR Exhibit 51.

1 I'd like to direct your attention to that
2 exhibit.

3 If we can have that up on the overhead
4 projections. Is that doable?

5 (Document displayed on screen.)

6 MR. VOLKER: Yes. And then if we can go to
7 Page 3.

8 (Document displayed on screen.)

9 MR. VOLKER: Okay. That's great. Thanks so
10 much.

11 With regard to Page 3, you stated at Lines 8
12 through 11 (reading):

13 "Proposed operations with a dual conveyance
14 system would include new or additional criteria
15 related to Old River and Middle River flows, Head of
16 Old River Gate (HORG) operations, Delta outflow, and
17 north Delta bypass flows, and would comply with
18 SWP/CVP permit requirements."

19 You wrote that; didn't you?

20 WITNESS PIERRE: Yes, I did.

21 MR. VOLKER: At the time you wrote that, you
22 had in mind that the State Water Board would issue a
23 Permit for the WaterFix Project that would contain within
24 it requirements, terms and conditions that would satisfy
25 the governing legal regime.

1 Is that your understanding?

2 WITNESS PIERRE: I think what I'm meaning to
3 say here is that the proposed operations have been
4 proposed consistent with the compliance with applicable
5 permit requirements.

6 MR. VOLKER: And let me put it another way:

7 Taking a step back from specific permit
8 requirements, was it your understanding that the WaterFix
9 would comply with Water Code Section 1702?

10 And to assist your review, may I have that
11 projected on the overhead screen. That was the eighth
12 and ninth files that we provided by flash drive to staff.

13 (Document displayed on screen.)

14 Mr. Eichenberg: Scroll down to 1702, please.

15 (Document displayed on screen.)

16 MR. VOLKER: Okay. And referring to the
17 highlighted portion of this document, which I would ask
18 be identified as PCFFA Number 1 for identification only.

19 Is that permissible, Madam Chair?

20 CO-HEARING OFFICER DODUC: We will so mark that
21 for identification.

22 ///

23 ///

24 ///

25 ///

1 (Pacific Coast Federation of
2 Fishermen's Associations and
3 Institute for Fisheries Resources
4 Exhibit PCFFA-1 marked for
5 identification)

6 MR. VOLKER: Thank you.

7 And then directing your attention to the
8 following language:

9 "Before permission to make such a change" --

10 And that refers, of course, to the language in
11 the preceding Section 1701 referring to changes in
12 (reading):

13 ". . . The points of diversion, place of use,
14 or purpose of use . . ."

15 Section 1702 continues, "(Reading):

16 -- "is granted, the Petitioner shall establish,
17 to the satisfaction of the Board, and it shall find,
18 that the change will not operate to the injury of
19 any legal user of the water involved."

20 Now, having in mind that admonition from Water
21 Code Section 70 -- 1702, can you tell us whether any
22 consideration was given to that in the preparation of
23 your testimony?

24 MR. MIZELL: Objection: Calls for a legal
25 conclusion.

1 CO-HEARING OFFICER DODUC: I think Miss Pierre
2 can answer that.

3 WITNESS PIERRE: In general, that's the purpose
4 of Part I and, as such, my testimony has been provided in
5 order to aid in -- in the Part I proceedings.

6 MR. VOLKER: That was my understanding. Thank
7 you.

8 And in order to accomplish that primary purpose
9 of Part I of this proceeding -- that is, to identify
10 injury of any legal user of the water involved -- did you
11 or anyone on your team, or any of the other panels,
12 determine what constituted a legal user of the water
13 involved?

14 WITNESS PIERRE: That's outside my area of
15 expertise.

16 So, again, I'm just presenting what we're
17 proposing to do with the backup testimony to provide
18 information about the analysis related to legal user
19 determination.

20 MR. VOLKER: I understand you lack the legal
21 expertise to make that determination.

22 Did anyone within the Department of Water
23 Resources or --

24 CO-HEARING OFFICER DODUC: Hold on, Mr. Volker.
25 What is that noise? Oh, it's the time.

1 That's a very disruptive noise.

2 MR. BERLINER: Sounds like it's coming from the
3 speakers.

4 CO-HEARING OFFICER DODUC: It's not an alarm.

5 Is it an alarm?

6 I think it stopped.

7 Okay. Okay. Let's resume, Mr. Volker.

8 Please repeat your question again.

9 MR. VOLKER: Yes. Thanks very much, Madam
10 Chair.

11 I understand that you don't lack -- you don't
12 have the legal expertise required to ascertain what
13 constitutes an injury of any legal user of water.

14 And my question is: Did anyone within the
15 Department of Water Resources or the Bureau of
16 Reclamation provide you with that information?

17 WITNESS PIERRE: I based my testimony, as I
18 mentioned before, on information that has been provided
19 over the course of my time as Project Manager and the
20 work that I've been doing. So that's what my testimony
21 is based on.

22 MR. VOLKER: So your testimony did not include
23 information about what constituted a legal user of water.

24 WITNESS PIERRE: Right. My testimony was meant
25 to identify the Proposed Project, describe it, and

1 describe what the Board should expect to hear from the
2 subsequent witnesses relative to demonstrating the case
3 around legal users and an injury to water.

4 MR. VOLKER: In your professional judgment,
5 would information regarding what constituted a legal user
6 of water be essential to an informed determination of
7 whether any such injury would result from this Project?

8 MR. MIZELL: Objection: Goes beyond the
9 witness' expertise.

10 CO-HEARING OFFICER DODUC: Mr. Volker, perhaps
11 if you could break that question --

12 MR. VOLKER: I would --

13 CO-HEARING OFFICER DODUC: -- down.

14 MR. VOLKER: -- be happy to, yes.

15 Thanks for the guidance.

16 You're familiar with a number of statutory
17 regimes that govern operation of the State and Federal
18 Water Projects; are you not?

19 WITNESS PIERRE: Generally.

20 MR. VOLKER: Indeed, a basic understanding of
21 how those statutes and the implemented regulations
22 operate is necessary in order to make any informed
23 judgment as to the impacts of the WaterFix on legal users
24 of water; is that correct?

25 WITNESS PIERRE: I think that's part of the

1 determination, yes.

2 MR. VOLKER: Okay. And so, for example, in
3 offering testimony in this proceeding, you had in mind
4 the likely Permit requirements, as you've attested on
5 Line 11 of DWR-51, that would be enforced by this Water
6 Board in connection with its review and approval of the
7 WaterFix Project; is that correct?

8 WITNESS PIERRE: No.

9 As I mentioned before, these are the proposed
10 operations, and I think this is more of a general
11 statement and not specific to this proceeding.

12 I think what I meant here was that there are
13 other Permit requirements that are existing. Additional
14 ones may come online.

15 And what I'm trying to say here is that the
16 Proposed Project includes compliance with those
17 applicable Permits and not specifically assuming the
18 outcome of these proceedings.

19 MR. VOLKER: Very well.

20 And, so, when you say, "would comply with
21 SWP/CVP permit requirements," you did not mean to suggest
22 that the WaterFix would comply with the applicable laws
23 concerning water flow criteria; for example, protection
24 of endangered species, water quality, and so forth?

25 WITNESS PIERRE: Actually, that's precisely

1 what I meant, was that applicable Permits would be
2 complied with as part of the operation of the WaterFix.

3 MR. VOLKER: And the applicable Permit
4 requirements, in your estimation, would include the
5 requirements of the laws governing water quality, water
6 flow, and so forth.

7 WITNESS PIERRE: That's correct.

8 MR. VOLKER: Okay. Would you tell us what
9 consideration, if any, you gave to the WaterFix's
10 compliance with the following statutes.

11 First of all -- and I'll ask the projectionist
12 to bring up on the screen -- Water Code Section 1243,
13 which is among the nine items. I believe that would be
14 the sixth folder.

15 (Document displayed on screen.)

16 MR. VOLKER: If you look at the first
17 highlighted language, which appears in Section 1243, it
18 states (reading):

19 "In determining the amount of water for
20 appropriation for other beneficial uses, the Board
21 shall take into account, when it is in the public
22 interest, the amounts of water required for
23 recreation and the preservation and enhancement of
24 fish and wildlife resources."

25 CO-HEARING OFFICER DODUC: And your question,

1 Mr. Volker?

2 MR. VOLKER: Is -- I believe I was just
3 explaining the previous question, which as yet had not
4 been answered but had to do with whether this witness
5 took into account various statutory restrictions that
6 guide this Board's determination of whether this Permit
7 should issue, and this is the first of a series of
8 statutes with which this Board must comply.

9 And I want to know to what extent this witness,
10 or any of the Panel Members, gave consideration to these
11 statutory constraints on issuance of the Permit; i.e.,
12 the Permit requirements that the witness has attested to.

13 MR. MIZELL: With regards to this particular
14 section of the Water Code, I'm going to object to it as
15 being relevant only to Part II.

16 MR. VOLKER: If I might be heard.

17 CO-HEARING OFFICER DODUC: Mr. Volker.

18 MR. VOLKER: Yes. It certainly is pertinent to
19 Part II, and it is equally pertinent to Part I, since
20 legal users of water do require protection of water
21 quality among the many other factors that the Court --
22 that the Board must consider.

23 CO-HEARING OFFICER DODUC: Thank you,
24 Mr. Volker.

25 Miss Pierre, please answer, if you can remember

1 the question.

2 WITNESS PIERRE: I'm not really sure I
3 understand what the actual question is. If you would
4 repeat it, that would be helpful.

5 MR. VOLKER: I'd be happy to. Thank you.

6 Did you or anyone else testifying on behalf of
7 DWR and the Bureau in this proceeding give any
8 consideration to the requirements of Water Code
9 Section 1243(a)?

10 WITNESS PIERRE: I can't speak for others.

11 Personally, I'm not familiar with the specific
12 language in the Water Code in this section.

13 I can say that, for the highlighted item, that
14 was a consideration in development of the Project, and it
15 is the subject of Part II.

16 MR. VOLKER: And did you give any consideration
17 to this language in determining whether or not there
18 would be injury to any legal user of water?

19 MR. BERLINER: I'm going to object: That is
20 not what this Code section pertains to.

21 This code -- Mr. Volker has not read the first
22 sentence of this section, and it concerns the use of
23 water for recreation and preservation and enhancement of
24 fish and wildlife resources.

25 This is not injury to a legal user of water.

1 CO-HEARING OFFICER DODUC: Mr. Volker, she's
2 answered this particular question with respect to this
3 section, so please move on.

4 MR. VOLKER: All right.

5 Ms. Pierre, in formulating your testimony in
6 Exhibit 51, was it your understanding that sports
7 fishermen and commercial fishermen were not legal users
8 of water?

9 MR. BERLINER: Objection: Calls for a legal
10 conclusion.

11 CO-HEARING OFFICER DODUC: Mr. Volker, perhaps
12 you want to rephrase that as to whether or not fishermen
13 and sportfishing were considered.

14 MR. VOLKER: Well, I can do that, but the point
15 was a narrower one. I'd be happy to ask the question
16 suggested and then maybe we can narrow it, but the . . .

17 What consideration, if any, was given to
18 protecting recreation and the preservation and
19 enhancement of fish and wildlife resources in connection
20 with your preparation of testimony for this proceeding?

21 MR. BERLINER: Objection: That's a Part II
22 question.

23 CO-HEARING OFFICER DODUC: It goes towards the
24 Project Description.

25 Miss Pierre, please answer.

1 WITNESS PIERRE: The Project Description in
2 the -- included -- Excuse me.

3 The operational criteria included were
4 targeting primarily species listed under the Endangered
5 Species Act.

6 MR. VOLKER: And so other than species listed
7 under the State and Federal Endangered Species Act, no
8 consideration was given to those resource impacts?

9 WITNESS PIERRE: No, that's not what I said.
10 There was -- The EIR does include an evaluation
11 of recreational effects, as well as effects on species
12 that are not listed under the Federal or State Endangered
13 Species Act, so there are evaluations included in the EIR
14 that look at the issues that you're raising.

15 MR. VOLKER: And did you prepare those portions
16 of the Recirculated Draft EIR and Supplemental Draft EIS?

17 WITNESS PIERRE: I did not personally, but I
18 did oversee that preparation.

19 MR. VOLKER: And would you please identify the
20 individuals who did prepare that information.

21 WITNESS PIERRE: That was . . .

22 (Witnesses confer.)

23 WITNESS PIERRE: Well, I guess that's a good
24 point of clarification.

25 Are you referring to the analysis of species or

1 of recreation?

2 MR. VOLKER: I was referring to your previous
3 answer, so you may guide -- guide me in that regard.

4 Are you referring to recreational impacts or
5 endangered species impacts when you're speaking about
6 consideration of the requirements of Water Code 1243?

7 WITNESS PIERRE: I believe we're talking about
8 both.

9 And in terms of the impacts on nonlisted
10 aquatic species and resources, that analysis was prepared
11 primarily by Mauren (phonetic) Greenman.

12 In terms of recreation, Mr. Centerwall would be
13 able to answer that portion of the EIR.

14 (Pacific Coast Federation of
15 Fishermen's Associations and
16 Institute for Fisheries Resources
17 Exhibit PCFFA-2 marked for
18 identification)

19 MR. VOLKER: And, similarly, with regard to the
20 next subdivision of this section, 1243.5, which appears
21 on the same exhibit -- which I would request be marked as
22 PCFFA 2 -- that section, 1243.5, directs (reading):

23 "In determining the amount of water available
24 for appropriation, the Board shall take into
25 account, whenever it is in the public interest, the

1 amounts of water to remain in the source for
2 protection of beneficial uses, including any uses
3 specified to be protected in any relevant water
4 quality control Plan . . ."

5 And the same question: With respect to that
6 statutory command:

7 To what extent, if any, did your team, or
8 anyone else assisting in the testimony on behalf of DWR
9 and the Bureau, give consideration to that requirement?

10 WITNESS PIERRE: So, this, as I mentioned in my
11 testimony, is represented by our continued application of
12 the D-1641 requirements that are part of the foundation
13 on which we build additional criteria specific to the
14 California WaterFix.

15 MR. VOLKER: And would it be correct to surmise
16 from your answer that consideration of Decision 1641 was
17 also the primary basis for consideration of impacts on
18 recreation and preservation and enhancement of fish and
19 wildlife resources as called for under 1243?

20 WITNESS PIERRE: The evaluation in the EIR
21 relative to recreation and the nonlisted fish species I
22 don't believe was based on D-1641.

23 The fish species was based on a number of
24 different biological methods that were deemed to be
25 appropriate.

1 MR. VOLKER: All right. Addressing the
2 reliance on D-1641, I notice in your proposed testimony
3 that you made specific reference to Decision 1641 on a
4 number of occasions and indicated that the WaterFix
5 Project was premised on compliance with D-1641.

6 And directing your attention again to DWR-51,
7 Page 4, you state (reading):

8 "The current WQCP as implemented through Water
9 Rights Decision 1641, requires the Projects to meet
10 the protective standards established by the State
11 Water Board. DWR and Reclamation's water rights
12 permits for the State Water Project/Central Valley
13 Project incorporate the applicable requirements of
14 D-1641."

15 Is that a correct summary of your understanding
16 of the governing law with regard to operation of the
17 WaterFix?

18 MR. MIZELL: Objection: Calls for a legal
19 conclusion as to what constitutes governing law.

20 CO-HEARING OFFICER DODUC: Miss Pierre, if you
21 could just affirm the correctness of your statement.

22 WITNESS PIERRE: The statement that was read
23 actually falls under Item B, which is titled "SWP/CVP
24 Operations and Current Regulatory Requirements," so this
25 is providing an overview of such.

1 MR. VOLKER: And is it your testimony that the
2 WaterFix complies with Decision 1641?

3 WITNESS PIERRE: As -- As proposed, again,
4 D-1641 is the foundation on which we built a number of
5 the new operational criteria, so, yes, this is a Project
6 meant to be and modeled to be compliant with the Water
7 Quality Control Plan.

8 MR. VOLKER: And in your professional judgment,
9 will the WaterFix assure achievement of the salmon
10 doubling requirements articulated by this Board and WR
11 D-1641?

12 MR. BERLINER: Objection: That's a Part II
13 question.

14 CO-HEARING OFFICER DODUC: Mr. Volker, I think
15 she's answered with respect to the Project Description
16 that it incorporates and built upon Decision 1641.

17 I would encourage you to move on.

18 MR. VOLKER: I will do that.

19 Are you familiar with the requirements of the
20 Delta Reform Act?

21 MR. BERLINER: Objection: Vague. It's a very
22 long Act.

23 CO-HEARING OFFICER DODUC: Hold on.

24 MR. BRODSKY: Michael Brodsky on behalf of
25 California Delta Alliance.

1 With regard to the witness not answering on the
2 grounds that it's a Part II question, I'd like to review
3 that, originally, the Board granted Part II parties the
4 right to examine in Part I because witnesses in Part I
5 would be giving testimony as to facts that are relevant
6 to issues in Part II.

7 So, to the extent the witness knows the answer,
8 I think it's irrelevant that it goes to Part II.

9 When I asked to be able to have the ability to
10 cross -- for Part II parties to have the ability to
11 cross-examine in Part I, the justification was that, that
12 way, we wouldn't need to call Miss Pierre as a hostile
13 witness in Part II.

14 So, I mean, if she's giving testimony that is
15 establishing something that goes to a fact that'll be
16 relevant in Part II and she knows the answer, then either
17 she needs to answer on cross-examination now or we would
18 have to call her -- call her back as a hostile witness in
19 Part II.

20 If she doesn't know, obviously, then, she can't
21 answer.

22 CO-HEARING OFFICER DODUC: Thank you,
23 Mr. Brodsky.

24 Mr. Jackson, did you wish to say something?

25 MR. JACKSON: Yes. My point is a little

1 broader, I think.

2 The ruling by the -- The prehearing ruling by
3 the Board talked about legal users of water, and those
4 are much broader than simply water rights. There are
5 subsistence fishers, there are commercial fishers, there
6 are groundwater users who have valid groundwater rights
7 that could be affected by this Project, and there are
8 people who have, I think, opinions in regard to the
9 question of public interest.

10 And so I'm looking for some guidance about when
11 we're going to be able to do public interest questions
12 and when we're going to be able to talk about legal uses
13 of water that are not -- that may be affected but that
14 are not on your water rights list.

15 And as I understood your ruling, Part I was
16 when we were going to do that.

17 CO-HEARING OFFICER DODUC: Okay.

18 Mr. Herrick?

19 MR. HERRICK: Thank you. John Herrick for
20 Central Delta Parties.

21 I'd also like to add that the questions that
22 deal with fishery flow compliance or operational things
23 under the Fish Code, that's certainly pertinent to an
24 examination of injury to other legal users, because the
25 proposed operations and/or modeling, if they do or don't

1 deal with those operations, that determines what the
2 output is, whether there's harm to somebody.

3 So, somebody's supposed to legally be doing
4 some large additional flows for fishery protections,
5 hypothetically, and of course that should be in the
6 modeling and that would then tell us whether or not
7 somebody's being harmed somewhere else.

8 So I think the questions are appropriate.

9 Thank you.

10 CO-HEARING OFFICER DODUC: Miss Des Jardins?

11 MS. DES JARDINS: Thank you.

12 I just wanted to raise the question: There is
13 a lot of information about the hydrology, the
14 hydrologic -- the assumptions in the hydrologic model
15 being presented in this phase of the hearing.

16 And the question is, how much are we going to
17 revisit that in Phase II to the extent that these
18 questions are not allowed to be asked and answered in
19 this phase?

20 Thank you.

21 CO-HEARING OFFICER DODUC: Thank you.

22 Mr. Berliner, Mr. Mizell, your comment on this?

23 I -- I am under the impression that Miss Pierre
24 is here to provide a broad project description, and if I
25 understood her correctly yesterday, she replied -- and

1 I'm seeking assurance from you -- that she will be
2 returning as a witness in Part II for a more focused
3 discussion, and I assume that's where you'll be
4 presenting your exhibits and your testimony about the
5 fisheries effect.

6 MR. MIZELL: I believe that understanding is
7 correct. The . . .

8 As to the ruling by the Board to extend the
9 parties in Part II the ability to cross-examine in
10 Part I, it was not our understanding of that ruling that
11 it, therefore, expanded the scope of Part I's legal
12 issues.

13 It seems as though subsequent rulings continued
14 to keep Part I as a narrowly-focused portion of this
15 hearing on the legal users of water but allowed people to
16 come forward to discuss the Project Description, which is
17 consistent with your statements just now.

18 CO-HEARING OFFICER DODUC: Mr. Berliner,
19 anything to add?

20 MR. BERLINER: No, I don't have anything.

21 CO-HEARING OFFICER DODUC: Okay. Mr. Brodsky.

22 MR. BRODSKY: I'd just like to -- Some facts
23 are -- are being established that are relevant to the
24 entire proceeding; for example, how are we defining
25 D-1641? That goes to everything.

1 So, to the extent that a cross-examiner is
2 focusing a question as to a fact that's being asserted,
3 as -- framing that as how it affects Part II, that is
4 simply framing the question.

5 But, I mean, if the witness is establishing a
6 fact now that affects issues in Part II and we have no
7 further opportunity to cross-examine the witness in
8 Part II, we have to do it now. Otherwise, what was the
9 reason for giving --

10 CO-HEARING OFFICER DODUC: Mr. Brodsky.

11 Mr. Mizell, Mr. Berliner, let me request now
12 for the record your assurance that Miss Pierre will
13 return as a witness in Part II to specifically discuss
14 details with respect to fisheries impact and that she
15 will be available for cross-examination then.

16 MR. BERLINER: Excuse me. Could we have a
17 couple minutes to confer on this?

18 CO-HEARING OFFICER DODUC: Sure.

19 (Counsel confer.)

20 CO-HEARING OFFICER DODUC: Mr. Mizell --

21 MR. BERLINER: Yes.

22 CO-HEARING OFFICER DODUC: -- are you ready?

23 MR. BERLINER: Yes, we are.

24 At -- At this point on -- on biological
25 questions, this witness may or may not be the appropriate

1 witness to provide the best information on the impacts of
2 this Project on salmon doubling, which was the question
3 that led to this extensive discussion.

4 So we will have a witness in Part II who will
5 be addressing impacts on fisheries, whether it's from the
6 biology standpoint or the modeling standpoint, as
7 appropriate.

8 We understand that's part of our burden. And
9 we also understood that was part of Part II.

10 So, Ms. Pierre may or may not be the exact
11 appropriate witness to address that. And if necessary,
12 and they feel that her testimony is relevant in Part II,
13 they can call her as a hostile witness, if necessary. We
14 have no power to preclude that. The Board can require
15 that she be here.

16 So, we're not -- we haven't fixed in on who
17 exactly our witnesses are for Part II, which we will at
18 the appropriate time.

19 CO-HEARING OFFICER DODUC: But it may not be
20 Miss Pierre, is what you're telling me.

21 MR. BERLINER: As to -- As to biology and --
22 and the issues related to salmon doubling, at this point,
23 we're not committing one way or the other as to who
24 will --

25 CO-HEARING OFFICER DODUC: All right. In that

1 case, I will allow those question of Miss Pierre and she
2 will answer to the best of her ability. And if she would
3 not answer, I expect that she will state so.

4 All right. With that, please, Mr. Volker,
5 continue.

6 MR. VOLKER: Thank you.

7 Do we have the ability to reread a question
8 that's already been posed and is pending, or should I
9 take a stab of repeating what I said?

10 CO-HEARING OFFICER DODUC: Just repeat that.

11 MR. VOLKER: Sure. Okay.

12 You stated in your testimony that DWR and
13 Reclamation operate the State and Federal Water Projects
14 subject to and incorporating the applicable requirements
15 of Decision 1641; is that right?

16 WITNESS PIERRE: That's correct.

17 MR. VOLKER: Okay. And one of those
18 requirements, as you may be aware, is that salmon
19 populations be doubled.

20 Are you familiar with that?

21 WITNESS PIERRE: My understanding was that was
22 a requirement of CDPIA. That's -- That's my
23 understanding around that.

24 MR. VOLKER: I forgive you.

25 All right. So, as you testified today, you

1 have not received information from DWR or the Bureau with
2 regard to the requirement articulated by this Board in
3 1995 that Decision 1641 requires a doubling of salmon
4 populations.

5 WITNESS PIERRE: No.

6 MR. VOLKER: And, thus, when you attest to
7 compliance of the WaterFix with the applicable
8 requirements of Decision 1641, you're not including the
9 salmon doubling requirement?

10 MR. BERLINER: Objection: Misstates her
11 testimony. She didn't say that one way or another.

12 CO-HEARING OFFICER DODUC: Mr. Volker, try your
13 question again, please.

14 MR. VOLKER: I'd be happy to. Thank you, Madam
15 Chair.

16 Is it your opinion that WaterFix would comply
17 or not comply with the requirements of Decision 1641?

18 WITNESS PIERRE: My understanding is that we
19 would comply with Decision 1641.

20 MR. VOLKER: And in reaching that
21 understanding, what consideration, if any, did you give
22 to the requirement of Decision 1641 that salmon
23 populations be doubled?

24 WITNESS PIERRE: The compliance with D-1641
25 statements that I've made have to do with the meaning of

1 the operational outlined within that decision.

2 MR. VOLKER: And -- And may I, then, fairly
3 represent to you that, as I believe you've already
4 indicated, you were not aware that Decision 1641 required
5 a doubling of salmon populations.

6 WITNESS PIERRE: No, I was not.

7 MR. VOLKER: Thank you.

8 What consideration, if any, did you or your
9 team, or any other representative of DWR and the Bureau,
10 give to the requirements of the Delta Reform Act that
11 flow criteria adequate to protect public trust resources
12 be adopted by this Board and implemented?

13 MS. MORRIS: I have an objection: This -- This
14 whole --

15 CO-HEARING OFFICER DODUC: Miss Morris.

16 MS. MORRIS: Thank you. Stefanie Morris, State
17 Water Contractors.

18 This whole line of question about asking the
19 witness the intent of legal statutes seems inappropriate
20 to me. It's asking for a legal conclusion.

21 If Mr. Volker wants to write a legal brief,
22 he's very welcome to. But whether a DWR witness on
23 Project overview understood what every single witness
24 from the DWR and the Bureau put together what they looked
25 at seems inappropriate to me.

1 CO-HEARING OFFICER DODUC: Thank you,
2 Miss Morris.

3 Miss Des Jardins.

4 MS. DES JARDINS: Respectfully, this goes to
5 the Gallery II analysis. Public flow criteria are
6 fundamental to that. This was part of the testimony
7 that's being presented.

8 Thank you.

9 CO-HEARING OFFICER DODUC: Mr. Volker, I
10 understand your question, at least -- Well, correct me if
11 I'm misunderstanding.

12 But your questions are intended to explore the
13 extent to which the Project Description, which
14 Miss Pierre is testifying to, considered and included the
15 various requirements that you are pointing out.

16 So, your questions are specific to her
17 understanding of how the Project Description considered
18 and adhered to those provisions.

19 Am I correct?

20 MR. VOLKER: Well stated. Thank you.

21 CO-HEARING OFFICER DODUC: And in that framing
22 of his question, I'm going to ask Miss Pierre to address
23 them.

24 MR. VOLKER: All right. Let's turn our
25 attention, then, to the Delta Reform Act and specifically

1 Section 85086(c)(1), which is among the nine folders that
2 we have furnished staff.

3 That would have been Folder 9, I believe.

4 (Document displayed on screen.)

5 MS. RIDDLE: It's the bottom document.

6 MR. VOLKER: Okay. We anticipated that your
7 technology would change the enumeration to coincide with
8 an alphabetic organization.

9 So I take that back. This would . . .

10 MR. BERLINER: It's -- It's on there, you're
11 right. It's the bottom -- It's the bottom document, if
12 they just go back.

13 (Document displayed on screen.)

14 MR. BERLINER: There you go.

15 MR. VOLKER: All right. Good. Thank you.

16 Water Code Section 85086(c)(1) states

17 (reading):

18 "For the purpose of informing planning
19 decisions for the Delta Plan and the Bay Delta
20 Conservation Plan, the Board shall, pursuant to its
21 public trust obligations, develop new flow criteria
22 for the Delta ecosystem necessary to protect public
23 trust resources."

24 Are you familiar with that mandate from the
25 legislature?

1 WITNESS PIERRE: Which Board is this referring
2 to?

3 MR. VOLKER: The State Water Board.

4 WITNESS PIERRE: Yes, I'm generally familiar
5 with this component of the Act.

6 MR. VOLKER: And are you familiar with the
7 Board's promulgation in August 2010 of flow criteria
8 intended to satisfy this statutory mandate?

9 WITNESS PIERRE: If you're referring to the
10 flow document presented to the Board, I have reviewed
11 that document.

12 I don't believe that that is actually
13 associated with the language in this text that's
14 highlighted, explicitly.

15 MR. VOLKER: And why do you have that
16 understanding?

17 WITNESS PIERRE: The language in this Act is a
18 directive, in my understanding, for the Board's
19 consideration in reviewing what was the Bay-Delta
20 Conservation Plan and is essentially now the California
21 WaterFix. The flow document was prepared for a wholly
22 different purpose.

23 And that's -- that's my understanding. I was
24 not involved with those proceedings at all.

25 MR. VOLKER: And so it's your testimony that

1 this Water Boards' determination of flow criteria
2 sufficient to protect public trust resources has nothing
3 to do with this proceeding?

4 MR. MIZELL: Objection: Misstates the witness'
5 testimony.

6 CO-HEARING OFFICER DODUC: Mr. Volker, if you
7 could please restate and clarify your question.

8 MR. VOLKER: Yes.

9 So it's your understanding that this Board's
10 promulgation of flow criteria sufficient to protect
11 public trust resources has nothing to do with the Project
12 Description that you wrote and is summarized in DWR-51?

13 WITNESS PIERRE: I wouldn't agree with that
14 statement.

15 What I'm testifying, is that relative to the
16 flows document presented to the Board, which I'm familiar
17 with, that is not one and the same as the directive
18 provided in the Act on the screen. And what I'm
19 testifying to is the Project proposed by the Petitioners
20 for the California WaterFix.

21 So I see these as separate things from the flow
22 document.

23 MR. VOLKER: Is it your testimony that when
24 this Board considers approval of the WaterFix, that it
25 should not give consideration to the flow criteria it

1 developed pursuant to this statutory mandate?

2 MR. BERLINER: I have a question of relevance
3 of this line of questioning.

4 This witness -- I'm sorry.

5 It's up to the Board to determine flow
6 criteria.

7 The point of testimony here is cumulative in
8 order to address the no injury rule. This to me sounds
9 like issues that would be appropriate for briefing, as to
10 whether the evidence is adequate to support the Board's
11 findings.

12 So, we -- You know, if -- if Mr. Volker is
13 looking for some sort of stipulation that flow criteria
14 is part of this proceeding, we'll stipulate to that.
15 It's in the law.

16 But to continuously ask this witness about
17 areas, Water Code sections, and Water Board decisions,
18 just doesn't seem to lead us anywhere productive.

19 CO-HEARING OFFICER DODUC: Mr. Volker.

20 MR. VOLKER: Well, the witness purports to be
21 an expert with regard to the integration of the WaterFix
22 Project with applicable and environmental criteria and
23 has indicated, as an example, that Decision 1641 is part
24 of the regulatory environment that was given
25 consideration in formulating the WaterFix Project.

1 And my questions are simply: If that is the
2 case, then what additional consideration, if any, was
3 given to the overwhelming determinations by State and
4 Federal agencies, including this Board, that the flow
5 criteria set forth in Decision 1641 have failed to
6 protect the public trust resources of the Delta.

7 And I was about to go in to some examples of
8 findings by EPA and by this Board to that effect.

9 Because if this Board can't bring -- fast
10 forward from 1641 to current science, we're all.

11 CO-HEARING OFFICER DODUC: Mr. Volker --

12 MR. VOLKER: Wasting our time.

13 CO-HEARING OFFICER DODUC: -- I'm not looking
14 to you for testimony.

15 MR. VOLKER: Yes.

16 CO-HEARING OFFICER DODUC: Miss Pierre, to what
17 extent are you familiar with the 2010 Flow Criteria
18 Report produced by this Board?

19 WITNESS PIERRE: I have read portions of it.

20 CO-HEARING OFFICER DODUC: Okay. To what
21 extent was that considered in developing the Project
22 Description?

23 To your knowledge.

24 WITNESS PIERRE: There's a lot of information
25 that was considered, and that was certainly one piece of

1 evidence that was under consideration in the development
2 of the operational criteria.

3 CO-HEARING OFFICER DODUC: All right.

4 Mr. Volker --

5 MR. VOLKER: Yes, thanks.

6 CO-HEARING OFFICER DODUC: -- please move on.

7 MR. VOLKER: I will, yes.

8 I'd like to direct the witness' attention to
9 the next document we would wish to mark for
10 identification, and that is the State -- an excerpt from
11 this Board's 2010 flow criteria adopted August 3, 2010.

12 That may be your -- Yes. Okay. It should be
13 Folder 5.

14 (Document displayed on screen.)

15 MR. VOLKER: Right. And directing your
16 attention to the highlighted sentence at the top of --
17 this is Page 2, which states (reading):

18 "The best available science suggests that
19 current flows are insufficient to protect public
20 trust resources."

21 Have you read that previously?

22 WITNESS PIERRE: Which document is this?

23 MR. VOLKER: This is a document that I would
24 ask be marked as PCFFA Number 4, which is Page 2 from
25 this Water Boards' 2010 Flow Criteria.

1 MS. RIDDLE: I believe that's a -- that's a
2 State Water Board exhibit just for the purpose of
3 avoiding redundancy. I don't think it needs to be
4 marked.

5 MR. VOLKER: Yes.

6 MS. RIDDLE: I don't -- Staff can let us know
7 what number it is, but you can proceed --

8 MR. VOLKER: Well --

9 MS. RIDDLE: -- by doing that.

10 MR. VOLKER: -- it's Number 25, and rather than
11 staff having to go through hundreds of pages of
12 Document 25, I thought we'd cut to the chase and just
13 mark it as an excerpt that would be more user-friendly.

14 CO-HEARING OFFICER DODUC: And your question,
15 Mr. Volker?

16 MR. VOLKER: I believe there was a question
17 pending and I'd be happy to rephrase.

18 Have you read this sentence previously?

19 WITNESS PIERRE: Most likely, yes. It's in the
20 introduction of the document, so I expect that I have
21 read it, yes.

22 MR. VOLKER: And do you agree with it?

23 WITNESS PIERRE: I think it's --

24 MR. BERLINER: Objection: Relevance.

25 CO-HEARING OFFICER DODUC: Mr. Volker, where

1 are you going with this? And if you could be very direct
2 in your question.

3 MR. VOLKER: I'd be happy to. Thank you, Madam
4 Chair.

5 To what extent, if any, does your Project
6 Description acknowledge that this Board, and other
7 agencies to which I will refer shortly, have found that
8 the best available science suggests that current flows
9 are insufficient to protect public trust resources?

10 MR. MIZELL: Objection: Once again, we're
11 getting into what the best available science is.

12 This is clearly and directly on point with
13 Part II and the debates over what the biological
14 consideration should be in this Project.

15 In terms of what's presented in the Project
16 Description, everyone involved in this hearing has the
17 operational criteria and Miss Pierre's overview.

18 Debating the merits of the best available
19 science is not something we've prepared for, based upon
20 reliance on the notices that this Board has put out and
21 the rulings thereafter.

22 CO-HEARING OFFICER DODUC: Mr. Volker, is your
23 question specifically directed to the question of whether
24 best available science was used, or whether -- or how the
25 flows were considered in developing the Project

1 Description?

2 MR. VOLKER: Well, for example, the witness has
3 testified that consideration was given to a range of
4 alternatives, Numbered 1 through 8.

5 Number 8 was urged upon DWR by this Board to
6 assure that adequate outflow through the Delta was given
7 full consideration, I think as part of the outgrowth of
8 the flow criteria that I've been discussing.

9 So the question is: To what extent does
10 Alternative 8 represent minimum flows required to restore
11 and protect public trust resources, including fish and
12 wildlife, in the Delta?

13 MR. MIZELL: I renew my objection.

14 This requires the witness to produce a
15 conclusion based upon some very significant science and
16 biological information which is yet to be presented and
17 was clearly within the notice for Part II.

18 CO-HEARING OFFICER DODUC: Miss Pierre will
19 just answer the question to the extent that she can. And
20 if she does not know, she's free to say that as well.

21 WITNESS PIERRE: I'm sorry. Can you repeat the
22 question? I'm sorry.

23 MR. VOLKER: I was already thinking of the next
24 one.

25 (Laughter)

1 MR. VOLKER: Let's see.

2 Is it your understanding that Alternative 8
3 represents the minimum flow criteria necessary to restore
4 and protect public trust resources in the Delta?

5 WITNESS PIERRE: That's not my understanding.

6 MR. VOLKER: And is that one reason that
7 Boundary 2 falls short of Alternative 8?

8 MR. BERLINER: Objection: That's . . .

9 I'm very unclear. That question is being asked
10 in response to this witness' answer, and it's -- it's a
11 non sequitur. She indicated it was not her understanding
12 as you phrased the purpose of Alternative 8.

13 CO-HEARING OFFICER DODUC: Mr. Volker, your
14 followup question also confused me, so perhaps you might
15 clarify.

16 MR. VOLKER: I'll break it down. Thanks very
17 much.

18 You've indicated that Alternative 8 was
19 requested by the Water Board to assure consideration of
20 adequate outflow to the Delta, and through the Delta to
21 the ocean; is that correct?

22 WITNESS PIERRE: No. Actually, my testimony
23 reads that "a high outflow scenario was requested," and
24 that is represented by the Alternative 8 criteria and
25 then subsequently modified by the scenario presented in

1 Appendix C in the Recirculated Draft, which is
2 essentially Boundary 2.

3 MR. VOLKER: Would you tell us if, in
4 formulating Boundary 2, you or others on your team made a
5 determination not to assure achievement of all of the
6 flow criteria embraced within this Board's requested
7 Alternative 8?

8 CO-HEARING OFFICER DODUC: I can hear an
9 objection coming already.

10 Please restate that question . . . without
11 presuming that they did not do something.

12 MR. VOLKER: All right.

13 You have been employing an exhibit which
14 displays the continuum of Delta resource protection from
15 Alternative 1 on the left to a heightened level of
16 protection as represented by Alternative 8 on the right.

17 Do you have that in mind?

18 WITNESS PIERRE: They're characterized,
19 actually, as -- in terms of outflow, not level of
20 protection.

21 MR. VOLKER: All right. With that
22 characterization, is -- is that your understanding, that
23 you have identified a range of alternative flow regimes
24 ranging from less flow in Alternative 1 to greater flow
25 in Alternative 8?

1 WITNESS PIERRE: Generally, that's the range
2 being presented by this graphic.

3 MR. VOLKER: Yes.

4 And you have testified that the WaterFix
5 Project would comply with any of the flow requirements
6 that fall within the Boundaries Numbered 1 and 2; is that
7 correct?

8 WITNESS PIERRE: The Project being presented is
9 Boundary 1 and Boundary 2, so I'm unclear what the
10 question is.

11 MR. VOLKER: So, the Project cannot be both
12 Boundary 1 and Boundary 2; can it?

13 WITNESS PIERRE: That's what's being presented
14 as -- as the range of potential operations that accounts
15 for adjustments using the Adaptive Management Program
16 that is included in the Project.

17 MR. VOLKER: So, by referencing 1 and 2, you're
18 attempting to embrace a variety of different scenarios
19 within a range of output; is that correct?

20 WITNESS PIERRE: For purposes of determining
21 effects on legal users, we are asking the Board to
22 consider the range of Boundary 1 to Boundary 2 so that,
23 if the initial operating criteria are adjusted using the
24 Adaptive Management Program, there is a presentation of
25 potential effects of those adjustments within Boundary 1

1 and Boundary 2.

2 MR. VOLKER: All right. Let's focus on
3 Boundary 2.

4 You have testified on Page 11 of DWR-51 that
5 you determined that Alternative 8 was not within the
6 bracketed range that this Project would achieve; is that
7 correct?

8 WITNESS PIERRE: Alternative 8 outflow is
9 different than Boundary 2, and so as represented on the
10 graph, it's outside of the range presented for Boundary 1
11 to Boundary 2.

12 MR. VOLKER: Is it your understanding that it
13 is impossible for this Board to require compliance with
14 Alternative 8 in this proceeding?

15 MR. MIZELL: Objection: Calls for a legal
16 conclusion.

17 Trying to ask the witness to answer what the
18 Board can and cannot impose upon a Project seems clearly
19 in the purview of the Board only.

20 CO-HEARING OFFICER DODUC: Re -- Restate your
21 question, Mr. Volker.

22 MR. VOLKER: You made a determination, did you
23 not, that Boundary 2 would not provide as much outflow as
24 Alternative 8; is that correct?

25 WITNESS PIERRE: I think, generally, we can

1 look at it that way.

2 However, outflows' variable amongst water year
3 types and months, and so I wouldn't want to
4 mischaracterize less or more. That generally, I think --
5 That's something the Modeling Panel could help understand
6 in terms of where there's greater or less outflow.

7 MR. VOLKER: As an expert, if I pose to you the
8 hypothetical that this Board might indeed adopt
9 Alternative 8 in this proceeding, to what extent would
10 your analysis of the impacts of the Project, which as
11 you've indicated do not include Alternative 8, be
12 changed?

13 WITNESS PIERRE: Alternative 8 was evaluated in
14 the EIR, so all of the analyses that -- for all of the
15 different resources evaluated are included and have been
16 included since the initial public Draft EIR/EIS.

17 The extent to which Alternative 8 differs from
18 Scenario 2 was also included in the Recirculated Draft in
19 Appendix C, and that was how we looked at the
20 implications or effects of Boundary 2, was looking at
21 Alternative 8 as a point of comparison, if you will. So
22 I think that information is on the record.

23 MR. VOLKER: You have indicated on Page 11
24 that . . . the Proposed Project was selected rather than
25 a -- a broader Project range that would embrace

1 Alternative 8, because Alternative 8, quote, "would
2 likely not meet the project objectives or purpose and
3 need statement."

4 Is that a correct restatement of your
5 testimony?

6 WITNESS PIERRE: Well, I think it's only
7 partial. I think the entire paragraph preceding that --
8 that quote from the Draft EIR should be considered.

9 And I think maybe to make this a little bit
10 easier: Alternative 8 had significant environmental
11 impacts upstream of the Delta, and as such we move
12 forward looking at something such as Scenario 2, and that
13 is the reason why that is before the Board as the outer
14 range.

15 MR. VOLKER: In your professional judgment, if
16 this Board should adopt Alternative 8, what changes would
17 be required to the WaterFix Project?

18 MR. MIZELL: Objection: That's a rather broad
19 and vague question.

20 Are you looking for a specific resource impact
21 or anything you could direct the questioner (sic) to more
22 specifically? Otherwise, I think it may fall outside her
23 expertise to speak on every aspect of the Cal WaterFix
24 environmental document and how it might change your --
25 your hypothetical.

1 CO-HEARING OFFICER DODUC: Mr. Volker.

2 MR. VOLKER: I'm only asking about areas within
3 the witnesses' expertise. She is, after all, the Program
4 Manager familiar with the scope and generally with the
5 impacts of the Project, and she has indicated familiarity
6 with Alternative 8 and the fact that Scenario 2 is
7 different.

8 And so I think it's a fair question to
9 understand the difference.

10 CO-HEARING OFFICER DODUC: Between
11 Boundary 2 --

12 MR. VOLKER: Boundary 2, yes.

13 CO-HEARING OFFICER DODUC: -- and
14 Alternative 8.

15 MR. VOLKER: Correct.

16 CO-HEARING OFFICER DODUC: Miss Pierre.

17 WITNESS PIERRE: I think I've already described
18 the extent of my knowledge about the difference between
19 Alternate 8 and Boundary 2, because I am focused on the
20 Project Description, and Alternative 8 has never been
21 defined as such.

22 MR. VOLKER: Can any other panelist answer the
23 question?

24 WITNESS PIERRE: There's different operational
25 criteria in Alternative 8, and the EIR/EIS includes an

1 evaluation of that alternative.

2 And, so, in terms of what's different about it,
3 I think the EIR would be able to describe the specifics
4 around what's in Alternative 8 and what's different about
5 it compared to what's being proposed within Boundary 1
6 and Boundary 2.

7 MR. VOLKER: And my question has to do with
8 witnesses on behalf of the Petitioners.

9 Is there a witness being presented by the
10 Petitioners who can answer that question?

11 MR. MIZELL: I'm going to object to this being
12 beyond the scope of our testimony.

13 Our scope of testimony is crafted around the
14 Proposed Project we're presenting to this Board, not
15 Alternative 8, as the witness has already indicated. And
16 to discuss the details of the EIR and the EIS at this
17 point is to try and change the Project before the Board.

18 Our Proposed Project is Alternative 4(a) with
19 the boundary analysis in the initial operating criteria
20 range.

21 CO-HEARING OFFICER DODUC: Thank you for that
22 clarification.

23 But in her testimony, Miss Pierre did present
24 the now infamous chart comparing the different
25 alternatives, and she did include her understanding of

1 what those various alternatives are, and so I will allow
2 this line of question.

3 But I recognize, and I believe Mr. Volker does
4 as well, that there is a limitation as to how much
5 Ms. Pierre can provide in terms of specificity.

6 MR. VOLKER: Thank you.

7 All right. The last pending question was:

8 Can any panelist on behalf of Petitioners
9 answer the question whether or not the Project would
10 change if the Board adopted Alternative 8?

11 WITNESS PIERRE: It's a different Project, so,
12 yes.

13 MR. VOLKER: Yes, meaning there are panelists
14 who could describe the changes in the Project which would
15 result from this Board's adoption of Alternative 8?

16 WITNESS PIERRE: If you're looking for a
17 description of the differences between Alternative 8 and
18 Alternative 4(a), then we can certainly read from the
19 EIR, maybe -- if that's what you're looking for, or if
20 you're looking for a difference between Scenario 2 and
21 Alternative 8, we could again read from the EIR that
22 description of difference.

23 MR. VOLKER: Actually, I'm simply striving to
24 identify the changes in the Project that would result if
25 the Board adopted Alternative 8.

1 CO-HEARING OFFICER DODUC: Mr. Volker --

2 MR. VOLKER: I think you indicated it would be
3 a different project; right?

4 CO-HEARING OFFICER DODUC: Mr. Volker, perhaps
5 we are -- Perhaps you need to define what you mean by
6 "Project."

7 I think when Miss Pierre's talking about the
8 Project, she's talking about what's been presented as
9 Boundary 1 and 2.

10 What is it that you are referring to when you
11 are saying "project"?

12 MR. VOLKER: A project that might conform to
13 the Board's order requiring implementation of
14 Alternative 8.

15 And it bears on Part I of these proceedings
16 because, as I understand it, we are addressing impacts on
17 legal users of water. And, obviously, they have an
18 interest, many of them -- and my clients certainly in
19 restoring salmon populations, for example -- along which
20 many of the members of the groups I represent depend for
21 their livelihood.

22 CO-HEARING OFFICER DODUC: So, your question,
23 again, is?

24 MR. VOLKER: What changes in the Project would
25 result and, to be more specific, what changes in impacts

1 on legal users of water would result should this Board
2 adopt Alternative 8?

3 MR. MIZELL: I'm going to, again, object.

4 This is -- for the efficiency of this process,
5 are we really going to have Miss Pierre pull up the EIR
6 and read through the environmental document in order to
7 accommodate Mr. Volker's line of questioning about a
8 Project that is not before this Board?

9 CO-HEARING OFFICER DODUC: Miss Morris, not
10 that I'm encouraging you to come back but . . . Okay.

11 Mr. Volker, I think we are intrigued by your
12 line of questioning, but it doesn't seem to get us very
13 far to keep asking the question of how the Project might
14 change.

15 Obviously, the Board has the discretion to
16 impose whatever conditions we deem appropriate as part of
17 any approval.

18 And the testimony has presented -- or at least
19 Miss Pierre's testimony has presented a broad range of
20 alternatives and, within those alternatives, their
21 proposal of their operational parameters.

22 So, to the extent that she can answer your
23 question with respect to the Project Description, I will
24 allow that.

25 But I don't know to what extent it will be

1 productive to get into the details of what specific
2 operational, as well as fish and wildlife, impacts might
3 be represented as the difference between Boundary 2 and
4 Alternative 8.

5 MR. VOLKER: So, am I permitted to continue
6 with questions in this --

7 CO-HEARING OFFICER DODUC: I'll allow you to
8 continue, and we'll see how productive this is, because,
9 so far, it has not been very productive.

10 MR. VOLKER: Let's return to DWR-51 and the
11 discussion of project objectives and purpose and need
12 statement on Page 11.

13 Do you have that in mind?

14 Yes?

15 WITNESS PIERRE: Oh, yes, I have it in front of
16 me.

17 MR. VOLKER: Yes. Okay. Thanks.

18 And with regard to the assertion made in your
19 testimony, referring to the BDCP Draft EIR/EIS, that the
20 greater outflow required under Alternative 8 would likely
21 not meet the "project objectives or purpose and need
22 statement," could you explain what factors led to that
23 assertion?

24 WITNESS PIERRE: So, I think maybe, in general,
25 we can describe what is Alternative 8.

1 And Alternative 8 was a high Delta outflow
2 scenario and, in order to achieve that outflow, had a
3 number of targets.

4 And we can review what those specifics are if
5 we do want to pull up the EIR and review the description
6 of Alternative 8.

7 But, in general, it had specific targets
8 throughout the year for outflow, and to achieve that
9 outflow, it drew down reservoir storage.

10 And so there were a number of significant
11 impacts upstream as a result, and that's what's described
12 in the Draft EIR.

13 Additionally, it had impacts on water supply,
14 because that water was used for the high outflow.

15 And, so, in looking at those factors and
16 looking at Alternative 8, it was deemed to not meet the
17 Project purpose and objectives and, therefore, we started
18 to look at a revision to Alternative 8 in order to
19 address the general intent of what Alternative 8 was
20 meant to do but also to avoid some of the environmental
21 impacts that we saw. And that is what's included as
22 Appendix C in the Recirculated Draft, which is
23 essentially the scenario -- excuse me -- Boundary 2
24 presented as part of the Proposed Project.

25 MR. VOLKER: Thank you.

1 And in preparing Appendix C, what
2 consideration, if any, was given to this Water Board's
3 adoption in August 2010 of its flow criteria for
4 restoration of the public trust resources of the
5 Bay-Delta?

6 WITNESS PIERRE: I'm not able to answer that.

7 Alternative 8 and the alternative evaluated in
8 Appendix C were essentially provided by the State Board
9 staff for evaluation in the EIR. So to the extent that
10 there was consideration of those flow criteria, I can't
11 speculate.

12 MR. VOLKER: Did you give any such
13 consideration to the Water Board's 2010 flow criteria?

14 WITNESS PIERRE: As I previously stated, that
15 was one piece of the consideration before us as we
16 developed the alternatives and the Proposed Project.

17 MR. VOLKER: And would you identify the scope
18 and nature of the consideration you gave to that flow --
19 to those flow criteria?

20 WITNESS PIERRE: I can't recall every specific
21 thing. I can tell you that myself, as well as other
22 folks, have -- are familiar with that document, others
23 more than me, others less.

24 And it's one piece of evidence that was used in
25 determining how we might develop operational criteria

1 that meets the Project purpose and objectives for the
2 WaterFix.

3 MR. VOLKER: And can any other panelist provide
4 that information?

5 WITNESS PIERRE: I'm not sure.

6 MR. VOLKER: I'd like to have marked as PCFFA's
7 next exhibit in order for identification the October 30,
8 2015, comments of the United States Environmental
9 Protection Agency.

10 (Pacific Coast Federation of
11 Fishermen's Associations and
12 Institute for Fisheries Resources
13 Exhibit PCFFA-3 marked for
14 identification)

15 MS. RIDDLE: Excuse me. Could I just clarify
16 that the SWRCB-25, that page wasn't Number 4; right?

17 So this would be Number 4?

18 MR. VOLKER: Oh. Well, I had suggested marking
19 that, and if we did, it would -- the 2010 flow criteria
20 that are compiled in State Water Board Exhibit 25, and
21 what I am proposing to be excerpted as PCFFA-4 would be
22 marked as 4.

23 Can that be done?

24 MS. RIDDLE: For consistency, we've been
25 allowing it, I think.

1 Sorry. I just -- I didn't -- Sorry. I was --
2 I was not aware of whether you were aware that you could
3 include the whole document but . . .

4 MR. VOLKER: So --

5 MS. RIDDLE: This is five. I'm just trying to
6 keep track.

7 MR. VOLKER: Yes.

8 MS. RIDDLE: Okay. Thank you.

9 (Pacific Coast Federation of
10 Fishermen's Associations and
11 Institute for Fisheries Resources
12 Exhibit PCFFA-4 marked for
13 identification)

14 MR. VOLKER: If we could turn to the third page
15 which has highlighted information.

16 And directing your attention to the first
17 paragraph on Page 3, the highlighted sentence that reads
18 (reading):

19 "These species have experienced sharp
20 population declines in the last decade and showed
21 record low abundance over the last five years."

22 Do you have that in mind?

23 WITNESS PIERRE: I'm looking at that language.

24 MR. VOLKER: And do you agree that that's a
25 fair characterization of the plight of the Bay-Delta

1 species in question?

2 MR. MIZELL: Objection: Again, we're getting
3 into biological justifications here. It's clearly
4 outside the scope of Part I, as far as we were aware,
5 given the notices the Board has produced on this hearing
6 today.

7 CO-HEARING OFFICER DODUC: Mr. Volker, where
8 are you going with this question? If you could just
9 directly ask the witness that question.

10 MR. VOLKER: Well, two points here:

11 The overarching concern is that legal users of
12 water include fishermen and women and subsistence users
13 of fish that are dependent on adequate flows; and the EPA
14 has recognized that there have been sharp population
15 declines in species that are closely related to the still
16 commercially-viable populations of fall run Chinook
17 Salmon.

18 And my question --

19 CO-HEARING OFFICER DODUC: And your specific
20 question to this witness is?

21 MR. VOLKER: That has to do with the legal --
22 the impact on legal users of water.

23 And then the specific question here is:

24 If the purpose of this witness' testimony in
25 Part I is to identify the impacts of the WaterFix on

1 those legal users of water, does she agree that these
2 species have experienced sharp population declines as
3 stated by EPA?

4 MR. MIZELL: And, once again, our understanding
5 of the scope of Part I for legal users of water was not
6 that we would be before you here today explaining
7 population declines, the basis of those population
8 declines, what may or may not be causing the population
9 declines, and salmon doubling goals, these issues
10 relating around the fish abundance and how we understood
11 clearly were in Part II.

12 I believe the questioner believes these fall
13 within Part I because fishermen, in his description, are
14 legal users of water.

15 But absent a clearer understanding of that
16 particular connection, we came before you today to
17 discuss what's more traditional and considered to be a
18 legal user of water and reserved for Part II all of the
19 biological justification discussions.

20 CO-HEARING OFFICER DODUC: But since you've now
21 informed me that Miss Pierre may not be back in Part II,
22 I will allow the question and ask her to answer to the
23 best of her ability.

24 WITNESS PIERRE: The highlighting shows several
25 species that aren't actually fished, so I think it would

1 be helpful to be more clear about what specific fish
2 relative to legal users that we want to discuss.

3 MR. VOLKER: Well, you're an expert. I'm
4 simply asking if EPA's summary as to the plight of the
5 fishes listed is correct.

6 And I was going to move on to the very similar
7 decline or sharp population decline of those fishes which
8 remain commercially viable but perhaps not much longer.

9 CO-HEARING OFFICER DODUC: Miss Pierre, do you
10 have the scientific and technical expertise to come to a
11 conclusion as to these statements? Are you familiar with
12 this EPA letter?

13 WITNESS PIERRE: I'm familiar with this letter,
14 and I take issue with many components of it.

15 So, in terms of do I agree with this statement
16 or that, I think I'm hesitant to answer outside of the
17 context in which a lot of the highlighted statements are
18 presented.

19 CO-HEARING OFFICER DODUC: You may ask,
20 Mr. Volker, but if she's not able to answer . . .

21 MR. VOLKER: Yes. Thank you, Madam Chair.

22 And I would ask the same question as a -- as an
23 initial inquiry:

24 Do you agree with the sentence that I read,
25 that the species described have experienced sharp

1 population declines in the last decade?

2 WITNESS PIERRE: Some of those species have
3 experienced population declines as measured by their
4 indices.

5 MR. VOLKER: And are some of those species on
6 the brink of extinction, in your professional judgment?

7 WITNESS PIERRE: I am not an expert.

8 MR. VOLKER: Is there such an expert within the
9 five panels being presented by DWR and the Bureau?

10 WITNESS PIERRE: I believe, for Part II, that
11 is going to be a topic of discussion.

12 MR. VOLKER: And as for Part I? No?

13 WITNESS PIERRE: Again, I think if we're
14 talking about fish and what is commercially or
15 recreationally or fish for sustenance, then we should be
16 talking specifically about which species we're talking
17 about.

18 What's listed in the highlight is a laundry
19 list of species that occur in the Delta and do not
20 necessarily represent the legal user you're -- you're
21 discussing.

22 MR. VOLKER: Well, I believe my question had to
23 do with whether there is an expert who can testify in
24 Part I on behalf of Petitioners with regard to the
25 declines in the listed species.

1 Is there such an expert?

2 WITNESS PIERRE: That's a Part II issue. And
3 in terms of if there's an -- I'm not aware that anybody
4 in Part I is going to be testifying as to declines of
5 commercially- and recreationally-fished fish.

6 MR. VOLKER: Are you aware that some of the
7 fishes now listed were in the past commercially fished?

8 MR. BERLINER: Objection: Relevance.

9 CO-HEARING OFFICER DODUC: Mr. Volker.

10 MR. VOLKER: Well, Your Honor, we're sort of on
11 a steep slope into the great abyss of extinction.

12 Many of the species listed here were formerly
13 commercially fished. In our lifetime, we are now seeing
14 that fall run Chinook Salmon, the mainstay of my clients'
15 livelihoods, may over the next decade or two likewise be
16 facing extinction, so the question is a proper one.

17 At one point -- At what point do the
18 Petitioners acknowledge that there has been a seemingly
19 inexorable and sharp decline across the board in Delta
20 anagomous fisheries? And at what point will recognition
21 be given that legal users of water that depend on those
22 fishes are being harmed by that decline?

23 CO-HEARING OFFICER DODUC: Yes, thank you.

24 And your objections now, Mr. Berliner?

25 MR. BERLINER: Yes. There -- To my knowledge,

1 Mr. Volker's clients are not legal users of water as
2 defined under Section 1702.

3 This is a -- an issue of public trust and
4 fishing and recreational interests that are in part of --
5 in Part II where we will have biologists.

6 And so while these questions are addressed
7 within the context of legal user of water because it's
8 clear that's what Part I is to deal with, in fact, these
9 are not legal users of water as this Board has
10 traditionally dealt with this question under
11 Section 1702.

12 So, I think Mr. Volker's questions should be
13 saved for Part II, where we will have witnesses who can
14 directly answer these questions.

15 CO-HEARING OFFICER DODUC: Miss Morris.

16 MS. MORRIS: I join Mr. Berliner's
17 objection/clarification.

18 And then I have a procedural question.

19 It seems like the clock is stopping on -- which
20 is why it's been over an hour and 20 minutes since we
21 started this questioning, and we still have 11 minutes on
22 the clock.

23 CO-HEARING OFFICER DODUC: Because I get -- I
24 keep getting objections.

25 MS. MORRIS: I understand that, but to the

1 extent the questioner is really testifying and --

2 CO-HEARING OFFICER DODUC: I understand.

3 MS. MORRIS: -- not actually speaking to the
4 objection, it seems like the clock that should be part
5 of -- coming out of their time rather than the rest of us
6 who are hungry.

7 CO-HEARING OFFICER DODUC: Thank you,
8 Miss Morris.

9 Mr. Brodsky.

10 MR. BRODSKY: Mr. Volker's clients aren't legal
11 users of water, they certainly fall within human uses,
12 which is appropriate for Part I.

13 The Board specifically defined "subsistence
14 fishing" as a human use that would be appropriate for --
15 to be addressed in Part I, and Mr. Volker's clients are
16 not recreational fishers. They make their living.

17 So, even if they're not legal users, it's a
18 human use that's appropriate for Part I.

19 CO-HEARING OFFICER DODUC: Thank you,
20 Mr. Brodsky.

21 Mr. Jackson.

22 MR. JACKSON: The place I think that this is
23 going to go is going to reoccur, and it's going to
24 reoccur when we put on our evidence.

25 One of the elements -- And this one is public

1 trust, but there's also the public interest that are sort
2 of the requirements for the Board to make a decision.

3 And there are people who use water that are --
4 that are affected by the fact that this change in point
5 of diversion has trundling along with it the largest
6 infrastructure Project in California and it affects the
7 whole Central Valley.

8 So, the question of who is a -- who -- who
9 you're going to let put on evidence in Phase I, I don't
10 want to end up in Phase II and find out that that
11 evidence isn't biological.

12 So, I think which need some clarity about, for
13 instance, groundwater users who are affected by the
14 Project in the Delta and in the Sacramento and
15 San Joaquin Valleys.

16 I think there -- Because those are Delta users
17 of water that are affected by this Project, not
18 necessarily because a change of point of diversion,
19 because -- but because it enables a system in which their
20 rights can be taken.

21 So, it seems to me that there should be some
22 leeway in Part I to distinguish between human uses, which
23 as I understood was from Part I from the ruling, and then
24 the biological things that are considered later.

25 CO-HEARING OFFICER DODUC: Okay.

1 MR. JACKSON: Public trust includes both of
2 them.

3 What -- What -- What I think I heard from this
4 witness is that the reason that Alternative 8 isn't part
5 of the proposal is because it would require a lessening
6 of deliveries.

7 CO-HEARING OFFICER DODUC: Mr. Jackson, that's
8 enough.

9 MR. JACKSON: Well --

10 CO-HEARING OFFICER DODUC: Your --

11 MR. JACKSON: Well --

12 CO-HEARING OFFICER DODUC: Your statement's --

13 MR. JACKSON: -- when do I put that on --

14 CO-HEARING OFFICER DODUC: Your statements are
15 on the record.

16 MR. JACKSON: -- under this --

17 CO-HEARING OFFICER DODUC: Thank you.

18 Miss Des Jardins.

19 MS. DES JARDINS: I wanted to note that there's
20 a disadvantage to Protestants in this proceeding and that
21 there's expensive and complex modeling being put on.

22 There are conclusions being presented about
23 Alternative 8. A modeling for Alternative 8 has not been
24 provided.

25 CO-HEARING OFFICER DODUC: All right. Thank

1 you.

2 MS. DES JARDINS: Again, as part of the
3 exhibits and the conclusions, there's a question here of
4 the foundation.

5 You know, the assumptions that are being made
6 in the modeling that is being presented to the Board, you
7 know, part of it are appropriate assumptions --

8 CO-HEARING OFFICER DODUC: Thank you.

9 MS. DES JARDINS: -- about the material.
10 Thank you.

11 CO-HEARING OFFICER DODUC: Thank you.

12 Let's note for the record that Mr. Volker still
13 has 11 minutes and 39 seconds on his cross-exam.

14 And let's go ahead and take our lunch break
15 right now, and we will reconvene at 1:30.

16 We will take all of your objections and
17 comments under consideration.

18 (Luncheon recess was taken at 12:27 p.m.)

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1 Thursday, August 4, 2016 1:34 p.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: Good afternoon,
5 everyone. We are back in session.

6 And during the break, we had the opportunity to
7 pull up our February 11th, 2016, ruling on the issue of
8 scope of Part I and Part II and cross-examination.

9 And I will read from Page 10 of that ruling
10 (reading):

11 "Some parties question whether parties to
12 Part II of the hearing would be permitted to
13 cross-examine witnesses during Part I of the
14 hearing.

15 "If parties to Part II wish to cross-examine
16 witnesses in Part I" --

17 Oh, I'm sorry. I'm reading the wrong one.
18 Never mind.

19 Going back (reading):

20 "As discussed in the prehearing conference,
21 some issues could cross over Part I and II but,
22 generally, Part I focuses on human uses of water
23 (water right and water use impacts) and Part II
24 focuses on environmental issues.

25 "Part I can address human uses that extend

1 beyond the strict definition of legal users of
2 water, including flood control issues and
3 environmental justice concern."

4 And this is the important part now, Mr. Volker
5 (reading):

6 "If a human use is associated with the health
7 of a fishery or recreation, testimony on this matter
8 should be presented in Part II."

9 MR. VOLKER: Thank you for the guidance. I'll
10 move on.

11 I'd like to direct the witness' attention to --

12 MS. RIDDLE: Is your microphone on?

13 MR. VOLKER: Yes.

14 -- Page 11, Line 21 of DWR-51, and specifically
15 the summary of the reasons underlying the rejection of
16 Alternative 8, specifically the language (reading):

17 ". . . would likely not meet the project
18 objectives or purpose and need statement."

19 Do you have that in mind?

20 WITNESS PIERRE: I'm looking at that language,
21 yes.

22 MR. VOLKER: Yes. Okay.

23 And among the project objectives captured in
24 that reference are: Achieving the maximum contract
25 volumes in the State and Federal water contracts; is that

1 correct?

2 WITNESS PIERRE: I don't believe that's the way
3 the project objective and purpose is worded within the
4 EIR.

5 (Pacific Coast Federation of
6 Fishermen's Associations and
7 Institute for Fisheries Resources
8 Exhibit PCFFA-6 marked for
9 identification)

10 MR. VOLKER: If I might have staff project an
11 excerpt from State Water Board Exhibit 3, which we have
12 marked as, hopefully, PCFFA Exhibit 6.

13 (Document displayed on screen.)

14 MR. VOLKER: And drawing the witness' attention
15 to project objectives and the third bullet point, which
16 provides (reading):

17 "Restore and protect the ability of the State
18 Water Project and Central Valley Project to deliver
19 up to full contract amounts," et cetera.

20 Does that refresh your recollection as to the
21 project objectives that concern water supply?

22 WITNESS PIERRE: Yes, but there's more to that
23 statement that I think provides additional context around
24 that objective.

25 MR. VOLKER: Certainly. It's a balancing

1 process. One balances water supply objectives against
2 protection of the environment and outflow in the Delta,
3 in summary; correct?

4 WITNESS PIERRE: That's not what it says. It
5 continues with (reading):

6 ". . . when hydrologic conditions result in the
7 availability of sufficient water consistent with
8 other requirements."

9 MR. VOLKER: All right. Fine. Then would you
10 agree that achieving full contract amounts when
11 sufficient water is available is among the project
12 objectives?

13 WITNESS PIERRE: It states, "up to full
14 contract amounts."

15 MR. VOLKER: So you would agree with the
16 proposition that, everything else being equal, if there's
17 sufficient water available, the Project strives to
18 maximize the supply of water up to the full contract
19 amount?

20 MR. MIZELL: Objection: Vague. What does the
21 questioner mean by "all things else being equal"?

22 CO-HEARING OFFICER DODUC: Mr. Volker can just
23 strike that part from his question.

24 MR. VOLKER: Yes, thank you.

25 CO-HEARING OFFICER DODUC: Miss Pierre, answer,

1 please.

2 WITNESS PIERRE: Yes. I mean, my answer is
3 just what I can read from what is written in the EIR,
4 which is on the screen, and I agree that what's on the
5 screen is what is included in the Recirculated Draft.

6 MR. VOLKER: And as Project Manager, you would
7 agree that that is one of the reasons that Alternative 8
8 was rejected.

9 WITNESS PIERRE: Yes, that is one of the
10 reasons why Alternative 8 was rejected. In fact -- Well,
11 I should clarify that:

12 It's not rejected. It's an alternative
13 evaluated in the EIR, but it's not the Proposed Project.

14 MR. VOLKER: And, furthermore, it's not only
15 the Proposed Project, it is excluded from the bracketed
16 range of outflows embraced within the Project; correct?

17 WITNESS PIERRE: Alternative 8 itself is not
18 included within Scenario 1 and Scenario 2, but there are
19 similarities between -- excuse me -- Boundary 2 and
20 Alternative 8.

21 Again, there was adjustments made to Boundary 2
22 in response to not only this particular item we're
23 discussing but the environmental effects that were
24 identified as part of Alternative 8 in the EIR.

25 MR. VOLKER: If you know, what contract amounts

1 were referenced in the DEI -- the RDEIR and SDEIS in this
2 passage?

3 WITNESS PIERRE: I don't know.

4 Steve, do you?

5 (Witnesses confer.)

6 WITNESS CENTERWALL: Yeah. I don't know what
7 the specific contract amounts are.

8 MR. VOLKER: Would it be important to know
9 whether that refers to the maximum contract amounts under
10 existing State Water Project and Central Valley Project
11 contracts as of some date in order to test the accuracy
12 and validity and rationale for this reason for not
13 embracing Alternative 8?

14 WITNESS CENTERWALL: Again, what I would say is
15 that we have fully evaluated Alternative 8, so I wouldn't
16 characterize it as not embracing it. It just is not the
17 proposed action in the EIR/EIS.

18 MR. VOLKER: Oh. For not including it as the
19 proposed action, same question.

20 MR. MIZELL: I'm going to object to the use of
21 the word "important." That's -- Clearly, they can opine
22 as to whether they personally feel it's important, but as
23 for speaking for the Project as to whether that was an
24 important value, that's beyond the scope of the expertise
25 of these witnesses.

1 MR. VOLKER: I'm just trying to figure out what
2 is full contract amount. Is it a number plucked out of
3 thin air? Does it reflect someone's review of existing
4 State and Federal water contracts? And is it an average?
5 What year was this a representative of, and so forth.

6 CO-HEARING OFFICER DODUC: Mr. Volker, they
7 have testified that they do not know -- at least
8 Miss Pierre has -- that she does not know what that
9 amount is.

10 Do you know, Mr. Centerwall?

11 WITNESS CENTERWALL: No, I don't.

12 MR. VOLKER: As one final followup, Madam
13 Chair:

14 Would it make a difference in your professional
15 judgment if the -- whatever reference point was used for
16 full contract amount was reduced from what was thought to
17 be the full contract amount?

18 MR. BERLINER: Objection.

19 WITNESS CENTERWALL: I don't think I understand
20 the question.

21 MR. BERLINER: Objection: Vague.

22 Reduced by a gallon? An acre-foot? By a
23 hundred percent? We have no reference point here.

24 MR. VOLKER: I'll leave it up to the witness.

25 Reduced -- The witness can say 1 gallon

1 de minimis, 1 million acre-feet, yes.

2 WITNESS CENTERWALL: What do you mean by "would
3 it make a difference"?

4 MR. VOLKER: In this passage's assertion that,
5 for that reason, that the Alternative 8 was not the
6 Proposed Project or included within the Proposed Project.

7 WITNESS PIERRE: Again, that's not the only
8 reason, and so Lines 14 through 17 of the written
9 testimony just above the excerpt we're focused on here
10 also identifies the environmental implications.

11 So it's a, I think, more complicated question
12 than just focused on what full contracts are and how this
13 Project -- this alternative does or doesn't respond to
14 that, if speculatively contract amounts change.

15 MR. VOLKER: And for that reason, the author of
16 this -- of your testimony would have to have in mind some
17 specific project objective relating to quantity of water
18 delivered; would you not?

19 WITNESS PIERRE: This is an excerpt from the
20 EIR and it was written by the Project proponents, and
21 that is their discretion in the policy.

22 So it's not -- was not a passage written by me.
23 It was written by actual entities.

24 MR. VOLKER: And in your testimony, you have
25 indicated apparent agreement with the rationale presented

1 in the RDEIR; isn't that true?

2 WITNESS PIERRE: That's right. I'm using what
3 was found to be in the EIR and identifying why we have
4 moved from Alternative 8 to the alternative evaluated in
5 Appendix C, which is Scenario -- excuse me -- Boundary 2.

6 MR. VOLKER: All right. And so I believe you
7 testified that you were aware of the legislature's
8 adoption of the Delta Reform Act, which has among its
9 primary objectives to, quote, "reduce reliance on the
10 Delta in meeting California's future water supply needs."

11 That's in Water Code Section 85021.

12 Are you familiar with that?

13 WITNESS PIERRE: I'm aware that that's included
14 in the Reform Act.

15 MR. VOLKER: In light of the fact the
16 legislature has directed this Board to take into account
17 the heightened need to reduce reliance on the Delta,
18 would not that factor weigh in determining what is or
19 what should be the full contract amount for State Water
20 Project water?

21 WITNESS PIERRE: That's outside my area of
22 expertise.

23 MR. VOLKER: Okay. Who among the panelists for
24 the Petitioners would have that information?

25 WITNESS PIERRE: I don't know.

1 MR. VOLKER: I'd like to direct your attention
2 to Page 5, Line 8, of your testimony.

3 At this point in your testimony, you make
4 reference to the fact that, in your view (reading):

5 ". . . Delta levees and the infrastructure they
6 protect are at risk from earthquake damage,
7 continuing land subsidence, and rising sea level."

8 So, taking the first issue first, earthquake
9 damage risk.

10 What effort was made by the Petitioners in
11 developing the WaterFix to make allowance for the risk
12 from earthquake damage of the Proposed Project
13 facilities?

14 WITNESS PIERRE: I think the Engineering Panel
15 will be able to answer that question.

16 MR. VOLKER: And, specifically, then, you don't
17 have at your disposal information regarding the factors
18 that went into that calculation, such as design
19 earthquake, lateral and vertical ground motion --

20 WITNESS PIERRE: The statement in my --

21 MR. VOLKER: -- acceleration --

22 WITNESS PIERRE: Oh, I'm sorry.

23 MR. VOLKER: Go ahead.

24 WITNESS PIERRE: The statement made in my
25 testimony is reflecting the number of data sources that

1 have evaluated that potential risk in the Delta. It's
2 essentially an overview section.

3 MR. VOLKER: Yes. And going beyond the
4 overview section, do you have information with respect to
5 whether these same risk factors were analyzed in
6 connection with the development of the Project?

7 WITNESS PIERRE: I think the Engineering Panel
8 can provide detail about that.

9 MR. VOLKER: All right. And, similarly, with
10 regard to the third factor referenced, rising sea level,
11 do you have information regarding two things:

12 One, what is the historic reach of seawater
13 during drought conditions --

14 (Timer rings.)

15 MR. VOLKER: -- prior to the Project?

16 WITNESS PIERRE: Sorry. That was distracting
17 me. So now I need to answer the question?

18 CO-HEARING OFFICER DODUC: Yes.

19 WITNESS PIERRE: Okay. Can you repeat -- I'm
20 sorry --

21 MR. VOLKER: Yes. What --

22 WITNESS PIERRE: -- the last part of it?

23 MR. VOLKER: If you know -- or if not, could
24 you reference a panelist who does know -- what is the
25 historic reach of seawater in the vicinity of the Project

1 facilities prior to development of California by
2 Europeans?

3 WITNESS PIERRE: I'm not certain any of the
4 panelists would have that information.

5 MR. VOLKER: Is it possible that historic sea
6 levels extended far upstream of the Project facilities,
7 and if the reservoirs were drawn down under this Project
8 proposal, that similar sea level intrusion could take
9 place?

10 WITNESS PIERRE: Are we still going?

11 CO-HEARING OFFICER DODUC: If you -- That will
12 be his final question.

13 WITNESS PIERRE: Okay.

14 CO-HEARING OFFICER DODUC: Do you have an
15 answer?

16 WITNESS PIERRE: No, I'm not aware.

17 CO-HEARING OFFICER DODUC: Okay.

18 WITNESS PIERRE: Thank you.

19 CO-HEARING OFFICER DODUC: Thank you.

20 MR. VOLKER: Thank you.

21 CO-HEARING OFFICER DODUC: Thank you,
22 Mr. Volker.

23 MR. VOLKER: Oh, and may I move into admission
24 the six exhibits that I've marked for identification?

25 CO-HEARING OFFICER DODUC: All right. Any

1 objections?

2 MR. WILLIAMS: Madam Chair, Philip Williams for
3 Westlands Water District.

4 I have no objection to the moving.

5 CO-HEARING OFFICER DODUC: Okay. And so moved?

6 MR. VOLKER: Thank you.

7 (Pacific Coast Federation of
8 Fishermen's Associations and
9 Institute for Fisheries Resources
10 Exhibits PCFFA-1 through PCFFA-6
11 received in evidence)

12 CO-HEARING OFFICER DODUC: Mr. Williams?

13 MR. WILLIAMS: I do have a motion I'd like to
14 make, Miss Doduc.

15 Mr. Jackson spoke of clarity twice. And in
16 that spirit, I'd like to move to strike the entirety of
17 Mr. Volker's line of questioning due to its pervasive
18 incurable defects including, but not limited to,
19 irrelevancy, vagueness and ambiguity, the introduction of
20 hearsay evidence, and perhaps most egregiously,
21 mischaracterization of the witness' testimony and of the
22 law, and questions beyond the scope of Part I.

23 CO-HEARING OFFICER DODUC: Mr. Volker, do you
24 wish to respond for the record?

25 MR. VOLKER: Well, procedurally, the time to

1 interpose objections is during the interplay between the
2 questioner and the witness rather than drop an atomic
3 bomb at the end of the presentation.

4 No one here can remember the particulars of any
5 of the questions and answers that apparently animate this
6 forceful motion, and on that ground alone, it should be
7 denied.

8 CO-HEARING OFFICER DODUC: Thank you.

9 We'll take it under advisement.

10 MR. JACKSON: May I speak to this for a minute?

11 CO-HEARING OFFICER DODUC: Will you state your
12 name.

13 MR. JACKSON: I looked up -- There's a Law
14 Review article on evidence in administrative proceedings.

15 And I believe the precedent for the ruling the
16 Board made was Calhoun vs. Bailar in 1980.

17 And the Board needs to consider -- They've
18 already made a ruling to the -- all of the testimony and
19 presented information over -- for use in this hearing
20 over the objections of Protestants. And I believe part
21 of that is the consideration of hearsay.

22 So, as objections to hearsay come up, as
23 Protestants have tried to use them in cross-examination,
24 it needs to be examined in the context of this entire
25 ruling.

1 In administrative hearings, I believe the
2 correct use is to let in hearsay and then weigh it at the
3 end. I believe that's the original intent of that
4 particular concept.

5 Thank you.

6 CO-HEARING OFFICER DODUC: Okay. Thank you.

7 Thank you, Mr. Volker.

8 MR. VOLKER: Thank you.

9 CO-HEARING OFFICER DODUC: North Delta
10 C.A.R.E.S., Group Number 39.

11 Anyone wish to cross-examine?

12 Seeing none, we'll move to Mr. Patrick Porgans.

13 CROSS-EXAMINATION BY

14 MR. PORGANS: Madam Chair, members of this
15 Board, my name is Patrick Porgans. I'm a solutionist and
16 a forensic accountant, and I'm representing Planetary
17 Solutionaries today and acting as a de facto Public
18 Trustee; okay?

19 So, I have to say that I spent 24 hours getting
20 prepared straight to get to this meeting. I had an
21 emergency today which caused some complications. So I'm
22 not totally prepared, and that's my fault.

23 Anyway, I wanted to ask Jennifer.

24 You don't mind if I call you Jennifer; do you?

25 WITNESS PIERRE: That's okay.

1 MR. PORGANS: All right. So what I was looking
2 at is, I wanted to look at your Exhibit -- I believe it
3 was Exhibit 1, Exhibit 11, and 51 after that.

4 (Document displayed on screen.)

5 CO-HEARING OFFICER DODUC: Mr. Porgans, could I
6 ask that you move the microphone closer so we can all
7 hear you.

8 Thank you.

9 MR. PORGANS: Thank you for letting me know
10 that. My voice is -- Anyway . . .

11 So, moving along, I wanted to look at your
12 Exhibit 1, DWR-1.

13 WITNESS PIERRE: I'm there.

14 MR. PORGANS: There seems to be -- Could you
15 put up 11 first.

16 (Document displayed on screen.)

17 MR. PORGANS: 11 is your -- an outline of what
18 you do?

19 WITNESS PIERRE: Oh, okay.

20 MR. VOLKER: Yeah. Okay.

21 So, anyway, looking at that particular
22 Statement of Qualifications, it appears to me that you
23 have a number of key positions, you know, in the Delta,
24 Suisun Marsh, and elsewhere in the Delta, and you were
25 BDCP before; were you not?

1 WITNESS PIERRE: Yes. I managed the effects
2 analysis for BDCP.

3 MR. VOLKER: And you've been with this -- in
4 this process now for 10 years?

5 WITNESS PIERRE: No. I began work on the BDCP
6 in 2011.

7 MR. PORGANS: But you had done prior work for
8 the Suisun Marsh?

9 WITNESS PIERRE: I was a Consultant Project
10 Manager for the Suisun Marsh Plan prior to my work on
11 BDCP.

12 MR. VOLKER: Okay. And before that, before
13 Suisun Marsh --

14 Can you move that up so I can see it?

15 So you were the Project Manager for the Delta
16 Conservation Plan and the Project Manager for the Suisun
17 Marsh, Preservation and Restoration Plan. You were the
18 Project Manager for the South Delta Improvement Program,
19 the SEIR; is that correct?

20 WITNESS PIERRE: That's correct.

21 MR. PORGANS: You've had a lot of experience.
22 You came -- You went from BDCP over to -- over to the
23 CWF.

24 WITNESS PIERRE: I did, yes.

25 MR. PORGANS: Yeah. Were you here when they

1 made that decision to call it the California WaterFix?

2 WITNESS PIERRE: Actually, I was not. I was on
3 medical leave at the time.

4 MR. PORGANS: Thank goodness for you.

5 Is there anybody here that can tell me -- Well,
6 I don't believe you can.

7 I'm interested in knowing. I know it goes back
8 to 2006, you know, when the Task Force did their review
9 and they said that they would like to look at -- excuse
10 me -- would like to look at the -- I have a problem here,
11 so forgive me.

12 They were looking at this alternative, the
13 tunnels, back in 2006-2007.

14 Do you recollect?

15 WITNESS PIERRE: I wasn't involved at that
16 time.

17 MR. PORGANS: Okay. I'd like to submit
18 evidence -- documents to that effect, that that's what
19 happened.

20 So, moving along. I want to ask you a question
21 about the project water use.

22 Are you familiar with the components that DWR
23 uses in order to determine it's going to make X amount of
24 water deliveries?

25 WITNESS PIERRE: No, I'm not. I'm not an

1 operator. I'm not familiar with that process.

2 MR. PORGANS: Is there any operator here that
3 knows about it, or is that next?

4 WITNESS PIERRE: There will be an Operations
5 Panel.

6 MR. PORGANS: Okay. So what I wanted to do is,
7 I want to give this witness a copy of this bulletin here.
8 It's Bulletin 132-63. Is that okay to give it to her?

9 And, by the way, I have the original here.

10 You might want to start on Page 95 -- Well,
11 start at 121 first.

12 CO-HEARING OFFICER DODUC: Could you --
13 Mr. Porgans, can you repeat that into the microphone?
14 Not all of us heard that.

15 MR. PORGANS: Forgive me.

16 I wanted to ask you the question, to look at
17 Page 95 -- excuse me -- first, 121.

18 CO-HEARING OFFICER DODUC: While you're doing
19 that, is that a -- is that a document that we've
20 identified? Okay.

21 MR. PORGANS: It hasn't been identified? Okay.

22 Anyway, take a look at that Project water yield
23 there.

24 CO-HEARING OFFICER DODUC: Mr. Porgans, for the
25 rest of us who could not have access to that, could you

1 describe: What is it that Miss Pierre is looking at?

2 MR. PORGANS: Yeah. I can read it to you.

3 I'm sorry. I had all this on the drive and --

4 CO-HEARING OFFICER DODUC: That's okay. Just
5 help us out here.

6 MR. PORGANS: I'm not that kind of person. I'm
7 prepared. I've been waiting for this for 40 years. I'm
8 a little upset with myself today.

9 Anyway, I'm going to read this to you. This is
10 Chapter VII, and this is Bulletin 132-63, and Page 121.
11 It says here (reading):

12 "Project water yield, as used in this report,
13 is determined by the relationship among three
14 factors: The water demand upon the Delta Pool --
15 and we'll talk about that in a minute -- "the water
16 supplies available to the Delta Pool, and the
17 capability of the project conservation facilities to
18 develop supplies to meet the total demands. The
19 yield of the project was determined by comprehensive
20 operation studies, utilizing the surplus flows
21 discussed in Chapter V for each decade from 1960
22 through 2020 as the basic water supply to the Delta,
23 and utilizing the project demands set forth in
24 Chapter VI."

25 Okay. Now, I'm -- Did you get all that over

1 there, Jennifer?

2 WITNESS PIERRE: Yes, I'm reading it.

3 MR. PORGANS: Okay. I'm going to move to the
4 next paragraph on Page 121, and we'll get that in the
5 record, if I have to give you my copy of this book.

6 Okay. So it says here -- If you go to
7 Page 95 -- Well, let me finish this page. Sorry.

8 (Reading):

9 "Water Demands Upon the Delta Pool.

10 "The water demands upon the Delta Pool include,
11 in addition to required deliveries to customers as
12 set forth in Chapter IV, irrecoverable water losses
13 involved in making such deliveries. Such losses
14 include those which will be incurred during the
15 construction period and all seepage and
16 evaporation," so forth and so on.

17 I'm going to show why this is all relevant in a
18 minute.

19 Now, if I go back to -- if I go back to Page 95
20 of Bulletin 132-63, and I'm looking at the second
21 paragraph on Page 95, and it says (reading):

22 "The Delta Pooling Program."

23 It says (reading):

24 "The Department will operate the project in
25 accordance with the Delta Pooling Concept. The

1 Delta Pooling Program recognizes the
2 Sacramento-San Joaquin Delta as the central
3 collection point for all surface waters from the
4 Sacramento and San Joaquin Valleys. All state
5 projects demands in Central and Southern California,
6 as well as a substantial measure of the Federal
7 Central Valley Project demands, will be met by
8 exporting water from the Delta. These export
9 requirements will be provided by diverting" -- this
10 is Page 96 -- "surplus waters now wasting to the
11 ocean during the winter and spring months, such
12 surpluses to be firmed up by major storage
13 developments in the Sacramento Valley and by
14 San Luis Reservoir."

15 Now, if we go down to the next paragraph, it
16 says here -- This is rather important (reading):

17 "In the operation of the State Water Project,
18 Oroville and San Luis Reservoirs will be operated in
19 conjunction with surplus flows in the Delta to
20 develop an initial firm annual yield for delivery of
21 4,000,000 acre-feet."

22 Did you get that, Jennifer?

23 WITNESS PIERRE: Yes. I'm following along.

24 MR. PORGANS: Thank you.

25 Now, it says (reading):

1 "Therefore, additional future water supplies
2 must be made available in the Delta, both to offset
3 the effect of depletions resulting from increased
4 upstream development, and to meet export demands.

5 "The Delta Pooling Program involves the
6 utilities' system approach in the marketing of water
7 in the service areas of the State Water Project."

8 And then it talks about Delta depletions.

9 Now, the reason why we're bringing this up is
10 because, you know, the Projects -- Jennifer, you can
11 probably answer question. You have an overall
12 understanding of the issues.

13 What's the annual take-away deliveries that
14 have been made to the State Water Project contracts just
15 south of the Delta?

16 WITNESS PIERRE: I don't know.

17 MR. BERLINER: Objection: Vague.

18 During what time period are we talking about?

19 MR. PORGANS: Well, I would say in the last --
20 last two or three years.

21 WITNESS PIERRE: I don't know that answer.

22 MR. PORGANS: Okay. All right. I'll have to
23 ask that of the Operating Committee.

24 Now, the problem that we're having here -- And
25 I wanted to refer to that Code section when I get to it.

1 I have a document here. It's the North Delta
2 Water Agency Contract Outflows.

3 In this document -- And I'm going to give it to
4 her in a minute and she'll have my copy and you can get
5 get it yourself.

6 In this document, it tells us, in order to meet
7 the standards, how they intend for the North Delta Water
8 Agency on the certain types of water classification type
9 water years, we could be pushing out as much as 3 to
10 300,000 acre-feet of water to meet the standard, and it
11 could be higher than that according to this, depending on
12 year type.

13 So, what I'm saying -- You got an issue over
14 there, bro?

15 CO-HEARING OFFICER DODUC: So, Mr. Porgans,
16 what is your question for Miss Pierre?

17 MR. PORGANS: Yes. I'm sorry about that,
18 Miss Chairwoman.

19 So, in this document, what it's telling us is,
20 do you know how much water it takes move the percentage
21 of carriage water that's required to move a hundred
22 acre-feet across the Delta?

23 WITNESS PIERRE: I don't know that answer.

24 MR. PORGANS: Okay. Could I provide you with
25 the answer or not? Or is that overstepping my bounds?

1 CO-HEARING OFFICER DODUC: And is that leading
2 to a specific question for her?

3 MR. PORGANS: No, it is. I'm trying to get to,
4 you know, where DWR has been getting its water as of
5 late, because apparently there isn't any surplus water in
6 the Delta at this particular point in time.

7 And that leads me to when we went back in the
8 1997 -- '92 drought period. I'm looking in operations
9 and I'm talking about adaptive management here, huh?
10 That's what I'm talking about.

11 So in the '87 to '92 period, or what the
12 documents tell us --

13 MR. BERLINER: Excuse me. I'm going to object.

14 We've not had a single question here, and
15 Mr. Porgans has had quite an opportunity for oration, but
16 this is supposed to be a question-and-answer format. So
17 if he could get to his questions so the witnesses could
18 answer --

19 CO-HEARING OFFICER DODUC: I believe --

20 MR. BERLINER: -- we can move this along.

21 CO-HEARING OFFICER DODUC: -- he's trying to
22 get to his question.

23 Mr. Porgans.

24 MR. PORGANS: If I may, I am getting to the
25 question.

1 Look, you guys took a long time getting this
2 together. I'm -- I'm going there.

3 So if I look at operations, because that's what
4 we're talking about, the operating criteria, whatever it
5 is, you know, how it's been changed, nobody knows.

6 So what I'm saying is, under the operating
7 criteria in the '87-92 period, do you know how much water
8 was exported in 1991 and '92?

9 WITNESS PIERRE: Are you asking me if I know
10 how much was actually exported, or what would be exported
11 under the California WaterFix?

12 MR. PORGANS: What would be exported under the
13 present conditions, not the California WaterFix.

14 WITNESS PIERRE: I don't -- I don't know the
15 answer to that.

16 MR. PORGANS: By the way, I'm asking questions
17 but I'm not getting answers; okay?

18 So, anyway, if we look at this document that
19 I'm going to give you -- and I'm looking now -- And this
20 is dated December 27th, 1984.

21 And the reason why this is -- Excuse me.

22 I want you to take a look at this information
23 and confirm that the carriage water requirements for the
24 Suisun Marsh are as they are stated on this page in 1928,
25 '29, '30, so forth.

1 And then I yellowed-lined these -- highlighted
2 these for you.

3 So you can tell me the additional outflow that
4 needs to be deflected at the time and also what Delta
5 water agencies contract.

6 CO-HEARING OFFICER DODUC: Miss Pierre, are you
7 familiar with these -- Of course, you have to receive the
8 document first but -- Go ahead.

9 MR. OCHENDUSZKO: Mr. Porgans -- Sorry, Kyle
10 Ochenduszko.

11 So, for clarification, are you referring to DWR
12 Exhibit Number 306, the agreement for North Delta Water
13 Agency?

14 MR. PORGANS: Yeah. That would be the North
15 Delta Water Agency Agreement, that's correct, and
16 sometimes -- Yes, that's correct.

17 MR. MIZELL: That's an incorrect
18 identification. Our exhibit is the 1981 contract with
19 the North Delta Water Agency, not the 1984 contract.

20 MR. PORGANS: He's correct, it's 1981.

21 WITNESS PIERRE: This says 1984.

22 MR. PORGANS: What?

23 WITNESS PIERRE: The document you handed me is
24 dated December 27th, 1984.

25 MR. PORGANS: That's correct.

1 CO-HEARING OFFICER DODUC: And so it is not a
2 document that is an exhibit yet.

3 WITNESS PIERRE: Okay. Then --

4 CO-HEARING OFFICER DODUC: All right.

5 WITNESS PIERRE: Okay. So I'm not familiar
6 with this document, and I'm not an expert on carriage
7 water operations. And I think the Operations Panel can
8 help answer a lot of the questions I haven't been able to
9 answer.

10 MR. JACKSON: I appreciate that. Thank you
11 very much.

12 Now, one of the things that -- and I don't --
13 I'm going to have -- I don't have that with me. Sorry
14 again. I'll bring it up.

15 But it says in Section 12934(d) of the
16 California Water Code that, under the enabling
17 legislation for the State Water Project -- because you
18 mentioned in your testimony that we're looking for a new
19 way to get the water -- forgive me -- Master levees.
20 This is 12934(d)(3) (reading):

21 "Master levees, control structures, channel
22 improvements, and appurtenant facilities in the
23 Sacramento-San Joaquin Delta for water conservation,
24 water supply in the Delta, transfer of water across
25 the Delta, flood and salinity control, and related

1 functions."

2 Now, in your testimony, it says that we're
3 looking at a new facility, a new conveyance facility; is
4 that correct?

5 WITNESS PIERRE: Right. My testimony speaks to
6 the use of dual conveyance.

7 MR. PORGANS: That's right.

8 It's a new facility. It's a new conveyance
9 facility.

10 WITNESS PIERRE: There are a number of new
11 facilities included, yes.

12 MR. PORGANS: Thank you.

13 I'm not interested in all the details, just,
14 yeah, that fact.

15 So . . . In the . . . Excuse me.

16 We make reference to -- Your testimony makes
17 reference to this new facility.

18 Can you describe the old conveyance facility
19 that goes -- that allows both DWR and the Bureau of
20 Reclamation to transport and convey water across the
21 Delta?

22 CO-HEARING OFFICER DODUC: Do you need the
23 question repeated, Miss Pierre?

24 WITNESS PIERRE: No, I don't. I was just
25 looking at my written testimony so that I can be specific

1 about the connection back to that (reading):

2 "The State Water Project" -- and I'm reading
3 from Page 3, Line 18 -- "includes multiple
4 facilities, including pumping and power plants;
5 reservoirs, lakes, and storage tanks; and canals,
6 tunnels, and pipelines that capture, store, and
7 convey water."

8 And I think that's the answer to the question.

9 MR. PORGANS: Now, when you put this new --
10 this proposed California WaterFix -- which I've never
11 understood how they came up with that title. But I'll
12 talk to somebody about that later, because you weren't
13 there.

14 WITNESS PIERRE: Right.

15 MR. PORGANS: You were not there.

16 So, now, putting this new facility to divert
17 higher up on the river, how does that affect the State
18 Water Project yield?

19 WITNESS PIERRE: I think the Modeling Panel can
20 give you information about how Boundary 1 and Boundary 2
21 were modeled, as well as the resultant yield from those,
22 so that you can understand what the yield is for the
23 Proposed Project with that facility in place.

24 MR. PORGANS: Thank you.

25 How would that -- If that facility was in

1 place, how would that, if it would at all, change the
2 monitoring points that we now have in place at Emmaton,
3 Rio Vista, the river.

4 CO-HEARING OFFICER DODUC: I didn't hear the
5 word you said before "points." Which points at Emmaton
6 and Rio Vista?

7 MR. PORGANS: I said Rio Vista or Emmaton.
8 Like, right now, we have the Emmaton standard.

9 WITNESS PIERRE: Okay. So the compliance
10 points.

11 MR. PORGANS: So if you put that in, the
12 facilities you're speaking about, how does that affect
13 there? Would it reduce the amount of water we have to
14 push out to meet the standard, or do you know?

15 WITNESS PIERRE: So, again, our basis is to
16 meet D-1641, and there's no proposed changes in any of
17 the compliance points. The Modeling Panel will be able
18 to give you the actual modeling results of how those
19 compliance points are met use -- with Boundary 1 and
20 Boundary 2.

21 MR. PORGANS: Okay. So we'll talk to them
22 about that.

23 So . . .

24 Give me a minute here.

25 Now, putting those facilities in, would that

1 improve the water quality for the State Water Project
2 Contractors?

3 WITNESS PIERRE: Would it include the --

4 MR. PORGANS: Would it improve -- excuse me --
5 improve.

6 CO-HEARING OFFICER DODUC: The water quality?

7 MR. PORGANS: Yes.

8 WITNESS PIERRE: That's my understanding, but I
9 don't have any other details beyond that.

10 MR. PORGANS: Okay. The Operating Committee
11 would know about that?

12 WITNESS PIERRE: I think so.

13 MR. PORGANS: So, getting back to this whole
14 issue here about the necessity for the Project. I know
15 that you looked at a number of alternatives.

16 Did you look at an alternative that would still
17 be able to provide the water that you -- you're looking
18 for?

19 WITNESS PIERRE: We looked at, in the EIR/EIS,
20 two different baselines or no-action type scenarios. The
21 first was an Existing Condition Scenario to meet the
22 needs of CEQA and the other was the No-Action
23 Alternative, which satisfies the needs of NEPA.

24 MR. PORGANS: Okay. Now, going back over the
25 operation criteria, if we look back at, say, particular

1 years on the operating -- the operation of the Project,
2 let's say, for example, 1987 to 1992, are you aware that
3 there were a number of violations of D-1485?

4 WITNESS PIERRE: I'm not aware of that.

5 MR. PORGANS: Okay. To whom should I speak
6 with about that?

7 WITNESS PIERRE: I think the Modeling Panel or
8 the Operations Panel would assist with that line of
9 questioning.

10 MR. PORGANS: Okay. And looking back at the
11 1976-77 drought, you're not familiar with what they were
12 doing in operations then?

13 WITNESS PIERRE: That's right. I think
14 Modeling or Operations can help with that question.

15 MR. PORGANS: Okay. Now, at this -- Corwin,
16 Cowin -- whatever his name is -- he says that you say
17 that compliance is going to be number one on the -- on
18 the agenda for you guys with this new Project.

19 I'm paraphrasing here.

20 WITNESS PIERRE: The WaterFix operations
21 propose to continue to meet the obligations of the State
22 and Water -- Federal Water Projects, including D-1641.

23 MR. PORGANS: Okay. Does the -- Do the Op
24 people provide any models on -- and I'm not a big model
25 fan, either -- any models on, you know, different

1 scenarios, pre-drought operations in the Project?

2 WITNESS PIERRE: Do you mean operations of the
3 Project before California WaterFix?

4 MR. PORGANS: Oh, yeah. That's -- That's part
5 of this adaptive management, learning from what we -- the
6 experience that the Department operated under.

7 WITNESS PIERRE: The adaptive management
8 proposed for California WaterFix is meant to be applied
9 to the operations of California WaterFix, not a
10 retrospective application of operations 20 years ago.

11 MR. PORGANS: Collectively, your handle of the
12 operations of the Project generally provide you with some
13 new information. That's part of the adaptive management.

14 WITNESS PIERRE: Again, the adaptive management
15 proposed for -- under this program and the Proposed
16 Project is related to the operation of the Project with
17 the WaterFix facilities in place and operating.

18 I think the Operations Panel can give you some
19 more insight about what they've learned over time in
20 operating the Projects.

21 MR. PORGANS: Okay. Well, I want to thank you
22 for your light and brief responses, though I have to say
23 that I didn't get enough answers to my questions and I've
24 been routed over to Ops. And I understand why.

25 But I believe that it's very important that --

1 and I suggest that -- I don't know. Excuse me.

2 Has the modeling went back and looked at all
3 the years of operation to give you some indication as to
4 what took place and then, as they say in football, Monday
5 night quarterback?

6 WITNESS PIERRE: The analysis that's provided
7 in the EIR/EIS, as well as in the Biological Assessment
8 uses CalSim, and CalSim relies on the 82-year record that
9 reflects conditions over those 82 years but with the
10 application of the facility.

11 So I think the answer is, yes, there has been
12 evaluation of what WaterFix in place would have looked
13 like with those various hydrologic conditions over those
14 82 years.

15 MR. PORGANS: Thank you.

16 We know that modeling has its shortcomings.
17 Hmm?

18 Do you --

19 WITNESS PIERRE: There's no question.

20 MR. PORGANS: Excuse me. I'm sorry. Let me
21 rephrase that.

22 Do you know of any reason why we shouldn't have
23 full confidence in modeling such as CalSim II?

24 MR. BERLINER: Objection: Vague as to the term
25 "full confidence." In what context?

1 MR. PORGANS: Level of confidence.

2 CO-HEARING OFFICER DODUC: Miss Pierre has said
3 that no model is perfect. I assume that applies to
4 CalSim.

5 WITNESS PIERRE: Right. But I would also add
6 that it's the best available information in total that we
7 have to do the evaluations that we've done for this
8 Project.

9 MR. PORGANS: That's DWR-generated information;
10 isn't it?

11 CO-HEARING OFFICER DODUC: Mr. -- I'm sorry. I
12 didn't hear that.

13 MR. PORGANS: I said, is that -- CalSims is
14 DWR's; is it not?

15 WITNESS PIERRE: They are one entity that runs
16 that model.

17 MR. PORGANS: Yeah. They're -- But that's
18 their model that they depend on; is it not?

19 WITNESS PIERRE: A number of water users depend
20 on that model.

21 MR. PORGANS: I know, but it was developed --
22 Was -- What was DWR's involvement in the development of
23 CalSims II?

24 WITNESS PIERRE: I have no -- I don't know.

25 MR. PORGANS: Thank you.

1 law. And I own and run a business called Snug Harbor
2 Resort LLC. It's on Steamboat Slough downriver of the
3 proposed intakes.

4 (Document displayed on screen.)

5 And I -- I used -- I created a set of slides.
6 The slides mostly are from DWR evidence that's already
7 online, and the -- it shows in the slides, so if anybody
8 has a question where that slide came from, I don't plan
9 to submit any of this as evidence right now. I'm just
10 using it for making it easier when I try to explain what
11 I'm asking. So --

12 CO-HEARING OFFICER DODUC: Thank you.

13 MS. SUARD: Just -- And if I get nervous -- Am
14 I not loud enough? Sorry.

15 CO-HEARING OFFICER DODUC: No, you're perfect.

16 MS. SUARD: Okay. If I get nervous, sorry
17 about that.

18 I -- I appreciate your position. You have a
19 pretty difficult job, and I really appreciate that we
20 have your whole background, and I would -- I would say
21 all of you have a tough job.

22 And so, for Miss Pierre: I -- Most of my
23 questions are related to what you've been doing.

24 I understand you have a very extensive
25 background, and so my questions are much more general,

1 and so it might be a little bit easier than the last
2 couple of ones.

3 Could we get the next slide, please?

4 (Document displayed on screen.)

5 MR. OCHENDUSZKO: Do you have the remote?

6 CO-HEARING OFFICER DODUC: Yes. Everyone, take
7 note: If this works, you might want to duplicate this
8 method.

9 MS. SUARD: Okay. Thank you. I did not know
10 that.

11 Okay. So this first slide is just a reference.
12 I wanted to make it a little bit easier.

13 My focus is -- for -- for my questions are for
14 water quality and water quantity impacts. I'm asking
15 about the North Delta area because that's where I am, and
16 that's where my business is on Steamboat Slough.

17 And I'm going to start with, as the slide says,
18 the focused area of the Delta impacts. Yours -- Your
19 presentation material DWR-1 talked about basically what's
20 changing and what isn't changing.

21 And in the lower right, it says there's no
22 change in quantity, timing, and purpose, so I'm going to
23 be focusing on that as well as quality.

24 But before I start going through some of the
25 other slides, I did want to understand one of the things.

1 You assisted -- Miss Pierre, you said you
2 assisted in development of the various operational
3 scenarios for WaterFix, including the Boundary 1 and
4 Boundary 2; is that correct?

5 WITNESS PIERRE: Yes, that's correct.

6 MS. SUARD: Okay. And you -- You managed the
7 preparation of the January 2016 Draft Biolo -- Biological
8 Assessment; is that correct?

9 WITNESS PIERRE: Yes, I did.

10 MS. SUARD: Okay. Was Boundary 1 and 2
11 scenarios in the 2015 Recirculated Draft EIR/EIS?

12 WITNESS PIERRE: Is it possible to switch over
13 to the continuum on my -- from my Exhibit 1? The
14 graphic.

15 (Document displayed on screen.)

16 WITNESS PIERRE: Very good. Thank you.

17 So, in the EIR/EIS, we evaluated a range of
18 alternatives between Alternative 1 and 8. Those are
19 actual alternatives. And we also -- So what we're
20 showing is that Boundary 1 and Boundary 2 fall within the
21 range of the alternatives that are in the EIR/EIS.

22 In the Recirculated Draft, Boundary 2 was
23 evaluated in Appendix C.

24 MS. SUARD: Okay. Thank you. So then the
25 answer is yes.

1 WITNESS PIERRE: I don't want to mislead you
2 that Boundary 1 was explicitly evaluated in the
3 Recirculated Draft. Its effects are within the effects
4 identified with the other alternatives, but Boundary 2
5 was explicitly evaluated.

6 MS. SUARD: So it wasn't -- But it wasn't
7 labeled Boundary 2; it was labeled something else.

8 WITNESS PIERRE: We called it Scenario 1, I
9 think.

10 MS. SUARD: Okay.

11 WITNESS PIERRE: I know. That's why -- There's
12 a lot of modeling out there.

13 MS. SUARD: There is, which is -- makes it a
14 little bit hard for all the rest of us trying to keep up
15 with all of this.

16 So, were Boundary -- So, we just talked about
17 the 2015. So were Boundary 1 and 2 scenarios included in
18 the January 2016 Draft Biological Assessment?

19 WITNESS PIERRE: Can we go back to the slide
20 again, please?

21 (Document displayed on screen.)

22 WITNESS PIERRE: So, what was evaluated in the
23 January Biological Assessment was this gray box, H3+
24 where it says BA in parentheses.

25 MS. SUARD: Okay.

1 WITNESS PIERRE: So that's -- that's the
2 scenario in that document.

3 MS. SUARD: Okay. So -- So have -- have these
4 words or the concept Boundary 1 and 2 ever been disclosed
5 or discussed in any of the public forums other than this
6 hearing? Was it ever referred to this before like this?

7 WITNESS PIERRE: Boundary 1 and Boundary 2
8 represent the adaptive management range that's been
9 proposed, which has been a concept attached to the
10 Proposed Project for quite some time.

11 So, I think this explicitly shows the effects
12 of what that -- what adjustments could be made under
13 adaptive management, what they are for purposes of this
14 hearing, but they've been expressed as the adaptive
15 management process to date.

16 MS. SUARD: Okay. That -- That's so helpful.

17 So I'm -- I'm just going to say a summary of
18 what those boundaries are so that -- for my benefit and
19 other people that might have been questioning this.

20 So, this statement, does this sound appropriate
21 to you (reading):

22 "The two new boundaries are being presented as
23 operational changes that DWR and USBR are requesting
24 be inserted or included in the State Water Projects,
25 Central Valley Project Water Rights Permits. As the

1 bookends, the Projects could operate within through
2 an adaptive management process."

3 WITNESS PIERRE: I think I would rephrase that
4 to say that DWR and Reclamation are asking the Board to
5 consider the effects from Boundary 1 and Boundary 2 on
6 legal users as part of this proceeding to allow the space
7 for adaptive management to be implemented as part of the
8 Project.

9 MS. SUARD: Okay. I just -- I wanted a
10 clarification on that. Thank you very much.

11 Other people have asked you about the North
12 Delta Water Agency DWR contract. I'm going to ask some
13 questions.

14 So, I just have a just straightforward question
15 on that.

16 Your testimony on Page 5 says that WaterFix
17 Project was -- as proposed will restore and protect water
18 quality "consistent with statutory and contractual
19 obligations."

20 Do you know if the modeling analysis performed
21 for any of the four scenarios, H3, H4, B1 and B2, include
22 the seven monitoring locations, water quality monitoring
23 locations, identified in the 1981 North Delta Water
24 Agency contract?

25 WITNESS PIERRE: The Modeling Panel will be

1 able to answer that more specifically.

2 MS. SUARD: Okay. So I'm -- I'm going to go
3 into a little bit more general questions.

4 So -- Oh, yeah, I can do this.

5 (Document displayed on screen.)

6 MS. SUARD: Okay. Just to make sure there's an
7 understanding of the areas I'm talking about:

8 Here is one of the slides from DWR, Page 8 --
9 DWR-1, Page 8. And I just take screen prints off the
10 computer, and you can see in the top side of the slide
11 exactly where you can find that online if you -- somebody
12 wants to reference it.

13 And I -- I want to make sure that, when we
14 talk, you understand that I'm focusing on the waterways
15 that are called Steamboat Slough, Sutter Slough,
16 Sacramento River right below Freeport.

17 Are you familiar with those areas?

18 WITNESS PIERRE: I am.

19 MS. SUARD: Okay. Thank you.

20 The -- I -- I notice that there's -- there's
21 four dots there. There's that green dot.

22 Could you describe what that is, the Delta
23 water facilities?

24 WITNESS PIERRE: The Engineering Group can
25 correct me, but I think this is what was Intake 4 that's

1 no longer proposed.

2 Oh, then I'm wrong.

3 MS. SUARD: Excuse me?

4 WITNESS PIERRE: I don't know. I'm -- I was
5 taking a guess, but maybe the Engineering Group should
6 answer that.

7 MS. SUARD: Okay. The -- Some of the
8 documentations say they're asking for an additional,
9 like, three intakes in addition to an existing water
10 right. So I was asking, do you know if there's an
11 operating intake right there?

12 WITNESS PIERRE: I don't --

13 MR. BERLINER: If it might be helpful, there's
14 a key on the left side of the map that indicates that
15 that green dot --

16 WITNESS PIERRE: Oh.

17 MR. BERLINER: -- is the currently authorized
18 diversion location.

19 MS. SUARD: Currently authorized. Thank you.

20 So is -- Is there diversion be -- at that point
21 in time operating right now?

22 WITNESS PIERRE: Not that I'm aware of.

23 MS. SUARD: Okay. I'm going to go on. I might
24 have to go back to that.

25 I -- I just want to ask some questions about

1 the physical components of the Project, and probably
2 somewhere in the detail areas, it might be there,
3 but . . .

4 So -- So the Project talks about 9,000 cubic
5 feet per second, which is over 17,000 acre-feet per day,
6 or over 6.5 million acre-feet per year.

7 But your documentation also says that the --
8 the average yield will be 4.9 million acre-feet, and I
9 wonder why the discrepancy.

10 Does it take diversion of 6.5 million acre-feet
11 to result in deliveries of 4.9 million acre -- acre-feet?

12 WITNESS PIERRE: Maybe we can pull up my DWR-1,
13 Page 14, please.

14 (Document displayed on screen.)

15 WITNESS PIERRE: There we go.

16 MR. MIZELL: Just for the clarity of the
17 record, Miss Suard, which of those two questions would
18 you like answered first?

19 MS. SUARD: I -- I would like to know the --
20 It's -- I -- I -- I gave some numbers, and the question
21 is:

22 Does it take diversion of 6.5 million acre-feet
23 to deliver 4.9 million acre-feet?

24 WITNESS PIERRE: So, I think it's important to
25 understand that for each of the facilities that is

1 included in the California WaterFix, they have a criteria
2 applied to how they're operated such that their
3 maximum -- for example, in the case of the North Delta
4 Diversions -- their maximum capacity to divert 9,000 cfs
5 is not used for the entirety of their operation.

6 They are governed, in part, by existing
7 criteria, as well as the new North Delta Diversion bypass
8 flows criteria that govern when they can be operated and
9 how they can be operated, which reduce their use below
10 the maximum amount.

11 MS. SUARD: Thank you. You answered a question
12 I hadn't asked yet, but that -- that's -- that's really
13 perfect.

14 What is a physical -- What is the cubic feet
15 capacity of those 40-foot tunnels, each one of them?

16 WITNESS PIERRE: I don't know, but I think the
17 Engineering Panel could answer that for you.

18 MS. SUARD: Okay. Thank you.

19 Are there -- I'm going to go to the next one.

20 Oh, got to get mine back.

21 (Document displayed on screen.)

22 So your -- your testimony, DWR-53, it says

23 (reading):

24 ". . . new points of diversion will not injure
25 other legal users of water or, in effect, initiate a

1 new water right."

2 So, I -- I actually -- I'm going to have to
3 jump around on slides on -- on this part, so I'm actually
4 going to go down a couple slides.

5 (Document displayed on screen.)

6 MS. SUARD: Can that get scooted up a little
7 bit or is that something I do?

8 There we go.

9 So this graphic right here is -- You can see
10 it's from one of the Water Board's maps. It's the
11 GeoTracker GAMA Program. And that shows a bunch of
12 drinking water wells.

13 And you can see there's a lot of them, a lot of
14 drinking water wells, public and private. This is more
15 of the public drinking water wells.

16 And the -- At least from what I have reviewed
17 of the modeling, there does not seem to be an effects
18 analysis for the drinking water wells downstream of the
19 intakes. Or is there? I'm asking: Is there an effects
20 analysis for drinking water wells?

21 WITNESS PIERRE: In the context of the
22 testimony you had up, that's not my testimony. That's
23 Miss Sergeant's testimony, and I think you could ask her
24 this question.

25 MS. SUARD: Okay. Thank you.

1 I'm going to go to another one.

2 (Document displayed on screen.)

3 MS. SUARD: This is another one. This is State
4 Water Rights Control Board, one of -- another one of
5 their mapping programs. And it lists all the water
6 rights holders and water users in the Delta. I think
7 water rights associated within the legal Delta.

8 Did -- Did the modeling that was done, to your
9 knowledge, assess impacts to all those water rights users
10 in the Delta?

11 WITNESS PIERRE: Again, I think Miss Sergent
12 will be speaking to water rights and -- and impacts
13 around that.

14 MS. SUARD: But you -- you have no
15 understanding of impacts to any of those?

16 WITNESS PIERRE: So, that's -- that's outside
17 my area of expertise.

18 MS. SUARD: Okay. I have to go back. Sorry.

19 (Document displayed on screen.)

20 MS. SUARD: Okay. So . . .

21 So, here's a screen print from the water
22 balance estimates, and this is from the California Water
23 Plan, and I will probably be submitting this one.

24 And it is -- It is from DWR, and it -- it gives
25 the total Sacramento River flows, and they said it came

1 from day flow, and then it talks about Delta outflow.

2 And I've been having trouble trying to get this
3 same information from 2011 to 2015.

4 Is -- Is the new modeling that's involved in
5 the documents provided by DWR for this hearing, does it
6 include more recent flow information and export
7 information?

8 WITNESS PIERRE: I'm not sure. And I -- I
9 think the Modeling Group can present the information they
10 have, and I'm not sure if they have information for --
11 for those years.

12 MS. SUARD: And who -- who -- Are -- Were you
13 involved with developing the 2013 California Water Plan
14 Update?

15 WITNESS PIERRE: I was not.

16 (Document displayed on screen.)

17 MS. SUARD: Okay. What I wanted to point out
18 about on this particular slide is, Delta outflow declined
19 substantially, according to what the 2013 Final Water
20 Plan said.

21 And there has been a great decline in water
22 quality, and so I -- I -- I wonder, in -- in the
23 modeling, do you know what -- who submitted the baseline
24 numbers for CalSim to?

25 WITNESS PIERRE: The Modeling Panel can tell

1 you how they derived assumptions.

2 MS. SUARD: Okay. Thank you.

3 (Document displayed on screen.)

4 MS. SUARD: If it can get scooted up again.

5 This looks like the most basic question, but
6 I've actually been asking it for a couple years and I've
7 gone to these modeling meetings.

8 And CalSim was developed through the Cal Tech
9 Record of R&E, and then was used and then recalibrated
10 into CalSim II. And kind of right from the get-go, I
11 noticed that there is a difference between the
12 calculations that DWR uses when converting from cfs to
13 gallons per minute -- you may know all that -- and what
14 USGS and USBR and other agencies use.

15 So, one of my questions are, do you have any
16 idea -- or is this for the water modelers -- which
17 conversion formula was used for CalSim and CalSim II?

18 WITNESS PIERRE: The Modeling Panel can answer
19 that.

20 MS. SUARD: Okay. Thank you.

21 I'm going to keep going, then.

22 (Document displayed on screen.)

23 MS. SUARD: So, you were -- you were involved
24 with the Bay-Delta Conservation Plan starting in 2011; is
25 that correct?

1 WITNESS PIERRE: Yes.

2 MS. SUARD: Okay. So, these graphics come
3 from -- Actually, 2010 is the one on the left and the
4 other one's 2015. You can see where you can get them
5 online.

6 And a text analysis was done regarding impacts
7 to -- on those of us downstream from proposed intakes.

8 And I noticed that, in the current
9 documentation, these don't show. And I am curious why
10 these were not included.

11 WITNESS PIERRE: The graphic on the right is --
12 appears to be from something called 36 Annual Progress
13 Report. I'm not familiar with that document.

14 MS. SUARD: Both were part of the Bay-Delta
15 Conservation Plan modeling, and I can provide the full
16 documents if you need that.

17 But let's -- let's just look at what's in those
18 documents; okay? I believe it was RMA is -- is the
19 modeling -- I'm not sure. I remember the documents not
20 saying exactly who did the models.

21 What's important -- So, let's look at the left
22 side. It shows that there will be seasonal changes in
23 flow, and that the flow will be reduced greatly on
24 Steamboat Slough and Sutter Slough.

25 Do you -- Do you recognize where those areas

1 are?

2 WITNESS PIERRE: On the map, yes, I know where
3 those are.

4 MS. SUARD: Okay. And flows will increase
5 substantially in the lower area of the Delta.

6 Do you see that part?

7 The -- The blue -- The blue dots.

8 WITNESS PIERRE: I'm seeing that there's
9 actually increased flow.

10 MS. SUARD: No. There's -- There's -- Okay.

11 So, it's seasonal changes, and that one is
12 talking about all water years, and there's actually a
13 reduction.

14 Let's -- Let's go to the seasonal changes in
15 electroconductivity, which is indication of seasonal
16 changes in salinity.

17 The gray area is a slight change. Is that what
18 it appears to you?

19 WITNESS PIERRE: It -- The graphic says -5 to
20 5 percent change in relative flow.

21 I want to point out, this is from a -- At least
22 based on the date provided here, it looks like it's from
23 2010, which is actually not the Project that is before
24 the Board during these proceedings.

25 MS. SUARD: Okay. The one on the left is 2010.

1 Okay. So -- So the -- So -- Okay. Thank you.

2 The Project before the proceeding right now
3 does not provide modeling for impacts to Steamboat Slough
4 that I have seen.

5 Are -- Are you saying that -- Are there --
6 That -- My question is: Are there modeling -- detailed
7 modeling for impacts to water rights users, surface water
8 rights users, below the intakes?

9 WITNESS PIERRE: The modeling has been done for
10 Boundary 1 and Boundary 2 and H3 and H4, and in the case
11 of the BA, that's included as H3+.

12 In terms of which particular points in or along
13 Steamboat or Sutter Slough are identified, the Modeling
14 Panel will need to help identify where various modeling
15 results would indicate changes along those two sloughs.

16 MS. SUARD: So, are you aware of any modeling
17 to that effect that's been done?

18 WITNESS PIERRE: The modeling is done for the
19 entire Delta, and so how we extract that data to develop
20 the information you're looking for, I'm not a hundred
21 percent familiar with.

22 So I think the Modeling Panel can help walk
23 through how to look at what the impacts are at those
24 runs.

25 MS. SUARD: Thank you.

1 And you can see, I'm very concerned about the
2 water quality and water quantity, for obvious reasons.

3 (Document displayed on screen.)

4 MS. SUARD: Okay. So we're looking at -- back
5 the DWR-1, one of your slides.

6 Would it be possible to add to this type of
7 slide how much water will be left on the Sacramento River
8 and Steamboat Slough and Sutter Slough and Georgiana?

9 WITNESS PIERRE: The North Delta bypass flow
10 criteria that I identified are actually based on the flow
11 that actually remains in the Sacramento River.

12 So, I -- I don't know if we can extract the
13 data for Steamboat or Sutter in the -- in the format you
14 might be looking for it. But I think in terms of what
15 water remains in the Sacramento River, that's actually
16 the basis for the North Delta Diversion bypass flow
17 criteria. "Bypass flow" refers to those flows that
18 remain in the river.

19 MS. SUARD: And -- And how much is that? What
20 is the minimum flow?

21 WITNESS PIERRE: It varies depending on the
22 hydra -- hydrology and the time of year. But we can look
23 at . . .

24 Let's see. This table would be in the
25 Draft BA, the BA and the EIR.

1 In the BA and Draft BA, it was Table 3.3-2.
2 And it is not easy to summarize, so I don't know if
3 there's specific months that we would want to take a look
4 at.

5 But I think . . . The modeling team can
6 provide, I think, the results of what those criteria are,
7 but there's a -- there's a -- various levels of pumping
8 that can occur and it's all based on what the hydrology
9 in the river is, and that is what dictates what remains
10 in the Sacramento River.

11 MS. SUARD: All right. Does 5,000 cfs sound
12 like the average during summer months to you?

13 WITNESS PIERRE: No.

14 MS. SUARD: Okay.

15 WITNESS PIERRE: It's -- It cannot be
16 summarized that simply.

17 MS. SUARD: Okay. So this really is questions
18 for the modelers; is that correct?

19 WITNESS PIERRE: I think so.

20 MS. SUARD: Okay. Thank you.

21 (Document displayed on screen.)

22 MS. SUARD: I'm sorry. That one's a little bit
23 harder to read.

24 Let me see where that one came -- I -- I think
25 that came from another one of the presentations in 2015,

1 and it talks about reverse flows on the Sacramento River,
2 Steamboat Slough, Sutter Slough.

3 Does your current Project anticipate there's
4 going to be reverse flows on the Sacramento River at --
5 near the intakes?

6 WITNESS PIERRE: The graphic you're showing is
7 not for the Project in front of the Board today.

8 This is another 2010 document. In terms of
9 reverse flows, they were evaluated. The results, again,
10 I think the Modeling Panel can explore in better detail.

11 MS. SUARD: Okay. So will we be presented with
12 that type of information by the next panel? Or the
13 Modeling Flows Panel?

14 WITNESS PIERRE: They can provide that
15 information.

16 MS. SUARD: Thank you.

17 So, I'm going to bring up another concern I
18 have, and that is drinking water quality.

19 This graphic actually comes from USGS, and
20 they've actually been doing a series of water quality
21 tests up and down the whole Sacramento and San Joaquin
22 Valley -- or Central Valley.

23 And since implementation of CALFED Projects and
24 increase in diversions at Clifton Court Forebay, there's
25 been a substantial increase since starting about maybe

1 somewhere between 2000-2003.

2 There -- The water quality in the Delta has
3 declined, and I -- I can measure that just from my own
4 business well. It's all over the place. And I know
5 Water Board's very aware of that.

6 Has your computer modeling addressed the climb
7 in aquifer drinking water -- aquifer -- if the Project
8 were to operate?

9 WITNESS PIERRE: The Engineering Panel can
10 describe that analysis.

11 MS. SUARD: Okay. And so they can describe
12 that.

13 Do you know if they modeled any of that?

14 WITNESS PIERRE: I don't know for sure.

15 MS. SUARD: Okay. And we'll get another slide.

16 Oops. Sorry. I'm going to keep going past those.

17 (Document displayed on screen.)

18 MS. SUARD: Okay. So, there -- there are --
19 There's a couple extra slides in here that I don't need
20 to get to.

21 Let me go back at the beginning. I think I
22 missed it.

23 (Document displayed on screen.)

24 MS. SUARD: There we go. That's the one.

25 So there -- there are, as part of DWR's volume

1 of -- of material that they put online as evidence,
2 there's the discussions of barriers in the Delta.

3 Are barriers in various places in the Delta
4 part of this Project?

5 WITNESS PIERRE: The Project includes a Head of
6 Old River Operable Gate.

7 MS. SUARD: Okay. Head of Old River is in the
8 San Joaquin area or the Sacramento River area?

9 WITNESS PIERRE: It is in the head of Old River
10 but at San Joaquin.

11 MS. SUARD: Okay. The reason why I ask that is
12 there -- Sacramento River used to be called Old River and
13 I've seen transposing of data very often in this process,
14 so I just wanted to confirm that.

15 So, if -- if there's only one barrier proposed,
16 why would DWR be submitting this documentation?

17 WITNESS PIERRE: I think the Operations Panel
18 could probably answer that. I'm not aware of why this
19 was submitted as part of somebody else's testimony.

20 MS. SUARD: Could you tell me who with
21 operations?

22 MR. MIZELL: Objection: Asked and answered.

23 She's not aware of why this exhibit was
24 submitted.

25 CO-HEARING OFFICER DODUC: She can answer she

1 does not know who.

2 WITNESS PIERRE: I don't know who.

3 MS. SUARD: Okay. I'm going to do more of a
4 closeup on that one.

5 So -- Well, you can't answer that. I'll have
6 to go to operations on that. Sorry.

7 You know, I -- I think that I'm not going to go
8 on with any other questions.

9 Thank you very much, and I'll be back.

10 CO-HEARING OFFICER DODUC: Miss Suard, that was
11 excellent. Thank you.

12 MS. SUARD: Thank you.

13 CO-HEARING OFFICER DODUC: I hope everyone took
14 notes. That was a really nice format for conducting your
15 cross-examination.

16 MS. SUARD: I will definitely be doing the
17 maps.

18 CO-HEARING OFFICER DODUC: All right. Well,
19 we've been going for a while, so let's take a short break
20 going by that clock, I guess.

21 We will reconvene at 3:05.

22 (Recess taken at 2:52 p.m.)

23 (Proceedings resumed at 3:05 p.m.)

24 CO-HEARING OFFICER DODUC: All right. We are
25 back in session, and we will now move to Group Number 42,

1 SolAgra Corp.

2 Is there someone here representing Group 42,
3 SolAgra Corp. and IDE Technologies?

4 All right. Group Number 43, Clifton Court.

5 CROSS-EXAMINATION BY

6 MS. WOMACK: Hi. My name is Suzanne Womack,
7 and I am from Clifton Court L.P., and I just have a few
8 questions.

9 I wanted to start with DWR-1, Page 5. I had a
10 question on that.

11 (Document displayed on screen.)

12 MS. WOMACK: Yeah, that one.

13 On the agricultural impacts, you show -- Oh,
14 first of all, does this have to do with Alternative 4(a)?
15 Is this -- Is this something that relates to 4A? Are all
16 these -- all of your documents to do with that?

17 WITNESS PIERRE: This is showing the
18 progression of the planning of the Proposed Project over
19 time, so it hasn't always been referred to as 4A but --

20 MS. WOMACK: Right. Oh, I understand that.
21 Yeah.

22 So -- But -- And in 2014, was there a 4A then?
23 I wasn't sure.

24 WITNESS PIERRE: That was Alternative 4 but it
25 has the same --

1 MS. WOMACK: Alternative 4 and 4A -- Okay.
2 Because I get confused.

3 So -- And I'm -- Okay. So, are there actual
4 numbers? So for 2012, the ag impact, was -- is there a
5 number? That looks 6,000-ish? I mean, are there actual
6 numbers with these?

7 WITNESS PIERRE: There are numbers. This is
8 not, I think, as exact as we can get.

9 The EIR/EIS includes specific numbers for each
10 component and what the impacts of each of those are. And
11 the Engineering Panel can get more into this graphic as
12 well as where the footprint impacts occur.

13 MS. WOMACK: Okay. So they'll be able to tell
14 me how -- exactly what each one of those and how much
15 it's reduced. Because it looks like you've reduced the
16 agricultural impact.

17 WITNESS PIERRE: Yes.

18 MS. WOMACK: That's great.

19 Okay. So, the next slide I'd like to see is
20 DWR-1, Page 8. If we could just --

21 (Document displayed on screen.)

22 MS. WOMACK: That's Page 7. Page 8.

23 Could you do another Page 8? There's, like,
24 three of them.

25 (Document displayed on screen.)

1 MS. WOMACK: That's the second. There's a
2 third.

3 (Document displayed on screen.)

4 MS. WOMACK: There we go. That Page 8.

5 So -- Let's see. You said that the
6 crosshatched section is the -- the new part for your --
7 the Project. That's what you're going to be adding on;
8 is that --

9 WITNESS PIERRE: That's --

10 MS. WOMACK: That's what I remember hearing.

11 WITNESS PIERRE: That's a portion of the
12 forebay that would be modified, yes.

13 MS. WOMACK: Right. And, then -- So, at the
14 edge of the crosshatched section, is that where they're
15 going to put in, like, a levee or a bank -- I don't know
16 what you call it with the forebay, if it's bank or
17 levee -- will be along that?

18 WITNESS PIERRE: The Engineering Panel should
19 be able to explain exactly what the features are along
20 the perimeter of the forebay.

21 MS. WOMACK: Okay. Yeah. Well, you -- you
22 don't know what will be there.

23 WITNESS PIERRE: I don't know the specific
24 details of what the current design is.

25 MS. WOMACK: Okay. But there -- there will be

1 something there along that line.

2 WITNESS PIERRE: The -- You'll need to ask the
3 Engineering Panel about the details.

4 MS. WOMACK: Huh. Okay. Because my farm is
5 most of that crosshatched area, but then you've left a
6 little part out, and I'm just trying to figure out what's
7 going to be there. You know, what am I going to be
8 looking at?

9 So -- Okay. So -- So you don't know. Okay.

10 And then this is -- The forebay -- This whole,
11 let's see, how you're going to be diverting up north, it
12 necessitates changing the Clifton Court Forebay; right?

13 And you will -- Right now, you're -- that
14 doesn't really show it, but you're going to have a north
15 and a south, but that's going to be the basic footprint
16 for the forebay in -- in the 4 alternative or 4A?

17 MR. MIZELL: Objection: Compound question.

18 Can the questioner --

19 MS. WOMACK: Oh, I'm sorry.

20 MR. MIZELL: -- maybe take it one -- one at a
21 time?

22 MS. WOMACK: Okay. Let's see.

23 So, that will be the footprint for the -- for
24 the Clifton Court North and South.

25 WITNESS PIERRE: That's what's proposed.

1 MS. WOMACK: That's what's proposed. Okay.

2 And this slide does not show where you're going
3 to cut it in two. It's just not there.

4 WITNESS PIERRE: The Engineering Panel can
5 provide a lot more detail.

6 MS. WOMACK: Okay.

7 WITNESS PIERRE: This was just meant to be an
8 overview.

9 MS. WOMACK: Okay. Okay. So -- Hmm. okay.

10 How much of my land is going to be left for me?
11 What -- What -- Or how much have you reduced -- Either
12 how much have you -- Did you -- You reduced the forebay
13 because the other ones took all of my land. How much did
14 you reduce the forebay?

15 WITNESS PIERRE: Again, I think the Engineering
16 Panel can provide the detail about the specific design
17 here and how it compares to previous designs.

18 MS. WOMACK: Okay. So you don't know how much
19 of my land will remain, how much -- Yeah.

20 WITNESS PIERRE: Not specifically, no.

21 MS. WOMACK: Not specifically. So -- Okay.

22 So, I have another question. On DWR-1,
23 Page 4 -- you don't have to show it -- it says the whole
24 purpose . . . of the --

25 (Reading):

1 "CBF fundamental purpose as described in the
2 EIR/EIS" is (reading):

3 "To make physical and operational improvements
4 to the system to restore it and protect."

5 And the first one is the ecohealth (sic) of the
6 Delta, I would imagine.

7 Is that correct? That's -- That's the CBF
8 fundamental purpose; right?

9 WITNESS PIERRE: That's the first of three
10 listed, yes.

11 MS. WOMACK: Yes. That's the first.

12 So ecosystem health has to be pretty important.

13 And if we could go back -- Well, I guess we can
14 see them.

15 At two -- Well, at the three diversion intakes
16 at the north, will you be putting fish screens --
17 state-of-the-art new fish screens at each of those
18 intakes?

19 WITNESS PIERRE: That's what's proposed, and
20 the Engineering Panel can review more about how that
21 design is proceeding.

22 MS. WOMACK: Okay. So, it -- the fundamental
23 purpose is to make the physical and operational
24 improvements to the system and restore the Project.

25 Are there also, then, brand new -- brand new

1 fish screens for the Clifton Court Forebay?

2 WITNESS PIERRE: No, there is not.

3 MS. WOMACK: Are there brand new fish screens
4 for the Central Valley Project?

5 WITNESS PIERRE: No. That's not proposed.

6 MS. WOMACK: Okay. Thank you.

7 Hmm. Let's see. What am I forgetting?

8 So, basically, do you find it kind of funny
9 that there's no injury to legal water users and yet my
10 land is taken. How am I not being injured there?

11 MR. BERLINER: Objection: Calls for a legal
12 conclusion.

13 She could rephrase that question.

14 CO-HEARING OFFICER DODUC: Yeah. You want to
15 try to rephrase that?

16 MR. MIZELL: I'll try, but who knows? It's
17 kind of the end of the day.

18 MS. WOMACK: You know, I just -- I won't -- My
19 land is -- That crosshatches my land and it's your
20 Project.

21 How can I not -- That'll be your land, not my
22 land. How is that not an injury?

23 WITNESS PIERRE: That specific question is
24 outside my area of expertise. So I think in terms of
25 asking that question, it will be appropriate fo

1 Miss Sergent, who will be the last to testify.

2 MS. WOMACK: Under Water Rights?

3 WITNESS PIERRE: Under Water Rights, yeah.

4 MS. WOMACK: Okay. I'll -- Because I -- I'm a
5 teacher -- well, I was a teacher. I retired just so I
6 can represent our family because, you know, it's --
7 it's -- this has been here 55 years and it's just so sad
8 to see it being taken.

9 Anyway, I think I've asked all of my questions.

10 Thank you so much. I really appreciate.

11 Okay. That's great.

12 CO-HEARING OFFICER DODUC: Thank you,

13 Miss Suard.

14 MS. WOMACK: Oh, no, no, no. I'm so sorry.

15 Can I keep going? I've got a few more minutes.

16 I forgot.

17 As I was reading DWR-1, Page 9 -- Gee, I'm just
18 not good at this. Page 9 is --

19 (Document displayed on screen.)

20 MS. WOMACK: Yeah. Thank you so much.

21 It says (reading):

22 "Use North Delta Diversion under wetter
23 conditions, less-so in drier conditions."

24 So, what's a wetter condition?

25 WITNESS PIERRE: This is a general concept of

1 what dual conveyance is. And so, as I've described
2 before, how you actually use the North Delta Diversion
3 will be based on the hydrology in the river and that can
4 change over time.

5 But, in general, those are used more frequently
6 when there's more water in the Sacramento River and less
7 so when there's less water in the Sacramento River, which
8 is generally reflected by wetter and drier conditions
9 overall.

10 MS. WOMACK: But is there a -- is there,
11 like -- Is it, like -- To me, it seems it should be,
12 like, whoop, there's a line and wetter, you know, and,
13 oop, drier.

14 Is there -- Are there numbers that --

15 WITNESS PIERRE: There are.

16 So, the criteria are based on if there's X
17 amount of water in the river, then export to the North
18 Delta Diversion can be at this level. And there's a
19 number of different triggers, for example, about how
20 those exports will be operated.

21 So it's not a single number, and it's, again,
22 based on the hydrology at the time of operation, and that
23 can change even within a season.

24 MS. WOMACK: Right. Right. You know, being at
25 Clifton Court, I frequently -- I can see if the gates are

1 up and they're pumping and down, and so that has to do
2 with the hydrology. Yeah. Because -- Okay.

3 So, to maximize the fish protection, you're
4 going to be coordinating.

5 So, we -- So, is it going to be, like, 50-50,
6 the tunnels, down -- and then what you're -- Because
7 you're going to still run the Clifton Court and the CDP
8 will be running. You know, they can take pretty close to
9 50,000 cubic feet right now, so . . .

10 I mean, some -- From what I'm reading, if it's
11 a drier condition, they could be running full board. If
12 it's a wetter condition, they could run in conjunction.

13 Is there something that lays that out a little
14 more carefully?

15 WITNESS PIERRE: Yes. So, if you look in the
16 BA, it's all of the criteria outlined in the Table 3.3-2.
17 And in the EIR --

18 Do you know which table that is?

19 MS. RIDDLE: Are you referring to the Draft BA
20 or the BA that was just recently released.

21 WITNESS PIERRE: It's the same table number.

22 MS. RIDDLE: And those are the same under both
23 documents?

24 WITNESS PIERRE: Yes.

25 MS. WOMACK: So Draft B -- BA, Table 3.3-2 will

1 show the -- So it's like numbers?

2 WITNESS PIERRE: Right. So, in . . .

3 Just a second. I'm just trying to find which
4 table's in the EIR since that might be a little bit
5 easier to read.

6 In the Draft EIR/EIS, it's Table 3-16.

7 MS. WOMACK: 3-16. Thank you so much.

8 My last question is: Coordinating South Delta
9 Diversions to meet water quality objectives, maximize
10 fish protection and water supply, that's with the dual
11 conveyance.

12 So, how do you maximize fish protection without
13 state-of-the-art fish screens at half of your convey --
14 well, two out of the five intakes. How do you maximize?

15 WITNESS PIERRE: So, we're going to talk a lot
16 more in Part II about the environmental benefits and
17 implications of the Project, so I think that we'll answer
18 those questions then.

19 MS. WOMACK: In Part II.

20 WITNESS PIERRE: Um-hmm.

21 MS. WOMACK: Okay. So as a legal user, it's
22 not -- Okay. I just -- Yeah.

23 Okay. I guess I'll have to wait.

24 Okay. I think I'm done. Thank you so much.

25 Thank you.

1 CO-HEARING OFFICER DODUC: Are you sure you're
2 done?

3 MS. WOMACK: I know. (Laughing.)

4 I think so.

5 CO-HEARING OFFICER DODUC: All right. Going,
6 going, gone.

7 MS. WOMACK: Definitely.

8 CO-HEARING OFFICER DODUC: All right. Thank
9 you, Miss Womack.

10 That completes my list of parties to conduct
11 cross-examination.

12 Let me turn to staff. I believe you have some
13 questions for these witnesses?

14 MS. RIDDLE: Sure. Can you pull up
15 Exhibit 515, please.

16 I just want to ask a few questions to drill
17 down to better define what's being proposed for the State
18 Board's proceeding.

19 (Document displayed on screen.)

20 MS. RIDDLE: This table lays out some of the
21 proposed ter -- operational constraints and components of
22 the Project.

23 And I just wanted to determine which of these
24 are proposed for part of the State Board's proceeding or
25 are being proposed for inclusion as part of the Project?

1 And you may not be the right person to ask
2 this, but at some point, if we could get some
3 clarification on those, because some are indicated as
4 modeling constraints; others are indicated as proposed
5 operations.

6 So we just -- We'd like to understand those a
7 little bit better and how they're intended to be
8 proposals for consideration of the Change Petition.

9 WITNESS PIERRE: I think I can answer that, and
10 how I would answer that is that H3 and H4 are the initial
11 operating criteria that are proposed as Alternative 4(a).

12 But Boundary 1 and Boundary 2 are being
13 provided as well so that there can be consideration
14 around, if there's adaptive management from H3 and H4 in
15 that initial operating criteria, what the impacts on
16 legal users would be from that range.

17 So I think H3/H4 is what's being proposed.

18 MS. RIDDLE: So, all of those conditions are
19 being proposed for this proceeding, including the North
20 Delta bypass, Old and Middle River flows, the outflows,
21 the Head of Old River Barrier, and the South Delta are
22 all of the various parameters that are laid out or
23 proposed for the Board's consideration as well as not
24 just mauling parameters and ESA considerations but in
25 this proceeding as part of the Project?

1 WITNESS PIERRE: So, this table's actually the
2 CalSim modeling assumptions. And, so, in some instances,
3 the modeling assumptions can't fully reflect the criteria
4 that are proposed.

5 So I would suggest that, instead, we look at
6 the criteria that are included in the description of
7 Alternative 4(a), is how I would recommend you look at
8 that.

9 MS. RIDDLE: And that description is intended
10 to also apply to the change position, so the parameters
11 with the Project are -- I'm just trying to clarify, you
12 know, what -- what's being asked for inclusion here as
13 part of this proceeding as opposed to -- I know there's
14 three general categories of information or providing
15 things for the CalSim model is one category which some of
16 those are and aren't proposed operations.

17 Then there's the ESA process and the CSA
18 process and the Board's process, and I just wanted to
19 understand better if there's any distinctions between
20 those and where those fly for our consideration as far as
21 what is being proposed.

22 WITNESS PIERRE: I think, for these
23 proceedings, we would like you to focus on Boundary 1 and
24 Boundary 2, just acknowledging that the range of H3/H4 is
25 what's been proposed for initial operations, and that the

1 biological opinion and the incidental take for CSA are
2 likely to hone in on specific criteria that fall within
3 Boundary 1 and Boundary 2.

4 MS. RIDDLE: Thank you.

5 So, on Page 2, I wanted to -- Or, Dana, do you
6 want to follow up?

7 MS. HEINRICH: Yeah. I'd like to follow up
8 actually along the lines of what Miss Riddle was just
9 asking and what you were just talking to Miss Womack
10 about. And, specifically, it's the bypass flow criteria
11 for the North Delta Diversion.

12 There's a table that you have in Exhibit 515.
13 I think it's the same thing as the table that's included
14 in the description of Alternative 4(a).

15 And right at the top of that table, it says
16 that the criteria are for modeling purposes only. So
17 it's really unclear to me at least whether those are just
18 modeling assumptions or if you're actually proposing to
19 operate in accordance with those criteria.

20 WITNESS PIERRE: For that specific one.

21 So, in the BA, both the January version and the
22 July version, as well as the EIR, there is a description
23 of the North Delta Diversion operational criteria, the
24 bypass flow criteria.

25 (Document displayed on screen.)

1 WITNESS PIERRE: Yes, that's it.

2 And that is -- does not vary across H3, H4,
3 Boundary 1 or Boundary 2.

4 And the differences in how that was modeled are
5 identified in a -- the -- not this table. This is the --
6 This is what was modeled. This is what the criteria are
7 as well.

8 And then the Table 3.3-1, which was right above
9 this. This is -- This is 515. I'm sorry.

10 So this table appears in a lot of places. So
11 it's the same in all the places it appears.

12 So, right now, this is being shown as an
13 attachment to 515. It's also shown in the BA and the EIR
14 as the modeling criteria and the proposed operational
15 criteria for the North Delta Diversions.

16 I wanted to just point out that, in the BA and
17 the EIR, we also try to identify where the modeling has
18 varied from the criteria that are proposed.

19 So, it's the criteria you want to look at and
20 Modeling is trying to reflect that criteria the best it
21 can. We're trying to identify where there might be
22 differences.

23 MS. HEINRICH: So there are criteria that are
24 not just real-time. There are some basic not real-time
25 criteria in that -- in the other table.

1 WITNESS PIERRE: Absolutely. So we have that
2 for the North Delta diversion.

3 MS. HEINRICH: For the North Delta I asked
4 specifically.

5 WITNESS PIERRE: And OMAR as well has as it
6 creates that criteria.

7 MS. HEINRICH: So just -- Sorry if I'm beating
8 a dead horse.

9 But that criteria, then, is set forth in the
10 BA?

11 WITNESS PIERRE: And in the EIR --

12 MS. HEINRICH: And in the EIR.

13 WITNESS PIERRE: -- in Table 4A.

14 MS. HEINRICH: Okay. But in the EIR, this same
15 table appears, which -- which describes all of the
16 criteria as modeling parameters.

17 WITNESS PIERRE: Um-hmm. No. There's actually
18 a table that has -- Maybe we can pull it up, because
19 it -- I don't know if that's easy to do.

20 Probably the easiest ways to find it would be
21 the BA in Chapter 3, and you can go to Table 3.3-1.

22 (Document displayed on screen.)

23 WITNESS PIERRE: There you go. That's it.

24 So, this table's essentially showing the
25 parameters. So starting with North Delta bypass flow and

1 then what the criteria is. We then try to describe how
2 that criteria was represented in the model.

3 So it's the cri -- It's that middle column of
4 criteria you want to focus on.

5 MS. HEINRICH: Thank you.

6 WITNESS PIERRE: Okay.

7 CO-HEARING OFFICER DODUC: Other questions from
8 staff?

9 MS. RIDDLE: Yeah, I have a couple more. Maybe
10 this is answered by this table also.

11 On Page 2 of 515 for the South Delta exports,
12 the Banks Pumping Plant.

13 Just clarifying: Is -- So that's also proposed
14 to be an operating criteria that, during the specified
15 months September -- July to September, that diversions
16 would first occur at the South Delta pumping facilities
17 up to 3,000 cfs, and then any further diversion may or
18 may not occur in the South Delta.

19 WITNESS PIERRE: (Nodding head.) That's
20 correct.

21 MS. RIDDLE: So the L2 means that that's only
22 an indication if exports are actually lower than 3,000 in
23 total between the two facilities?

24 WITNESS PIERRE: I think the Modeling Panel can
25 give a little bit more information --

1 MS. RIDDLE: Okay.

2 WITNESS PIERRE: -- about how that might vary
3 in actual operations and what they're seeing in the model
4 from that.

5 MS. RIDDLE: Okay. Thanks.

6 And can you provide -- This might be a modeling
7 question as well.

8 Can you provide any information as to where
9 that number -- how that number was developed?

10 WITNESS PIERRE: I think it would be better to
11 ask them to have a better recollection of that. And by
12 that, I mean the Modeling Panel.

13 MS. RIDDLE: Okay. Thanks.

14 And then just some questions about the Delta
15 outflow constraints under H3 and H4.

16 You have an exceedance plot. I think I'm
17 envisioning maybe how that would work.

18 Would there also be salinity-based compliance
19 methods with that as there are currently with the
20 existing Delta outflow objectives?

21 WITNESS PIERRE: All right. So you're --

22 MS. RIDDLE: It doesn't say so. I just wanted
23 to clarify for purposes of determining, you know, how we
24 might write permanent conditions for this Project.

25 WITNESS PIERRE: Sure. So, for H3, you're

1 essentially saying the Delta outflow would be the same as
2 the No-Action Alternative, which is driven by D-1641
3 obligations and the Fall X2 Requirement.

4 And then H4 includes additional spring outflow,
5 and that's not water quality-based as proposed. It's
6 based on the River Index.

7 MS. RIDDLE: Okay. Thanks.

8 And I think this is my last question.

9 With respect to real-time operations and
10 adaptive management, I was wondering if you could
11 elaborate on the envisioned role of the Board in both of
12 those processes.

13 WITNESS PIERRE: So, I think -- I'm glad you
14 brought it up because there is a difference between
15 adaptive management and real-time operations, and there
16 may have been some confusion about that over the last
17 couple of days.

18 So, adaptive management is a process by which
19 adjustments to the criteria themselves would be made in
20 collaboration with multiple agencies and stakeholders.
21 And I think that's the piece of the adaptive management
22 framework that was provided as an exhibit that we will
23 provide a lot more detail on as part of Part II.

24 So that's something we're working on and that
25 really will hash out roles and responsibilities and

1 involvement in the adaptive management process itself.

2 In terms of real-time operations, they differ,
3 because these are -- they -- these are adjustments,
4 generally minor adjustments, that get made in real-time,
5 similar to how things are operated now.

6 And Mr. Leahigh can talk more about that
7 process now.

8 In terms of the Board's role moving forward, I
9 think there hasn't been any explicit discussion around
10 that, but I don't know that that means that there
11 couldn't be.

12 MS. RIDDLE: Okay. Thank you.

13 CO-HEARING OFFICER DODUC: Chair Marcus, any
14 questions?

15 CO-HEARING OFFICER MARCUS: No. I think
16 I'll --

17 CO-HEARING OFFICER DODUC: Microphone, please.

18 CO-HEARING OFFICER MARCUS: I could, but I
19 think the answers to my questions, you'll refer me to the
20 Operations, the Modeling and the Engineering Panels, so
21 at this point, I think I'll hold rather than asking you
22 the simple questions because I think that's -- that's
23 where we need to go.

24 My question is just -- My questions go with how
25 the legal users in this phase can assess how they might

1 be heard in looking at this and where the smartest tools
2 to go are for them to go to rather than having to read
3 the entire EIR.

4 And I'm just hoping that as the next -- the
5 next periods go through, it'll be a little easier for
6 them to figure out than it seems to be at this point.

7 CO-HEARING OFFICER DODUC: Thank you.

8 Board Member D'Adamo?

9 BOARD MEMBER D'ADAMO: A couple of questions
10 regarding Boundary 2, Alternative 8, and Appendix C.

11 So, first of all, I think I heard you say that
12 Alternative 8 does not meet the project objectives;
13 correct?

14 WITNESS PIERRE: That's right.

15 BOARD MEMBER D'ADAMO: And would that also be
16 the case with Boundary 2?

17 WITNESS PIERRE: I haven't done that analysis
18 to say that or not. I think it's . . .

19 That's subjective, I think, and I think
20 hasn't -- I'm not -- I can't answer that.

21 BOARD MEMBER D'ADAMO: Okay. What is the
22 difference between Boundary 2 and Appendix C?

23 WITNESS PIERRE: Appendix C was a modification
24 of Alternative 8, and Alternative 8 was modeled at the
25 late long-term, and it also included a substantial amount

1 of habitat restoration.

2 So, Boundary 2 has the same operational
3 criteria. It's just that it removes -- it removes the
4 habitat. It looks at -- It uses the ELT model, or early
5 long-term, so not as extensive climate change as was used
6 in the late long-term versions.

7 And . . . I believe that's -- those are the
8 main differences. There may have been some other very
9 small differences.

10 BOARD MEMBER D'ADAMO: Okay. And looking at
11 DWR Exhibit 1, Page 10, the chart that we keep referring
12 to, where would you put Appendix C? Would it be
13 between -- Well, I think I'm answering the question
14 myself here. I just want to make sure.

15 It would be between Boundary 2 and
16 Alternative 8.

17 WITNESS PIERRE: I would really just put it
18 right on Boundary 2 --

19 BOARD MEMBER D'ADAMO: Right on Boundary 2.

20 WITNESS PIERRE: -- in terms of the operational
21 criteria.

22 So, when you have variations in the climate
23 assumptions and the habitat assumptions, you might get
24 slightly different outcomes. But in terms of where it
25 falls within the range of operations, it's essentially

1 Boundary 2.

2 BOARD MEMBER D'ADAMO: Okay. And have you made
3 a determination as to whether or not Appendix C meets the
4 project objectives?

5 WITNESS PIERRE: No, I have not.

6 BOARD MEMBER D'ADAMO: Okay. Thank you.

7 CO-HEARING OFFICER DODUC: Let's keep this
8 short.

9 Let me ask a further clarifying question.

10 So the materials submitted include analyses and
11 modeling of all these various alternatives.

12 WITNESS PIERRE: Submitted for purposes of
13 these proceedings, it's Boundary 1 and 2 and H3 and H4,
14 but the Alternatives 1 through 8 and the variations in
15 operations were included in the EIR/EIS.

16 CO-HEARING OFFICER DODUC: Okay. And while I
17 understand that the operating criteria that's being
18 proposed is H3 and H4 --

19 Correct?

20 WITNESS PIERRE: That's the initial operating
21 criteria for Alternative 4(a), which is the Proposed
22 Project.

23 CO-HEARING OFFICER DODUC: Is the Proposed
24 Project capable of operating to Boundary 1 and
25 Boundary 2?

1 Never mind -- Putting aside the issue of
2 objectives, of meeting objectives, is the Proposed
3 Project capable physically, assuming that the water is
4 there and everything, of operating to Boundary 1 and
5 Boundary 2?

6 WITNESS PIERRE: Physically, each of those
7 boundaries can be operated to, but there are other issues
8 that arise in terms of Boundary 2.

9 CO-HEARING OFFICER DODUC: I understand.

10 But it is physically capable of operating to
11 Boundary 1 and Boundary 2.

12 WITNESS PIERRE: Yes.

13 CO-HEARING OFFICER DODUC: Thank you.

14 No further questions?

15 I will ask Mr. Mizell and Mr. Berliner if you
16 have redirect.

17 MR. MIZELL: Yes, just one question.

18 CO-HEARING OFFICER DODUC: Please go ahead.

19 REDIRECT EXAMINATION BY

20 MR. MIZELL: Okay. Miss Pierre, will the
21 California WaterFix as proposed here at this hearing,
22 increase the export capacity of the State Water Project?

23 WITNESS PIERRE: No, it will not.

24 MR. MIZELL: That's all.

25 CO-HEARING OFFICER DODUC: Thank you,

1 Mr. Mizell.

2 All right. Let me run down the list of the
3 parties and ask if you would like to do recross of that
4 one question.

5 State Water Contractors.

6 MS. MORRIS: (Shaking head.)

7 CO-HEARING OFFICER DODUC: Let the record
8 reflect that Miss Morris has said no.

9 Group 4, San Luis & Delta-Mendota.

10 MR. JACKSON: No, thank you.

11 CO-HEARING OFFICER DODUC: That was a no as
12 well.

13 Westlands?

14 MR. WILLIAMS: No, ma'am.

15 CO-HEARING OFFICER DODUC: A no from
16 Mr. Williams.

17 Coalition for a sustainable Delta?

18 Not here.

19 Sacramento Valley Group.

20 You're representing -- Well, Group 7, which is
21 a --

22 MR. LILLY: I -- This is Allan Lilly, and I
23 represent the Cities of Folsom and Roseville, San Juan
24 Water District, Sac Suburban Water District, and I'm part
25 of Group 7.

1 fact -- by having a North Delta diversion, would increase
2 the top -- the capability of bringing water from the
3 Delta to the Banks Pumping Plant; is that correct?

4 WITNESS PIERRE: It provides a different -- a
5 dif -- an additional diversion location, but there's
6 still the limitation within Banks that would eliminate
7 any potential for increases from Banks.

8 MR. LILLY: Okay. But the North Delta
9 Diversion and tunnels would, in fact, remove a constraint
10 on exports that currently exist; is that correct?

11 MR. BERLINER: Objection: That exceeds the
12 scope of the redirect.

13 We're now talking North Delta operations.

14 CO-HEARING OFFICER DODUC: Rephrase that,
15 Mr. Lilly.

16 MR. LILLY: All right. When you -- I'll just
17 leave it -- I won't ask anymore questions. I think she's
18 clarified what her understanding of export capacity was.

19 CO-HEARING OFFICER DODUC: Thank you,
20 Mr. Lilly.

21 Group 8, Tehama-Colusa?

22 Group 9, North Delta.

23 Oh, was Mr. Jackson coming up for something?

24 MR. JACKSON: No, I'm just getting ready.

25 CO-HEARING OFFICER DODUC: Oh, okay. I thought

1 you had adopted someone else.

2 MR. JACKSON: Nope.

3 CO-HEARING OFFICER DODUC: Group 9 -- I'm
4 sorry. Group 10.

5 Okay. 11, The Water Forum.

6 12, County of Colusa.

7 13, Sacramento Regional.

8 14, County of Yolo.

9 15, East Bay Municipal Utility District.

10 MR. ETHRIDGE: We have no questions.

11 CO-HEARING OFFICER DODUC: That was a no
12 question from . . . Mr. Ethridge?

13 MR. ETHRIDGE: (Nodding head.)

14 CO-HEARING OFFICER DODUC: Okay. 16.

15 MR. ADAMS: For Friant, no questions.

16 CO-HEARING OFFICER DODUC: 17?

17 Mr. Minasian is not here.

18 18.

19 Mr. Laughlin is not here.

20 19. Miss Meserve is coming down.

21 RE-CROSS-EXAMINATION BY

22 MS. MESERVE: Thanks. I'm Osha Meserve for
23 various multiple parties on the list.

24 I just want to clarify with respect to the
25 diversion capacity.

1 Are you aware, Miss Pierre, that there is an
2 Army Corps limit on the Clifton Court Forebay capacity
3 right now?

4 MR. BERLINER: Objection: Beyond the scope.

5 Now we're talking Permit terms rather than size
6 of the export facility.

7 CO-HEARING OFFICER DODUC: Miss Meserve, help
8 me understand --

9 MS. MESERVE: I was --

10 CO-HEARING OFFICER DODUC: -- the relation.

11 MS. MESERVE: -- trying -- The DWR on redirect
12 has tried to establish that they're not increasing the
13 diversion capacity of the Project, and I'd like to
14 provide some other information to the contrary.

15 CO-HEARING OFFICER DODUC: I'm going to allow
16 that.

17 MS. MESERVE: If she doesn't know the answer,
18 then it's okay.

19 There -- Are you aware of a capacity, an Army
20 Corps limit, on Clifton Court Forebay, Miss Pierre?

21 WITNESS PIERRE: Yes, I am.

22 MS. MESERVE: And what is that limit?

23 WITNESS PIERRE: I think it's 6680.

24 MS. MESERVE: Right. I agree.

25 With WaterFix, do you know what the combined

1 SWP diversions could be?

2 WITNESS PIERRE: Again, the export is still
3 limited by the physical capacity at Banks, which is
4 separate from the Clifton Court Forebay Permit term.

5 MS. MESERVE: Wouldn't the capacity be -- go up
6 to 10,300 cfs at that time if we had the North Delta
7 Diversions that are being proposed here?

8 WITNESS PIERRE: We're not changing the
9 capacity of Banks to export water and that's what my
10 testimony was.

11 MS. MESERVE: Okay. To clarify, however, if
12 there were additional diversion capacity, that would
13 increase the amount that could be diverted physically at
14 one time from the Delta; correct?

15 MR. MIZELL: Objection: Misstates her
16 testimony.

17 CO-HEARING OFFICER DODUC: Miss Meserve, would
18 you like to rephrase that?

19 Because your question assumed an increase in
20 capacity, so -- and that's not what she testified.

21 MS. MESERVE: If the -- If the Corps limit of
22 6680, if there's an additional point of diversion beyond
23 that covered by the Corps Permit that we've discussed
24 just now, then wouldn't the capacity to divert at one
25 time, in fact, be increased?

1 MR. BERLINER: Objection: Beyond the scope;
2 and speculative.

3 MS. MESERVE: I'll leave it at that.

4 CO-HEARING OFFICER DODUC: Yes, please.

5 MS. MESERVE: I think I made my point.

6 CO-HEARING OFFICER DODUC: Thank you.

7 Group 20, Mr. Daniel Wilson.

8 21, Central Delta.

9 MR. HERRICK: No, we have none.

10 CO-HEARING OFFICER DODUC: And that was a no
11 from Central Delta.

12 22.

13 City of Stockton is not here.

14 Stockton East, Number 23, is also not here.

15 24.

16 MR. KEELING: Madam Chair, Tom Keeling. We
17 have none.

18 CO-HEARING OFFICER DODUC: All right. No
19 question from Mr. Keeling on behalf of Group 24.

20 Group 25.

21 MR. MILJANICH: No questions.

22 CO-HEARING OFFICER DODUC: And is that Mr.
23 Emlen?

24 MR. MILJANICH: Miljanich.

25 CO-HEARING OFFICER DODUC: Miljanich. Okay.

1 MR. MILJANICH: County Counsel for the County
2 of Solano.

3 CO-HEARING OFFICER DODUC: Thank you.

4 26, Contra Costa Water District . . . is not
5 here.

6 27, City of Antioch . . . is not here.

7 28, California Delta Chambers . . . is not
8 here.

9 29, Steamboat Resort . . . is not here.

10 30, Mr. Brodsky.

11 RE CROSS-EXAMINATION BY

12 MR. BRODSKY: Thank you. Michael Brodsky on
13 behalf of Save the California Delta Alliance.

14 So, Miss Pierre, your understanding of the
15 question, does it increase the export capacity, means
16 does it increase the export capacity as far as the
17 physical limitations of the system itself?

18 The physical capacity of the system, the
19 infrastructure?

20 WITNESS PIERRE: The export capacity at Banks
21 doesn't change and that is the limiting factor on the
22 export south of Delta.

23 MR. BRODSKY: Could we have the question
24 repeated again, the original question?

25 CO-HEARING OFFICER DODUC: Mr. Mizell?

1 MR. MIZELL: If he wants the exact wording, I
2 think we should go to the transcript.

3 (Record read as follows:)

4 "Will the California WaterFix as proposed here
5 at this hearing, increase the export capacity of the
6 State Water Project?"

7 MR. BRODSKY: Okay. So that's of the entire
8 export capacity of the entire State Water Project with
9 regards to its physical capacity, not with regards to any
10 regulatory constraints.

11 WITNESS PIERRE: Not proposing to adjust the
12 regulatory constraints or the physical constraints on the
13 export capacity.

14 MR. BRODSKY: So -- So, then, you understood
15 the question to include regulatory constraints when we
16 talk about the export capacity of the State Water
17 Project.

18 WITNESS PIERRE: The question was, is there a
19 change or increase in the export capacity, and my
20 testimony is that there is not, and that is based on the
21 fact that none is proposed either in terms of physical or
22 regulatory change in the constraint which occurs at
23 Banks.

24 MR. BRODSKY: So, the other day, we -- we -- we
25 discussed your proposed redefinition of the

1 export-to-inflow ratio.

2 Do you recall that?

3 WITNESS PIERRE: I wouldn't characterize it as
4 my redefinition of the export-to-inflow ratio.

5 MR. BRODSKY: Okay. I pointed to Page 3-80 of
6 the Biological Assessment, which is what is proposed for
7 California WaterFix, to the Board as far as the
8 export-to-inflow ratio and you agreed with that.

9 WITNESS PIERRE: I agreed that the WaterFix was
10 proposing the EIR ratio as shown in the BA that we
11 evaluated.

12 MR. BRODSKY: Right. And as it was shown
13 there, the new points of diversion, the three North Delta
14 Diversions, are excluded from the export term.

15 WITNESS PIERRE: That's correct.

16 MR. BRODSKY: So, is it possible under the new
17 operating scenario, if the Project is approved, one of --
18 one of the benefits that you've stated is that it gives
19 you greater operational flexibility; is that right?

20 WITNESS PIERRE: That's correct.

21 MR. BRODSKY: So there -- there could be times
22 when there are, say, for example, Delta smelt present at
23 the South Delta diversion points which would prohibit you
24 from diverting any water there, and you might switch to
25 the North Delta Diversion Points and divert from North

1 Delta.

2 MR. BERLINER: Objection: Beyond the scope of
3 redirect. We're into operations --

4 CO-HEARING OFFICER DODUC: Capacity --

5 MR. BERLINER: -- now.

6 CO-HEARING OFFICER DODUC: Capacity is a -- is
7 a bit broad term.

8 I'm going to allow Mr. Brodsky a little bit
9 more leeway.

10 WITNESS PIERRE: That's a potential scenario
11 for use of this new facility.

12 MR. BRODSKY: And so, say, for example, if
13 under that scenario you were diverting 5,000 cubic feet
14 per second from the North Delta Diversion Points and zero
15 from South Delta, that would count as zero exports for
16 purposes of the export-to-inflow ratio.

17 WITNESS PIERRE: As defined, yes.

18 MR. BRODSKY: And if you were diverting 9,000
19 cubic feet per second, which is full capacity, as I
20 understand it, of the new diversion points, under that
21 scenario, that would count as zero exports.

22 WITNESS PIERRE: For that particular criteria.

23 MR. BRODSKY: And it's your testimony that that
24 does not increase the export capacity of the State Water
25 Project.

1 WITNESS PIERRE: That's my testimony, yes.

2 MR. BRODSKY: Okay. And let me turn, then, now
3 to the combined export capacity of the State Water
4 Project and the Central Valley Project, and perhaps I get
5 to ask a question of our Federal witness.

6 And, I'm sorry, sir, I don't -- I don't recall
7 your name, because you've been so quiet.

8 WITNESS CENTERWALL: My name's Steve
9 Centerwall.

10 MR. BRODSKY: Steve. Thank you very much for
11 bailing me out there.

12 And so perhaps both witnesses need to answer
13 this.

14 The combined capacity is 15,000 cubic feet per
15 second --

16 CO-HEARING OFFICER DODUC: Before you --

17 MR. BRODSKY: -- is that correct?

18 CO-HEARING OFFICER DODUC: Before you go there,
19 I might need to have my memory refreshed.

20 Was Mr. Mizell's question focused on just the
21 State Water Project capacity or both capacities?

22 MR. MIZELL: Just the State Water Project
23 capacity.

24 CO-HEARING OFFICER DODUC: Would the court
25 reporter confirm that, or read it back again.

1 MS. RIDDLE: Questioner, also, I think you said
2 that Mr. Centerwall is Federal representative. I think
3 both are representatives of DWR and on --

4 MR. BRODSKY: Oh.

5 MS. RIDDLE: -- the EIR team for the Project.

6 MR. BRODSKY: Okay. Thank you.

7 CO-HEARING OFFICER DODUC: And the question
8 again, please?

9 THE REPORTER: If people --

10 MR. BRODSKY: Well, I want to ask -- Oh.
11 Sorry.

12 THE REPORTER: If people will stop talking,
13 I'll read it.

14 (Record read as follows:)

15 "Will the California WaterFix as proposed here
16 at this hearing, increase the export capacity of the
17 State Water Project?"

18 CO-HEARING OFFICER DODUC: All right. That is
19 the scope of the redirect.

20 MR. BRODSKY: So, if I may proffer, I think
21 it's relevant that the two Projects are jointly operated,
22 and that the import here is how much total water can be
23 exported, and that artificial segmentation of SWP from
24 CVP really doesn't get to the truth of the matter.

25 In other words, are we -- are we taking more

1 water out of the Delta or not, I think is the -- was --
2 was the point of the question.

3 CO-HEARING OFFICER DODUC: All right. You may
4 ask, but keep in mind that these witnesses are
5 representing the State Water Project, so to the extent
6 that --

7 MR. BRODSKY: Yes.

8 CO-HEARING OFFICER DODUC: You can answer.

9 MR. BRODSKY: I was under the misimpression,
10 but that was corrected, that we had a --

11 MS. RIDDLE: Just to clarify: Are you
12 representing the entire Project or just the State Water
13 Project? That would be an important clarification here.
14 I think -- My impression was that the -- all the
15 witnesses were representing the entire Project overall.

16 MR. MIZELL: The Department's witnesses
17 don't -- don't purport to represent the Bureau, although
18 we are Joint Petitioners, so when it comes to Project
19 Description and overview at the level that Jennifer and
20 Steve are discussing, they can do a good job of
21 representing that level of information.

22 When it comes to the details about the Bureau,
23 its operations, and its take on the modeling, they have
24 witnesses prepared for that particular purpose.

25 If I might, while I have the microphone, I do

1 want to object to his recharacterization of the intent of
2 my question. The intent of my question was how I asked
3 it and not to be construed more broadly by Mr. Brodsky.

4 CO-HEARING OFFICER DODUC: Thank you,
5 Mr. Mizell.

6 MR. BRODSKY: May I proceed?

7 CO-HEARING OFFICER DODUC: Please proceed.

8 MR. BRODSKY: To the extent you know, it's my
9 understanding that the carrying capacity of the actual
10 canals, after the water is pumped out of the Delta that
11 carry the water south, is 15,000 cubic feet per second.

12 Is that correct, if you know?

13 WITNESS PIERRE: I think you need to ask the
14 Operation Panel.

15 MR. BRODSKY: Okay. You testified in answer to
16 Miss Meserve that there was an Army Corps inflow limit, I
17 believe, of -- was it 6680 cubic feet per second?

18 WITNESS PIERRE: It's more complicated than
19 that, but that's a shorthand.

20 MR. BRODSKY: Okay. So isn't it true that
21 since water that's diverted from the North Delta intakes
22 does not count toward the export term, that -- let us
23 just say for shorthand that there's 6680 at Clifton
24 Court, then we could divert another 8,000 at North Delta,
25 8,200, and come up to 15,000; isn't that correct?

1 WITNESS PIERRE: You're still limited by the
2 Banks capacity, and that's not changing.

3 MR. BRODSKY: So what would the total capacity
4 of export cubic feet per second be with North Delta and
5 South Delta combined?

6 The Army Corps 6680 limit does not apply to the
7 North Delta intakes. It doesn't constrain them. Does
8 it --

9 Let me just ask it that way.

10 The current Army Corps limit at Clifton Court
11 would not constrain diversions at the North Delta
12 intakes; is that correct?

13 WITNESS PIERRE: That's correct. Although
14 they're operated in conjunction with dual conveyance, as
15 I testified.

16 MR. BRODSKY: Okay. That does it for that.

17 So it is not allowed at this -- Or I want to
18 put it in the positive.

19 Is it allowed at this point on recross to
20 follow up on some questions that were asked by Board
21 staff or only on that one question by Mr. Mizell?

22 CO-HEARING OFFICER DODUC: Only on that one
23 question by Mr. Mizell.

24 MR. BRODSKY: Okay. I'm done, then.

25 Thank you very much.

1 CO-HEARING OFFICER DODUC: Thank you,
2 Mr. Brodsky.

3 Oh, Mr. Jackson, you're up next.

4 RECROSS-EXAMINATION BY

5 MR. JACKSON: So, when you say that the
6 building of 9,000 cubic feet per second diversions in
7 tunnels don't increase the capacity of the State Water
8 Project, what is your reason for answering that question
9 no?

10 WITNESS PIERRE: The export capacity of the
11 State Water Project is limited by what Banks is able to
12 export, and that is not changing.

13 MR. JACKSON: So where . . .

14 Banks is limited by a physical capacity for
15 moving water that will include the water that's moved
16 from the North Delta facility?

17 WITNESS PIERRE: That's correct.

18 MR. JACKSON: So the next step in the Project,
19 the increase in capacity at Banks, probably the increase
20 in capacity in the canals, the increase in capacity at
21 San Luis, will be when we will see the full impact of
22 the --

23 CO-HEARING OFFICER DODUC: You do not have to
24 answer that, Miss Pierre.

25 MR. JACKSON: Do you factor in the ability of

1 the North Delta facility to pass -- transfer water during
2 the summer into your answer?

3 MR. BERLINER: Objection: That's an
4 operational question, not a capacity question.

5 CO-HEARING OFFICER DODUC: Miss Pierre.

6 MR. JACKSON: The capacity is, I guess, the
7 squiggly word we're having problems with here.

8 If you -- If you can't increase exports by
9 building this facility, why would you spend \$15 billion
10 to build it?

11 CO-HEARING OFFICER DODUC: Do you wish to
12 object?

13 MR. BERLINER: I do.

14 CO-HEARING OFFICER DODUC: All right. Move on,
15 please, Mr. Jackson.

16 MR. JACKSON: Well, I -- it's clear that, you
17 know, we have an answer. She's not going to move from
18 the answer.

19 CO-HEARING OFFICER DODUC: Mr. Jackson, what is
20 your question?

21 MR. JACKSON: Can we all go home now?

22 (Laughter)

23 CO-HEARING OFFICER DODUC: Not yet. I have a
24 few more parties.

25 WITNESS PIERRE: I wanted to answer that.

1 (Laughing.)

2 CO-HEARING OFFICER DODUC: 32.

3 MS. DES JARDINS: Restore the Delta has no
4 questions.

5 CO-HEARING OFFICER DODUC: That was a
6 no-question by Mr. Stroshane.

7 33 . . . is not here.

8 34 . . . is not here.

9 35 . . . is not here.

10 37, Miss Des Jardins.

11 RE-CROSS-EXAMINATION BY

12 MS. DES JARDIN: Miss Pierre, in answering this
13 question about whether this would increase the exports of
14 the State Water Project, did you take into account the --
15 the source of upstream supply for those diversions?

16 WITNESS PIERRE: My testimony was based on the
17 export capacity at Banks, which is not proposed to
18 change.

19 MS. DES JARDIN: Are you aware of how often the
20 export capacity at Banks actually constrains current
21 operations, current exports?

22 WITNESS PIERRE: No, I'm not.

23 MS. DES JARDIN: Are you aware of what
24 percentage of water that's diverted is actually stored
25 water that's released from Oroville Reservoir?

1 MR. BERLINER: Objection: Beyond the scope.

2 CO-HEARING OFFICER DODUC: Miss Des Jardins,
3 what is the linkage here to capacity?

4 MS. DES JARDIN: If the North Delta Diversions
5 increase the capacity of the Project to divert unstored
6 flows -- which would what my next question was going to
7 be -- then wouldn't it, in effect, increase the overall
8 export?

9 There are two operating criteria: One is
10 pumping capacity; the other is supply.

11 And the question is whether this would increase
12 the supply of unstored water for the Banks facilities.

13 MR. MIZELL: After hearing Tom's objection,
14 that's beyond the scope of the question asked.

15 MS. DES JARDIN: I would respectfully say
16 there's two ways to define.

17 There is multiple considerations and capacity,
18 and the question was phrased in a general way. It was
19 not phrased as the export pumping capacity of Banks.

20 MR. BERLINER: Actually, I think if you looked
21 at the question, it was directed at the export capacity
22 of the State Water Project. It was not concerning
23 upstream reservoirs at all.

24 MS. DES JARDIN: Well, it -- I would say
25 upstream supply, period.

1 CO-HEARING OFFICER DODUC: Miss Pierre, go
2 ahead and answer to the best of your ability.

3 WITNESS PIERRE: I don't understand the
4 question.

5 MS. DES JARDIN: The question is: Are you --
6 Would -- Do you know if the diversion facilities would
7 allow an increase of unstored flows on the Sacramento
8 River, increase diversion by the State Water Project in
9 answering that question?

10 WITNESS PIERRE: The point of diversion
11 proposed on the North -- in the North Delta on the
12 Sacramento River would provide additional flexibility and
13 opportunities for diversion. But, again, the export
14 capacity of the State Water Project is not changing.

15 MS. DES JARDIN: Isn't there a concern right
16 now that there are times when there are high flows and
17 the exports in the South Delta are constrained for
18 various reasons --

19 MR. BERLINER: Objection --

20 MR. JACKSON: -- and --

21 MR. BERLINER: -- beyond the scope.

22 MS. DES JARDIN: But I -- This is whether it
23 would increase -- The operational flexibility is
24 specifically with respect to these unstored flows, isn't
25 that true, Miss -- Miss Pierre? When would the

1 operational flexibility be exercised?

2 MR. BERLINER: Same objection.

3 CO-HEARING OFFICER DODUC: I'm going to allow
4 it because operational flexibility is a key reason for
5 the proposal.

6 To the extent that operational flexibility
7 impacts capacity, if it does, you should answer that
8 question.

9 WITNESS PIERRE: The operational flexibility
10 does not result in a change in the export capacity of the
11 State Water Project.

12 MS. DES JARDIN: Well, are you saying that it
13 doesn't result in a change in the pumps, or it doesn't
14 result in increased diversions of unstored water by the
15 State Water Project?

16 WITNESS PIERRE: I don't -- I'm not clear what
17 "it" we're referring to.

18 MS. DES JARDIN: The construction of the new
19 facility.

20 Does the construction of the new facility not
21 allow increased diversions of unstored water?

22 MR. BERLINER: Same objection.

23 CO-HEARING OFFICER DODUC: I think you need to
24 move on, Miss Des Jardins.

25 MS. DES JARDIN: Thank you.

1 So, with respect to . . .

2 In -- In assessing the capacity of the State
3 Water Project, do you have any knowledge of the history
4 of the parties for the State Water Project?

5 MR. BERLINER: Same objection.

6 CO-HEARING OFFICER DODUC: Help me understand
7 where you're going with this, Miss Des Jardins, and in
8 specific connection to capacity.

9 MS. DES JARDIN: Specifically, I wanted to say
10 there is an issue of when the Permits were issued.

11 Were you aware that there was an assumption
12 that the flows on the Sacramento River were going to be
13 augmented as part of the State Water Project operations?

14 CO-HEARING OFFICER DODUC: And that relates to
15 capacity . . .

16 MR. JACKSON: It --

17 CO-HEARING OFFICER DODUC: Capacity.

18 MS. DES JARDIN: It relates to capacity of the
19 State Water Project, the 10,000 cfs capacity.

20 There are two things: One is, do you have the
21 physical capacity at the pumps; and, two, are you able to
22 get the water there?

23 The augmenting of the flow on the Sacramento
24 River by a million acre-feet a year provides the water.

25 That was the history, and so I was asking if

1 she was aware of that.

2 WITNESS PIERRE: I am not aware of that.

3 MS. DES JARDIN: Okay. So you weren't aware
4 that this -- there was a project that was never built or
5 the --

6 MR. BERLINER: Objection: Relevance.

7 CO-HEARING OFFICER DODUC: All right. Let's
8 move on, Miss Des Jardins.

9 MS. DES JARDIN: All right. So -- So you --
10 It's difficult -- So, in doing this, you're really just
11 looking at the physical capacity of the pumps, and you
12 have no idea of when that capacity is reached or not
13 reached and how it interacts with upstream supply.

14 MR. BERLINER: Objection: Compound question.

15 MS. DES JARDIN: Okay. So, in looking at this,
16 are you only considering the physical capacity of the
17 pumps?

18 MR. MIZELL: Objection: Asked and answered.

19 MS. DES JARDIN: Okay.

20 CO-HEARING OFFICER DODUC: Let's -- For the
21 record, Miss Pierre, in answering Mr. Mizell's question,
22 is your answer based on your understanding that the --
23 the question was specific to physical capacity?

24 WITNESS PIERRE: That's correct, of the export
25 facility, yes.

1 MS. DES JARDIN: And so we don't have a
2 particular understanding of the upstream supply of the
3 State Water Project or how that might constrain current
4 exports.

5 MR. BERLINER: Same objection.

6 CO-HEARING OFFICER DODUC: Let's move on,
7 Miss Des Jardins.

8 MS. DES JARDIN: Okay. I think that's --
9 that's an interesting question.

10 In the revised DEIR, it shows that there are --
11 there is a No-Action Alternative baseline and there is
12 the Proposed Project.

13 Are you aware of the difference in exports
14 between these two scenarios?

15 MR. BERLINER: Same objection.

16 CO-HEARING OFFICER DODUC: Again, the question
17 is with respect to capacity.

18 So, have you asked her, is there a difference
19 in capacity?

20 MS. DES JARDIN: Okay. Then my questions are
21 done.

22 Thank you.

23 CO-HEARING OFFICER DODUC: Mr. Volker.

24 RE-CROSS-EXAMINATION BY

25 MR. VOLKER: Good afternoon. Steve Volker for

1 PCFFA and IFR.

2 Will the California WaterFix increase the
3 export quantity of the State Water Project?

4 MR. MIZELL: Objection: Beyond the scope of my
5 question.

6 CO-HEARING OFFICER DODUC: My apology. I
7 didn't hear the question, Mr. Volker.

8 MR. VOLKER: It's exactly the same question
9 posed except it substitutes the word "quantity" for the
10 word "capacity."

11 The reason for that is, the capacity normally
12 would extend to two variables: Rate and duration. Just
13 like if you're looking at miles per hour, that's a rate.
14 If you're looking to the distance traveled, you need to
15 know both the rate and the duration.

16 It seems to me that the witness is, through
17 design or inadvertence, leading this Board to the
18 incorrect conclusion that the California WaterFix will
19 not increase the export quantity -- that is, the water
20 actually supplied by the State Water Project -- when, in
21 fact, that's one of the driving purposes of the Project.

22 So I think it's fair redirect to inquire
23 whether the California WaterFix will increase the export
24 quantity of the State Water Project.

25 MR. MIZELL: Again, I think it's a substantive

1 change of the subject of my redirect.

2 CO-HEARING OFFICER DODUC: Please ask your next
3 question, Mr. Volker.

4 MR. VOLKER: When you answered that question,
5 did you limit your answer only to the rate of pumping?

6 WITNESS PIERRE: I was speaking specifically to
7 the export capacity, which is limited by Banks.

8 MR. VOLKER: May I have the witness directed to
9 answer the question that was posed? It's a very specific
10 question.

11 We're referring to the export capacity at
12 Banks, but the question is: Does your answer limit
13 itself only to the rate of pumping at Banks and exclude
14 the duration of pumping at that rate or any other rate?

15 WITNESS PIERRE: No. There -- The entire
16 diversion or -- excuse me -- export capacity at Banks
17 would take into account the rate and diversion of the
18 maximum use of Banks, which is not proposed to change.

19 MR. VOLKER: You indicated rate and diversion.
20 Did you mean to say rate and duration?

21 WITNESS PIERRE: I did mean to say that, and I
22 thought I clarified myself. And hopefully I can in the
23 transcript, because I didn't mean to use that word.

24 MR. VOLKER: Can you, by reference to any of
25 the testimony or exhibits submitted thus far by

1 Petitioners, provide us the basis for your answer?

2 WITNESS PIERRE: The basis for my answer, I
3 thought I stated in my testimony, is that we are not
4 proposing to change the export capacity at Banks and,
5 therefore, the export capacity of the State Water Project
6 is not going to change under California WaterFix.

7 MR. VOLKER: So, just to clarify: When you say
8 you're not going to increase the export capacity of
9 Banks, are you saying you will not increase the duration
10 of pumping at high rates of -- at high rates?

11 MR. BERLINER: I'm going to object.

12 The Board is used to dealing with capacity of
13 Water Projects, size of facilities, size of pumps. We
14 deal with that all the time as a capacity issue.

15 And somehow we're getting wrapped around the
16 axle on the definition of capacity that the Board deals
17 with every day on the water Project. I -- I --

18 CO-HEARING OFFICER DODUC: All right.

19 MR. BERLINER: We need some direction here.

20 CO-HEARING OFFICER DODUC: Thank you,
21 Mr. Berliner.

22 Mr. Volker, please move to your next question.
23 I think we've -- we've gotten all we can from Miss Pierre
24 with respect to capacity.

25 MR. VOLKER: All right. I have nothing

1 further, then.

2 Thank you.

3 CO-HEARING OFFICER DODUC: Thank you.

4 North Delta C.A.R.E.S.

5 Not here.

6 Mr. Porgans?

7 Not here.

8 Snug Harbor.

9 I would be so impressed if you have a slide for
10 this.

11 (Laughter)

12 MR. VOLKER: Do you really want it?

13 RE-CROSS-EXAMINATION BY

14 MS. SUARD: Okay. Nicky Suard, Snug Harbor.

15 I'm trying to understand. The questions over
16 and over again was a little hard, so I'm going to try and
17 be very concise.

18 Will the Project increase the ability of Banks
19 to run at maximum capacity? Understanding that it does
20 not always run at maximum capacity now, will it increase
21 its capacity to run at maximum -- increase the
22 duration -- Sorry. Not to use the word duration.

23 Will it increase the ability of Banks to run at
24 maximum capacity?

25 MR. MIZELL: Objection: I believe that this is

1 beyond the scope of my question.

2 Again, I think it's confusing the word
3 "capacity" with the word "opportunity" and they're two
4 distinct concepts.

5 CO-HEARING OFFICER DODUC: Okay.

6 MR. VOLKER: I -- I didn't use the word
7 "opportunity," and I do believe that, currently, Banks
8 operates at less than capacity part of the time.

9 Mrs. Womack, I wish she was here. She
10 described the damage from operating at less than capacity
11 and then revving up to full capacity and going back down
12 to low capacity.

13 And it -- it appears to me that the answer
14 would be yes, that this Project intends to let Banks
15 operate at maximum capacity. So that's just sort of a
16 simple question.

17 WITNESS PIERRE: The question from Mr. Mizell
18 was, will it change the capacity, and the answer is no.

19 The extent to which maximum capacity is used
20 more or less frequently than under existing conditions
21 can be answered by the following team.

22 MR. VOLKER: Okay. Thank you.

23 CO-HEARING OFFICER DODUC: Thank you,
24 Miss Suard.

25 Group 42 . . . not here.

1 Group 43, Clifton Court. Miss Womack is not
2 here.

3 Okay. That concludes the parties I have.

4 My counsel advised me, Mr. Mizell, that as
5 Hearing Officer, I am not restricted to your redirect.

6 So let me ask Miss Pierre the question that
7 everyone else has been attempting to ask.

8 We hear you that the Project being proposed is
9 not to increase the capacity, the pumping capacity.
10 However, you're also requesting this Project in order to
11 increase operational flexibility.

12 From your understanding as the overall Deputy
13 Project Manager to help develop this Proposed Project,
14 does that flexibility in operation possibly translate to
15 operating, yes, within the current capacity but resulting
16 in more opportunity to use that capacity?

17 WITNESS PIERRE: It depends on what the
18 operational criteria are that end up being conditioned on
19 both the existing and proposed new facilities, so there's
20 that possibility.

21 There's also a possibility that that doesn't
22 occur because of those criteria, or even that -- that
23 it's even less opportunity to use at capacity.

24 It all depends on what criteria ultimately end
25 up covering the facilities that are in the Proposed

1 Project.

2 CO-HEARING OFFICER DODUC: Ooh, she's good.

3 (Laughter.)

4 CO-HEARING OFFICER DODUC: In your testimony,
5 you also refer specifically in discussing Alternative 3
6 that it was not consistent with the project objective
7 and, therefore, you know, you proposed Boundary 2.

8 WITNESS PIERRE: Do you mean Alternative 8?

9 CO-HEARING OFFICER DODUC: Alternative 8. I'm
10 sorry, Alternative 8. Now I'm getting all the numbers
11 mixed up, too.

12 WITNESS PIERRE: It happens.

13 CO-HEARING OFFICER DODUC: So, is it your
14 understanding that, regardless of the operational
15 criteria that this Board might impose, one of the project
16 objective is to have increased flexibility in operation
17 and, therefore, improve opportunity to operate the pump
18 capacity?

19 WITNESS PIERRE: To my knowledge, the
20 flexibility is not identified as a project objective.
21 It's . . . But I understand the relationship that you're
22 getting at in terms of the opportunities to improve water
23 supply. And the water supply is -- shorthand is one of
24 the objectives.

25 So, again, depending on the criteria and -- and

1 how that's applied, you could have those opportunities.

2 In terms of -- Are you asking about Boundary 2?

3 CO-HEARING OFFICER DODUC: And if you have that
4 opportunity, then it's possible -- if you have that
5 opportunity, then it's possible for there to be
6 additional exports yet still be operating within the
7 current pumping capacity.

8 WITNESS PIERRE: I think so, if I understand
9 your question.

10 One of the things we didn't talk much about
11 Boundary 2 was that it further restricts the South Delta,
12 so we are losing some diversion opportunity under
13 Boundary 2.

14 And because of the outflow criteria included in
15 Boundary 2, we're losing overall diversion capacity
16 because the inability or reduced opportunities to use the
17 North Delta facilities and the South Delta facilities, as
18 well as the use of water for outflow.

19 CO-HEARING OFFICER DODUC: All right. I think
20 I'm starting to beat this one to death as well, too.

21 But just to put a bullet high on this:

22 So maintaining current capacity does not imply
23 maintaining current exports.

24 WITNESS PIERRE: Total south of Delta exports?
25 That's right.

1 CO-HEARING OFFICER DODUC: Thank you.

2 Any other questions?

3 MS. RIDDLE: So just we need to clarify:

4 The analyses that were conducted for this
5 Project indicate that exports could be increased anywhere
6 between zero and 500,000 acre-feet on average depending
7 upon the operating criteria; correct?

8 That was your analysis that was submitted for
9 this Project, perhaps not yours but others. That's what
10 is included in other testimony.

11 So I -- Yeah, it seemed like we were kind of
12 dancing around that for a long time, not really
13 necessarily. But, you know, I think the crux of the
14 matter is, it depends on the operating criteria; correct?

15 So, it could be nothing, it could be no
16 increase, and it could up to, based on your analysis,
17 500,000 acre-feet on average; correct?

18 WITNESS PIERRE: So, I don't have the exact
19 numbers and those aren't numbers I have memorized. I
20 don't want to say "yes" explicitly to that question.

21 But I think it's important to know that it's
22 not just zero to some positive number. There's also
23 alternatives here that would actually reduce
24 South-of-Delta exports, so -- And that's all driven by
25 how the facilities are operated and the potential to use

1 the capacity that isn't changing.

2 CO-HEARING OFFICER DODUC: Anything else?

3 Okay. At this time, I think you might have
4 some exhibits to move into the record.

5 MR. MIZELL: Yes. We'd like to move Exhibits
6 DWR-1, 11, 12, 51, 52, 103 through 117, exclusive of 111
7 and 112, into the record.

8 CO-HEARING OFFICER DODUC: Any objections?

9 Mr. Volker.

10 MR. VOLKER: Yes. I don't think it's
11 necessary, but we would renew the objections posed
12 previously in writing.

13 Thank you.

14 CO-HEARING OFFICER DODUC: Thank you. Those
15 objections are noted.

16 All right. We are done with this panel? Oh.

17 MR. MIZELL: I also have some State Water Board
18 exhibits. Those were all DWR exhibits.

19 CO-HEARING OFFICER DODUC: Oh, okay. Wait
20 before you get there, Mr. Mizell.

21 Mr. Brodsky?

22 MR. BRODSKY: Yes. Just to renew my objections
23 to portions of DWR-51 that depend on State Water
24 Resources Control Board-3 which is the 2015 DEIR.

25 And I have submitted those objections in

1 writing.

2 Thank you.

3 CO-HEARING OFFICER DODUC: Thank you.

4 MR. JACKSON: I wanted to object that the DWR
5 has still not answered the question that was mandated by
6 the Board to disclose the sensitivity analyses.

7 I asked this question early in the hearing.
8 The Board mandated that they provide it. The agencies
9 have declined to do so and they, in fact, objected when
10 I -- today, in introducing it into evidence, that these
11 three exhibits that were downloaded from the BDCP
12 website, they said they lacked foundation.

13 But it's prejudicing me as a Protestant that
14 they have, in contempt of this order by the Board,
15 refused to provide it, and I object to this testimony
16 being introduced, that they did not answer this question
17 and it was mandated, and it prejudiced my questioning of
18 the witnesses, and those exhibits were excluded at their
19 request.

20 But that was information from an early BDCP
21 Steering Committee. The Board participated as an
22 ex officio member of the Steering Committee. There's
23 records of Tom Howard going to the meetings.

24 There were early decisions made about modeling,
25 about the range and analyses that were going to be

1 presented, that are important to be considered.

2 And I knew this at the beginning of the
3 hearing. I wanted them to be in evidence and the
4 Board -- the agencies have refused and can -- I brought
5 it up repeatedly that they had not responded.

6 But I object to all of this on the grounds that
7 it's -- I -- I'm asking for a contempt sanction.

8 They were in contempt of this order. They did
9 not provide this information, and I was not able to use
10 it because of their failure to provide it.

11 But I should be able to get information to the
12 extent that Miss Pierre in this entire process refers to
13 early analyses.

14 Like, even -- even Alternative 8, there's early
15 analyses, and it refers to alternative screenings. And
16 Appendix 3I says that that the Board approved this.

17 And we're not able to have -- to do questions
18 on it because DWR has refused to disclose it, and it's
19 prejudicial.

20 So, yes, I object.

21 CO-HEARING OFFICER DODUC: Thank you. We will
22 take your objection under advisement.

23 Mr. Mizell.

24 MR. MIZELL: Yes. I seem to have misplaced the
25 list of State Water Board exhibits that we included in

1 our last revised notice on the exhibits we intend to
2 enter into evidence.

3 If I could enter those into evidence first
4 thing tomorrow morning, that would be greatly
5 appreciated.

6 CO-HEARING OFFICER DODUC: Oh, we have your
7 letter, so I believe we're pulling it up right now.

8 MR. MIZELL: Okay.

9 MS. D'ADAMO: While we're waiting for that, for
10 DWR-1, you submitted an errata, so are you entering the
11 Errata DWR-1?

12 MR. MIZELL: Yes, including the errata for
13 DWR-1.

14 MS. D'ADAMO: Thank you.

15 MR. MIZELL: Yeah. So we'd like to enter into
16 evidence State Water Board Exhibits 1 through 9
17 inclusive, 21, 23, 27, 30, 65, 83, 84, and I think
18 there's one or two more there.

19 Would you scroll down?

20 CO-HEARING OFFICER DODUC: All right.
21 Mr. Mizell, we'll take that under advisement for now.

22 MR. OCHENDUSZKO: I think he was asking for
23 projections. Can you scroll down?

24 MS. RIDDLE: Can you scroll down, please?

25 MR. MIZELL: And 87.

1 CO-HEARING OFFICER DODUC: All right. Since
2 there have been some objections made, we'll take the
3 objections as well as your request to move these exhibits
4 into the record all under advisement.

5 Mr. Brodsky.

6 MR. BRODSKY: Yeah. Michael Brodsky, Save the
7 California Alliance.

8 We've submitted written objections --

9 CO-HEARING OFFICER DODUC: Yes.

10 MR. BRODSKY: -- to SWRCB-3, the 2015 RDEIR and
11 also the 2013 EIR -- I don't recall which number that is
12 offhand right now -- because they do not meet the
13 Kelly-Frye standard for scientific evidence.

14 And I'd also like to proffer on that, that in
15 upcoming panels, the Modeling Panel and other panels, we
16 will ask questions that support our objection to those
17 documents, so there'll be more -- more -- more coming
18 from our side why those aren't admissible.

19 CO-HEARING OFFICER DODUC: Thank you,
20 Mr. Brodsky.

21 Mr. Volker.

22 MR. VOLKER: Madam Chair, likewise, PCFFA
23 reduced its written objections to SWRCB Exhibits 21, 27,
24 30, 3, 4, and 102 on Kelly-Frye and related grounds.

25 Thank you.

1 CO-HEARING OFFICER DODUC: Thank you.

2 There is no need to renew everyone's
3 objections. We have them in writing.

4 Mr. Jackson.

5 MR. JACKSON: I simply don't want to miss an
6 opportunity.

7 I also join in the last two objections.
8 They're in writing and on Kelly-Frye.

9 CO-HEARING OFFICER DODUC: Thank you.

10 All right. Anyone else will adhere to my
11 request and not renew their written objections.

12 We're looking at 4:30, so at this point, unless
13 you -- I'm looking at my Co-Hearing Officer. If you
14 really want to proceed, I'm going to suggest that we
15 adjourn for the day, and we will resume in the morning
16 with your direct of your Panel 2 witnesses.

17 MR. MIZELL: (Nodding head.)

18 CO-HEARING OFFICER DODUC: 9 o'clock tomorrow.

19 MR. MIZELL: 9 o'clock.

20 CO-HEARING OFFICER DODUC: Thank you.

21 Thank you, Miss Pierre and Mr. Centerwall.

22 (Proceedings adjourned at 4:30 p.m.)

23

24

25

1 State of California)
2 County of Sacramento)

3

4 I, Candace L. Yount, Certified Shorthand Reporter
5 for the State of California, County of Sacramento, do
6 hereby certify:

7 That I was present at the time of the above
8 proceedings;

9 That I took down in machine shorthand notes all
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and
14 correct transcription of said shorthand notes, and a
15 full, true and correct transcript of all proceedings had
16 and testimony taken;

17 That I am not a party to the action or related to a
18 party or counsel;

19 That I have no financial or other interest in the
20 outcome of the action.

21

22 Dated: August 11, 2016

23

24

25

Candace L. Yount, CSR No. 2737