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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  
COASTAL HEARING ROOM  
1001 I STREET  
SECOND FLOOR  
SACRAMENTO, CALIFORNIA

PART 2

Thursday, February 8, 2018

9:30 A.M.

Volume 2

Pages 1 - 101

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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  
Conny Mitterhofer, Supervising Water Resource Control Engineer  
Kyle Ochenduszko, Senior Water Resources Control Engineer  
Andrew Deeringer

PART 2

For Petitioners:

California Department of Water Resources:

James (Tripp) Mizell  
Karla Nemeth, Director

The U.S. Department of the Interior:

Amy L. Aufdemberge, Esq.

INTERESTED PARTIES:

For Central Delta Water Agency, South Delta Water Agency  
(Delta Agencies), Lafayette Ranch, Heritage Lands Inc.,  
Mark Bachetti Farms and Rudy Mussi Investments L.P.:

John Herrick, Esq.

For Natural Resources Defense Council, The Bay Institute,  
and Defenders of Wildlife:

Doug Obegi

## 1 INTERESTED PARTIES (Continued)

2 For Restore the Delta:

3 Barbara Barrigan-Parilla

4 For City of Antioch:

5 Matthew Emrick

6 For The Environmental Justice Coalition for Water,  
7 Islands, Inc., Local Agencies of the North Delta, Bogle  
8 Vineyards/Delta Watershed Landowner Coalition, Diablo  
9 Vineyards and Brad Lange/Delta Watershed Landowner  
10 Coalition, Stillwater Orchards/Delta Watershed Landowner  
11 Coalition, Brett G. Baker and Daniel Wilson:

12 Osha Meserve

13 For Barbara Daly / North Delta C.A.R.E.S.:

14 Barbara Daly

15 For County of San Joaquin, San Joaquin County Flood  
16 Control and Water Conservation District, and Mokelumne  
17 River Water and Power Authority:

18 Thomas H. Keeling

19 For The Sacramento Valley Group, North Delta Water  
20 Agency, Tehama-Colusa Canal Water Authority:

21 David Aladjem

22 For State Water Contractors:

23 Stefanie Morris

24 For San Luis &amp; Delta-Mendota Water Authority:

25 Rebecca L. Harms

For Westlands Water District:

Philip A. Williams

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INTERESTED PARTIES (Continued)

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

Ryan Bezerra

For Sacramento County Water Agency, Glenn-Colusa Irrigation District, Biggs-West Gridley Water District, Carmichael Water District as well as Placer County Water Agency and the County of Sacramento:

Aaron Ferguson

For Sacramento Regional County Sanitation District and The City of Stockton:

Kelley Taber

For The County of Yolo:

Philip J. Pogledich

For San Joaquin Tributaries Authority (SJTA):

Tim O'Laughlin

For Friends of the River & Sierra Club of California:

E. Robert Wright

For Pacific Coast Federation of Fishermens Associations and Institute for Fisheries Resources:

Osha Meserve

For Snug Harbor Resorts, LLC:

Nicole S. Suard, Esq.

For Clifton Court, L.P.:

Suzanne Womack

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

Thomas H. Keeling (specially appearing)

1 INTERESTED PARTIES (Continued)

2 For California Department of Fish and Wildlife:

3 Director Chuck Bonham

4 For NOAA Fisheries:

5 Kathy Marcinkevich

6 For The City of Stockton:

7 Elbert Holman

8 For Center for Biological Adversity:

9 Steve Jones

10 For the North Delta Water Agency:

11 Melinda Terry

12 For San Francisco Baykeeper:

13 Ben Eichenberg

14 For Friends of the San Francisco Estuary:

15 Darcy Luce

16 For Partnership for Sound Science in Environmental  
17 Policy:

18 Craig S.J. Johns

19 For Friends of Stone Lakes National Wildlife Refuge:

20 Dale Claypool

21 For North Delta C.A.R.E.S.:

22 Barbara Daly (for Von Matney and for Melvin Skip Seebeck)

23 For Penny Opal Plant:

24 Penny Opal Plant

25

1 INTERESTED PARTIES (Continued)

2 For Norm Sands:

3 Norm Sands

4 For The California Water Storage Forum:

5 Ken Fanning

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1 Thursday, February 8, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: All right. It is  
5 9:30. We're on.

6

7 Good morning, everyone. Welcome back to this  
8 Water Right Hearing on the Water Right Change Petition  
9 for the California WaterFix Project.

10 I am Tam Doduc, Board Member and Hearing  
11 Officer -- Co-Hearing Officer for these proceedings. To  
12 my right is Board Chair Felicia Marcus and Co-Hearing  
13 Officer as well. We will be joined shortly by Board  
14 Member Dee Dee D'Adamo who will be to the Chair's right.

15 On my left are staff members attorney Dana  
16 Heinrich, Supervising Water Resources Control Engineer  
17 Conny Mitterhofer, and Kyle Ochenduszko. We're also  
18 being assisted by other staff today as needed.

19 A couple of general announcements:

20 First of all, please look around and identify  
21 the exit closest to you. In the event of an emergency,  
22 an alarm will sound and we will evacuate this room  
23 immediately. Please take your valuables with you.

24 Please take the stairs and not the elevators  
25 down to the first floor and exit to the park across the



1 street where we will wait for the all-clear signal before  
2 returning.

3 If you are not able to take the stairs, please  
4 flag down one of us or anyone wearing orange-colored  
5 clothing and you will be directed to a protected area.

6 Second announcement: This hearing is being  
7 Webcasted and recorded. Both the audio and video will be  
8 made available. So as you are providing your comments,  
9 please speak into the microphone and begin by stating  
10 your name and affiliation.

11 We have our court reporter back with us today,  
12 and the court reporter will prepare a transcript of this  
13 hearing.

14 The transcript for Part 1 of the hearing has  
15 already been posted on the State Water Board's WaterFix  
16 Petition hearing website, and the transcript for Part 2  
17 will be posted as soon as possible after the completion  
18 of Part 2.

19 If you would like a copy of the transcript  
20 sooner, please make arrangements with the court reporter  
21 directly.

22 Finally, and most importantly, because I have  
23 already heard several dings, please take a moment right  
24 now to put all noise-making devices on silent, vibrate,  
25 do not disturb.

1           Mr. Herrick, I'm looking at you.

2           Even if you think they are already set that  
3 way, please take a moment and check.

4           All right. Let the record note that we now  
5 have been joined by Board Member Dee Dee D'Adamo.

6           All right. I have a lengthy script on the  
7 background of the Water Right Hearings, as well as the  
8 proceedings for today.

9           We welcome those of you who are participating  
10 in this proceeding for the first time, and especially  
11 those who are appearing today to present your Policy  
12 Statements. We look forward to hearing them and to  
13 hearing from you.

14           But before we get to that, as most of you know,  
15 we had an announcement from the Department of Water  
16 Resources yesterday, and I see the Department's Director  
17 here, so I'd like to ask her to come up in light of the  
18 developments yesterday.

19           We welcome you, Director Nemeth, and ask you to  
20 provide us in person an update on the situation with  
21 respect to the WaterFix Project. We appreciated  
22 receiving by e-mail yesterday afternoon your press  
23 release, but it really did not shed a lot of light in  
24 terms of these proceedings, so appreciate you being here  
25 and ask you to please provide us a formal update on the

1 status of not only your project but also your thinking  
2 with respect to the Petition that is before us.

3 DIRECTOR NEMETH: Sure. Is this -- Okay. This  
4 is on.

5 Good morning Chair Doduc, Ms. Marcus and  
6 Miss D'Adamo.

7 It's a pleasure to be here and probably won't  
8 surprise you that I am planning to describe that in my  
9 Policy Statement.

10 So if -- With your permission, if you would  
11 allow me to just read from my Policy Statement, I think  
12 that may help enlighten us all on where we are on this  
13 process.

14 CO-HEARING OFFICER DODUC: I would ask,  
15 Director Nemeth, that, yes, please do read it but also  
16 please provide it for the record.

17 DIRECTOR NEMETH: I will do so.

18 First, I want to open by thanking you for the  
19 opportunity this morning to help frame this important  
20 task that's in front of the State Water Board.

21 For those of us in the State government that  
22 work on Delta issues, the physical, regulatory and human  
23 complexities in generating solutions are always daunting.

24 I want to thank the Board for the manner in  
25 which it's carrying out these proceedings to date.

1           You have before you a Water Right Change  
2           Petition to allow operation of up to three intakes for  
3           the State Water Project along the Sacramento River.

4           As stated by Secretary Laird at the outset of  
5           Part 1 of this hearing, the Brown administration pursues  
6           California WaterFix because the situation in the Delta  
7           remains harmful for fish and puts millions of people and  
8           millions of acres of farmland at risk of water supply  
9           disruptions.

10           While we have debated and litigated, our  
11           ecosystem and water supply reliability problems have only  
12           worsened throughout the last three decades. The  
13           California WaterFix is an important part of the solution  
14           to these challenges.

15           We have achieved a great deal since this  
16           hearing was initiated in early 2016. A Final  
17           Environmental Impact Report and Environmental Impact  
18           Statement was prepared by the Department of Water  
19           Resources and Bureau of Reclamation.

20           In 2017, the California Department of Fish and  
21           Wildlife issued an incidental take permit. The U.S. Fish  
22           and Wildlife Service and the National Marine Fisheries  
23           Service both issued non-jeopardy biological opinions and,  
24           in July of 2017, DWR approved the project.

25           Finally, and importantly, last fall, Public

1 Water Agencies throughout California that contract for  
2 State Water Project deliveries voted to support WaterFix.

3 Yesterday, I sent a memo to them outlining  
4 decisions and actions that would provide an additional  
5 option for a staged approach to implementation of  
6 WaterFix. This memo reflects our decision.

7 The press is incorrect that we have decided on  
8 one tunnel. We have been and continue to be engaged in  
9 high-level decisions with water agencies about who will  
10 participate and how.

11 Unfortunately, we cannot keep you fully  
12 informed as these conversations move forward, but it is  
13 critically important that the Department begin to outline  
14 potential options for staged implementation so that these  
15 water agencies can have that information to bring in  
16 front of their Boards for public discussion about  
17 implementation of WaterFix. That was the sole purpose of  
18 yesterday's memo.

19 To be clear, we are not modifying the project  
20 or the change requested in our Petition. In fact, it is  
21 crucial that the Board complete these proceedings and  
22 issue that decision on the project as currently proposed.

23 As with any water project of this size, many  
24 participants and potential participants need guidance  
25 from this Board about the project that they can build and

1 operate before making final commitments.

2 In addition to pursuing the project as  
3 proposed, DWR will also focus on an option that would  
4 allow implementation in the near term of a first stage  
5 that will include those elements of WaterFix fundable by  
6 south of Delta State Water Project contractors.

7 Under this scenario, we would pursue the  
8 remaining elements when additional funding materializes.  
9 Preparing for that eventuality now will provide the  
10 flexibility to immediately implement a first stage and  
11 not delay the significant benefits of that effort if full  
12 funding is not available for the entire project.

13 Again, we continue to believe that the full  
14 project as defined is the correct and necessary path for  
15 California, but implementing construction in stages would  
16 also be prudent, fiscally responsible, and meet the needs  
17 of the funders identified to date.

18 And let me repeat that DWR continues to seek  
19 the addition of all three intake locations for WaterFix.  
20 DWR believes that the ultimate construction of the whole  
21 project is better for California.

22 Moreover, since our various permits address the  
23 full project, the State will have the flexibility to meet  
24 everyone's needs when the time and funding comes for any  
25 deferred second stage.

1           In considering California WaterFix, I hope you  
2 will again reflect on DWR's commitment to meet our  
3 obligations under our Water Right Permits to protect  
4 beneficially uses of water.

5           To do this, the State needs additional points  
6 of diversion on the Sacramento River that are operated in  
7 real-time, and use information developed through the  
8 adaptive management process in order to improve ecosystem  
9 health and improve water supply reliability for the  
10 future.

11           In short, the California WaterFix must be  
12 implemented to best serve Californians by protecting both  
13 the Delta estuary and improving water supply reliability.

14           Adaptive management is a fundamental  
15 cornerstone described in the Department of Fish and  
16 Wildlife incidental take permit and Federal Biological  
17 Opinions issued for California WaterFix.

18           DWR will put in place the monitoring, research  
19 investments, and communication we need to implement  
20 WaterFix. And DWR is committed to management that is  
21 transparent and built on collaborative science.

22           Modeling is an effective tool for assessing the  
23 differences between two conditions, and DWR has used the  
24 industry standard models to analyze the differences  
25 between a future with and without California WaterFix.

1           A critical component of the State Water Project  
2 operations is real-time decision-making. California  
3 WaterFix proposes that real-time operations will be an  
4 important component of managing the State Water Project  
5 in order to meet our regulatory obligations.

6           Only through real-time operations can the State  
7 Water Project account for actual conditions that inform  
8 operational decisions, including fish presence, weather  
9 patterns, and unreported changes in diversion.

10           DWR Operators have an excellent record of  
11 accounting for and adapting to these unpredictable  
12 factors.

13           We pursue this project in large part because  
14 our work with our State and Federal fishery agencies  
15 convinces us that a new configuration of Delta  
16 conveyance, along with state-of-the-art fish screens and  
17 adaptive management, provides the flexibility to move  
18 water in a more benign way and will be protective of  
19 listed species.

20           In closing, I hope you will bear in mind the  
21 fundamental respect that my Department holds and has  
22 demonstrated for your authority and your critical role in  
23 regulating the State's water resources.

24           Thank you for your time and consideration.

25           CO-HEARING OFFICER DODUC: Thank you, Director.



1           Let me try to convey what I believe I heard you  
2 say and ask for you to either affirm or clarify.

3           DIRECTOR NEMETH: Sure.

4           CO-HEARING OFFICER DODUC: It is my  
5 understanding from your statement that the Department is  
6 not seeking at this time to change the Petition that is  
7 before us.

8           DIRECTOR NEMETH: That's correct.

9           CO-HEARING OFFICER DODUC: Any other questions?  
10 Thank you very much.

11          DIRECTOR NEMETH: Thank you.

12          CO-HEARING OFFICER DODUC: I noted that the  
13 Director took six minutes for her Policy Statement. That  
14 minute will be subtracted -- Actually, were you planning,  
15 Mr. Mizell, on providing a Policy Statement --

16          MR. MIZELL: (Shaking head.)

17          CO-HEARING OFFICER DODUC: -- I'm sorry --  
18 Opening Statement when your case in chief -- Because,  
19 normally, what we've asked parties to do is keep track of  
20 their Policy Statement and deduct that time from your  
21 Opening Statement time.

22          MR. MIZELL: Absolutely.

23           And our intention was that you could remove us  
24 from the -- from the 60 minutes allocated for the revised  
25 panel water structure.

1 CO-HEARING OFFICER DODUC: Thank you very much.

2 I see Mr. Obegi in the audience.

3 Yesterday afternoon, after receiving the press  
4 release from the Department regarding this matter, we  
5 also received a renewed motion from NRDC, The Bay  
6 Institute, and I believe the Defenders of Wildlife.

7 Mr. Obegi, if you would mind coming up and  
8 providing your comments on this matter.

9 MR. OBEGI: Thank you very much.

10 To Hearing Officers, Board staff, members of  
11 the public:

12 My name's Doug Obegi. I'm here on behalf of  
13 the Natural Resources Defense Council, et al.

14 We filed a motion for a stay or continuance of  
15 the hearing in light of the anticipated changes on  
16 January 31st.

17 The Board denied that motion on the 6th on --  
18 in light of the fact that there were only press reports  
19 that DWR was considering changing the project.

20 DWR has now announced and unveiled massive new  
21 modeling that has not been presented to the Board and has  
22 announced a change in the project so that they would  
23 stage implementation and construction. They lack the  
24 funding to complete the project as currently designed,  
25 the entire project, and so they are looking at building a

1 first phase.

2 As the Board is -- As the Hearing Officers have  
3 explained, this hearing is to set the initial flow --  
4 appropriate flow criteria under the Delta Reform Act for  
5 the project as it would be initially operated subject to  
6 modification over time. That necessarily implicates a  
7 single-tunnel two-intake project as currently  
8 contemplated by DWR.

9 This is a -- We filed this motion for stay  
10 because part -- all of the Protestants are prejudiced by  
11 the fact that there is this massive change in the project  
12 and new modeling information that none of us were aware  
13 of and none of us have had time to analyze or see.

14 All of the testimony in this proceeding is for  
15 a three-intake two-tunnel project under certain  
16 operations as described in a Final Notice of  
17 Determination under CEQA and final permits.

18 DWR in their press release has stated that they  
19 are going to do a supplemental CEQA analysis. They're  
20 going to need to amend their Federal Biological Opinions  
21 and amend their California Endangered Species Act permit.

22 The prerequisites to starting Part 2 of this  
23 hearing are completion of the CEQA process and completion  
24 of these Endangered Species Act permits and Biological  
25 Opinions so that protestants would have an adequate

1 project description under which to be able to question  
2 witnesses and understand the impacts of the project.  
3 That has not happened.

4 We are extremely prejudiced by this last-minute  
5 filing that fundamentally changes the scope of this  
6 project. Moreover, as we discussed in our motion, under  
7 the Board's regulations, they cannot approve a water  
8 right for a project that will be constructed in phases.  
9 You need to file separate applications.

10 It's unclear to us why a Change Petition, you  
11 would be allowed to do something through a change in the  
12 water right that would be illegal under a Water Right  
13 Application, per se.

14 Moreover, the Board's regulations regarding  
15 construction of works requires diligent construction. As  
16 DWR's motion states, they don't know when they would or  
17 if they would begin construction of the second phase  
18 because it would be dependent on funding.

19 And, finally, the Delta Reform Act of 2009  
20 requires that the parties that would benefit from a  
21 project enter into arrangements or enter into contracts  
22 to pay for all of the costs associated with this project  
23 before they can begin construction.

24 It appears that DWR is asking the Board to say  
25 that this is a single project, three intakes, two

1 tunnels, and then, for purposes of the Delta Reform Act,  
2 say, "This is a two-intake one-tunnel project. We're  
3 going to start construction without paying or making  
4 arrangements for the full cost."

5 Fundamentally, we don't -- Without seeing the  
6 modeling, without having time to understand it, without  
7 having the testimony of DWR about this changed modeling,  
8 we can't proceed in this hearing.

9 It's fundamentally unfair, it's against the  
10 public interest, and what it's going to do is create a  
11 sequential need for DWR to have a second round, which  
12 means all of us public interest folks will be spending  
13 time and money and resources that we don't have to  
14 participate in that hearing.

15 And for those reasons, we renew our motion for  
16 an emergency stay continuance and ask that that stay be  
17 granted until such time as explained in your February 6th  
18 order that there can be briefing on whether this  
19 constitutes sufficient change in the project that  
20 warrants the new filing and new application and/or  
21 additional testimony.

22 CO-HEARING OFFICER DODUC: Thank you --

23 MR. OBEGI: Thank you.

24 CO-HEARING OFFICER DODUC: -- Mr. Obegi.

25 Any questions of Mr. Obegi?

1           Everyone, sit down.

2           (Laughter.)

3           CO-HEARING OFFICER DODUC: We received also  
4 yesterday as well as today several joinders in NRDC's  
5 motion.

6           I will call up those parties who have submitted  
7 joinders and give them the opportunity to provide some  
8 short comments, not to repeat what has already been said,  
9 but to add anything that you'd like for us to consider.

10          We will begin with Restore the Delta.

11          Ms. BARRIGAN-PARILLA: Good morning, Chair  
12 Doduc and Board Members.

13          We wish we were seeing you under different  
14 circumstances.

15          We --

16          CO-HEARING OFFICER DODUC: Please identify  
17 yourself.

18          MS. BARRIGAN-PARILLA: Barbara Barrigan-Parilla  
19 with Restore the Delta.

20          We did file a joinder to NRDC's motion.

21          On September 26th, General Manager for  
22 Metropolitan Water District, Jeff Kightlinger, had  
23 announced to his Board of Directors that they had already  
24 looked at and considered a single tunnel for two-thirds  
25 of the price that would deliver two-thirds of the water

1 and that it can provide good results.

2 In San Bernardino in mid-January, the  
3 San Bernardino Valley Water District, there were  
4 discussions about a new 6,000 cfs tunnel.

5 And on February 5th, at the Orange County  
6 Municipal Water District, it was stated that a 6,000 cfs  
7 tunnel was in consideration; that it would be several  
8 feet larger in diameter; and that really the operational  
9 criteria wouldn't be completely put together for review  
10 until April or May.

11 So we have new materials right now added to the  
12 hearings by the Department of Water Resources that we  
13 have not been able to review.

14 There is going to be the need for a  
15 Supplemental EIR which indicates there are significant  
16 changes being made to the project.

17 Well, you have to evaluate the Petitioners'  
18 case. The Petitioners' case grossly contradicts what is  
19 being messaged and told to the public in government  
20 hearings through water agencies throughout Southern  
21 California. Consequently, there is no true transparency  
22 in what constitutes Cal WaterFix.

23 We're being jammed by the Department of Water  
24 Resources, and we are setting up a condition of phased  
25 construction where a water right could end up in cold

1 storage.

2 We feel that the process and the push by DWR to  
3 move forward is disrespecting the people of California,  
4 the public trust, the ideas of transparency, and good  
5 government.

6 Thank you.

7 CO-HEARING OFFICER DODUC: Thank you.

8 City of Antioch. Mr. Emrick, do you have  
9 anything to add?

10 MR. EMRICK: Thank you, Chair.

11 Matthew Emrick, City of Antioch.

12 Frankly, I don't have anything else to add. I  
13 would -- I would join into the last two comments which I  
14 thought were very well articulated.

15 Thank you.

16 CO-HEARING OFFICER DODUC: Very efficient.

17 Thank you, Mr. Emrick. You got it.

18 Miss Des Jardins, are you here?

19 CSPA.

20 Oh, Miss Meserve.

21 MS. MESERVE: Good morning, Chair Doduc.

22 Miss Des Jardins is on her way. She'll be here  
23 this afternoon. She does have cross to conduct if we  
24 proceed.

25 And I do -- We also did a joinder just now so I



1 would like to make comments in line after the others.

2 CO-HEARING OFFICER DODUC: CSPA, are you here?

3 Let it be noted CSPA also filed a joinder.

4 North Delta C.A.R.E.S.

5 MS. DALY: Good morning. My name is Barbara

6 Daly. I'm representing North Delta C.A.R.E.S.

7 And what's been said expresses our opinions and

8 what we have to say, so we have nothing to add.

9 Thank you.

10 CO-HEARING OFFICER DODUC: Thank you,

11 Miss Daly.

12 Mr. Porgans also submitted a joinder. I do not

13 see Mr. Porgans in the audience.

14 I do not have a list of the new joinders so I

15 will ask Miss Meserve to come up.

16 Oh, hang on. I'm being handed something.

17 San Joaquin County.

18 MR. KEELING: Thank you, Madam.

19 On behalf of San Joaquin County Protestants, we

20 join in the NRBC --

21 CO-HEARING OFFICER DODUC: Identify yourself,

22 please.

23 MR. KEELING: Tom Keeling on behalf of the

24 County.

25 CO-HEARING OFFICER DODUC: Mr. Keeling.

1           MR. KEELING: We joined in NRBC's motion, which  
2 is now ripe. This is not premature. We're not talking  
3 about a hypothetical anymore, as stated in last week's  
4 ruling, or the ruling earlier this week.

5           I have very little to add to what has been said  
6 other than that characterizing this as a mere staged  
7 approach is tantamount to saying, Move along, folks.  
8 Nothing to see here."

9           If that were true, we wouldn't be talking about  
10 a new Supplemental EIR coming out in June to be  
11 supposedly certified or finalized in October.

12           We wouldn't be talking about new engineering  
13 specs on the tunnels.

14           And we certainly wouldn't be talking about  
15 endless pages of new modeling that no one in this room on  
16 the Protestant side has had an opportunity to review.

17           Thank you.

18           CO-HEARING OFFICER DODUC: Thank you,  
19 Mr. Keeling.

20           Downey Brand has also submitted a joinder.

21           MR. ALADJEM: Good morning, Chair Doduc,  
22 Members of the Board.

23           David Aladjem, Downey Brand, on behalf of  
24 Sacramento Valley Group, North Delta Water Agency, and  
25 Tehama-Colusa Canal Water Authority.

1           Chair Doduc, in response to the motion, which  
2 we joined, by NRDC, just a couple of points.

3           First of all, as indicated in our joinder, the  
4 Board has been very clear from the outset of these  
5 hearings that the efficient commencement of Part 2 should  
6 wait upon the completion of the environmental document.

7           The Board delayed Part 2 for a number of months  
8 after the approval of the project last summer to allow  
9 for the orderly presentation of evidence in Part 2.

10           We now learn that there will be a supplemental  
11 environmental document released, I believe, in June with  
12 a goal of a complete environmental document, final  
13 document and approval in October.

14           Under the way the Board has very -- I think  
15 very well set up in this hearing, we should wait at least  
16 until the environmental document comes out in June so we  
17 have all of that information so the Board can make an  
18 informed decision.

19           Second of all, Director Nemeth just said this  
20 is the same project as before.

21           Approximately now, I believe, 45 minutes ago,  
22 the Department served on all parties an e-mail which  
23 indicated, as best I could tell, there are literally 80  
24 to 100 different model runs. They are math -- the  
25 hydrologic model runs, biological model runs.

1           And the e-mail that sent out -- that was sent  
2 out to the Board Service List indicates those and that  
3 information would be relevant to the questions in front  
4 of us. None of the Protestants have had more than a  
5 chance to look at that e-mail.

6           It is, as Mr. Obegi said, a basic violation of  
7 due process to conduct this hearing without us having  
8 full and free opportunity to have our experts look at  
9 that material and to then be able to cross-examine.

10           Because in that information, we may well have  
11 things that we want to ask the Department's witnesses in  
12 Part 2 on the cross-examination and testimony they've  
13 already presented. We don't have that opportunity. And,  
14 therefore, delay of this hearing for a reasonable amount  
15 of time, 45 days, 60 days, is necessary in order to  
16 ensure due process.

17           Happy to take any questions.

18           CO-HEARING OFFICER DODUC: Thank you,  
19 Mr. Aladjem.

20           Miss Meserve. And then what I'll do is, I'll  
21 go through the remaining parties and ask if any of the  
22 other parties wish to add any comments.

23           MS. MESERVE: Good morning. Osha Meserve for  
24 Local Agencies of the North Delta, Bogle, Stillwater  
25 Orchards and Diablo Vineyards.

1           In addition, I represent a number of Part 2  
2 parties -- environmental Council of Sacramento, Sandhill  
3 Cranes, and Friends of Stone Lake -- that are also  
4 concerned about this proceeding with the hearing in light  
5 of yesterday's announcement.

6           In preparation for today, the parties have been  
7 reviewing all of the cases in chief submitted for Part 2.  
8 A large portion of time has been examining and create --  
9 and creating questions around the relationship of the new  
10 scenario CWF H3+ to what was presented before so that we  
11 can do that. We've been trying to make the adjustment,  
12 as the Board ordered, to proceed with the hearing.

13           We were told, too, that we should be comparing  
14 the No-Action Alternative to the current proposal, but we  
15 have to look back at our analysis from what we saw  
16 before, which was what was available to us leading up to  
17 the submission of our Part 2 testimony on November 30th.  
18 We had to rely on that prior information. That was bad  
19 enough.

20           Now, yesterday, we hear yet there's another  
21 change to the project which, although it was apparently  
22 in the works with DWR and the contractors for several  
23 months, was never brought forth to this Board and its  
24 prejudiced to both the Board and the public and all the  
25 parties to this proceeding.

1           There's a couple of key points that come from  
2 the letter that Ms. Nemeth -- Director Nemeth released  
3 yesterday, significant enough changes to prepare a  
4 Supplemental Environmental Report.

5           After practicing CEQA for 20 years, I can tell  
6 you nobody prepares a supplement EIR unless they need to.  
7 If they can rely on the prior EIR or just prepare an  
8 addendum, they would have done it.

9           These changes also require changes to their  
10 permitting that they've already received. And there's no  
11 word on how they're going to comply with the National  
12 Environmental Policy Act and how the Bureau is going to  
13 proceed or participate in this staged approach. Indeed,  
14 the Bureau has done nothing. They are also Petitioner.

15           We don't know the details of the new project.  
16 We received a conceptual diagram that shows that it's a  
17 different sized tunnel -- two different sized tunnels  
18 that were in Alternative 4A, which we've been studying  
19 for years.

20           That means a new phasing, that means a new  
21 construction period, different operations, different  
22 impacts on fish and wildlife and different impacts on  
23 legal users of water. None of that has been disclosed.

24           So it's a lot more than the 90 modeling files  
25 that were released yesterday and that have been in the

1 works, I believe, for months.

2 CO-HEARING OFFICER DODUC: Wrap up,  
3 Miss Meserve.

4 MS. MESERVE: If the changes are as minimal as  
5 DWR argues, there would be no reason to be completing a  
6 seven-month CEQA review.

7 We shouldn't be required to proceed with this  
8 hearing until there's a clear project description and  
9 some clear analysis so that we can understand how this  
10 affects both Part 1 and Part 2 issues.

11 We should be provided the opportunity to go  
12 back and revise both our Part 1 and Part 2 testimony to  
13 match the currently proposed project, whatever it is, and  
14 then we will need to proceed after that.

15 I can understand today we're accepting Policy  
16 Statements. That's more general and it's about the  
17 overall project which, as Director Nemeth has explained,  
18 still is -- they're attempting to proceed with.

19 But any other proceeding does not -- cannot be  
20 taken care of in cross-examination. This is too big of a  
21 change, and we need to know the details before we proceed  
22 further.

23 Thank you.

24 CO-HEARING OFFICER DODUC: Thank you,  
25 Miss Meserve.

1 All right. That's at least all the joinders I  
2 have for now.

3 Let me go through by party number. We'll begin  
4 with the State Water Contractors.

5 MS. MORRIS: Good morning. Stefanie Morris for  
6 the State Water Contractors. The State Water Contractors  
7 support the Department.

8 I would like to note for the record that the  
9 Department has said it is not changing its Petition. It  
10 still seeks the full project. It is simply looking at a  
11 possible staged implementation of construction.

12 This is common in large infrastructure  
13 projects. It's also common in water rights proceedings  
14 that they move forward before financing decisions are  
15 made and also before construction begins because it's  
16 necessary. It's a planning and it's a permit.

17 In fact, the Delta Reform Act requires, before  
18 construction can begin on this project, that a change  
19 petition be granted by this Board.

20 So we -- While we understand frustration and we  
21 understand the Department has provided additional  
22 modeling for a staged implementation, we still think it's  
23 relevant and efficient to proceed with Part 2 of this  
24 hearing based on the full 9,000 cfs project and for the  
25 Board to consider options for looking at a future date,



1 giving parties time to look at the staged implementation,  
2 additional submittal of evidence and cross-examination  
3 and -- and response to that evidence.

4 The reason that it is not inefficient to  
5 continue right now is because the Department is saying it  
6 still seeks the full 9,000 project and, therefore, that  
7 full 9,000 needs to be analyzed, and the evidence that  
8 has been submitted by DWR and the other Protestants needs  
9 to move before the Board.

10 Thank you.

11 CO-HEARING OFFICER DODUC: Thank you,  
12 Miss Morris.

13 San Luis & Delta-Mendota, followed by  
14 Westlands.

15 MS. HARMS: Hello. I'm Rebecca Harms here for  
16 San Luis Delta-Mendota.

17 We don't have any comment at this time.

18 CO-HEARING OFFICER DODUC: Thank you.

19 MS. HARMS: Thank you.

20 CO-HEARING OFFICER DODUC: Does the Westlands  
21 have any comment?

22 MR. WILLIAMS: No, ma'am.

23 CO-HEARING OFFICER DODUC: Thank you.

24 Sacramento Group has already spoken.

25 Does anyone wish to speak on behalf of that

1 group?

2 MR. BEZERRA: Yes. Thank you very much.

3 Good morning, Ms. Doduc, Ms. Marcus,  
4 Ms. D'Adamo. Ryan Bezerra for the Cities of Folsom,  
5 Roseville, San Juan Water District and Sacramento  
6 Suburban Water District.

7 What the Department has announced is a phased  
8 project. Director Nemeth just said that. She referred  
9 to the second phase as a deferred phase.

10 There clearly -- Even if the Department goes  
11 forward exactly as planned, there will clearly be some  
12 period of time where one part of the project operates and  
13 another does not.

14 You have heard my clients in Part 1 express  
15 serious concern about the possibility that this project,  
16 whatever it may be, will dramatically affect dry-year  
17 storage in Folsom Reservoir in any given year.

18 This Board issued an emergency order during the  
19 drought to protect one year of Folsom Reservoir storage  
20 due to the potential impacts on public health and safety  
21 supplies out of that reservoir.

22 There, therefore, as the Department has  
23 proposed the project, is substantial risk that any year  
24 during the phased of the project -- during the first  
25 phase of operation could dramatically affect Folsom

1 Reservoir. There is absolutely no evidence in this  
2 record about that risk.

3 And the fact that the Department released  
4 something like 85 new technical studies yesterday about  
5 how a phased project would work demonstrates that the  
6 Department is -- wants to know what would happen during  
7 the first phase as well. Right now, we don't know what  
8 that would be.

9 We proceeded on Part 1 with the concept that in  
10 any given year during project implementation, the entire  
11 project would be operating. That is not what we are  
12 looking at now.

13 The Department can say that they're  
14 preparing -- that they are proposing the full project,  
15 but what they are proposing is the operation of a partial  
16 project for some undefined period of time based -- and  
17 reflected in technical studies that we got yesterday at  
18 5 p.m.

19 And I -- I thought that our Friends of  
20 Westlands' Policy Statement yesterday hit the nail  
21 exactly on the head.

22 The proposed phased project is a State Project.  
23 The Petition you have in front of you is a Federal and  
24 State Project. We have absolutely no idea whatsoever  
25 what the first phase, a State-only phase, would do to

1 Federal facilities and the contractors who depend on  
2 those Federal facilities to get their water supplies.

3 We -- At this point, we -- there is no evidence  
4 in this record -- and the Department, as far as I know,  
5 has not proposed to submit any evidence in this record --  
6 as to how legal users of water could be injured during  
7 implementation of the first phase.

8 Moreover, we're here to talk about, on Part 2  
9 potentially, impacts on public trust resources. We're  
10 talking several listed species in these rivers.

11 Any given year of impact on those species could  
12 be unreasonable. We have no idea, and there's any  
13 evidence in the record, what effect may occur on those  
14 species during the phase -- the first phase of  
15 implementation.

16 So, the Board needs to stop and think very  
17 carefully how to proceed forward, because I understand  
18 you want to proceed with this. We've been going a long  
19 time. But we literally have no record whatsoever and no  
20 procedures for how to deal with what may occur during the  
21 first phase of implementation as proposed by the  
22 Department.

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

25 Anyone else from Group 7?

1           MR. FERGUSON: Good morning. Aaron Ferguson  
2 for Sacramento County Water Agency, Glenn-Colusa  
3 Irrigation District, Biggs-West Gridley Water District,  
4 Carmichael Water District, as well as Placer County Water  
5 Agency, and the County of Sacramento, who will be  
6 proceeding in Part 2 if we proceed.

7           We certainly support Mr. Obegi's request and,  
8 for the most part as well, all the comments that  
9 Mr. Bezerra just made in terms of the upstream  
10 operations.

11           The agency certainly has concerns about how the  
12 changed -- or staged project may affect operations.

13           And he's right, the project they're  
14 proposing --

15           CO-HEARING OFFICER DODUC: There's no need to  
16 repeat what he said.

17           MR. FERGUSON: -- will be on the ground for a  
18 period of time. It's important to understand how it's  
19 going to affect folks upstream.

20           From the County's perspective, the physical  
21 change -- changes in the landscape are critical and  
22 important. We need to be able to analyze what the  
23 physical changes will run on the two-tunnel -- or, excuse  
24 me -- two-intake one-tunnel project, what that  
25 configuration means in terms of the change of the

1 landscape in and around those -- those physical  
2 facilities, and so we certainly need time to understand  
3 that.

4 I have a sense the EIR's probably going to be  
5 addressing something like that. We need a chance to  
6 seriously understand that and be able to cross-examine  
7 the Proponents' witnesses on those issues.

8 I will just say that -- And I don't know the  
9 extent to the which DWR might suggest that this is not  
10 surprise testimony, they're not submitting any testimony,  
11 so there's no big deal.

12 I will just say that it's certainly important  
13 information and it's critical information that we need a  
14 chance to be able to evaluate in order to be able to  
15 cross-examine their witnesses in an efficient fashion.

16 For all those reason, we support the request to  
17 the stay the hearing.

18 CO-HEARING OFFICER DODUC: Thank you.

19 Moving on, I have City of Brentwood.

20 Reclamation Group 10.

21 I'll go by Group Number now. Hopefully, you  
22 still remember your Group Number.

23 (Audience grumbling.)

24 CO-HEARING OFFICER DODUC: It's a test,  
25 Mr. O'Laughlin.

1 11, water Farm.

2 12, County of Colusa.

3 13, Sacramento Regional Sanitation District.

4 Miss Taber.

5 MS. TABER: Good morning. Kelley Taber on  
6 behalf of Sacramento Regional County Sanitation District  
7 and, for efficiency, also on behalf of the City of  
8 Stockton, which comes up later.

9 Regional San and Stockton join in the NRDC  
10 motion and endorse the comments made by the other  
11 speakers.

12 We have just two additional brief comments to  
13 make:

14 And that is to point out that, as regards the  
15 phased approach, the EIR that was completed and certified  
16 by DWR and offered into the record at this point  
17 specifically rejected analyzing a phased alternative,  
18 which had been recommended by the Delta Stewardship  
19 Council, on the grounds that that alternative would be  
20 both fiscally imprudent and result in more significant  
21 environmental impacts to the Delta and the County's  
22 residents.

23 And I don't have handy the citation, but it's  
24 documents that we've submitted to the Board in the last  
25 few weeks.

1           Those specific findings are troubling and  
2 suggest that those go straight to the questions that are  
3 at issue here in Part 2 and I think further support  
4 NRDC's motion and the request of the parties that it  
5 would be essential to see a full environmental analysis  
6 of the impacts of the staged approach in light of the  
7 findings that have already been made by the Department.

8           And, secondly, I would ask that the Hearing  
9 Officers request clarification from Director Nemeth on a  
10 statement that I believe the parties heard her make, that  
11 it wouldn't be -- the Department cannot keep the Board  
12 and the public fully informed of the progress they are  
13 making in evaluating and potentially implementing a  
14 phased construction of the project.

15           I don't think I misheard that. I don't  
16 understand why, as a public agency, especially with this  
17 proceeding ongoing, the Department would be unable to  
18 keep the public and the participants fully informed, and  
19 certainly this Board, so we would like that clarified  
20 today on the record.

21           Thank you.

22           CO-HEARING OFFICER DODUC: Thank you,  
23 Miss Taber.

24           Next, I have Yolo County, with East Bay MUD to  
25 follow.



1                   MR. POGLEDICH: Good morning. Phil Pogledich,  
2 County Counsel for Yolo County.

3                   I have a Policy Statement I'll be delivering  
4 separately on behalf of Supervisor Oscar Villegas.

5                   But just to address the NRDC motion: Yolo  
6 County supports the motion.

7                   As you may know, Yolo County's participation in  
8 Part 2 is going to focus on structure-related impacts for  
9 the county, particularly in the Clarksburg area, and  
10 particularly for the agricultural industry in that area.

11                   To the extent that phasing of the construction  
12 is going to result in construction over a longer period  
13 of time, or other changes, then our Part 2 testimony  
14 would necessarily change to reflect the potential for  
15 either longer or greater, or perhaps both, effects on the  
16 overall impacts that our agricultural industry would  
17 experience in the Clarksburg area.

18                   So, as others have said, I think it's critical  
19 for us to understand what a staged or phased construction  
20 of this project would mean in terms of impacts on our  
21 local agricultural industry in order for us to properly  
22 participate in Part 2.

23                   Thank you.

24                   CO-HEARING OFFICER DODUC: Thank you very much.

25                   East Bay MUD.

1 I'm not seeing anyone.

2 We'll move on to Group Number 16, Friant.

3 17, San Joaquin River Exchange Contractors.

4 18, San Joaquin Tributary Authority.

5 Remember, Mr. O'Laughlin, you are Group 18.

6 MR. O'LAUGHLIN: Yeah. That's a good one.

7 Thank you. I can't remember yesterday.

8 Thank you.

9 Tim O'Laughlin representing the San Joaquin  
10 Tributaries Authority.

11 I've been harping on this issue since this  
12 hearing started, and I'm going to bring it back around  
13 again.

14 Your charge in this hearing under the Delta  
15 Reform Act is setting an appropriate Delta flow criteria.  
16 It's probably one of the key components of this hearing  
17 as we move forward.

18 And I'm, just on a practical basis, confused  
19 about how we would do that now given that we don't know  
20 how the Project's going to go forward.

21 So I have no problem if DWR wants to get up  
22 here and affirm that they're going forward with the  
23 entire Petition as filed, because then we can have an  
24 appropriate Delta flow criteria for the entire project.

25 And if they decide that they want to take the

1 risk of phasing it and segmenting it in sections and  
2 parts, that's fine with me. But from the get-go, they're  
3 going to know what the appropriate Delta flow criteria  
4 will be, what inflows will be, what outflows will be, and  
5 what the bypass flows will be. And I find that very  
6 difficult to believe that that's going to happen in this  
7 process.

8           So if DWR can't -- They can't have it both  
9 ways. They can't say that they're going -- they want to  
10 segment the project and not have this Board decide what  
11 the appropriate Delta flow criteria are going to be from  
12 the outset.

13           And they're going to have to live by that,  
14 because that is required by the legislature to be part of  
15 your approval for their Petition. So if the Petition  
16 goes forward as a whole, they're going to have to buy it.

17           CO-HEARING OFFICER DODUC: Thank you,  
18 Mr. O'Laughlin.

19           Group 20. Actually, I believe Miss Meserve  
20 covered 19 and 20.

21           21, Central Delta and South Delta.

22           MR. HERRICK: Thank you. John Herrick for  
23 South Delta parties.

24           We join in NRDC's motion and just reaffirm the  
25 other comments of the Protestants as to why the

1 proceeding should not proceed.

2 Thank you.

3 CO-HEARING OFFICER DODUC: Thank you,

4 Mr. Herrick. Efficient as always.

5 Stockton East is next.

6 North San Joaquin Water Conservation District.

7 Okay. Solano County.

8 Contra Costa County and Contra Costa County

9 Water Authority -- Water Agency. Excuse me.

10 28, California Delta chambers. No?

11 29, Steamboat Resort.

12 30, Save the California Delta Alliance.

13 33, Planning & Conservation League.

14 MR. WRIGHT: Does that also include Friends of

15 the River and Sierra Club, 33?

16 CO-HEARING OFFICER DODUC: Yes, it does.

17 Sorry. It does.

18 MR. WRIGHT: Yes. Good morning. Bob Wright.

19 I'm here the representing Friends of the River and Sierra

20 Club of California.

21 And we also join in and support NRDC's motion.

22 And I just wanted to follow up a little bit on

23 the comments that Osha Meserve made a few minutes ago:

24 That under the law, CEQA, Public Resources Code Section

25 21166, a Supplemental EIR is only required if one of

1 three things happens:

2           Substantial changes occur in the project which  
3 require major revisions in the EIR. That's the language  
4 that the statute uses.

5           Or substantial changes in the circumstances  
6 surrounding the project require major revisions of the  
7 EIR.

8           Or there's significant new information becomes  
9 available.

10           So, we've got a free country. We've got a  
11 First Amendment. The DWR Director and the State Water  
12 Contractors are free to tell you, to speak, that there  
13 are no changes in the project. But under the law, there  
14 must be substantial changes in the project or the  
15 circumstances or significant information or no  
16 Supplemental EIR is required.

17           And as Osha Meserve told you, in her 20  
18 years -- and I'd add in my 45 years -- nobody, to my  
19 knowledge, has ever prepared a Supplemental EIR if they  
20 didn't have to because they met the requirements in  
21 Section 21166 of CEQA.

22           Thank you very much.

23           CO-HEARING OFFICER DODUC: Thank you.

24           Next will be Group 34, the Environmental  
25 Justice Coalition for Water.

1 I'm not seeing anyone here.

2 We will now go to 38, Pacific Coast Federation  
3 of Fisherman's Association and Institute for Fishery  
4 Resources.

5 Miss Meserve, you don't represent them.

6 MS. MESERVE: I am an authorized representative  
7 for Environmental Justice Coalition for Water.  
8 Mr. Bailey couldn't be here today.

9 I think their clients would be concerned about  
10 the very same issues, obviously.

11 CO-HEARING OFFICER DODUC: Would be? Do you  
12 know for a fact?

13 MS. MESERVE: Yes. Well, he authorized me to  
14 come today and help argue for a stay of the hearing.

15 CO-HEARING OFFICER DODUC: All right.

16 MS. MESERVE: And I know that he has submitted  
17 testimony regarding impacts to fisheries, in particular,  
18 and subsistence fishing.

19 And if there's a different operational scenario  
20 that has two intakes operating, then the kind of  
21 switching off and on that we saw proposed with the three  
22 intakes, we don't know yet.

23 And maybe the 90 files of modeling reveal this  
24 or maybe the Supplemental EIR would reveal it, but it  
25 could be very different fish impacts and may be much

1 harder if they're hammering those two intakes or more for  
2 fish to get past, and that's just another question about  
3 what the project is that has been announced yesterday.

4 Thank you.

5 CO-HEARING OFFICER DODUC: Thank you,  
6 Miss Meserve.

7 38, PCCFA.

8 39. Oh, Miss Daly -- Miss Daly has already  
9 spoken.

10 41, Miss Suard, are you here?

11 MS. SUARD: Nicky Suard with Snug Harbor  
12 Resorts LLC.

13 Good morning.

14 First of all, I join in NRDC's motion to stay.

15 And I only got the e-mail this morning, so it  
16 is to me a big change.

17 I -- I want to point out -- I'm going to  
18 probably take the whole five minutes. But I wanted to  
19 point out:

20 DWR-574 is -- which was uploaded around, I  
21 believe, beginning November -- is a graphic showing one  
22 tunnel. It's a side view of what one tunnel looks like  
23 going through Bacon Island.

24 So that made me -- That was going to be one of  
25 the things -- I've been reviewing their documents -- I

1 was going to ask about that: Why are they only showing  
2 one tunnel?

3 So they uploaded that in November. So I'm just  
4 kind of curious. Why did it take this long for all of us  
5 to get the information? Or was that a graphic mistake?  
6 I don't know. But I just want to point that out.

7 I would like to say that, since 2000, the water  
8 quality -- the drinking water quality for humans --  
9 Everybody talks about the fish. I'm talking about the  
10 humans. The drinking water quality in the Delta is  
11 degrading. The -- Our wells --

12 CO-HEARING OFFICER DODUC: Miss Suard --

13 MS. SUARD: Sorry.

14 CO-HEARING OFFICER DODUC: -- I need you to  
15 focus.

16 MS. SUARD: Okay.

17 CO-HEARING OFFICER DODUC: We are right now  
18 only focusing on the announcement from the Department and  
19 NRDC's motion to stay.

20 MS. SUARD: Okay. So it is a Policy Statement.

21 CO-HEARING OFFICER DODUC: No. I'm -- I'm  
22 not --

23 MS. SUARD: Sorry --

24 CO-HEARING OFFICER DODUC: -- taking Policy  
25 Statements yet. I'm only asking the parties for their



1 input on the motion before us from NRDC.

2 MS. SUARD: Sorry.

3 I support the motion by NRDC to stay until  
4 at -- for at least 90 days, because there is a lot of  
5 modeling to review.

6 Thank you.

7 CO-HEARING OFFICER DODUC: Thank you,  
8 Miss Suard. We'll get to your Policy Statement, I  
9 promise, later today.

10 MS. SUARD: Thanks.

11 CO-HEARING OFFICER DODUC: 42, SolAgra Corp.  
12 43, Clifton Court.

13 Hello, Miss Womack.

14 MS. WOMACK: Good morning. Suzanne Womack  
15 representing my family farm, Clifton Court, L.P.

16 And I'm proud to be a part of such an  
17 intelligent group of Protestants. And I'm proud to join  
18 NRDC's motion for continuance.

19 Thank you so much.

20 CO-HEARING OFFICER DODUC: Thank you,  
21 Miss Womack.

22 I have -- Is there anyone here from ECOS,  
23 Environmental Council of Sacramento?

24 Friends -- Oh, is that Osha -- I'm sorry --  
25 Miss Meserve?

1 MS. MESERVE: (Nodding head.)

2 CO-HEARING OFFICER DODUC: Okay. Friends of  
3 Stone Lake, Save Our Sandhill Cranes?

4 All right. I think that covers all the  
5 officially designated parties.

6 Are there any parties whom I did not call?

7 Mr. Keeling, didn't I see you earlier?

8 MR. KEELING: You did. And I was speaking at  
9 that time on behalf of the San Joaquin County  
10 Protestants.

11 I've also been authorized to appear specially  
12 by Michael Jackson on behalf of CSPA, C-WIN, and  
13 AquAlliance. As you indicated earlier, those Protestants  
14 have joined in the NRDC motion.

15 Mr. Jackson thought it would be respe -- more  
16 respectful for him, since he has the flu, not to be here,  
17 and I fully agree.

18 CO-HEARING OFFICER DODUC: We thank him a lot.

19 MR. KEELING: We thank him for a lot of things,  
20 especially that today.

21 He wanted to -- to make it very clear as to how  
22 emphatically they agree with the NRDC motion and how  
23 essential they think that motion and the granting of that  
24 motion is to preserving not only the actual integrity but  
25 the appearance of integrity of this proceeding.

1 Thank you.

2 CO-HEARING OFFICER DODUC: Thank you,  
3 Mr. Keeling.

4 Any other officially designated parties?

5 At this time, I will turn back to Director  
6 Nemeth and Mr. Mizell and Miss Aufdemberge, if you wish  
7 to add anything.

8 MR. MIZELL: Tripp Mizell for DWR.

9 As you might expect, the Department has certain  
10 disagreements with the law and facts that have been  
11 presented by Protestants and other parties here this  
12 morning.

13 We would request that we have the opportunity  
14 to at least respond in writing prior to you making any  
15 decision on this motion.

16 CO-HEARING OFFICER DODUC: All right. Any  
17 other questions? If not, then I think we need to take a  
18 little break.

19 We will return at 10:30.

20 I thank everyone for their input this morning.  
21 I thank everyone who's been patient sitting there to  
22 present your Policy Statements.

23 We will return at 10:30 and I promise we will  
24 get to those Policy Statements.

25 (Recess taken at 10:23 a.m.)

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

2 CO-HEARING OFFICER DODUC: Sit down, everyone:

3 It is 10:30. We are resuming.

4 How soon we forget, Mr. Aladjem. Sit down.

5 All right. Thank you all for your patience and  
6 for the comments and arguments presented today.

7 Mr. Mizell, per your request, the Department  
8 and the Bureau may have until 5 p.m. tomorrow to submit a  
9 written response to NRDC's motion, as well as all the  
10 comments and issues raised today.

11 MR. MIZELL: (Nodding head.)

12 CO-HEARING OFFICER DODUC: Be advised that  
13 Hearing Team staff may follow up later today with  
14 questions that will be shared to the entire Service List  
15 with specific issues we want the Department and the  
16 Bureau to address in your response.

17 All other parties, you will have until noon  
18 next Tuesday to respond to whatever is provided by the  
19 Petitioners by close of day tomorrow.

20 All the hearing days for next week, as well as  
21 tomorrow, are hereby vacated. Unless we inform you  
22 otherwise, we prepare to resume -- or to initiate or to  
23 begin the evidence-sharing portion on February 22nd.

24 Does everyone have that? Is there any question  
25 on what I just said?

1 All right. Thank you.

2 With that, I will go back to my prepared script  
3 for today.

4 All right. How much of this background do you  
5 think we need?

6 Since I see some new faces, let me take the  
7 time, and I will ask all the usual players to bear with  
8 us for a minute.

9 But, as you can probably tell already from this  
10 morning's discussion, this type of water right proceeding  
11 is very, very different from our usual public meetings.

12 So let me share a little bit of background  
13 information on what this all means and what this all  
14 involves.

15 A Water Right Hearing is a quasi-judicial or a  
16 court-like proceeding -- hence, I have a gavel --  
17 conducted by us to develop a record of evidence relevant  
18 to specific key issues that we have identified in a  
19 Hearing Notice. We will rely on this evidentiary record  
20 to make our decision on this Petition.

21 While the hearing is open to the public to  
22 attend and to make policy type statements, participation  
23 in the evidentiary part of the hearing is limited only to  
24 designated parties who submitted several months ago the  
25 required Notices to participate. Those were the parties

1 we heard from here today.

2 Non-parties or interested person who are not  
3 actively involved in the evidentiary portion of the  
4 hearing may provide comments in the form of a brief  
5 Policy Statement either at the beginning of the  
6 hearing -- in this case beginning of Part 2 -- or in  
7 writing prior to the close of the hearing record. So  
8 until such time in the future that we close the hearing  
9 record on this Petition, you may continue to submit  
10 written Policy Statements.

11 Unlike witnesses who testify on behalf of  
12 parties, interested persons who are providing Policy  
13 Statements are not required to take an oath and are not  
14 subject to cross-examination.

15 And unlike witness testimony, Policy Statements  
16 are not considered evidence in support of the factual  
17 determinations in our decisions. But this important part  
18 of the hearing provides a valuable opportunity for us to  
19 hear from individuals and communities about general  
20 concerns and comments on the Petition under  
21 consideration.

22 So I really thank you for taking the time to  
23 come here and to provide your Policy Statements.

24 And as I mentioned earlier, and as you've  
25 observed this morning, a Water Right Hearing is very

1 different from a general public meeting. Unlike our  
2 usual public meetings, a hearing is tightly structured,  
3 parties are expected to adhere to specific requirements,  
4 and as Hearing Officers, Chair Marcus and I act much like  
5 judges to ensure that the hearing is conducted in an  
6 orderly fashion. We also take our responsibility to  
7 ensure the integrity of these proceedings extremely  
8 seriously.

9           Unlike our workshops and meetings, Board  
10 Members and staff will be in a listening mode for most  
11 of -- for the most part as unbiased arbiters of this  
12 matter. We will not interject during the hearing as we  
13 do in our usual meetings and will hold most of our  
14 questions until after cross-examination is completed.

15           This is common practice in Water Rights  
16 Hearings and does not mean that we're not engaged in the  
17 process, let me assure you, far from it. We take this  
18 matter and our obligations very seriously and are  
19 committed to a fair and impartial proceeding. Our duty  
20 is to listen carefully and to consider everyone's points  
21 in the context of making a specific legal determination.

22           Following this hearing, we will provide  
23 guidance to our Hearing Team in preparing the draft order  
24 to be considered by all the members of the State Water  
25 Resources Control Board at a public Board meeting.

1           The public will have the opportunity to comment  
2     in writing and orally on the draft order before we  
3     consider the adoption of that order.

4           All right. Let me now turn to the specific for  
5     this hearing.

6           This hearing is being held in accordance with  
7     our October 30th, 2015, Notice of Petition and Notice of  
8     Public Hearing. And as we've stated before, the hearing  
9     is narrowly focused on the proposed changes that are the  
10    subject of the Water Right Change Petition.

11          The purpose of a Change Petition Hearing is for  
12    us to obtain information on disputed facts to inform our  
13    decision whether to approve the Change Petition, approve  
14    subject to terms and conditions, or disapprove the  
15    Petition.

16          It is not a referendum on the WaterFix Project,  
17    the existence or overall effects of the State Water  
18    Project and Central Valley Project generally, or the many  
19    other aspects and issues pertaining to the WaterFix  
20    proposal. It is focused solely on the changes that are  
21    being petitioned to us by the Petitioners.

22          For us to approve that Petition, the  
23    Petitioners must establish, and we must find, that the  
24    proposed change will not injure any other legal user of  
25    the water involved or unreasonably affect fish and



1 wildlife.

2 In addition, a special provision contained in  
3 the Delta Reform Act of 2009 requires us to include  
4 appropriate Delta flow criteria as a condition of any  
5 approval.

6 And you've heard some of that already in  
7 arguments earlier today. We will also consider whether  
8 the project is in the public interest.

9 We conducted Part 1 of the hearing earlier,  
10 which was focused on the potential effects of the changes  
11 requested on agricultural, municipal, industrial and  
12 associated legal users of water.

13 Part 2 of the hearing will focus on potential  
14 impacts on fish and wildlife and recreational uses of  
15 water, public interest, and conditions that should be  
16 placed on any approval of the Petition to protect those  
17 uses.

18 Part 2 will also include consideration of  
19 appropriate Delta flow criteria for the WaterFix Project.

20 All right. Now let me get specifically to  
21 Policy Statements.

22 Policy Statements provided today, or in writing  
23 before the close of the record, may address either Part 1  
24 or Part 2 issues. As I stated earlier, a Policy  
25 Statement is a non-evidentiary statement and are limited

1 to three minutes per person.

2 Because we value each person's time and input,  
3 we will be strictly enforcing the three-minute time limit  
4 so that we can hear from everyone today and strongly  
5 discourage duplicative Policy Statements.

6 If you presented a Policy Statement at the  
7 beginning of Part 1, you need not and should not present  
8 the same Policy Statement again in Part 2.

9 In addition to non-parties who are making  
10 Policy Statements today, we are also allowing parties to  
11 provide Policy Statements.

12 During Part 1 of the hearing, we permitted  
13 parties to make Policy Statements in addition to Opening  
14 Statements in order to provide some flexibility for  
15 hearing party representatives who wish to make policy  
16 comments. However, to maintain a sufficient hearing, we  
17 limited Policy Statements by party representatives to  
18 three minutes per speaker, and the time the party spent  
19 on Policy Statements was deducted from the 20 minutes  
20 afforded each party to present a Policy Statement. We  
21 will allow the same flexibility for parties in Part 2.

22 We expect parties to make their Policy  
23 Statements today, with two exceptions:

24 One is Colin Bailey for the Environmental  
25 Justice Coalition for Water requested and will be allowed

1 to present a Policy Statement at the beginning of the  
2 Coalition's case in chief.

3 And I believe yesterday, we received a request,  
4 Mr. Keeling, from you to present your Policy Statement on  
5 behalf of -- Was it San Joaquin County?

6 MR. KEELING: That was Supervisor Miller's  
7 Policy Statement on behalf of the county. For personal  
8 reasons, she can't be here today, and she wanted to  
9 personally present it. So I did make that request.

10 Thank you.

11 CO-HEARING OFFICER DODUC: And your request is  
12 granted as well, Mr. Keeling.

13 MR. KEELING: Thank you.

14 CO-HEARING OFFICER DODUC: So, consistent with  
15 Part 1, we ask parties to track your time on the honor  
16 system and deduct that time used to present Policy  
17 Statements from the 20 minutes allocated for their  
18 Opening Statements or, in the Department's case, in  
19 presenting their case in chief.

20 All right. Policy Statements will be heard in  
21 the following order:

22 First, we will hear Policy Statements from any  
23 Federal, State and local elected officials or their  
24 representatives, followed by parties or interested  
25 persons who submitted a Notice of Intent to Appear,

1 followed by interested persons who wish to make a Policy  
2 Statement but did not file a Notice of Intent to Appear.

3 Anyone here who wishes to provide an oral  
4 Policy Statement, including parties, is required to fill  
5 out a new speaker card. They are available in the back.

6 We will also accept written Policy Statements.  
7 There is a basket there (indicating) to collect written  
8 Policy Statements in the front of the room. You may also  
9 submit written Policy Statements at a later date prior to  
10 the close of the hearing record.

11 It is not necessary to read the written Policy  
12 Statement into the record. If you think you can't cover  
13 everything you want to say in three minutes, we encourage  
14 you to submit a written Policy Statement. We do read all  
15 of them.

16 All right. Are there any other housekeeping  
17 procedural matter we need to discuss before we get to the  
18 Policy Statements?

19 Ah, a reminder: Mr. Mizell and Director  
20 Nemeth, the deadline for 5 p.m. tomorrow will also  
21 include a submission of the Policy Statement that you  
22 read into the record today.

23 MR. MIZELL: (Nodding head.)

24 CO-HEARING OFFICER DODUC: And I am reminded  
25 that we will also hear from appointed officials after

1 elected officials for Director Bonham, who's sitting in  
2 the audience.

3 All right. With that . . .

4 All right. With that, I will start calling  
5 names of people who have submitted speaker cards. And,  
6 again, I thank you for your patience today.

7 We will first hear from -- And I apologize in  
8 advance because I will be mispronouncing a lot of names.  
9 I do not quite have the Chair's talent in this.

10 All right. Director Bonham, please come up.

11 DIRECTOR BONHAM: Good morning, Chair, Board  
12 Members, staff.

13 My name's Chuck Bonham. I'm the Director of  
14 the California Department of Fish and Wildlife, which,  
15 even on a morning like this morning, I still think is a  
16 fantastic job.

17 My comments represent the Department's Policy  
18 Statement on Part 2, which, as I understand it, is your  
19 focus on the potential effects of this Petition on fish  
20 and wildlife as well as those conditions you may wish to  
21 place on any approval, including appropriate flow  
22 criteria for the California WaterFix Project.

23 Here's my bottom line:

24 In fall 2016, our Department received an  
25 application from the Department of Water Resources under

1 the California Endangered Species Act for an incidental  
2 take permit.

3 We took a long, hard look at what we received.  
4 And, in July of 2017, we issued an incidental take permit  
5 under the controlling State Endangered Species Act law.

6 We can only issue that permit if we conclude  
7 that the Project's impacts are minimized and fully  
8 mitigated. That is a standard more rigorous than I would  
9 argue you find in the parallel Federal Endangered Species  
10 Act and more protective than the standard of unreasonable  
11 effects of fish and wildlife.

12 In that permit, you will find fish measures,  
13 terrestrial measures, rigorous adaptive management,  
14 funding assurances, but you will also find performance  
15 metrics.

16 Performance metrics matter because, as I  
17 observed this morning, trust is a fundamental feature at  
18 play between all these parties.

19 I encourage you to look at Page 168 of our  
20 permit, which is evidence in your record. And I  
21 recommend you consider adopting certain Conditions of  
22 Approval from our permit into any order you may issue to  
23 ensure you're minimizing and fully mitigating, which goes  
24 beyond protecting against unreasonable effects.

25 We include three biological criteria which are

1 performance standards in this permit.

2           The first requires the project, once built, to  
3 operate the North Delta Diversion to achieve juvenile  
4 salmon survival rates through the intake bridge at  
5 95 percent or more against a preconstruction rate.

6           The second biological criteria says that the  
7 project shall operate to achieve pre-project juvenile  
8 salmon survival rates at Chips Island.

9           And the third biological criteria says the  
10 project shall insure the project does not result in  
11 overall decrease in the population size of Delta smelt  
12 and longfin smelt from pre-project conditions.

13           Those are mandatory --

14           (Timer rings.)

15           DIRECTOR BONHAM: -- performance criteria.

16           In addition, we adopted protective flow  
17 standards from the existing Federal Biological Opinions  
18 and we did more.

19           For the first time under State law, we're  
20 requiring specific flow releases for longfin smelt in the  
21 spring months of the year.

22           CO-HEARING OFFICER DODUC: Thank you, Director.

23           NOAA Fisheries.

24           I did not want to mangle your last name.

25           ///

1 MS. MARCINKEVICH: That's okay. Marcinkevich.  
2 I've heard all various permutations, so no offense.

3 Good morning. My name is Kathy Marcinkevich.  
4 I am here today as a proxy for Maria Rea, Assistant  
5 Regional Administrator representing the West Coast Region  
6 of NOAA Fisheries. And we wish to add our support for  
7 the process that you are undertaking under your unique  
8 authorities.

9 As you know, California WaterFix, the project  
10 itself, has been through numerous iterations. Our role  
11 has been to provide technical assistance to Reclamation  
12 and DWR along the way and, ultimately, to the RESA  
13 Section 7 consultation and Biological Opinion.

14 NIMS issued a Biological Opinion that reached  
15 conclusions of no jeopardy and no adverse modifications  
16 of critical habitat for all species in our jurisdiction  
17 on June 16th, 2017.

18 I want to emphasize the challenges of working  
19 through the scientific information that will be presented  
20 to you on the fish impacts of construction and operation  
21 of the project.

22 As we all know, the Delta is a complex and  
23 dynamic ecosystem and honing in on what is known and  
24 where the uncertainties lie is key to understanding both  
25 the impacts and the benefits of this very large



1 infrastructure project.

2 No doubt you will hear competing interpretation  
3 of that science, and I want to apologize that our experts  
4 are not part of your process due to limitations in our  
5 capacity and our ongoing Federal legal process.

6 Our Biological Opinion has been submitted into  
7 your record for this proceeding and it speaks for itself.  
8 I encourage you to read it to see how we worked through  
9 the anticipated effects of the project using the  
10 best-available scientific and commercial data, which is  
11 our legal standard.

12 Some of the adverse effects that we carefully  
13 evaluated include new projected impacts of in-water  
14 construction of barge traffic, the operation of North  
15 Delta Diversions, and flow survival effects on juvenile  
16 salmonids, including necessary bypass flows and  
17 operations to minimize those effects, the potential  
18 benefits of dual conveyance in the South Delta, necessary  
19 habitat mitigation and, perhaps most important, reliance  
20 on robust and well-funded Adaptive Management Program.

21 We are confident that the Adaptive Management  
22 Program, if well funded as required in our terms and  
23 conditions, will allow the agencies to make iterative  
24 adjustments to operational management over time as our  
25 understanding of the species and of the Delta ecosystem

1 continues to evolve.

2 Also of key importance to us at the time we are  
3 writing the Biological Opinion, the State Resources  
4 Agency made a new commitment through the same resiliency  
5 strategy to incur the viability of winter-run and  
6 spring-run of salmon. These and other key habitat  
7 improvements are expected to improve the baseline  
8 conditions of the species, supporting the non-jeopardy  
9 conclusions in our opinion.

10 So, in conclusion, NOAA Fisheries embraces a  
11 substantial collaboration that has led us to this point,  
12 and we fully support the State's recognition that  
13 providing a more reliable supply for California is  
14 coequal to the goal of protecting, restoring and  
15 enhancing the Delta ecosystem.

16 We wish you well in completing your review.

17 Thank you.

18 CO-HEARING OFFICER DODUC: Thank you.

19 Mr. Pogledich from Yolo County. My apologies.  
20 And you are an elected official. We should have called  
21 on you first.

22 MR. POGLEDICH: Well, I'm representing an  
23 elected official, so I think this is appropriate.

24 Phil Pogledich, once again, for Yolo County  
25 County Council.

1 I'm going to be reading a policy statement from  
2 Supervisor Oscar Villegas who apologies for not being  
3 able to attend today.

4 CO-HEARING OFFICER DODUC: Actually, we have  
5 his written --

6 MR. POGLEDICH: You should have --

7 CO-HEARING OFFICER DODUC: -- Policy Statement.

8 MR. POGLEDICH: You should have copies of that.  
9 I did serve it by e-mail yesterday.

10 CO-HEARING OFFICER DODUC: There is no read to  
11 read the entirety. If you could perhaps capture the key  
12 points.

13 MR. POGLEDICH: I'll capture a few key points  
14 as you suggest.

15 So I'll start by pointing to the second  
16 paragraph in which the Supervisor recognizes the  
17 difficulty of the task before you, and that presiding  
18 over these hearings, you're at the very center of the  
19 economic, environmental and political controversies that  
20 define modern water policy in California.

21 And then skipping down.

22 As he says, Clarksburg and other Delta legacy  
23 communities are like nothing else in the State. Many of  
24 my constituents have been farming the same land and have  
25 been part of the same community for up for six

1 generations.

2           They are leaders in the Delta agricultural  
3 industry. They operate award-winning wineries that  
4 supply wine grapes to many others. They farm row crops  
5 and cultivate orchards, serve their communities and  
6 occupy an increasingly rare place in California  
7 agriculture that deserves respect and protection.

8           I'll skip down a little further again.

9           I need not tell you how hollow it will be to  
10 simply say "I'm sorry" to fourth, fifth, or sixth  
11 generation of farmers across the Delta if the WaterFix  
12 proceeds and their concerns are realized.

13           If you vote DWR to its task, you will not be in  
14 that position for DWR will have persuaded you that the  
15 WaterFix, despite all the uncertainties of how it will be  
16 funded, how it will be built, and even what it will  
17 ultimately be, will not cause the serious harms to the  
18 Delta ecosystem, economy, or communities that so many  
19 fear.

20           And then he closes by thanking you for your  
21 work in these proceedings.

22           Thank you.

23           CO-HEARING OFFICER DODUC: Thank you very much.

24           Mr. Holman, representing the City of Stockton.  
25 Vice Mayor of Stockton.

1           Again, my apologies. I should have called on  
2 you first.

3           VICE MAYOR HOLMAN: No problem, Madam Chair. I  
4 just thank you for this opportunity to address you.

5           I have not made myself -- I haven't figured out  
6 how to clone myself yet nor, for good reason, I'm not  
7 omnipresent. But I have issues back in Stockton that I  
8 have to get to so I thank you for getting me to the  
9 podium in a fast way. Thank you.

10           I represent the City of Stockton. My name is  
11 Elbert Holman. I'm the Vice Mayor of the City of  
12 Stockton, and I'm also the Vice-Chair of the city's water  
13 community.

14           And I'm here today on behalf of the City's  
15 300000-plus residents and we would like to voice our  
16 strong concern that the WaterFix Project is not in the  
17 public interest because we feel that it threatens the  
18 future prosperity and the health of the City of Stockton,  
19 which you well know is the largest city in the -- in the  
20 Delta.

21           So the well-being of our city, its residents,  
22 its economy, is inextricably linked to the Delta, the  
23 quality and the quantity of water Delta supplies in the  
24 Delta ecosystem also.

25           And it is clear from the evidence that we have,

1 that has been also presented to you, and what you will  
2 see in Part 2 of this hearing where the WaterFix Project  
3 will degrade the environment of the Delta, and in doing  
4 so, we believe that it will compromise our city's water  
5 supply and other essential services.

6           So Stockton has -- We have participated in the  
7 WaterFix process from the beginning for more than 10  
8 years now. We submitted comments on the environmental  
9 review documents four times throughout the process. And  
10 we have made it clear that -- our concerns about the  
11 impact that this project will have on our community. And  
12 it is clear to us that not a single voice of our 300-plus  
13 thousand residents has been heard by the Project's  
14 proponents.

15           Stockton has repeatedly asked DWR and  
16 Reclamation to include an analysis of the water quality  
17 and full effects of our drinking water intake and  
18 wastewater discharge locations.

19           The project proponents have confirmed what  
20 Stockton has feared from the very beginning, and that is  
21 that Stockton's concerns for water quality, for secure  
22 drinking water source, for a healthy environment and  
23 healthy economy, we believe are meaningless to them.

24           Despite the evidence of the harm this project  
25 will cause to the City, our city, the Department of Water

1 Resources has refused to recognize or mitigate the  
2 impacts to the City at the same time that it has entered  
3 into agreements in favor of other Delta of to guarantee  
4 them clean water. This desperate treatment by the State  
5 agency that is supposed to serve all citizens of our  
6 state is unconscionable.

7 DWR has treated Stockton's 300000-plus  
8 residents, we feel, as second-class citizens and shifted  
9 the burden of mitigating the WaterFix impacts to the City  
10 and other non-project participants.

11 I just want to leave you with this:

12 If the WaterFix Project goes forward and the  
13 environ -- environmental impacts we have demonstrated  
14 become a reality, we believe that it will be  
15 Stockton's --

16 (Timer rings.)

17 VICE MAYOR HOLMAN: -- citizens that have to  
18 pay the cost of the impacts, its water supply and  
19 wastewater treatment and environmental remediation.

20 So we are asking the State Board, when  
21 considering whether to grant or deny this Change  
22 Petition, and whether this project is in the public  
23 interest, we just want you to remember that Stockton has  
24 invested hundreds of millions of dollars in its drinking  
25 water, its wastewater treatment process, in order to

1       comply with strict standards advocated by the project  
2       proponents, and that placing the Project's financial and  
3       environmental burdens on Stockton is patently unfair and  
4       unjust.

5               The WaterFix Project is not in the public  
6       interest, and we believe that this Change Petition should  
7       be denied.

8               Thank you very much for the opportunity to  
9       address you.

10              CO-HEARING OFFICER DODUC: Thank you, Mr. Vice  
11       Mayor.

12              And that's all the cards I have for elected and  
13       appointed officials.

14              Okay. All right. Now, let's get to the  
15       others.

16              Steve Jones, followed by Philip Williams  
17       representing Westlands.

18              MR. JONES: Good morning. I'm Steve Jones with  
19       the Center for Biological Diversity.

20              We are a party to the CEQA and CECU lawsuits'  
21       challenge to WaterFix but not a party to this hearing.

22              We have been deeply concerned that the Delta --  
23       that the Twin Tunnels Project would cause planetary-level  
24       irreversible harm to the Bay Delta ecosystem, harming  
25       longfin smelt, Delta smelt, endangered salmon, among



1 others. And not just fish. The extensive transmission  
2 lines required for the WaterFix project threatens fully  
3 protected Sandhill Cranes as well.

4 The -- You know, this announcement of the  
5 change, we're obviously still sorting through it, and  
6 it's -- it's -- it's unclear whether this is meant to be  
7 a phased thing or whether this is a single tunnel. But  
8 we have real concerns over either approach.

9 The single-tunnel project isn't just smaller or  
10 a phased version. It may actually have more severe  
11 impacts; for example, by concentrating adverse effects of  
12 diversions.

13 On the other hand, a staging of the project  
14 doesn't lessen the effects of the WaterFix Project. It  
15 would actually make them worse; for example, by  
16 stretching out the temporary impacts of construction over  
17 many years.

18 The public hasn't seen the new modeling that  
19 DWR will use to justify its claim that it's just the same  
20 project.

21 We can't even test these claims. Although  
22 we're not a party here, many of us are partners in a --  
23 many of our partners in the CEQA and CECU lawsuits are  
24 parties. They have to develop their cases in chief based  
25 on a different project than the one DWR is now proposing.

1           It makes little sense to proceed with this  
2 hearing based on its outdated, possibly irrelevant  
3 information. So we would oppose the change order.

4           Thank you very much.

5           CO-HEARING OFFICER DODUC: Thank you,  
6 Mr. Jones.

7           Mr. Williams, followed by Linda Terry,  
8 representing North Delta Water Agency.

9           MR. WILLIAMS: Good morning, Madam Hearing  
10 Officers, and Miss D'Adamo.

11           My name is Philip Williams. I serve as the  
12 general counsel of Westlands Water District.

13           Mr. Birmingham would have liked to have some  
14 comments but he could not be here today so I will be  
15 reading those in, although I have redacted it down to  
16 four sentences.

17           Westlands Water District understands that the  
18 Department of Water Resources is now proposing a staged  
19 implementation of the Cal WaterFix. However, it is not  
20 known how, if at all, a staged project will affect  
21 Central Valley Project water supplies.

22           Westlands looks forward to learning more about  
23 the impacts of the staged project through this hearing  
24 process.

25           It is Westlands' hope that, at the end of this

1 hearing, it can express unqualified support for the  
2 project because the District can have confidence that the  
3 staged project and, more particularly, the conditions  
4 imposed by an order approving DWR's Change Petition will  
5 not further reduce Central Valley Project water supplies.

6 Thank you for consideration.

7 CO-HEARING OFFICER DODUC: Thank you,  
8 Mr. Williams.

9 Miss Terry, followed by Mr. Eichenberg  
10 representing San Francisco Baykeeper.

11 MS. TERRY: Melinda Terry, North Delta Water  
12 Agency.

13 Before I start my time, I just want to say that  
14 I wrote this statement prior to yesterday's announcement,  
15 so I probably would have written and delivered a  
16 different one, but I'm going to go ahead and deliver what  
17 I had prepared.

18 CO-HEARING OFFICER DODUC: No. Just tell us  
19 what you really wanted to say.

20 MS. TERRY: Well, I want to deliver part of  
21 that but I would have done a longer written statement,  
22 probably, if I knew about the other.

23 So, with that, I'll go ahead and start.

24 During Part 1 of this hearing, Petitioners'  
25 claim that the history of the Department of Water

1 Resources' compliance with their 1981 contracts is to be  
2 construed as evidence that DWR will continue to comply  
3 with contracts under the operation of the proposed  
4 WaterFix projects.

5           However, Part 1 testimony of North Delta Water  
6 Agency experts pointed out that Petitioners' own modeling  
7 presented during Part 1 shows that operation of the  
8 project would result in additional 20 exceedances of the  
9 contract's water quality criteria.

10           Now, during Part 2, the Petitioners offer new  
11 modeling that removes South Delta export restrictions in  
12 October and November, resulting in significant increases  
13 in salinity at Emmaton during those months.

14           Instead of fully disclosing the modeling  
15 results, the Petitioners hide results behind shaded-out  
16 bar charts that focus only on the April through August  
17 time period.

18           What Petitioners do not reveal is that the new  
19 modeling shows salinity increases by 7 percent in October  
20 and 9 percent in November at the North Delta contract  
21 compliance point at Three Mile Slough.

22           These significant increases are compared to  
23 17 percent and 19 percent reductions in salinity during  
24 these months under the old modeling.

25           The Agency's experts estimate that the

1 significant increases in salinity would result in over  
2 200 additional violations of the contract's year-round  
3 water quality criteria.

4 To present such new and crucial evidence during  
5 the phase of the hearing concerning environmental effects  
6 and public interest issues defies logic, fairness, and  
7 due process.

8 Petitioners' bait and switch is compounded by  
9 the fact that Protestants are precluded from asking most  
10 of the Part 1 witnesses whether the modeling changes any  
11 of their opinions because they're not offered as  
12 witnesses during Part 2.

13 For example, DWR's lead water quality and water  
14 level modeling witness, Dr. Parviz Nader-Tehrani, has  
15 only submitted a sworn written declaration for Part 2 and  
16 is not on any of the witness panels for  
17 cross-examination.

18 DWR's lead witness, Maureen Sergent, who during  
19 Part 1 offered unsubstantiated conclusions in her  
20 testimony on the effects of the Project on the North  
21 Delta contract has no apparent role for Part 2.

22 How will water users in North Delta or the  
23 Board Members know whether the changes to the project,  
24 the new modeling -- new modeling alter any of her Part 1  
25 testimony, or her opinions after that.

1           Petitioners' lack of transparency in the  
2           ever-evolving project description for the California  
3           Water Project has resulted in stakeholders spending  
4           millions of hours navigating their way through thousands  
5           of pages and multiple modeling versions, and more as of  
6           yesterday, apparently. And for what?

7           After more than 10 years since the inception of  
8           this project, there is still no definable enforceable  
9           Operations Plan offered in the Petition. And the  
10          Petitioners refuse to acknowledge or disclose the full  
11          extent of major impacts of the project.

12          In the remaining phases of the hearing, the  
13          Board must demand specificity from Petitioners and not  
14          settle for the vague, generalized and unqualified  
15          testimony that Petitioners have submitted so far.

16          Thank you.

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

19          Mr. Eichenberg, followed by -- Ah. Do you wish  
20          to speak again, Miss Barrigan-Parilla?

21          MS. BARRIGAN-PARILLA: No. Thank you.

22          CO-HEARING OFFICER DODUC: Then after  
23          Mr. Eichenberg will be Darcy Luce representing Friends of  
24          the San Francisco Estuary.

25          ///

1                   MR. EICHENBERG: Hello, Miss Doduc,  
2 Miss Marcus, Miss D'Adamo. Thank you. Good to see guys  
3 again.

4                   My name is Ben Eichenberg. I'm here on behalf  
5 of San Francisco Baykeeper.

6                   Baykeeper are more than 5,000 members in  
7 support of believing in a healthy San Francisco Bay. For  
8 more than 25 years, Baykeeper has been a premier watchdog  
9 of water quality for San Francisco Bay.

10                  Today, California WaterFix is one of the  
11 greatest threats to the health of the bay, its wildlife,  
12 and the communities that rely on a thriving bay  
13 ecosystem.

14                  Baykeeper has submitted multiple comments on  
15 the likely water quality and potential impacts of  
16 WaterFix. The main problem areas include the trade of  
17 high-quality Sacramento River water in the Delta for  
18 lower-quality San Joaquin River water, increasing harmful  
19 concentrations of selenium, pesticides, nutrients and  
20 other contaminants.

21                  This places in jeopardy the communicates and  
22 the species that rely on Delta water. Harmful algal  
23 blooms in the Delta, such as microcystis, are already  
24 increasing in strength and frequency. More northerly  
25 extraction points will further increase the duration and

1 severity of these blooms.

2 WaterFix would accelerate salinity intrusions  
3 into the Delta further reducing brackish habitat,  
4 increasing habitat for endangered species and threatening  
5 water supplies.

6 Reduced fresh water flows would inhibit the  
7 ability of migrating salmon to quickly navigate through  
8 the Delta and bay to the ocean, increasing the likelihood  
9 of predation and reducing already struggling salmon  
10 populations.

11 WaterFix will worsen existing selenium  
12 problems. This threatens federally listed green sturgeon  
13 and diving ducks. The selenium concentrations in Suisun  
14 Bay are directly associated with fresh water flow.

15 WaterFix will reduce the sediment transport to  
16 San Francisco Bay as well threatening existing wetlands  
17 and beaches as well as reducing the ability of wetlands  
18 to keep up with sea-level rise and protect the Bay Area  
19 from future flooding.

20 Bay-Delta ecosystem's already in crisis, as I  
21 think has been adequately discussed, and the Board is  
22 well aware. WaterFix will make matters worse.

23 Salmon survival through the Delta will be  
24 worse, according to the National Marine Fisheries Service  
25 and other reputable scientists. Longfin smelt abundance



1 will be worse, according to the State of California's own  
2 scientists. These fish, Delta smelt, and many others  
3 will be harmed by WaterFix impacts. These impacts  
4 include reduced water quality, reduced turbidity,  
5 increased salinity and reduced Delta outflow.

6 Finally, the permanent application submitted by  
7 WaterFix will allow the continued operation of South  
8 Delta pumps in most months, eliminating any supposed  
9 environmental benefits from more northerly diversion  
10 points.

11 These known impacts are bad enough, but as has  
12 been covered, the project has not been adequately studied  
13 and most impacts are only projected in the near term.

14 For instance, some of the Project's modeling on  
15 those impacts in 2025 prior to the expected completion of  
16 WaterFix. Long-term impacts such as those that might  
17 result from climate changes and sea-level rise are  
18 ignored.

19 WaterFix isn't even in its final form. We  
20 don't know what the final project will look like.  
21 Neither does the Department of Water Resources and  
22 neither does the Board. Respectfully, this Board cannot  
23 in good conscience find that this project does not  
24 unreasonably affect fish or wildlife or recreational use  
25 of water or of public trust resources without an adequate

1 project --

2 (Timer rings.)

3 MR. EICHENBERG: -- description that accurately  
4 describes the project.

5 Thank you for your time.

6 CO-HEARING OFFICER DODUC: Thank you,  
7 Mr. Eichenberg.

8 Miss Luce followed by Mr. Craig Johns.

9 MS. LUCE: Good morning. My name is Darcy  
10 Luce. I'm a Friend of the San Francisco Estuary. Thank  
11 you very much for the opportunity to address you today.

12 This hearing and updates to the Bay Delta Water  
13 Quality Control Plan represent a pivotal moment in  
14 California water and ecosystem management.

15 This project as currently proposed will improve  
16 some hydrologic functions and increase water supply  
17 reliability but will lower water quality in the Delta and  
18 is anticipated to have negative impacts to the listed  
19 species and to the Estuary's food web.

20 These negative impacts and, more importantly,  
21 the absence of benefit are not justifiable under the  
22 Public Trust Doctrine when the Delta is already in  
23 ecological crisis.

24 In this case, protection of the public trust  
25 should take into account the imbalance and beneficial

1 uses up to this point that has created this crisis.

2           It is not sufficient justification for this  
3 project to meet outdated regulatory standards and  
4 contractual obligations that reflect the water past.

5           Lowered water quality also violates Federal and  
6 State antidegradation policies. The State Water Board's  
7 antidegradation policy highlights the importance of  
8 weighing the socioeconomic benefits of the project  
9 against its impacts, and the Final EIR/EIS, and  
10 reinforces the necessity, including a socioeconomic  
11 evaluation in the State Board's decision regarding this  
12 Water Rights Petition.

13           Economic analyses have been conducted on  
14 impacts to jobs and income derived from project  
15 implementation and, to a limited extent, on non-use value  
16 of the Delta. So -- sorry -- to eliminate extent on  
17 impacts to other types of use values.

18           However, an analysis that estimates the non-use  
19 value of the Delta as a unique cultural and biological  
20 resource is absent.

21           Our recent review of existing economic  
22 literature on the Delta, the San Francisco Bay Delta  
23 Estuary, and the watershed instream flows concluded that  
24 that non-use values have not been estimated for the  
25 estuary and its major tributaries and recommended a

1 contingent valuation study to determine the unique value  
2 of the Delta to the State and nation.

3 Furthermore, urban and agricultural valuations  
4 of water use fail to account for the opportunity, cost  
5 and beneficial uses lost when water is extracted from the  
6 ecosystem.

7 A complete economic analysis would also need to  
8 establish existence values from threatened and listed  
9 fish species and other aquatic species that decline  
10 further under the proposed project along with the  
11 existence value of impacted wildlife refuges and  
12 migratory corridor.

13 Finally, any analysis must consider the link  
14 between possible unintended socioeconomic impacts and  
15 concomitant ecological consequences of the Proposed  
16 Project.

17 For example, quote, "Temporary impacts to Delta  
18 agriculture could very well degrade the long-term  
19 stability of the Delta's agricultural community and lead  
20 to increased suburban and exurban sprawl in the area.

21 We urge you to conduct an adequate  
22 socioeconomic analysis before proceeding with your  
23 decision.

24 Thank you very much.

25 CO-HEARING OFFICER DODUC: Thank you.

1           Mr. Johns, followed by Mr. Keeling. Did you  
2 wish to speak again?

3           MR. KEELING: No. You've already addressed the  
4 placeholder issue I had.

5           CO-HEARING OFFICER DODUC: Thank you,  
6 Mr. Keeling.

7           Mr. Johns, to be followed by Mr. Clay pool.

8           MR. JOHNS: Thank you, Madam Hearing Officer  
9 and members of the Board and staff.

10           My name is Craig Johns. I'm here for  
11 Partnership of Sound Science in Environmental Policy.

12           I want to thank you for the opportunity to  
13 present these comments today, as well as submit my  
14 written Policy Statement, on behalf of PSSEP back in  
15 December.

16           And I'd also like to thank DWR for highlighting  
17 the concerns that we raised in our Policy Statement,  
18 about the fact that their proposal as highlighted in the  
19 EIR that's submitted in support of the project does not  
20 adequately address the issue of the need for adequate  
21 monitoring of selenium that will likely be coming from --  
22 from the project once it's constructed and built.

23           I will not repeat any of the issues that I  
24 raised in our written statement of December 6th. I would  
25 like to simply point out in -- in response to a couple of

1 comments that Ms. Nemeth made earlier in her  
2 presentation.

3 And, frankly, I'm confused about what project  
4 they're going to be moving forward with or not forward  
5 with. I appreciate the Hearing Officer's question  
6 confirming what their intentions are.

7 We're going to take them at their word that  
8 they're going to move forward with the big project as  
9 they proposed in the Change Petition and -- and highlight  
10 the fact that their own EIR/EIS has suggested that there  
11 will be at least 11 percent more selenium coming out of  
12 the Delta as a result of the operations of the WaterFix  
13 Project if it is built as proposed.

14 And that 4 -- roughly 450 additional kilograms  
15 of selenium is going to have a big deal to the San  
16 Francisco Bay as well as to the Delta.

17 And because the EIR/EIS found that they were  
18 not significant impacts, there was no specific mitigation  
19 requirements or even monitoring requirements that were  
20 required to be set up to monitor whether their own  
21 projections are accurate.

22 And that is the substance of the second comment  
23 that I'd like to make in respect to Ms. Nemeth's comments  
24 this morning.

25 And I was pleased to hear her say that DWR

1 commits to -- and I'm going to paraphrase here because I  
2 didn't get it written down quickly enough and I'll wait  
3 to see what the written statement was.

4 But they commit to putting in place necessary  
5 monitoring for the project, even though DWR objected to  
6 our Policy Statement because they didn't like the fact  
7 that we were submitting a proposed monitoring plan for  
8 selenium in the Delta. We are -- We are happy to hear  
9 Ms. Nemeth say that they're committed to putting in place  
10 proper monitoring for the project.

11 And I don't know if she's read our Policy  
12 Statement but I'll make sure that I get it over to her  
13 this afternoon. And hopefully, they will look at it more  
14 favorably the second time around and include those  
15 recommendations that we have submitted.

16 With that, I thank you very much again for the  
17 opportunity.

18 CO-HEARING OFFICER DODUC: Thank you,  
19 Mr. Johns.

20 Mr. Clay pool, followed by Bob Wright.

21 MR. CLAYPOOL: Good morning, Chair Doduc, Board  
22 Members and hard-working staff.

23 I'm Dale Claypool, Board Member of the Friends  
24 of Stone Lakes National Wildlife Refuge.

25 Friends of Stone Lakes is a volunteer,

1 non-profit, non-governmental group that supports refuge  
2 and is entirely separate from U.S. Fish and Wildlife  
3 Service.

4 Stone Lakes Refuge is one of the dwindling  
5 number of areas along the Pacific Flyway that continue to  
6 have viable lakes, wetlands and streams. As such, it  
7 provides critical habitat for water fowl and other  
8 migratory birds of international concern, as well as a  
9 number of endangered plant and animal species. It also  
10 serves as a buffer against the effects of urban  
11 encroachment into the Delta from Elk Grove, South  
12 Sacramento and surrounding areas.

13 Even before the Tunnels Project, Stone Lakes  
14 was identified as one of the sixth most threatened  
15 refuges in the entire U.S. fish and wildlife system. Now  
16 it's Ground Zero for the impacts of the Delta tunnels.

17 The water intakes, tunnel shafts, Intermediate  
18 Forebay, and transmission lines serving them would all be  
19 within or close by the refuge.

20 It's difficult for small organizations like  
21 ours to participate in the process of this magnitude and  
22 duration, but these are serious concerns.

23 We spent almost a decade working to try and  
24 minimize the impact of the tunnels on the Refuge. We  
25 support the strengthening of certain mitigation measures



1 that have occurred over the course of the process, such  
2 as creating wetlands and providing temporary storage  
3 area -- excuse me -- forage areas.

4 But we remain concerned about whether they're  
5 enforceable and whether there's adequate funds to support  
6 them.

7 Furthermore, many issues have yet to be  
8 adequately addressed. Construction activities and  
9 related traffic would surround and bisect the Refuge,  
10 making it unsuitable for wildlife and public.

11 New and modified above-ground power lines near  
12 and in the Refuge would result in increased bird strikes  
13 and increased mortality to greater Sandhill Cranes and  
14 other birds.

15 I was going to comment on DWR's recent change  
16 but Miss Meserve already did that for us and was much  
17 more eloquent than I would be. And we just -- I just say  
18 that we associate strongly with her comments.

19 In closing, we are concerned with cost cutting  
20 and project redefinition. The promised environmental  
21 commitments in mitigation were not accurately cited.  
22 Even if all the mitigation was implemented, we're very  
23 concerned about the damage the tunnels project would do  
24 to the Stone Lakes National Wildlife Refuge and the  
25 species that depend on it for habitat.

1 Thank you for the opportunity to comment.

2 CO-HEARING OFFICER DODUC: Thank you,

3 Mr. Claypool.

4 Mr. Wright, followed by North Delta

5 C.A.R.E.S . . . North Delta C.A.R.E.S.

6 Help.

7 Matney?

8 MS. DALY: Yes. Vonne Matney. Reading for

9 Vonne Matney and for Skip Seebeck.

10 CO-HEARING OFFICER DODUC: Okay. Miss Daly,

11 you know best.

12 MS. DALY: Thank you.

13 CO-HEARING OFFICER DODUC: All right.

14 Mr. Wright.

15 MR. WRIGHT: Good morning again. Bob Wright

16 representing Friends of the River and Sierra Club of

17 California.

18 In terms of policy, you've heard, from before

19 this hearing even started a couple years ago, from

20 various groups telling you that, hey, you should update

21 your Bay-Delta Quality Water Plan first before even

22 considering this Petition.

23 And, of course, the focus of those comments

24 were on the environmental issues, that you really want to

25 know how much water we need to keep flowing through the

1 Delta before deciding whether a massive project upstream  
2 could be developed reducing the fresh water flows through  
3 the Delta.

4 But I think it's turned out that the need to  
5 update your Bay-Delta Water Quality Plan -- and you've  
6 said in the past that the standards will be more  
7 stringent to protect the Delta -- is as important to  
8 economic interests as it is to the environmental impacts.

9 We've seen all this uncertainty. We've seen  
10 various groups pull out from stepping up to participate  
11 in financing, in paying for the WaterFix Tunnels.

12 And it really would make a tremendous amount of  
13 sense as a matter of policy, particularly if you take the  
14 opportunity now to continue the hearing until we -- after  
15 you get the Supplemental Final Environmental Impact  
16 Report that DWR announced yesterday afternoon they're  
17 going to do to move forward, update the Bay-Delta Plan  
18 with the more stringent standards you need, dealing with  
19 the issues raised under the Delta Reform Act, because  
20 that would not only be good for the environment, that  
21 would allow the Districts to the south that are trying to  
22 decide whether they want to participate in a project and,  
23 if so, what the size should be, be able to determine,  
24 does it make any sense to for them from a benefit cost  
25 analysis.

1 I do think that would be a very important  
2 policy for you for consider.

3 Thank you very much.

4 CO-HEARING OFFICER DODUC: Thank you,  
5 Mr. Wright.

6 North Delta C.A.R.E.S . . . Miss Daly, followed  
7 by more.

8 Miss Daly, why don't we bring the two speakers  
9 up.

10 MS. DALY: I'm speaking for them.

11 CO-HEARING OFFICER DODUC: Okay.

12 MS. DALY: Thank you.

13 My name is Barbara Daly. I did receive  
14 permission to speak for the people in North Delta  
15 C.A.R.E.S. I have several Policy Statements with me and  
16 others will be sent later, but I'll only ask permission  
17 to read two of them to you today, if that's all right  
18 with you.

19 The first one is from --

20 CO-HEARING OFFICER DODUC: And they are short?

21 MS. DALY: Yeah, the first one is pretty short.  
22 The second one is a little longer.

23 CO-HEARING OFFICER DODUC: All right.

24 MS. DALY: Thank you.

25 The first one's from Melvin Skip Seebeck. He

1 is a well driller in the North Delta.

2 And he says (reading):

3 "My son Mike and I have extensive well drilling  
4 experience in the North Delta and we are very  
5 educated about water quality issues.

6 "Construction of the California WaterFix  
7 Project will involve hundreds of deep watering wells  
8 which will damage individual wells and overall  
9 groundwater quality.

10 "Some of these impacts are known and spelled  
11 out in the Final EIR but many impacts are unknown.  
12 These impacts will negatively affect current and  
13 future uses of our Delta groundwater, which is a  
14 public trust resource.

15 "To help mitigate this damage to our wells and  
16 groundwater, I request that your Board require, as a  
17 condition of any diversion permits, that the  
18 California Groundwater Association, in conjunction  
19 with all affected landowners, have a direct voice in  
20 all aspects and impacts of the deep watering  
21 projects.

22 "This must include four points:

23 "One, the entirety watering plan, including but  
24 not limited to drilling methods, materials to be  
25 used, locations, depths, diameters and abandonment

1 procedures.

2 "Two, present and future adverse impacts on  
3 existing wells.

4 "Three, present and future adverse impacts on  
5 aquifers.

6 "And, four, mitigation of present and future  
7 adverse impacts on wells and aquifers.

8 "And a copy of this is going to the California  
9 Groundwater Association and to the Clarksburg  
10 Community Association."

11 That is from Skip. He has an office on  
12 Clarksburg Road in Clarksburg.

13 And this is from Vonne Matney. They are  
14 business owners in Hood, where one of the intakes is  
15 requested to be put, according to the past plan.

16 And she says (reading):

17 "I, Vonne Matney, represent Hood Supply Company  
18 and Restaurant and the Matney family.

19 "I was born and raised in Sacramento 56 years  
20 ago.

21 "I've been boating with my parents and  
22 grandparents on Folsom Lake and Sacramento River  
23 ever since I can remember.

24 "I remember fishing and climbing on rocks with  
25 my father when I was very young.

1            "I learned to swim in our neighborhood pool and  
2            was later swimming across the Sacramento American  
3            River as a team.

4            "I have also water skied at Folsom Lake,  
5            Oroville Lake, Eleanor Lake since I was 12 years  
6            old.

7            "In grammar school, I learned about zoology and  
8            the life cycles of the salmon. I have visited them  
9            as fish hatchery as a child and again with my own  
10           children.

11           "I canoed down the Eel River for a week the  
12           summer before starting high school, a fond memory of  
13           emotional growth, survival skills, and exploration.

14           "My parents acquired a river resort trailer in  
15           my late teens, situated on the Sacramento River  
16           between Walnut Grove and Isleton. It was called  
17           Ko-Ket Resort."

18           Still there.

19           "I was there when I spent my summers as a teen  
20           and young adult. It was there that I discovered the  
21           smoothest water-ski water in all of Northern  
22           California.

23           "It was there when we traveled by boat on the  
24           river to sloughs and, prior to that, out to have  
25           lunch where we enjoyed the quiet life of waking up

1 to hungry ducks on our dock in the morning and the  
2 beautiful sunsets of evening, where we explored Old  
3 Town Locke and went to the big store to buy our  
4 groceries in Walnut Grove" -- still there -- "where  
5 we jet skied into the meadows to meet up with our  
6 boating buddies, where we slept out on the boat  
7 because it was fun.

8 "I remember skiing before breakfast as often as  
9 possible and sharing meals with neighbors like one  
10 big happy family. Yes, these were some of the best  
11 days of my life on the Sacramento River in the heart  
12 of the Delta. Lucky me.

13 "Many years have passed since that time but the  
14 Delta is still the same, luckily. I currently live  
15 right next to the Sacramento River at I-5 and Pocket  
16 Road. I can still enjoy the beautiful view of the  
17 river from my balcony. I still enjoy the calling of  
18 ducks and geese as they fly overhead in V-shaped  
19 formations following the path of the Sacramento  
20 River.

21 "I'm thankful for the preservation of the  
22 nearby wetlands and wildlife sanctuaries in the  
23 area.

24 "I recently enjoyed viewing photos of and  
25 eagle's nest near my home.



1           " My husband once caught a salmon with a  
2 neighbor on the Sacramento River near Freeport.

3           " My family has enjoyed our boat and jet skis on  
4 the Sacramento River, just as I did with my family  
5 back then.

6           " My husband and I have enjoyed the safe,  
7 leisurely motorcycle ride down State Highway 160,  
8 also known as River Road, with our friends for many  
9 years.

10          " 15 years ago, we bought a restaurant property  
11 that had been closed down in Hood. We restored and  
12 remodeled it sensibly, spending a large amount of  
13 time and money.

14          " Hood Supply Company American Bar and Grill  
15 reopened in December of 2015. This historic  
16 landmark, which was originally part of the little  
17 town of Richland, now called Hood, dates back to  
18 1860. It is now considered one of the finest eating  
19 establishments in the Delta.

20          " We are smack dab in the middle of the  
21 construction zone of the tunnels, not to mention we  
22 are on the corner of a major thoroughfare, I-5 and  
23 Hood Franklin Road, and State Highway 160.

24          " The impact of this construction, noise,  
25 detours, trucking, traffic, dust, dirt, et cetera,

1 will certainly have an impact on our new business '  
2 continued success. It will probably kill it. No  
3 one knows for sure. I can't imagine anyone choosing  
4 to dine in the middle of a construction site or even  
5 near one.

6 "If Hood Supply Company does not continue to  
7 gain popularity as a sought-after eating  
8 establishment due to the interruption of this  
9 construction project, my family and this new  
10 business will be doomed financially and emotionally.

11 "For those of us who have many fond memories of  
12 the Sacramento Delta, and for those of us who have  
13 memories to be made, I strongly urge you to look at  
14 what you would be taking away and not so much as to  
15 what you would be gaining.

16 "This project could negatively affect so many  
17 lives in so many ways, not to mention the landscape  
18 and history, the farming, the wells, the fish, the  
19 birds, the wildlife, the recreation."

20 (Timer rings.)

21 MS. DALY: The love of the Delta, also known as  
22 little Netherlands, should be preserved."

23 Last sentence:

24 "With a thank you for the opportunity to speak  
25 and share my letter of comment and Policy Statement

1 impacts from the California WaterFix.

2 "Sincerely, Vonne Matney."

3 CO-HEARING OFFICER DODUC: Thank her. Her  
4 words were plaintive and really vivid imagery for me.

5 MS. DALY: I will tell her. Thank you very  
6 much.

7 CO-HEARING OFFICER DODUC: What was the name of  
8 that restaurant again?

9 MS. DALY: Hood Supply Bar and Grill --

10 CO-HEARING OFFICER DODUC: Thank you.

11 MS. DALY: -- I-5 and Hood Franklin Road --

12 CO-HEARING OFFICER DODUC: Miss --

13 MS. DALY: -- and 160.

14 CO-HEARING OFFICER DODUC: -- Madison also from  
15 North Delta C.A.R.E.S . . .

16 MS. DALY: She had to leave.

17 CO-HEARING OFFICER DODUC: Oh, okay. Sorry for  
18 that.

19 Miss Suard, followed by Penny Opal Plant.

20 MS. DALY: Nicky Suard for Snug Harbor Resorts,  
21 LLC.

22 I --

23 CO-HEARING OFFICER DODUC: And you did get,  
24 Miss Suard, it was 3 minutes, not 5?

25 MS. DALY: Yes, I got that. I shortened it.

1           First of all, I want to say thank you for doing  
2 the work you do because I understand protecting the water  
3 quality for everybody in California is a huge job. I  
4 mean, it is an unbelievable job. It's such a big state.

5           But I do want to also say that, since 2000 or  
6 maybe 2004, as we've been all going through this process,  
7 the water quality for humans in the Delta -- Everybody  
8 keeps talking about fish and other issues. The water  
9 quality for humans is degrading. And I'm pretty sure  
10 that you all are aware of it just because of all the  
11 tests that are coming out. And it is degrading for our  
12 surface water and our drinking water aquifer.

13           Too much water is being diverted from the  
14 Sacramento River Watershed. It is affecting the Delta  
15 right now, and as we go on with more hearings and more  
16 talk, it's just going to get worse and worse and takes  
17 time for the aquifer to recharge.

18           So my request is actually to reduce exports  
19 outside of the Sacramento River Watershed until the water  
20 quality improves, because it's -- there's a big drastic  
21 change going on in the Delta.

22           I -- I also request -- You know, there's such a  
23 confusion about which project it is. I believe that we  
24 still don't know exactly how much is being diverted from  
25 the Delta.

1           We hear about the exports, but exports and  
2 diversions are two different things. And now there's new  
3 modeling to look at.

4           So I -- As a policy for all of us, for you, for  
5 us, almost anybody involved, we need time to review what  
6 it is, is the new proposal because the changes in sizes  
7 of tunnels affect recreation. It affects it because that  
8 means bigger barges coming through that create bigger  
9 wakes that impact recreation.

10           So it's not just about water. We are also  
11 facing Phase 2 of the impacts to recreation, which I know  
12 we'll be getting to.

13           The other one point I want to make is: The  
14 Department of Water Resources is supposed to protect all  
15 of our water of. All's I've seen here is attorneys  
16 protecting water rights of people that work with the  
17 State water contracts.

18           And I'm requesting that maybe this Board has  
19 the power to set up a totally different set of attorneys  
20 or a fund that the people that are -- you know, the  
21 agencies that are all trying to protect Northern  
22 California watershed, Northern California Delta, that --  
23 that there be a fund for help pay for this, because this  
24 is huge.

25           We've spent years now in hearings at our own

1 expense, and there's so many attorneys involved trying to  
2 protect, and there is no fund, State -- you know, paid by  
3 our taxpayer dollars --

4 (Timer rings.)

5 MS. DALY: -- that protect us.

6 So thank you.

7 CO-HEARING OFFICER DODUC: Thank you,  
8 Miss Suard.

9 Miss Plant followed by Norm Sands.

10 MS. PLANT: Good morning, relatives. My name  
11 is Penny Opal Plant. I'm Yagui, Mexican, Choctaw and  
12 Cherokee. My family has lived in San Pablo and Richmond  
13 since the 1930s.

14 I first want to pay my respects to the  
15 indigenous people of this land whose ancestors lived for  
16 thousands of years within the natural laws of this area.

17 I oftentimes think of the writings from the  
18 first Spaniards that came here of how the sky was black  
19 with migrating birds, and plethora of wildlife, our  
20 non-human relatives, that were here.

21 I am a signatory on the indigenous women of the  
22 Americas defending Mother Earth Treaty. I am not here on  
23 behalf of the treaty, but I am here on behalf of my  
24 obligation to the treaty and to my grandson.

25 Water is life. We can't live without water,

1 and neither can our non-human relatives that live in the  
2 Delta.

3 This to me as a woman is a water theft that  
4 diminishes the sacred system of life that the Delta has  
5 inside of her, around her, and above her.

6 This cannot pass, this WaterFix.

7 We've seen over the years how climate has  
8 changed our ability to have fresh and clean water, how  
9 industry has changed our ability for fresh and clean  
10 water.

11 And from my heart to yours, especially to the  
12 women who carry more water than men and who have a  
13 greater responsibility to the water because ourselves and  
14 our daughters and our nieces, when they are pregnant,  
15 their babies swim in a sea of water and are born on a  
16 great wave.

17 My responsibility is to the water, and I  
18 understand that that's your responsibility, too. So  
19 please, please protect this water and the life that lives  
20 inside of her belly.

21 Thank you.

22 CO-HEARING OFFICER DODUC: Thank you.

23 Mr. Sands.

24 MR. SANDS: I'm a little bit -- I have a cold,  
25 so I can either cover my mouth or I can cover the

1 microphone.

2 Hi, Chairman Doduc. My name is Norm Sands. I  
3 also come here and stand with Penny Opal Plant.

4 I felt compelled to come here today to stand  
5 for all our non-human relatives. We don't need science  
6 or your experts to tell us that our non-human relatives,  
7 our standstill relatives, our fliers, will die with  
8 whatever you do. We don't believe there is an acceptable  
9 amount that can die.

10 I ask that you take into consideration all  
11 life. All life is sacred.

12 CO-HEARING OFFICER DODUC: Oh. Thank you,  
13 Mr. Sands.

14 That is all the speaker cards I have for Policy  
15 Statements.

16 Is there anyone else who wish to provide a  
17 Policy Statement today?

18 All right. Oh, there's one?

19 And if, afterwards, you could fill out one of  
20 these cards just so we can officially have you.

21 MR. FANNING: Yes, I will do that. Thank you  
22 very much.

23 My name is Ken Fanning. I'm with the Northern  
24 California Water Storage Forum.

25 And our concern is about the -- the overall



1 flow on the Sacramento River with any sort of diversion.

2 There really needs to be more upstream storage  
3 in order to provide the Delta with the sort of water it  
4 needs for pulse flows, for the Ex Tube Mixing Zone, and  
5 other -- other environmental enhancements of -- of the  
6 Delta.

7 The -- With sea-level rise and climate change,  
8 the only solution to protecting the Delta really is more  
9 storage upstream. That would include Sites Reservoir, it  
10 would include Temperance Flat on the -- you know, further  
11 south, and other storage projects upstream.

12 So, our concern is that unless there's more --  
13 more water storage upstream, permanent water storage  
14 upstream, you know, there's not going to be enough flow  
15 to protect the Delta and, in particular, the Lower  
16 Sacramento River.

17 You know, the Auburn Dam was started in 1970,  
18 started and stopped in 1975, and would have provided  
19 flood protection to Sacramento, as well as controlled  
20 flows of temperature and -- to the Lower Sacramento River  
21 and as well as the closest source for pulse flows to the  
22 Delta.

23 So, without upstream storage, there's really no  
24 way to -- to protect the Delta at all, particularly with  
25 sea-level rise. There will be more and more storage

1 upstream all the time unless you're going to completely  
2 inundate the Delta.

3 So, thank you for considering other options and  
4 thank you for having the hearing.

5 CO-HEARING OFFICER DODUC: Thank you.

6 Anyone else?

7 Not seeing any takers, let me again recap my  
8 instructions from earlier:

9 Petitioners, you have until 5 p.m. tomorrow to  
10 provide a written response to NRDC's motion, the  
11 joinders, as well as the statements you heard today.

12 All other parties will have until noon on  
13 Tuesday to respond to Petitioners' submittal.

14 Let me also add, Mr. Mizell, that your  
15 submittal should also include Direct Amended Witness  
16 Statement today.

17 The hearing days of tomorrow and all of next  
18 week are canceled.

19 And until we rule on the motion or inform you  
20 otherwise, parties should assume that the evidentiary  
21 portion will begin on February 22nd.

22 Are there any questions?

23 Mr. Mizell.

24 MR. MIZELL: Tripp Mizell for DWR.

25 You mentioned earlier that staff may have

1 certain questions they would like, specifically mentioned  
2 in our response.

3 Is there --

4 CO-HEARING OFFICER DODUC: If so --

5 MR. MIZELL: -- a time --

6 CO-HEARING OFFICER DODUC: If so, we will  
7 provide that on the Service List by closing business  
8 today.

9 MR. MIZELL: Thank you very much.

10 CO-HEARING OFFICER DODUC: By 5 p.m. today.

11 All right. Thank you all.

12 With that, we are adjourned.

13 (Proceedings adjourned at 11:39 a.m.)

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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: February 12, 2018

23

24

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Candace L. Yount, CSR No. 2737